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*FUSION DANCE®™
CULTURAL GUARD Newsletter

Analysis and Illustration of News and Research Data Obtained on United States and International Politics, Policies, and Practices of Dance and Other Arts. An Investigative and Informative Class Medium Available Nationally and Internationally. Disseminated at Presentations, Home and Abroad, 1978-2005. Used for Lecture Notes on Blackboard and/or Mailed Internationally in Response to Inquiries, 1983-2005.

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PROTECT YOUR DANCE AGAINST IDENTITY THEFT

Preamble. "Intellectual property rights are the rights given to people over the creations of their minds." [wto.org]

If you have any kind of creation in or related to dance under your name or other identifier of your own unique invention and design, and they prove to be attractive and saleable, the chances are, as time goes by, that others may want to own them too. They may want to do so without your permission and without any compensation and acknowledgement to you as original creator and owner. In order to do that they may trivialize or generalize your creation and its identity as though they have never been your own but belonged to anybody and everybody who wanted to use them, claimed or pretended to have originated them - leaving you totally out of the equation. After years of making your creation and its identity known in your country and perhaps even abroad, to your astonishment, you may find them on the internet and in traditional commerce - whether for profit or non-profit - used by others to promote their own related or unrelated products or ideas. It was these prospects that prompted the writing of this article illustrating what can happen to dance in time, attempting a reasonable answer to the question:

WHY DANCE INNOVATORS WORLDWIDE NEED TRADEMARK AND COPYRIGHT AND <u>ENFORCED</u> PROTECTION OF THEIR INTELLECTUAL PROPERTY?

A case study based on the Author's own situation relative to his innovation of a globally applicable theory and practice: cultural and artistic diversity education and conflict resolution, cross-training and performance, through the forms of dance and related aerobics/exercise and theater movement. His local, national, and international research and presentations helped him continuously develop his innovation before, during, and after his 28 years tenure as dance and exercise professor at a state university in the U.S.A. The real life examples cited below are meant for credibility only and not to prove that any law had been violated by anyone.

THEY SAY "imitation is the highest form of flattery" -- but it can be the highest form of trademark and copyright violation too. Some real heavy legal stuff is involved here, such as §43 (15 U.S.C. 1125) of the U.S. Trademark Law that forbids "false designation of origin, false or misleading description of fact, or false or misleading representation of fact" in conjunction with §45 (15 U.S.C. 1127) "Colorable imitation" and "Dilution" of a registered mark, and other applicable parts of the law; also definitions of the U.S. Copyright Law including Nimmer on Copyright, (1) "fragmented literal similarity" (where words, lines, or paragraphs are copied word-for-word, although not necessarily verbatim) at seq. 13.03 [A] at 13-28 to 13-58 (1993), and other definitions of copyright infringements. [17 U.S.C.; "IP NII," KF2979.U55 1995] (Both U.S. laws have at least their rough equivalents in many other countries throughout the world).

OF THE MANY WAYS AND MEANS your intellectual property may be imitated on or off the Worldwide Web, this writing will concentrate on traditional, off-line print media from where infringements spread to the internet.

ONE CASE IN POINT is this writer's registered trademarks/service marks and copyrighted photographic art work expression, "Fusion," "Dancefusion," "Fusion Dance," "Fusiondancer" and "Breaking the Style Barrier" which were imitated in 1997 by a leading U.S. dance periodical. Because of its broad influence in the field, this periodical has encouraged a myriad of further violations by its readership and other media along its national and international lines of distribution.

THERE IT WAS, in their "Anniversary Issue," running throughout a near-center fold article, this writer's registered service mark and

copyrighted art work expressions and materials glaring into the reader's face, colored, imitated and diluted to conceal **the gravest identity theft the dance world has ever seen.** Related front page highlight, infringing program notes, reports, some listings, subsided somewhat only after a change of the periodical's ownership. Similar cases may go undetected for years, because one cannot survey all related paper media when published. By the time distant big city and community art columnists' infringing materials are recycled on the internet, the trademark's owner gets tangled in a vicious circle of infringements between traditional and electronic media.

NAMES, DATES, DETAILS are a matter of public record that anyone willing to do the research can access. This writer has done his own private research and has also obtained U.S. governmental research data on the same subject, all of which point to an avalanche of infringements set off by the aforesaid publication. Collaterally, not only this class medium but major U.S. and foreign mass media also infringed this writer's trademarks and plagiarized his expressions **before and after 1997.**

THEY ALSO SAY "no ifs, ands, or buts, shoplifting is stealing" -- and so is the ripping off of the trademark and copyright identity of a product. **Why would the "powers that be" -- art columnists, critics and others -- who are used to gaining money and prestige and increased circulation by reviewing in glowing terms the activities of their favorites in the conventional limelight, rip off the brilliant marks, expressions, and substance of an unconventional contemporary innovation and falsely describe their origin in order to make them fit the otherwise incompatible activities of the said powers' present and past favorites?** Perhaps, because they were more profitable as rip-offs and false credits to some famous names than as credit to their "no name" innovator promoting diversity in the Minnesota boondocks and behind the former Iron Curtain.

LET IT SUFFICE to say that the above "powers" deprived this writer of the legal identity of his innovative product, not even mentioning his name let alone giving him any credit for it (except incidentally in a 1998 brief academic retirement announcement tantamount to appearing in the Obituary section). By encouraging a myriad of others to do the same, the aforesaid "powers that be" deceived their public into thinking and acting as though the dancefusion marks were not this writer's **legally registered intellectual property but rather a public domain balloon** flown high on hopes of its becoming the latest phenomenal dance craze leading to riches and fame.

