

ESTTA Tracking number: **ESTTA327598**

Filing date: **01/19/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92050557
Party	Plaintiff TRP Entertainment, LLC
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Attachments	56f MOTION with exhibits.pdf (152 pages)(5041187 bytes)

discovery responses, including revised Initial Disclosures with new documents and Rule 26(a) witnesses, amended responses to first sets of interrogatories and requests for production, responses to second sets of interrogatories and requests for production, responses to first sets of requests for admission, and one thousand two hundred eighty two (1,282) documents, on or immediately before the day they filed their first Motion for Partial Summary Judgment (the DVP Genericness MSJ), which resulted in the suspension of this proceeding. Because this proceeding has been suspended, TRP is unable to ask DVP and its Rule 26(a) witnesses about documents, disputed facts and issues that are the subject of the DVP SJ Motions. Simply put, TRP has been railroaded by DVP's premature SJ Motions, and should be provided the opportunity pursuant to Rule 56(f) to discovery information necessary for its oppositions to the DVP SJ Motions. As such, TRP's Motion should be granted in the manner requested herein.

II. BACKGROUND

A. Discovery Efforts to Date

This proceeding was instituted on February 17, 2009, and trial dates were set. Francis Decl., ¶ 2; Docket Nos. 1-3. On March 3, 2009, TRP filed a First Amended Petition for Cancellation, and trial dates were reset. Francis Decl., ¶ 2; Docket Nos. 4 and 5. On April 3, 2009, DVP filed its answer and counterclaim, and trial dates were reset on April 6, 2009, with discovery closing on December 2, 2009. Francis Decl., ¶ 2; Docket Nos. 6 and 7. On July 6, 2009, TRP served its Initial Disclosures in accordance with the Board's April 6, 2009 Order, but DVP did not. Francis Decl., ¶ 2. In fact, DVP did not serve its Initial Disclosures until July 24, 2009. Francis Decl., ¶ 2, Exhibit A. In these Disclosures, DVP listed DVP and its principal Steve Apple as persons with knowledge, as well as Dick Feeney and Sandy Hackett. Id.

On June 11, 2009, TRP served DVP with first sets of interrogatories and requests for production, and after TRP granted an extension of time to respond to these requests, DVP served responses on July 17, 2009, and amended responses on July 21, 2009. Francis Decl., ¶ 3. Unfortunately, these responses were deficient in numerous respects, thus prompting TRP's

counsel to draft DVP's counsel a meet and confer letter on July 24, 2009. Id.; Exhibit B. In response to this letter, DVP's counsel stated in an email "if you truly are concerned about receiving substantive answers to your questions where you can ask all the follow up questions you desire, we invite you to come to our office (or pay for my client and myself to come to your office) for a deposition of Mr. Apple." Francis Decl., ¶ 3, Exhibit C.

On October 29, 2009, TRP served second sets of interrogatories and requests for production on DVP, as well as a first set of requests for admission. Francis Decl., ¶ 4. During the month of October and into November, 2009, the parties discussed potential resolution of this dispute. Id.

On November 6, 2009, TRP's counsel wrote DVP's counsel an email inquiring when DVP and Mr. Apple would be available for a Fed. R. Civ. P. 30(b)(6) deposition. Francis Decl., ¶ 5, Exhibit D. When DVP's counsel did not respond, TRP's counsel emailed again on November 17, 2009. Id. When TRP's counsel still did not hear from DVP's counsel, TRP served deposition notices for DVP as well as Harmony, who DVP's counsel purported to represent in DVP's Initial Disclosures. Francis Decl., ¶ 2, Exhibit E; see also Exhibit A.

On November 24, 2009, TRP's counsel spoke with DVP's counsel, who stated that he was going to speak with his client about deposition dates. Francis Decl., ¶ 6. On November 25, 2009, TRP's counsel wrote DVP's counsel an email confirming their November 24, 2009 conversation and requiring an answer about deposition dates. Id.; Exhibit F. TRP's counsel stated that he needed to confirm that those depositions would go forward on December 1 and 2, 2009. Id. TRP's counsel spoke with DVP's counsel later that day after numerous other email exchanges, and DVP's counsel informed him for the first time that he did not represent Harmony even though Harmony was listed as "c/o Jacob L. Hafter" on DVP's Initial Disclosures. Francis Decl., ¶ 6; see Exhibit A. The two agreed that the December 1 and 2, 2009 dates would be moved, and they also agreed to extend the case management deadlines in the case for a period of thirty (30) days in order to complete depositions, which again, TRP's counsel had been trying to

schedule. Francis Decl., ¶ 6. To this extent, TRP's counsel filed a consent motion on November 25, 2009, and the TTAB entered an order granting this extension on November 25, 2009. Id.; see Docket Nos. 11 and 12. The new discovery cutoff date was extended to January 1, 2010. Francis Decl., ¶ 6; see Docket No. 12.

On November 27, 2009, DVP's counsel sent TRP's counsel an email stating that December 10 and 11, 2009 would work for DVP and Harmony, but requested payment for expenses related to such depositions. Francis Decl., ¶ 7, Exhibit G. On November 30, 2009, TRP's counsel advised DVP's counsel that while TRP was unwilling to pay travel expenses for DVP, it was willing to pay Harmony its witness fee under Fed. R. Civ. P. 45. Id. DVP's counsel did not respond, and on December 1, 2009, TRP's counsel advised DVP's counsel he was no longer available for deposition on December 10, 2009, and to call TRP's counsel to resolve the deposition issues. Id. On December 2, 2009, DVP's counsel emailed TRP's counsel stating that December 11, 2009 could potentially work for both the depositions of DVP and Harmony. Francis Decl., ¶ 7. TRP's counsel responded stating that he could take DVP's deposition on December 11, 2009, and then take Harmony's deposition the following week via telephone. Id. DVP's counsel said that he would check on this. Id.

On December 4, 2009, DVP's counsel advised TRP's counsel that Mr. Apple from DVP was not available on December 11, 2009 for deposition, but he was available on December 17 and 18, 2009. Francis Decl., ¶ 8; Exhibit H. Also on December 4, 2009, DVP's counsel advised TRP's counsel for the first time that Harmony would require a subpoena, but that December 17 or 18, 2009 would work for a Harmony deposition. Id.

On December 4, 2009, DVP served responses to TRP's second sets of interrogatories and requests for production on DVP, as well as a first set of requests for admission. Francis Decl., ¶ 9. However, no documents were produced at this time. Id. In response to TRP's second set of interrogatories, DVP identified two new parties who have knowledge of the facts regarding this dispute, Classique Productions ("Classique"), and Destinations by Design ("Destinations"). Id.

DVP also stated that they would be producing additional responsive documents for this proceeding the following Monday, December 7, 2009. Id.; Exhibit I.

On December 7, 2009, TRP's counsel spoke with DVP's counsel about deposition dates and discovery issues, including when documents that were responsive to TRP's second sets of discovery were going to be provided to TRP. Francis Decl., ¶ 10. And, on December 8, 2009, TRP's counsel sent DVP's counsel an email inquiring about these issues. Id.; Exhibit J. DVP's counsel responded, stating that he was still discussing the deposition issues with Harmony, and was still compiling documents and amending Initial Disclosures. Id. He apologized, stating: "Sorry about the delay." Id. In response, TRP's counsel informed DVP's counsel that he wanted to take the depositions of Classique and Destinations, as well as issue subpoenas to them. Id. TRP's counsel also stated that he did not logistically think that they could accomplish all of the depositions and discovery by January 1, 2009, and therefore inquired whether DVP's counsel would stipulate to another thirty (30) day extension of time. Id. In response, DVP's counsel sent TRP's counsel an aggressive email at 3:39 p.m., falsely accusing TRP's counsel of a variety of different things, including: (a) prolonging the expense of the litigation; (b) "inflating the cost of this [allegedly] frivolous litigation"; (c) purposely choosing a venue [the TTAB] where if TRP lost its petition, it would not have to pay legal fees. Id. DVP's counsel then told TRP's counsel to complain to the USPTO if TRP's counsel did not like his response to the simple extension query. Id.

