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Gotham Audio LLC

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Franz Ammann and Lewis Frisch are pleased to announce that on January 22, 2008 the United States Patent and Trademark Office registered the distinctive "GA and Design" Mark (see attachment) to our partnership, Gotham Audio, LLC. This successfully concludes the Gotham organization's three year legal effort to confirm its ownership of the historic Mark. This ownership had been challenged in December 2005 by Charles Whitener and his Westrex Corporation, a manufacturer of vacuum tubes. On December 13, 2007 the Trademark Trial and Appeal Board granted Gotham's motion to dismiss this Opposition with prejudice.

The "GA and Design" Mark registered to Gotham Audio, LLC is identical to the Mark that Stephen Temmer and his company Gotham Audio Corporation, registered as a US Trademark in August 1965. This identical Mark was subsequently registered by Temmer, through his company Gotham AG, as a Swiss Trademark in 1984.

The Patent and Trademark Office recognized that Gotham Audio, LLC co-member and CEO, Franz Ammann, could assert use of this Mark as early as the spring of 1984. Consequently, the Mark registered to Gotham Audio, LLC was assigned a date of first use as March 14, 1984. The clear link between Gotham Audio, LLC and Stephen Temmer's Gotham Audio Corporation is now a matter of record.

We could ask for no better way to begin 2008, a year which marks the 50th anniversary of the founding of Gotham Audio in the US and the 25th anniversary of the founding of Gotham AG in Switzerland.

BACKGROUND AND DETAILS :

In 2004, Frisch and Ammann were preparing to launch a new company to distribute Gotham Audio Cable in the United States. These cables are produced and marketed by the Swiss company, Gotham AG, which was originally established as a subsidiary of the famed Gotham Audio Corporation based in New York City.

Gotham Audio Corporation was founded by Stephen Temmer in 1958. He registered his Gotham trademark in Switzerland in 1984, shortly before his retirement. He subsequently transferred the sales rights for Gotham Audio Cable, along with rights to continue to use the Gotham name and Mark, to Franz Ammann. Ammann continued to use the Gotham name and mark over the next twenty + years, establishing a successful organization near Zurich which distributes professional audio equipment in Switzerland, while marketing Gotham Audio Cable worldwide.

The New York Gotham's core business, the distribution of Neumann microphones, came to an abrupt end in 1991 when the Neumann family turned over ownership of their business to Sennheiser. The disheartened principals of the Gotham Audio Corporation embarked upon new ventures, and with the untimely death of Stephen Temmer in 1992, the remarkable company that he founded slowly faded from the rapidly changing audio scene.

A decade later, Franz Ammann and Lewis Frisch decided to name their new company Gotham Audio, LLC, so as to preserve the use of the legendary Gotham Audio name and Mark by those with both a historical connection to the Gotham Audio Corporation and a true appreciation for that company's immense contributions to our industry. Temmer's successors at Gotham Audio in New York had failed to renew his US trademark and after the business closed its doors, they did little to preserve the company's legacy. Frisch informed several of them in late 2004 of his intention to revive the name and renew the Mark in the US, but received nothing in reply, either at that time, or since.

Frisch hoped to launch a website at www.gothamaudio.com but he found that the web address was held by an Atlanta businessman. Since nothing was posted at the web address, Frisch contacted Charles Whitener and informed him of his plans for Gotham Audio LLC. Whitener offered to sell the web address. Frisch made him an offer on November 4, 2004 and heard nothing further in reply over the course of the next 12 months.

Gotham Audio, LLC was incorporated in the Commonwealth of Pennsylvania on November 24, 2004. On December 20, 2004 the LLC filed an application for the distinctive "GA and Design" Mark with the US Patent and Trademark Office.