AS THIS WRITER'S then 94 years young Hungarian mother, Iluska -- the brightest literary wit on either side of the Atlantic -- has taught him in 2001 to comment in Latin:

E NON EVERO E BEN TROVATO!

That roughly translated means, "though it's not true it is well thought out!" Indeed, the balloon burst, "fusion" failed to work for dance but the die-hards hung onto it anyway on-line and off.

SO MUCH SO that when the concerned arm of this country's government, The United States Patent and Trademark Office, conducted its Nexis® and Lexis® research into these circumstances, it found what seemed like the same vast **confirmation** of public domain property that the aforesaid powers instigated **not to look like the deception it actually was, but real,** possibly fooling not only their public but also the authorities. This writer helped to make the fact and sources of deception apparent to the USPTO because their Nexis® and Lexis® research was **not broad enough** to cover **any** of the leading dance media in the U.S.A. and abroad, most of which either **did not participate** in the deception, or only incidentally.

ANOTHER PROBLEM with not so much the U.S. but the U.K., German, BENELUX trademark examiners was that they failed to recognize **contradistinction** by not going back **far enough** in time. Because the further back they would have gone toward 1966 and 1979-1980, the less evidence they would have found of anybody innovating and using first, in connection with dance, the marks, "Fusion," and "Dancefusion," "Fusion Dance," "Fusiondancer" and the logo, "Breaking the Style Barrier" except this writer, Dr. Fogarassy or, by his former artistic name, "Dr. Varga." He, for the first time in dance history, not only used the word, fusion, singly, as a symbolic title and mark for his 1966 civil rights choreography, but started juxtaposing "dance" and "fusion" creating dancefusion, a **contradistinctive** compound word **trademark.** The two words together no longer meant what they did separately, but were merely a symbol for fighting cultural and artistic discrimination through his innovation characterized as "Breaking the Style Barrier" meaning diversity, versatility, freedom and equality of the people and their dance and related movement forms. There was to be plenty of adaptation, but nothing as live and vibrant as dance and related movement was to be "fused" literally and rigidly, or loosely to obliterate cherished cultural and artistic distinctions, making the term "fusion" deadening to the art of dance and its creators. For his **"creation of the mind,"** DANCEFUSION® and other, common-law* then internationally registered fusion trademarks (1980*-1992, 1999, 2002, 2003, 2004), Dr. Fogarassy prescribed a non-literal meaning, and any other interpretation and use is false, violating §43 and §45 above and their global equivalents. *1966-1979 for unique trials in USA and abroad.

WILLFUL VIOLATORS are those aware while the so called "innocent infringers" are those unaware of violating exclusive rights of the intellectual property owner. In the case explored herein, the latter was probably deceived by the former into becoming infringers **en masse.** Unfortunately for the latter, the law determines infringement "without regard to the intent or state of mind of the infringer; innocent infringement is infringement nonetheless". See "the innocence or willfulness of the infringing activity may be relevant with regard to the award of statutory damages" in 17 U.S.C. §504(c)** (1988). **TM adaptations de facto or de jure.

YOU DO NOT have to allege any violation of the law, as this writer had to herein for illustration purposes, to sense that something is not right when you see your intellectual property being used by others without your permission.

SOME COUNTRIES' authorities do not realize that a violation could have spread to them from beyond their borders - as the fusion mark violations have from the U.S.A. - and they should not legitimize it

because it may seem to benefit their own citizens. Names of countries, infringing websites and individuals are withheld to avoid involving the re-publisher in any liability.

LITIGATION, especially under these circumstances, could be very expensive for you, and even futile if you cannot overcome the defenses made available to the alleged violators. Actual and potential infringers may ask for, or you may offer to them, the licensing of your trademark if it was to your mutual benefit. Otherwise, unless they voluntarily cease and desist upon your request, litigate you must. If you hesitate too long, you may lose everything you ever created and lived by as the marks and materials of your intellectual property. If you have a strong case, as this writer does nationally and internationally, you may very well win and the violators lose and pay court costs and statutory damages.

THIS IS APPLICABLE TO direct violators committing the act through a particular medium, and **contributory violators** in control of the medium through which the act was committed; for example, those who bought this writer's registered service mark, dancefusion or fusion dance as their domain name and address, and those Registrars who **sold his lawfully owned mark** to them. The U.S. Lanham Act made the indiscriminate sale of trademark domain names possible, however, creating an unconstitutional double standard and unequal protection under the law that the rest of the world was forced to follow--but that's another story in previous and forthcoming issues of Fusion Dance®™Cultural Guard.

HOPEFULLY, this case study will help dance innovators worldwide better understand the need for enforced trademark and copyright protection of their intellectual property against identity thieves lurking around every dance and movement corner. In time all cherished dance creations of the mind may need protection. Your time to secure yours may be right now.

1. FUSION, 1966, promoting civil rights, by Fogarassy for his B.A. Dance degree (C.G., Fall 1980 issue);
2. FUSION, 1967, Emshwiller's short film promoting towels for a towel manufacturing company (Int'l. Encyc. Dnc., 1998)

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Dr. Gusztav Fogarassy

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STOP TERRORISM BEFORE IT STOPS YOU!

"Adaptation" *builds* dance forms, **"fusion"** *destroys* them because **this term,** as Dr. Fogarassy originally related it to dance in his 1966 civil rights choreography, is merely **symbolic of breaking down the barriers of cultural and artistic discrimination.** While "fusion" may describe something discernible in music, and physics, medical and other sciences, it cannot do so in dance because of the incompatibility of the term with the medium and instrument of expression in this art. For more information, visit www.dancefusion.org and click on **"trademark warning."**

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