In response to DVP's counsel's 3:39 p.m. email, TRP's counsel asked DVP's counsel to reconsider his position because: (a) DVP's counsel did not disclose the identity of the new third parties until December 4, 2009; (b) DVP's counsel had not received the revised Initial Disclosures or the numerous documents DVP's counsel claimed to be reviewing; and (c) DVP's counsel did not tell TRP's counsel until December 4, 2009 that Harmony would require a subpoena. Francis Decl., ¶ 10A, Exhibit J. TRP's counsel also told DVP's counsel that he could file a motion with the TTAB, but would rather not, in order to avoid additional fees and

costs. Id. TRP's counsel's 4:01 p.m. email sparked off another series of hyperbolic emails from DVP's counsel about his vision of this proceeding and his presumed success. Id. At 4:57 p.m. on December 8, 2009, TRP's counsel asked DVP's counsel to email him the new documents (which he did not), and attached an amended deposition notice for DVP for December 17, 2009. Id.

On December 9, 2009, TRP served a second amended notice of deposition for DVP to DVP's counsel, for DVP's deposition on December 17, 2009. Francis Decl., ¶ 11, Exhibit K. Additionally, TRP's counsel executed document and deposition subpoenas for Harmony, which were served on December 10, 2009. Francis Decl., ¶ 11, Exhibit L. The production date for the Harmony document subpoena was December 22, 2009, and the Harmony deposition date was scheduled for December 29, 2009. Id. Also, TRP's counsel executed a document and deposition subpoena for Classique on December 9, 2009, which was served on December 10, 2009. Francis Decl., ¶ 11, Exhibit M. Also on December 9, 2009, TRP served a first amended Rule 30(b)(6) Notice of deposition of Harmony as well as a Rule 30(b)(6) Notice of Deposition of Classique. Francis Decl., ¶ 11, Exhibit N.

On December 9, 2009, DVP's counsel served amended Rule 26 Initial Disclosures, which disclosed Classique and Destinations as parties with knowledge, and stated they were "expected to testify concerning the facts and circumstances surrounding this lawsuit." Francis Decl., ¶ 12, Exhibit O. In addition to the new parties with knowledge, DVP's counsel listed many new categories of documents, all of which were designated "Attorneys' Eyes Only." Id. In addition to certain admittedly confidential material, the disclosure also consisted of publicly available information such as magazine articles, performance reviews, office actions and responses thereto, and other non-confidential materials. Id.¹ While TRP's counsel had asked DVP's counsel to email the newly produced documents to him, DVP's counsel sent them via U.S. Mail. Id. It was not until the following week that TRP's counsel received these documents, which

¹ These materials clearly do not come within the terms of the parties' Stipulated Protective Order approved on November 5, 2009, and should therefore be declassified. See Docket Nos. 9 and 10.

amounted to a grand total of one thousand two hundred eighty two (1,282) pages. Id. Also on December 9, 2009, TRP's counsel received Registrant's Second Amended Responses to First Set of Interrogatories and Requests for Production, containing various new responses. Francis Decl., ¶ 12, Exhibit P. Unbeknownst to TRP's counsel, on December 9, 2009, DVP filed its Genericness MSJ. Francis Decl., ¶ 12. DVP's counsel did not mention this during any correspondence on December 9, 2009. Id.

On December 11, 2009, TRP's counsel received an Order from the TTAB stating that this proceeding had been suspended in light of DVP's December 9, 2009 Genericness MSJ. Francis Decl., ¶ 13; see Docket No. 14. Later that day, DVP's counsel sent TRP's counsel an email stating that he had filed two (2) Motions for Partial Summary Judgment, and that since the proceeding had been suspended in light of the TTAB's Order, he would not attend any depositions or defend the case. Francis Decl., ¶ 13, Exhibit Q. In subsequent emails, DVP's counsel refused to attend any depositions. Id. These depositions included depositions of DVP, which was set for December 17, 2009, and depositions of Harmony and Classique, set respectfully on December 29 and 30, 2009. Id.; see supra. As such, TRP's counsel was forced to cancel plane reservations, court reporters, and conference rooms. Id.

On December 21, 2009, Harmony produced documents pursuant to the subpoena that was served on it on December 10, 2009. Francis Decl., ¶ 14. These documents consisted primarily of advertising and marketing materials, which TRP has yet to be able to ask Harmony about in deposition in light of the suspension order in place. Id.

Also on December 21, 2009, TRP's counsel sent DVP's counsel a letter, advising him that he had not yet received the DVP SJ Motions, and it did not appear that the Motions were served in accordance with 37 C.F.R. § 2.119. Francis Decl., ¶ 14A, Exhibit R. On December 22, 2009, DVP's counsel advised TRP's counsel in an email that he had served the DVP SJ Motions (allegedly again) on December 21, 2009. Francis Decl., ¶ 14A, Exhibit S. TRP's counsel responded by stating that he had never received the DVP SJ Motions, and if they were

not served before December 21, 2009, then the service date should be December 21, 2009. Id. DVP's counsel agreed to enter into a Stipulation stating that the service date of the DVP SJ Motions was December 21, 2009. Id. The parties submitted this Stipulation on December 23, 2009, and the Board approved it on January 4, 2010. See Docket Nos. 16 and 17.

On December 24, 2009, DVP's counsel wrote Harmony an email at least implying that they should not attend their deposition. Francis Decl., ¶ 15, Exhibit T.

On December 28, 2009, TRP's counsel spoke with Gene Brown from the Trademark Trial and Appeal Board, who advised him that unless he had consent from DVP's counsel to conduct third party depositions, those depositions should not go forward. Francis Decl., ¶ 16. As a result, TRP's counsel contacted both Harmony and Classique and advised them on December 28, 2009, that their depositions for December 29 and 30, 2009 respectfully, were cancelled for the time being. Id., Exhibit S.

The foregoing shows is that DVP and its counsel served the majority of their discovery responses, including revised Initial Disclosures with new documents and witnesses, amended responses to first sets of interrogatories and requests for production, responses to second sets of interrogatories and requests for production, responses to first sets of requests for admission, and one thousand two hundred eighty two (1,282) documents, on or immediately before the day they filed their first Motion for Partial Summary Judgment (the DVP Genericness MSJ), which resulted in the suspension of this proceeding. Francis Decl., ¶ 17; see supra. Additionally, while TRP attempted to arrange mutually-agreeable deposition dates with DVP's counsel since the beginning of November, 2009, DVP's counsel refused to commit to dates, and when dates were finally set, advised TRP's counsel that since the proceeding was suspended, no depositions would proceed. Id. This appears to be a premeditated plan to prevent TRP from obtaining information and testimony pursuant to the Federal Rules that is reasonably expected to create triable issues of fact in response to the premature DVP SJ Motions, filed approximately three (3) weeks before the discovery cutoff date. Id.; see Docket Nos. 13 and 15.

B. The DVP Misdescriptiveness MSJ and Discovery Related Thereto

In the DVP Misdescriptiveness MSJ, DVP claims that TRP's misdescriptiveness arguments must fail. DVP Misdescriptiveness MSJ, pp. 1-12. As a threshold matter, whether a mark is primarily geographically deceptively misdescriptive is a question of fact. In re Save Venice New York, Inc., 259 F.3d 1346, 1351 (Fed. Cir. 2001). With this in mind, DVP contends that its "Direct From Vegas The Rat Pack" mark is not a geographic indicator because it is derived from Applicant's corporate name, "Direct From Vegas Productions, Inc." Francis Decl., ¶ 18, DVP Misdescriptiveness MSJ, pp. 7-8. TRP should be able to ask DVP and its Rule 26(a) witnesses Harmony, Classique, and Destinations in deposition about this contention, and how the contention proves that "Direct From Vegas" is not a geographic indicator."² Francis Decl., ¶ 18. TRP should also be allowed to obtain subpoenaed documents from Classique and Destinations that support or refute these novel and meritless contentions. Id.