A year later, Charles Whitener's Westrex Corporation filed a notice of Opposition to the Gotham application with the Trademark Trial and Appeal Board. Their attorneys claimed that Gotham Audio's use of the GA Mark would infringe upon the Gotham trade name and mark which Westrex had *allegedly* used to brand audio power amplifiers since 1995. At the same time they filed a trademark application for the GOTHAM name and GA Mark in the European Community. Just prior to this, in September 2005. they had also filed a trademark application in the US for GOTHAM (this application was subsequently suspended due to its conflict with the registered trademark of JL Audio (Miramar, FL) for their widely advertised and sold GOTHAM power amplifiers).

In January 2006 , Frisch was contacted by attorneys representing Charles Whitener and the outlines of Whitener's plans emerged. It seemed that over a period of years, Charles Whitener had aggressively sought to acquire marks and naming rights for numbers of "classic" American electronics companies that *allegedly* had ceased to do business. He intended to use these names and logos to brand re-makes of their original audio products (primarily vacuum tubes) or to generate licensing revenue from other companies who wished to use the names. His attorneys offered to license the GA and Design Mark to Gotham Audio LLC for an annual fee of \$1000.

Emboldened by his apparently successful acquisition of rights to the classic Westrex and Western Electric Marks, Whitener began to post a "Coming Soon" message on the www.gothamaudio.com URL and he followed up in early 2006 by displaying logos for Gotham Audio, Mullard, Tung-Sol and Telefunken on his Gotham Audio website.

There was however no evidence to show that Whitener had actively used the GA and Design Mark in connection with specific goods advertised and offered for sale, while the Swiss company Gotham AG had registered the mark in Switzerland in 1984 and had used it extensively, continuously and internationally since then. With this in mind , Gotham Audio, LLC retained Sanford Piltch, a Patent and Trademark Attorney based in Allentown PA to answer the Opposition.

Manufacturers such as Electro-Harmonix/New Sensor Corp. and Telefunken USA were also concerned about Whitener's posting logos that they were actively using. Mike Matthews, at Electro-Harmonix, shared the name of his attorney with Gotham, in case cooperation in legal matters became advisable.

On February 28th, 2006, Piltch affirmed that Whitener did not possess any rights to the GOTHAM or "GA and Design" Marks either directly or through a predecessor entity. Further that Gotham Audio, LLC possessed rights to these Marks through the affiliation with Gotham AG who had acquired the rights to use the Marks from Stephen Temmer in 1984 and had used them continuously in the USA from that time until the founding of Gotham Audio, LLC. Further that Whitener had adopted the Marks to confuse and mislead the public into assuming that his companies were somehow affiliated with Stephen Temmer and the Gotham Audio Corporation which originated the Marks. Finally that there was no evidence that Gotham Audio, LLC's use of the "GA and Design" Mark would in any way confuse or mislead the public as regards to the source of or possible associations with the goods *allegedly* manufactured or sold by Whitener's companies.

The case dragged on throughout 2006 and well into 2007. In early 2007 Whitener's www.gothamaudio.com website went blank. In the months that followed. Whitener and his attorneys failed to present any further evidence to support their claims and prosecute the Opposition. On October 26, 2007 Attorney Piltch filed combined motions to dismiss Opposition for failure of Opposer to take testimony and for judgment for Opposer's failure to prove case. On December 13, 2007, the Trademark Trial and Appeal Board granted all of Gotham Audio, LLC's motions and dismissed the Opposition with prejudice.

Most significantly, the date of first use and first use in commerce was set as March 14, 1984, *prior* to Stephen Temmer's retirement and *prior* to the expiration of his original US trademark registration in November 1985 . So the lineage of the Gotham Audio, LLC "GA and Design" Mark is now clearly linked to the original 1965 US Mark and to Temmer's 1984 trademark application in Switzerland.

Gotham Audio, LLC wishes to thank those colleagues in the audio industry who have expressed their support for its efforts over the past three years. In this way, they too have done their part to honor the legacy of one of the pioneering names in Professional Audio, and to discourage this sort of trademark raiding by those who have little connection to, or true appreciation for, the distinguished heritage of those who built our industry in the 1950's and 1960's.

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