

The Beat Goes On For Andy Stroud

By Kris Burks

Photographs of Miles Davis, Steve McQueen, Johnny Cash and other performers adorn the walls of **Andy Stroud's** office. These images are more than just a lawyer's attempt to enliven his surroundings. Each of the photographs was taken by Jim Marshall, legendary rock and roll photographer and one of Stroud's clients. Stroud, a partner in Sacramento's *Mennemeier, Glassman & Stroud LLP*, has initiated numerous actions on Marshall's behalf since he began representing the photographer three years ago. Stroud has mainly represented Marshall in copyright infringement cases arising out of the unauthorized use of photographs. In addition, Stroud has also pursued trademark actions for the photographer. Since the name "Jim Marshall" has been trademarked by Marshall, anyone who puts his or her name on one of Marshall's photos is engaging in trademark infringement as well as a copyright violation.



For Stroud, representing Marshall has been one fascinating and litigious trip, indeed. Marshall photographed rock and roll's heyday in the 1960's. According to the book *Not Fade Away: The Rock & Roll Photographs of Jim Marshall*, Marshall was one of the chief photographers at the Monterey Pop Festival and at the original Woodstock. Marshall was also the only photographer with backstage access to the Beatles' final concert. Marshall, who continues to tour as a music photographer, most recently with Limp Bizkit, has more than 500 album and compact disk covers to his credit.

"The main thing to understand about Jim is that Jim was a photographer at a time and a place in the sixties that will never be repeated again," Stroud said. "Not only was it the turbulent times of the sixties, but it wasn't the business that it is now. They didn't have entourages and managers and that kind of stuff. Jim essentially hung out with the stars."

The combination of Marshall's access to the stars, longevity in the business, and sheer talent has given him a body of photographic work that is unmatched. Unfortunately, that body of work serves as a magnet to those who wish to make unauthorized use of his work.

"Jim is an artist with an artist's temperament," Stroud said. "Jim has very strong feelings about people using his work without his permission. As all artists do. Anyone who represents artists knows that they feel very strongly about that. So, Jim wants to hunt down even the smallest infringer. He wants to sue them and for them to know they cannot use his work." Among Marshall's most infringed-upon photographs is a famous shot of the late Johnny Cash flipping "the bird" at the crowd during a concert at San Quentin Prison in 1969. The photograph has become a popular image in the counter-culture, Stroud notes, "Skateboard companies love the image." In attempting to stop the infringement of this image, Marshall has sued infringers ranging in size from college kids selling t-shirts on Ebay to the Urban Outfitter chain of apparel stores.

In 2003, Matthew Barney, the hottest avant garde artist in New York today, took the Johnny Cash picture out of Rolling Stone magazine, put some bees wax on it and made some other modifications, put it in a box, framed it and called it "Window of the Man in Black." Barney sold it at an auction for \$25,000. Stroud's position was that it was not Barney's work, but that of Marshall because the "primary feature" of the work was the photograph, as the name indicates. Marshall filed a complaint against Barney for copyright infringement for making a derivative work out of his photograph and for trademark infringement because Barney covered up Marshall's name, thus making it seem as though Barney was the source of the work. Marshall and Barney ultimately reached a private settlement.

Stroud, a former president of the Intellectual Property Section of the Sacramento County Bar Association, began his intellectual property practice a decade ago while practicing at *Orrick, Herrington & Sutcliffe*. Stroud, along with Norm Hile, now-Magistrate Judge Kim Mueller and other colleagues, won a trademark dispute with Wall Street Journal on behalf of California Journal magazine. That's what got him interested in intellectual property and he has been doing it ever since. In addition to Marshall, Stroud's intellectual property clients have included large corporations, a rap artist, a muralist, and "everything in between."

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