Next, DVP claims that even if its "Direct from Vegas The Rat Pack" mark contained a geographic indicator – which it does – TRP cannot satisfy the prima facie elements of a 15 U.S.C. § 1052(e)(3) claim. Francis Decl., ¶ 18A, DVP Misdescriptiveness MSJ, p. 8. With regard to the first criteria of the 15 U.S.C. § 1052(e)(3) test, "the primary significance of the mark must be a generally known geographic location," DVP claims that its mark: (a) "is spatial and temporal;" (b) "is intended to recall to the relevant audience Las Vegas in the 1960's when the Rat Pack was at their peak popularity"; (c) "invokes the imagination of customers"; and (d) "Respondent intentionally removed the "Las" from the Mark in an attempt to create this distinction." Francis Decl., ¶ 18A, DVP Misdescriptiveness MSJ, p. 9. DVP has not previously asserted these specific facts, and TRP is entitled to ask DVP and its Rule 26(a) witnesses Harmony, Classique, and Destinations in at least oral depositions how and why its mark is "spatial and temporal"; what that statement actually means; how and why its mark "is intended

² Again, DVP has claimed Harmony, Classique, and Destinations, all have knowledge about the facts and circumstances surrounding this lawsuit. See Registrant's Second Amended Initial Disclosure Pursuant to Rule 26(a)(1), attached hereto as Exhibit O.

to recall to the relevant audience Las Vegas in the 1960's when the Rat Pack was at their peak popularity"; how and why its mark "invokes the imagination of customers"; what customer imagination has been invoked; and the removal of "Las" from "Las Vegas" to achieve these goals. Francis Decl., ¶ 18A. Obtaining answers to these questions is relevant and important for TRP in responding to DVP's summary judgment claims and defeating such claims. Id.

With regard to the second factor of the 15 U.S.C. § 1052(e)(3) test, "the goods must not originate from that location," DVP claims that "it is obvious" that the Mark suggests a Rat Pack tribute show that was venues at the Sands Hotel in Las Vegas in the 1960's, and that fact is not disputed by TRP. Francis Decl., ¶ 18B, DVP Misdescriptiveness MSJ, p. 9. However, TRP contends that it is not "obvious" and DVP's claims that TRP does not dispute this allegation are factually and legally incorrect. Francis Decl., ¶ 18B. As such, TRP should be able to ask DVP and its Rule 26(a) witnesses Harmony, Classique, and Destinations in at least oral depositions how their assertions are obvious, and to whom they are obvious. Id. Furthermore, DVP is also entitled to obtain subpoenaed documents from DVP's Rule 26(a) witnesses Harmony, Classique, and Destinations on this issue as well. Id. Obtaining such testimony and documentation is important for TRP in responding to DVP's summary judgment claims and defeating such claims. Id.

Also, with regard to the second factor of the 15 U.S.C. § 1052(e)(3) test, DVP claims that since the concept for its show "originates" in Las Vegas, Nevada, that its services "originate" in Las Vegas, Nevada as well. Francis Decl., ¶ 18C, DVP Misdescriptiveness MSJ, p. 9. The word "originate" is a verb that means to "begin." Webster's New World Dictionary 955 (3d College ed. 1994). The word "origin" "is applied to that from which a person or thing has its very beginning." Id. DVP's headquarters are in located in Westminster, California, and therefore, DVP's services do not "originate" in Las Vegas, Nevada. Id. This fact is one of many disputed facts and TRP is entitled to ask DVP and its Rule 26(a) witnesses Harmony, Classique, and Destinations about this contention, and how, why, and where its show originated and what

documents and other evidence support such a theory. Id. Additionally, DVP is entitled to obtain subpoenaed documents from DVP's Rule 26(a) witnesses Harmony, Classique, and Destinations on this issue as well. Id.

With regard to the third factor of the 15 U.S.C. § 1052(e)(3) test, "purchasers must be likely to believe that the goods originate from the geographic location," DVP claims in conclusory fashion that "[p]urchasers do not believe, nor do they expect or want that the services provided under [DVP's mark] should originate in 2009 Las Vegas, Nevada." Francis Decl., ¶ 18D, DVP Misdescriptiveness MSJ, p. 9. DVP has not offered any support for this contention, and TRP should be able to ask DVP and its Rule 26(a) witnesses Harmony, Classique, and Destinations about this contention, including what purchasers do not believe nor expect or want its services to originate in Las Vegas, Nevada. Francis Decl., ¶ 18D. Furthermore, DVP is also entitled to obtain subpoenaed documents from DVP's Rule 26(a) witnesses Classique, and Destinations on this issue as well. Id.

Next, with regard to the third factor of the 15 U.S.C. § 1052(e)(3) test, DVP claims that most, if not all, patrons of its show would know something about the Rat Pack and that the Rat Pack performed most of their shows in Las Vegas, and therefore geographic origin is not as relevant to this portion of the 15 U.S.C. § 1052(e)(3) test as "inspiration" is for a tribute show. Francis Decl., ¶ 18E, DVP Misdescriptiveness MSJ, pp. 9-10. Again, no evidence has been presented by DVP to support this claim and TRP is entitled to ask DVP and its Rule 26(a) witnesses Harmony, Classique, and Destinations about its patrons and which patrons believe that "inspiration" for their tribute show is more important than the geographic location for their show, as it relates to this portion of the 15 U.S.C. § 1052(e)(3) test. Id. In addition to deposition testimony, TRP is also entitled to any and all responsive documents in the possession of DVP's Rule 26(a) witnesses Classique, and Destinations, which DVP has tried to prevent by the filing of its premature Misdescriptiveness MSJ. Id.

With regard to the fourth factor of the 15 U.S.C. § 1052(e)(3) test, "geographic location

is a material factor in the decision to purchase,” DVP claims that its mark is not geographically misleading because: “audiences could not be reasonably expected to want to see a Rat Pat (sic) tribute show that was related to California, the location there (sic) the Respondent has its business headquarters. Rather, audiences expect to see a Rat Pack tribute show that uses impersonators to recreate the experience provided to audiences in the 1960’s Las Vegas showrooms. Accordingly, the Mark, ‘Direct from Vegas’ is not geographically misleading; rather it is (sic) symbolizes the experience which the underlying performance delivers.” Francis Decl., ¶ 18F, DVP Misdescriptiveness MSJ, p. 11. No evidence has been presented by DVP to support these claims, and TRP is entitled to ask DVP and its Rule 26(a) witnesses Harmony, Classique, and Destinations about its patrons and which patrons believe that “inspiration” for their tribute show is more important than the geographic location for their show, as it relates to this portion of the 15 U.S.C. § 1052(e)(3) test. Francis Decl., ¶ 18F. Moreover, in addition to deposition testimony, TRP is also entitled to any and all documents in the possession of DVP’s Rule 26(a) witnesses Classique and Destinations relevant to this issue, which DVP has tried to prevent by the filing of its premature Misdescriptiveness MSJ. Id.

Next, DVP claims even if “Direct from Vegas” is a geographical indicator, the show has been performed in Las Vegas, Nevada for private events, and as such, TRP’s claims that “Direct from Vegas” is a false geographic indicator is flawed. Francis Decl., ¶ 19, DVP Misdescriptiveness MSJ, p. 12. DVP also states that since two Las Vegas based-agencies, Classique and Destinations, procured contracts for certain private Las Vegas performances, the “performance for which the Mark relates also comes from Las Vegas.” Id. As a threshold matter, even if DVP performed a few private events in Las Vegas, Nevada, that is irrelevant because DVP’s services under its mark do not originate in Las Vegas, Nevada. Id. Instead, TRP contends that such services originate in Westminster, CA, where DVP is admittedly headquartered. Id. Since DVP’s services under the mark do not originate in Las Vegas, Nevada, it does not matter if DVP’s show was performed in Las Vegas or if Classique or Destinations

procured contracts for private Las Vegas shows. Id. However, even if DVP's arguments had any shred of merit – which TRP believes they do not – TRP should be able to ask DVP and its Rule 26(a) witnesses Harmony, Classique, and Destinations about the aforementioned Las Vegas “shows,” where they were performed, how they were produced and performed, how Classique and Destinations assisted in the “performance” and/or “production” of these shows. Id. As set forth above, Classique and Destinations were first disclosed to TRP on Friday, December 4, 2009 in discovery responses, and were designated as Rule 26(a) witnesses for the first time in DVP's Second Amended Initial Disclosure, which was served on December 9, 2009, the same day that DVP filed its first premature Motion for Partial Summary Judgment. Id. TRP has not had an opportunity to obtain documents from these Classique or Destinations, and TRP should be able to obtain subpoenaed documents from them regarding these issues and shows which TRP believes will defeat DVP's allegedly “undisputed” contention that its show was “produced” in Las Vegas. Id. Also, TRP should be allowed to depose DVP, Harmony, Classique, and Destinations about these issues because TRP believes such documents and testimony will destroy DVP's claims that its minor forays private events in Las Vegas prove that its show “originates” in Las Vegas. This will assist TRP in defeating the DVP Misdemeanor MSJ. Id.

DVP also makes the following assertions against TRP:

Petitioner has a known reputation for using their capital and fiscal resources to push, bully and stymie small Rat Pack era tribute shows out of the market place. This instant action is a key example of such behavior. Rather than bringing such action before the judiciary, where petitioner may be liable for the cost of such an action if it turns out that its claims are not meritorious, they have sought to frustrate Respondent with frivolous claims before the Board. DVP Misdemeanor MSJ, p. 3.

DVP' allegations are false and reckless and are designed to tarnish TRP before the Board. Francis Decl., ¶ 20. Simply put, the Board should not consider such unsupported, libelous statements in deciding any part of this proceeding. Id. With that said, TRP should have an opportunity to ask DVP about these statements and determine the factual basis of such claims, what evidence supports such claims, and how those claims are relevant to the DVP SJ Motions.

Id.

C. The DVP Genericness MSJ and Discovery Related Thereto

In the DVP Genericness MSJ, DVP argues: (a) that TRP's incontestable Registration No. 2640066 ("066 Reg.") for the distinctive Mark "The Rat Pack is Back" (the "TRP Mark") should be canceled because the United States District Court in and for the District of Nevada entered a partial summary judgment order (the "Nevada SJ Order") tentatively (and erroneously) holding that "The Rat Pack" is generic; and (b) adding "is back" to "The Rat Pack" does not entitle the TRP Mark to continued registration. DVP Genericness MSJ (Docket No. 13), pp. 1-6. As a threshold matter, and like the issue of misdescriptiveness discussed above, whether a mark is generic is a question of fact. In re HOTELS.COM, L.P., 573 F.3d 1300, 1301-1302 (Fed. Cir. 2009); 2 J.T. McCarthy Trademarks and Unfair Competition ("McCarthy"), § 12.12, p. 12-38 (4th Ed. 2009). Furthermore, "[i]f the plaintiff has a federal registration, it constitutes a strong presumption that the term is not generic and defendant bears the burden of overcoming the presumption." 2 J.T. McCarthy, § 12.12, pp. 12-38-39, citing Coca-Cola Co. v. Overland, Inc., 692 F.2d 1250, 1254 (9th Cir. 1982)(citations omitted). Additionally, "[b]ecause a finding of genericness may result in the loss of rights which could be valuable intellectual property, a court should not find genericness without persuasive and clear evidence that the contested term has become generic among a majority of the buyer group." 2 J.T. McCarthy, § 12.12, p. 12-42 (citations omitted). Evidence used in a genericness determination includes: (1) the generic use by competitors which has not been contested by plaintiff; (2) the generic use of the term by the Plaintiff; (3) dictionary definitions; (4) generic use in trade journals or newspapers; (5) testimony of persons in the trade; and (6) consumer surveys. 2 McCarthy, § 12:13, pp. 12-43-47, citing In re Merrill Lynch, Pierce, Fenner and Smith, Inc., 828 F.2d 1567, 1571 (Fed. Cir. 1987)(citations omitted).

TRP contends that DVP has not and cannot come close to satisfying its heavy burden in proving genericness since it has not provided *any* of the above- mentioned evidence to support

its genericness claims. See DVP Genericness MSJ, pp. 1-6 (emphasis added). In fact, the only document that DVP has attached to its Genericness MSJ is the Nevada SJ Order, which cannot invalidate TRP's '066 Reg. as being generic. See DVP Genericness MSJ, Exhibit A. To wit, the Order is not a final judgment, especially because the Nevada Court has not entered the "proposed partial judgment" that it ordered Defendant Barrie Cunningham to prepare and submit. Francis Decl., ¶ 21, DVP Genericness MSJ, Exhibit A, p. 8. It is worth noting that when the Nevada SJ Order becomes a final judgment, it will most likely be appealed to the Ninth Circuit. Francis Decl., ¶ 21.

Even if the Board decided to afford any weight to the Nevada SJ Order, that Order only addresses "The Rat Pack" mark, as opposed to the composite "The Rat Pack is Back" mark, which is the subject of the '066 Reg. See DVP Genericness MSJ, Exhibit A. The Defendant in the Nevada Action did not even contest TRP's composite "The Rat Pack is back" mark, and as such, the Nevada Court only considered whether "The Rat Pack" was generic and should be disclaimed from the '066 Reg. See DVP Genericness MSJ, Exhibit A.

Because DVP has failed to submit anything other than the Nevada Court's tentative, non-final summary judgment order, the DVP Genericness MSJ should be denied out of hand. However, if the Board is not inclined to dismiss the DVP Genericness MSJ out of hand, TRP should at least be able to conduct discovery of DVP and its Rule 26(a) witnesses Harmony, Classique, and Destinations, about what facts and evidence aside from the Nevada SJ Order that DVP intends to use to support its genericness claims in its Genericness MSJ. The bottom line is that TRP does not want to be sandbagged by DVP in DVP's Genericness reply brief where DVP will undoubtedly attempt to supplement the record with evidence that TRP would not be able to address. TRP has already been sandbagged by DVP, and does not want that to happen again. See supra.

With regard to DVP's contention that "adding 'is back' to a generic term does not make the phrase unique," TRP is entitled to ask DVP and its Rule 26(a) witnesses Harmony, Classique,

and Destinations, about what facts and evidence aside from the Nevada SJ Order that DVP intends to use to support its statements that: (a) “[m]erely adding the qualifier ‘is back’ does not create enough specificity to make the phrase unique”; (b) “[a]ccordingly, the Mark does nothing more than announce that another Rat Pack tribute show is being produced for nostalgic audiences”; (c) “the Board must recognize that adding ‘is back’ to a generic term does nothing special to the generic term so that the relevant public can distinguish TRP’s tribute show from any other collection of Rat Pack impersonators”; and (d) “such analysis is one of first impressions, not one contingent upon fact.” Francis Decl., ¶ 22; see DVP Genericness MSJ, p. 5. Again, none of these “factual” statements and/or arguments are supported by any evidence, and DVP’s contention that the “is back” genericness inquiry is not governed by fact contravenes clear law that whether a mark is generic is a question of fact. Francis Decl., ¶ 22; see supra; In re HOTELS.COM, L.P., 573 F.3d at 1301-1302; 2 J.T. McCarthy, § 12.12, p. 12-38. In addition to deposition testimony, TRP is also entitled to any and all responsive documents in the possession of DVP’s Rule 26(a) witnesses Classique, and Destinations, which support any of DVP’s far-fetched factual assertions. Francis Decl., ¶ 22.

Finally, TRP is entitled to discovery regarding DVP’s prosecution of its Registration No. 3220387 (“387 Reg.”) for “Direct From Vegas the Rat Pack” – the Registration at issue in this proceeding. Francis Decl., ¶ 23. Specifically, in DVP’s application for that mark, DVP did not disclaim “the Rat Pack” or “Rat Pack” from that application. Francis Decl., ¶ 23, Exhibit T. As such, this may be used as evidence against DVP “as admissions against interest and the like.” TBMP 704.04, citing American Rice, Inc. v. H.I.T. Corp., 231 USPQ 793, 798 (TTAB 1986)(holding that the fact that opposer took a position in its application inconsistent with its position in an inter partes proceeding may be considered as evidence). At the very least, TRP is entitled to at least ask DVP about its inconsistent position in an oral deposition. Francis Decl., ¶ 23.

Before having to respond to DVP’s premature SJ Motions, which were filed

approximately three (3) weeks prior to the discovery cutoff date, TRP should be given an opportunity to obtain the information and documentation identified above, as well as depose DVP, Harmony, Classique, and Destinations about these disputed facts. Francis Decl., ¶ 24. This information, documentation, and testimony is important in defending against the premature DVP SJ Motions because TRP contends it will contradict the statements, alleged “facts,” and arguments made in those Motions. Id.

Again, no depositions have taken place although TRP negotiated with DVP in good faith to schedule a date for DVP and attempted to take third party depositions which were cancelled due to the filing of DVP’s premature SJ Motions and the ensuing December 11, 2009 suspension order. Francis Decl., ¶ 25; see Docket No. 14. Additionally, and again, TRP has not had the opportunity to obtain documents from DVP’s Rule 26(a) witnesses aside from Harmony, and is entitled to such discovery to defeat DVP’s motions. Francis Decl., ¶ 25.

Based on the foregoing facts, and the arguments set forth below, TRP’s Motion should be granted.

III. ARGUMENT

Fed. R. Civ. P. 56(f) provides in pertinent part:

“If a party opposing the motion shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) deny the motion; (2) order a continuance to enable affidavits to be obtained, depositions to be taken, or other discovery to be undertaken; or (3) issue any other just order.” Id.

The purpose of Rule 56(f) is to serve as a safeguard against an improvident or premature grant of summary judgment. 10B Charles A. Wright, Arthur R. Miller, Federal Practice and Procedure 3d, § 2740 (2009)(citations omitted). As such, courts have held that technical rulings regarding Rule 56(f) are improper and the Rule “should be applied with a spirit of liberality.” Id. When the requested discovery is reasonably directed to facts essential to justify the party's opposition, such discovery must be permitted or summary judgment refused. Opryland USA Inc. v. Great American Music Show, Inc., 970 F.2d 847, 852 (Fed. Cir. 1992), citing Celotex Corp. v.

Catrett, 477 U.S. 317, 326 (1986)(Rule 56(f) provides non-movants with protection from being “railroaded” by premature summary judgment motions); also citing National Life Ins. Co. v. Solomon, 529 F.2d 59, 61 (2nd Cir. 1975) (summary judgment is improper when the opposing party has yet to exercise pretrial discovery); also citing Dunkin' Donuts of America, Inc. v. Metallurgical Exoproducts Corp., 840 F.2d 917, 919 (Fed. Cir. 1988)(Board prematurely granted motion for summary judgment in contravention of Rule 56(f)).

A court may either deny a summary judgment motion or grant a continuance to respond to the motion, which is the alternative relief TRP requests. See Seville Classics, Inc. v. Meskill Enterprises, LLC., 2005 WL 6141289, *1 (C.D. Cal. 2005)(granting plaintiff’s application for ex parte order under Rule 56(f) denying defendant’s motion for summary judgment), quoting United States v. Kitsap Physicians Serv., 314 F.3d 995, 1000 (9th Cir. 2002); See Wade v. Chao, 2008 WL 1743483, *1 (N.D. Cal.)(same); Caldwell v. Roseville Joint Union High School District, 2006 WL 3747288, *1 (E. D. Cal. 2006)(holding that “Rule 56(f) motions ‘should be granted almost as a matter of course unless the nonmoving party has not diligently pursued discovery of the evidence” and granting Rule 56(f) ex parte application for continuance); United States v. El Dorado County California, 2006 WL 73344, *1 (E.D. Cal. 2006)(same); see Edwards v. Toys "R" Us, 527 F. Supp.2d 1197, 1199 (C.D. Cal. 2007)(same).

Rule 56(f) requires the nonmoving party to state, by affidavit, reasons why discovery is needed in order to support its opposition to a motion for summary judgment. Opryland, 970 F.2d at 852. As set forth in detail above, and in the Francis Decl., additional information and evidence is needed from DVP and its Rule 26(a) witnesses Harmony, Classique, and Destinations regarding DVP’s 15 U.S.C. § 1052(e)(3) arguments and statements contained in the DVP Misdescriptiveness MSJ and the DVP Genericness MSJ. See supra. Again, this consists of responses to subpoenas, documents, and oral testimony. Id. TRP intends to conduct the depositions of DVP, Harmony, Classique, and Destinations, after all written materials are accumulated from Classique and Destinations, and service is effectuated. Id. As

discussed in detail above, this information is expected to create additional triable issues of fact regarding the statements that DVP has made in its premature SJ Motions. See supra.

IV. CONCLUSION

In light of the foregoing, TRP requests that the DVP MSJ be denied without prejudice. Alternatively, TRP requests that the date for filing and serving an opposition to the DVP SJ Motions be continued for a period of forty five (45) days from decision on this Motion so that TRP can conduct the discovery requested herein. In the event the Court denies this instant Motion, TRP respectfully requests that it be provided thirty (30) days after such denial to file and serve oppositions to the DVP SJ Motions.

Dated: January 19, 2010

WATSON ROUNDS

By: 

Matthew D. Francis
WATSON ROUNDS
5371 Kietzke Lane
Reno, Nevada 89511
(775) 324-4100

Attorneys for Petitioner/Counterdefendant
TRP Entertainment, LLC

CERTIFICATE OF SERVICE

I certify that I am an employee of the Law Offices of Watson Rounds, a Professional Corporation, and on this day I deposited a true and correct copy in the United States mail, first class postage prepaid, in Washoe County, Nevada, of the within document entitled **PETITIONER'S FED. R. CIV. P. 56(f) MOTION FOR ORDER DENYING RESPONDENT'S MOTIONS FOR PARTIAL SUMMARY JUDGMENT (DOCKET NOS. 13 AND 15); ALTERNATIVE MOTION FOR CONTINUANCE TO OPPOSE RESPONDENT'S MOTIONS FOR PARTIAL SUMMARY JUDGMENT; BRIEF AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF,** addressed as follows:

JACOB L. HAFTER, ESQ.
LAW OFFICE OF JACOB L. HAFTER & ASSOCIATES
7201 W. Lake Mead Boulevard, Suite 210
Las Vegas, Nevada 89128

Dated: January 19, 2010



Carla Ousby

Declaration of Matthew D. Francis

Declaration of Matthew D. Francis

copy of Registrant's Initial Disclosure Pursuant to Rule 26(a)(1) is attached hereto as Exhibit A. In these Disclosures, DVP listed DVP and its principal Steve Apple as persons with knowledge, as well as Dick Feeney and Sandy Hackett. Id.

3. On June 11, 2009, TRP served DVP with first sets of interrogatories and requests for production, and after I granted opposing counsel an extension of time to respond to these requests, DVP served responses on July 17, 2009, and amended responses on July 21, 2009. Unfortunately, these responses were deficient in numerous respects, thus prompting me to draft opposing counsel Jacob Hafter ("Mr. Hafter") a meet and confer letter on July 24, 2009. A true and correct copy of this July 24, 2009 letter is attached hereto as Exhibit B. In response to this letter, Mr. Hafter stated in an email "if you truly are concerned about receiving substantive answers to your questions where you can ask all the follow up questions you desire, we invite you to come to our office (or pay for my client and myself to come to your office) for a deposition of Mr. Apple." A true and correct copy of opposing counsel's July 24, 2009, email response is attached hereto as Exhibit C.

4. On October 29, 2009, TRP served second sets of interrogatories and requests for production on DVP, as well as a first set of requests for admission. During the month of October and into November, 2009, the parties discussed potential resolution of this dispute.

5. On November 6, 2009, I wrote opposing counsel an email inquiring when DVP and Mr. Apple would be available for a Fed. R. Civ. P. 30(b)(6) deposition. A true and correct copy of a November 6-17, 2009 email string between me and opposing counsel is attached hereto as Exhibit D. When opposing counsel did not respond, I emailed again on November 17, 2009. Id. When I still did not hear from opposing counsel, TRP served deposition notices for DVP as well as Harmony, who opposing counsel purported to represent in DVP's Initial Disclosures. Attached hereto as Exhibit E is a true and correct copy of an email with deposition notices for DVP and Harmony for December 1 and 2, 2009 respectfully; see also Exhibit A.

6. On November 24, 2009, I spoke with Mr. Hafter, who stated that he was going to

speak with his client about deposition dates. On November 25, 2009, I wrote Mr. Hafter an email confirming our November 24, 2009 conversation and requiring an answer about deposition dates. A true and correct copy of this email is attached hereto as Exhibit F. I stated that I needed to confirm that those depositions would go forward on December 1 and 2, 2009. Id. I spoke with Mr. Hafter later that day after numerous other email exchanges, and he informed me for the first time that he did not represent Harmony even though Harmony was listed as “c/o Jacob L. Hafter” on DVP’s Initial Disclosures. See Exhibit A. We agreed that the December 1 and 2, 2009 dates would be moved, and we also agreed to extend the case management deadlines in the case for a period of thirty (30) days in order to complete depositions, which again, I had been trying to schedule. To this extent, I filed a consent motion on November 25, 2009, and the TTAB entered an order granting this extension on November 25, 2009. See Docket Nos. 11 and 12. The new discovery cutoff date was extended to January 1, 2010. See Docket No. 12.

7. On November 27, 2009, Mr. Hafter sent me an email stating that December 10 and 11, 2009 would work for DVP and Harmony, but requested payment for expenses related to such depositions. A true and correct copy of a November 27, 2009 to December 2, 2009 email string between me and opposing counsel is attached hereto as Exhibit G. On November 30, 2009, I advised opposing counsel that while TRP was unwilling to pay travel expenses for DVP, it was willing to pay Harmony its witness fee under Fed. R. Civ. P. 45. Id. Mr. Hafter did not respond, and on December 1, 2009, I advised him I was no longer available for deposition on December 10, 2009, and to call me to resolve the deposition issues. Id. On December 2, 2009, opposing counsel Michael Naethe (“Mr. Naethe”) emailed me stating that December 11, 2009 could potentially work for both the depositions of DVP and Harmony. I responded stating that I could take DVP’s deposition on December 11, 2009, and then take Harmony’s deposition the following week via telephone. Id. Mr. Naethe said that he would check on this. Id.

8. On December 4, 2009, Mr. Naethe advised me that Mr. Apple from DVP was not available on December 11, 2009 for deposition, but he was available on December 17 and 18,

2009. A true and correct copy of a December 4, 2009 email string between me and opposing counsel is attached hereto as Exhibit H. Also on December 4, 2009, Mr. Naethe advised me for the first time that Harmony would require a subpoena, but that December 17 or 18, 2009 would work for a Harmony deposition. Id.

9. On December 4, 2009, DVP served responses to TRP's second sets of interrogatories and requests for production on DVP, as well as a first set of requests for admission. However, no documents were produced at this time. In response to TRP's second set of interrogatories, DVP identified two new parties who have knowledge of the facts regarding this dispute, Classique Productions ("Classique"), and Destinations by Design ("Destinations"). DVP also stated that they would be producing additional responsive documents for this proceeding the following Monday, December 7, 2009. A true and correct copy of a December 4, 2009 email from Mr. Naethe to me is attached hereto as Exhibit I.

10. On December 7, 2009, I spoke with Mr. Naethe about deposition dates and discovery issues, including when documents that were responsive to TRP's second sets of discovery were going to be provided to TRP. And, on December 8, 2009, I sent Mr. Naethe an email inquiring about these issues. A true and correct copy of a December 8, 2009 email string between me and opposing counsel is attached hereto as Exhibit J. Mr. Naethe responded, stating that he was still discussing the deposition issues with Harmony, and was still compiling documents and amending Initial Disclosures. Id. He apologized, stating: "Sorry about the delay." Id. In response, I informed Mr. Naethe that I wanted to take the depositions of Classique and Destinations, as well as issue subpoenas to them. Id. I also stated that I did not logistically think that we could accomplish all of the depositions and discovery by January 1, 2009, and therefore inquired whether he and Mr. Hafter would stipulate to another thirty (30) day extension of time. Id. In response, Mr. Hafter sent me an aggressive email at 3:39 p.m., falsely accusing me of a variety of different things, including: (a) prolonging the expense of the litigation; (b) "inflating the cost of this [allegedly] frivolous litigation"; (c) purposely choosing a venue [the TTAB]

where if TRP lost its petition, it would not have to pay legal fees. Id. He then told me to complain to the USPTO if I did not like his response to my simple extension query. Id.

10A. In response to Mr. Hafter's 3:39 p.m. email, I asked Mr. Hafter to reconsider his position because: (a) he did not disclose the identity of the new third parties until December 4, 2009; (b) I had not received the revised Initial Disclosures or the numerous documents Mr. Naethe claimed to be reviewing; and (c) neither he nor Mr. Naethe told me until December 4, 2009 that Harmony would require a subpoena. Id. I also told Mr. Hafter that I could file a motion with the TTAB, but would rather not, in order to avoid additional fees and costs. Id. My 4:01 p.m. email sparked off another series of hyperbolic emails from Mr. Hafter about his vision of this proceeding and his presumed success. Id. At 4:57 p.m. on December 8, 2009, I asked Mr. Hafter to email me the new documents (which he did not), and attached an amended deposition notice for DVP for December 17, 2009. Id.

11. On December 9, 2009, TRP served a second amended notice of deposition for DVP to opposing counsel, for DVP's deposition on December 17, 2009. A true and correct copy of this email is attached hereto as Exhibit K. Additionally, I executed document and deposition subpoenas for Harmony, which were served on December 10, 2009. True and correct copies of these subpoenas and affidavits of service for the subpoenas are attached collectively hereto as Exhibit L. The production date for the Harmony document subpoena was December 22, 2009, and the Harmony deposition date was scheduled for December 29, 2009. Id. Also, I executed a document and deposition subpoena for Classique on December 9, 2009, which was served on December 10, 2009. True and correct copies of this subpoena and an affidavit of service for the subpoena is attached collectively hereto as Exhibit M. Also on December 9, 2009, TRP served a first amended Rule 30(b)(6) Notice of deposition of Harmony as well as a Rule 30(b)(6) Notice of Deposition of Classique. A true and correct copy of a December 9, 2009 email to opposing counsel with these attached Notices is attached hereto as Exhibit N.

12. On December 9, 2009, opposing counsel served amended Rule 26 Initial Disclosures,

which disclosed Classique and Destinations as parties with knowledge, and stated they were “expected to testify concerning the facts and circumstances surrounding this lawsuit.” A true and correct copy of an email attaching Registrant’s Second Amended Initial Disclosure Pursuant to Rule 26(a)(1) is attached hereto as Exhibit O. In addition to the new parties with knowledge, opposing counsel listed many new categories of documents, all of which were designated “Attorneys’ Eyes Only.” Id. In addition to certain admittedly confidential material, the disclosure also consisted of publicly available information such as magazine articles, performance reviews, office actions and responses thereto, and other non-confidential materials. Id.¹ While I had asked opposing counsel to email the newly produced documents to me, he sent them via U.S. Mail. Id. It was not until the following week that I received these documents, which amounted to a grand total of one thousand two hundred eighty two (1,282) pages. Also on December 9, 2009, I received Registrant’s Second Amended Responses to First Set of Interrogatories and Requests for Production, containing various new responses. A true and correct copy of a December 9, 2009 email from Mr. Naethe attaching these amended responses is attached hereto as Exhibit P. Unbeknownst to me, on December 9, 2009, DVP filed Respondent’s Motion for Partial Summary Judgment on the issue of genericness (“DVP Genericness MSJ”). Opposing counsel did not mention this during any correspondence on December 9, 2009.

13. On December 11, 2009, I received an Order from the TTAB stating that this proceeding had been suspended in light of DVP’s December 9, 2009 Genericness MSJ. See Docket No. 14. Later that day, Mr. Hafter sent me an email stating that he had filed two (2) Motions for Partial Summary Judgment (“DVP SJ Motions”), and that since the proceeding had been suspended in light of the TTAB’s Order, he would not attend any depositions or defend the case. A true and correct copy of Mr. Hafter’s December 11, 2009 email is attached hereto as Exhibit Q. In subsequent emails, Mr. Hafter refused to attend any depositions. These

¹ These materials clearly do not come within the terms of the parties’ Stipulate Protective Order approved on November 5, 2009, and should therefore be declassified. See Docket Nos. 9 and 10.

depositions included depositions of DVP, which was set for December 17, 2009, and depositions of Harmony and Classique, set respectfully on December 29 and 30, 2009. See supra. As such, I was forced to cancel plane reservations, court reporters, and conference rooms.

14. On December 21, 2009, Harmony produced documents pursuant to the subpoena that was served on it on December 10, 2009. These documents consisted primarily of advertising and marketing materials, which I have yet to be able to ask Harmony about in deposition in light of the suspension order in place.

14A. Also on December 21, 2009, I sent Mr. Hafter a letter, advising him that I had not yet received the DVP SJ Motions, and it did not appear that the Motions were served in accordance with 37 C.F.R. § 2.119. A true and correct copy of my December 21, 2009 letter to Mr. Hafter is attached hereto as Exhibit R. On December 22, 2009, Mr. Hafter advised me in an email that he had served the DVP SJ Motions (allegedly again) on December 21, 2009, and I responded by stating that I had never received the DVP SJ Motions, and if they were not served before December 21, 2009, then the service date should be December 21, 2009. A true and correct copy of a December 21-23, 2009 email string between me and Mr. Hafter is attached hereto as Exhibit S. Mr. Hafter agreed to enter into a Stipulation stating that the service date of the DVP SJ Motions was December 21, 2009. Id. The parties submitted this Stipulation on December 23, 2009, and the Board approved it on January 4, 2010. See Docket Nos. 16 and 17.

15. On December 24, 2009, Mr. Hafter wrote Harmony an email at least implying that they should not attend their deposition. A true and correct copy of this email is attached hereto as Exhibit T.

16. On December 28, 2009, I spoke with Gene Brown from the Trademark Trial and Appeal Board, who advised me that unless I had consent from opposing counsel to conduct third party depositions, those depositions should not go forward. As a result, I contacted both Harmony and Classique and advised them on December 28, 2009, that their depositions for December 29 and 30, 2009 respectfully, were cancelled for the time being. True and correct

copies of my emails to Harmony and Classique are attached collectively hereto as Exhibit U.

17. The foregoing shows is that DVP and its counsel served the majority of their discovery responses, including revised Initial Disclosures with new documents and witnesses, amended responses to first sets of interrogatories and requests for production, responses to second sets of interrogatories and requests for production, responses to first sets of requests for admission, and one thousand two hundred eighty two (1,282) documents, on or immediately before the day they filed their first Motion for Partial Summary Judgment (the DVP Genericness MSJ), which resulted in the suspension of this proceeding. Additionally, while I attempted to arrange mutually-agreeable deposition dates with opposing counsel since the beginning of November, 2009, opposing counsel refused to commit to dates, and when dates were finally set, advised me that since the proceeding was suspended, no depositions would proceed. This appears to be a premeditated plan to prevent TRP from obtaining information and testimony pursuant to the Federal Rules that is reasonably expected to create triable issues of fact in response to the premature DVP SJ Motions, filed approximately three (3) weeks before the discovery cutoff date. See Docket Nos. 13 and 15.

B. The DVP Misdescriptiveness MSJ and Discovery Related Thereto

18. In its Motion for Partial Summary Judgment on the issue of misdescriptiveness (“DVP Misdescriptiveness MSJ”) DVP contends that its “Direct From Vegas The Rat Pack” mark is not a geographic indicator because it is derived from Applicant’s corporate name, “Direct From Vegas Productions, Inc.” DVP Misdescriptiveness MSJ, pp. 7-8. TRP should be able to ask DVP and its Rule 26(a) witnesses Harmony, Classique, and Destinations in deposition about this contention, and how the contention proves that “Direct From Vegas” is not a geographic indicator.”² TRP should also be allowed to obtain subpoenaed documents from Classique and Destinations that support or refute these novel and meritless contentions.

² DVP has claimed Harmony, Classique, and Destinations, all have knowledge about the facts and circumstances surrounding this lawsuit. See Registrant’s Second Amended Initial Disclosure Pursuant to Rule 26(a)(1), attached hereto as Exhibit O.

18A. Next, DVP claims that even if its “Direct from Vegas The Rat Pack” mark contained a geographic indicator – which it does – TRP cannot satisfy the prima facie elements of a 15 U.S.C. § 1052(e)(3) claim. DVP Misdescriptiveness MSJ, p. 8. With regard to the first criteria of the 15 U.S.C. § 1052(e)(3) test, “the primary significance of the mark must be a generally known geographic location,” DVP claims that its mark: (a) “is spatial and temporal;” (b) “is intended to recall to the relevant audience Las Vegas in the 1960’s when the Rat Pack was at their peak popularity;” (c) “invokes the imagination of customers;” and (d) “Respondent intentionally removed the “Las” from the Mark in an attempt to create this distinction.” DVP Misdescriptiveness MSJ, p. 9. DVP has not previously asserted these specific facts, and TRP is entitled to ask DVP and its Rule 26(a) witnesses Harmony, Classique, and Destinations in at least oral depositions how and why its mark is “spatial and temporal”; what that statement actually means; how and why its mark “is intended to recall to the relevant audience Las Vegas in the 1960’s when the Rat Pack was at their peak popularity;” how and why its mark “invokes the imagination of customers;” what customer imagination has been invoked; and the removal of “Las” from “Las Vegas” to achieve these goals. Obtaining answers to these questions is relevant and important for TRP in responding to DVP’s summary judgment claims and defeating such claims.

18B. With regard to the second factor of the 15 U.S.C. § 1052(e)(3) test, “the goods must not originate from that location,” DVP claims that “it is obvious” that the Mark suggests a Rat Pack tribute show that was venues at the Sands Hotel in Las Vegas in the 1960’s, and that fact is not disputed by TRP. DVP Misdescriptiveness MSJ, p. 9. However, TRP contends that it is not “obvious” and DVP’s claims that TRP does not dispute this allegation are factually and legally incorrect. As such, TRP should be able to ask DVP and its Rule 26(a) witnesses Harmony, Classique, and Destinations in at least oral depositions how their assertions are obvious, and to whom they are obvious. Furthermore, DVP is also entitled to obtain subpoenaed documents from DVP’s Rule 26(a) witnesses Harmony, Classique, and Destinations on this issue as well.

Obtaining such testimony and documentation is important for TRP in responding to DVP's summary judgment claims and defeating such claims.

18C. Also, with regard to the second factor of the 15 U.S.C. § 1052(e)(3) test, DVP claims that since the concept for its show "originates" in Las Vegas, Nevada, that its services "originate" in Las Vegas, Nevada as well. DVP Misdescriptiveness MSJ, p. 9. The word "originate" is a verb that means to "begin." Webster's New World Dictionary 955 (3d College ed. 1994). The word "origin" "is applied to that from which a person or thing has its very beginning." *Id.* DVP's headquarters are in located in Westminster, California, and therefore, DVP's services do not "originate" in Las Vegas, Nevada. This fact is one of many disputed facts and TRP is entitled to ask DVP and its Rule 26(a) witnesses Harmony, Classique, and Destinations about this contention, and how, why, and where its show originated and what documents and other evidence support such a theory. Additionally, DVP is entitled to obtain subpoenaed documents from DVP's Rule 26(a) witnesses Harmony, Classique, and Destinations on this issue as well.

18D. With regard to the third factor of the 15 U.S.C. § 1052(e)(3) test, "purchasers must be likely to believe that the goods originate from the geographic location," DVP claims in conclusory fashion that "[p]urchasers do not believe, nor do they expect or want that the services provided under [DVP's mark] should originate in 2009 Las Vegas, Nevada." DVP Misdescriptiveness MSJ, p. 9. DVP has not offered any support for this contention, and TRP should be able to ask DVP and its Rule 26(a) witnesses Harmony, Classique, and Destinations about this contention, including what purchasers do not believe nor expect or want its services to originate in Las Vegas, Nevada. Furthermore, DVP is also entitled to obtain subpoenaed documents from DVP's Rule 26(a) witnesses Classique, and Destinations on this issue as well.

18E. Next, with regard to the third factor of the 15 U.S.C. § 1052(e)(3) test, DVP claims that most, if not all, patrons of its show would know something about the Rat Pack and that the Rat Pack performed most of their shows in Las Vegas, and therefore geographic origin is not as

relevant to this portion of the 15 U.S.C. § 1052(e)(3) test as is “inspiration” for a tribute show. DVP Misdescriptiveness MSJ, pp. 9-10. Again, no evidence has been presented by DVP to support this claim and TRP is entitled to ask DVP and its Rule 26(a) witnesses Harmony, Classique, and Destinations about its patrons and which patrons believe that “inspiration” for their tribute show is more important than the geographic location for their show, as it relates to this portion of the 15 U.S.C. § 1052(e)(3) test. In addition to deposition testimony, TRP is also entitled to any and all responsive documents in the possession of DVP’s Rule 26(a) witnesses Classique, and Destinations, which DVP has tried to prevent by the filing of its premature Misdescriptiveness MSJ.

18F. With regard to the fourth factor of the 15 U.S.C. § 1052(e)(3) test, “geographic location is a material factor in the decision to purchase,” DVP claims that its mark is not geographically misleading because: “audiences could not be reasonably expected to want to see a Rat Pat (sic) tribute show that was related to California, the location there (sic) the Respondent has its business headquarters. Rather, audiences expect to see a Rat Pack tribute show that uses impersonators to recreate the experience provided to audiences in the 1960’s Las Vegas showrooms. Accordingly, the Mark, ‘Direct from Vegas’ is not geographically misleading; rather it is (sic) symbolizes the experience which the underlying performance delivers.” DVP Misdescriptiveness MSJ, p. 11. No evidence has been presented by DVP to support these claims, and TRP is entitled to ask DVP and its Rule 26(a) witnesses Harmony, Classique, and Destinations about its patrons and which patrons believe that “inspiration” for their tribute show is more important than the geographic location for their show, as it relates to this portion of the 15 U.S.C. § 1052(e)(3) test. Moreover, in addition to deposition testimony, TRP is also entitled to any and all documents in the possession of DVP’s Rule 26(a) witnesses Classique and Destinations relevant to this issue, which DVP has tried to prevent by the filing of its premature Misdescriptiveness MSJ.

19. Next, DVP claims even if “Direct from Vegas” is a geographical indicator, the show

has been performed in Las Vegas, Nevada for private events, and as such, TRP's claims that "Direct from Vegas" is a false geographic indicator is flawed. DVP Misdescriptiveness MSJ, p. 12. DVP also states that since two Las Vegas based-agencies, Classique and Destinations, procured contracts for certain private Las Vegas performances, the "performance for which the Mark relates also comes from Las Vegas." Id. As a threshold matter, even if DVP performed a few private events in Las Vegas, Nevada, that is irrelevant because DVP's services under its mark do not originate in Las Vegas, Nevada. See supra. Instead, TRP contends that such services originate in Westminster, CA, where DVP is admittedly headquartered. Id. Since DVP's services under the mark do not originate in Las Vegas, Nevada, it does not matter if DVP's show was performed in Las Vegas or if Classique or Destinations procured contracts for private Las Vegas shows. Id. However, even if DVP's arguments had any shred of merit – which TRP believes they do not – TRP should be able to ask DVP and its Rule 26(a) witnesses Harmony, Classique, and Destinations about the aforementioned Las Vegas "shows," where they were performed, how they were produced and performed, how Classique and Destinations assisted in the "performance" and/or "production" of these shows. As set forth above, Classique and Destinations were first disclosed to TRP on Friday, December 4, 2009 in discovery responses, and were designated as Rule 26(a) witnesses for the first time in DVP's Second Amended Initial Disclosure, which was served on December 9, 2009, the same day that DVP filed its first premature Motion for Partial Summary Judgment on this issue of genericness. See supra. TRP has not had an opportunity to obtain documents from these Classique or Destinations, and TRP should be able to obtain subpoenaed documents from them regarding these issues and shows which TRP believes will defeat DVP's allegedly "undisputed" contention that its show was "produced" in Las Vegas. Also, TRP should be allowed to depose DVP, Harmony, Classique, and Destinations about these issues because TRP believes such documents and testimony will destroy DVP's claims that its minor forays private events in Las Vegas prove that its show "originates" in Las Vegas. This will assist TRP in defeating the DVP

Misdescriptiveness MSJ.

20. DVP also makes the following assertions against TRP:

Petitioner has a known reputation for using their capital and fiscal resources to push, bully and stymie small Rat Pack era tribute shows out of the market place. This instant action is a key example of such behavior. Rather than bringing such action before the judiciary, where petitioner may be liable for the cost of such an action if it turns out that its claims are not meritorious, they have sought to frustrate Respondent with frivolous claims before the Board. DVP Misdescriptiveness MSJ, p. 3.

DVP' allegations are false and reckless and are designed to tarnish TRP before the Board. Simply put, the Board should not consider such unsupported, libelous statements in deciding any part of this proceeding. With that said, TRP should have an opportunity to ask DVP about these statements and determine the factual basis of such claims, what evidence supports such claims, and how those claims are relevant to the DVP SJ Motions.

C. The DVP Genericness MSJ and Discovery Related Thereto

21. The NV SJ Order is not a final judgment, especially because the Nevada Court has not entered the “proposed partial judgment” that it ordered Defendant Barrie Cunningham to prepare and submit. DVP Genericness MSJ, Exhibit A, p. 8. It is worth noting that when the Nevada SJ Order becomes a final judgment, it will most likely be appealed to the Ninth Circuit.

22. With regard to DVP's contention that “adding ‘is back’ to a generic term does not make the phrase unique,” TRP is entitled to ask DVP and its Rule 26(a) witnesses Harmony, Classique, and Destinations, about what facts and evidence aside from the Nevada SJ Order that DVP intends to use to support its statements that: (a) “[m]erely adding the qualifier ‘is back’ does not create enough specificity to make the phrase unique”; (b) “[a]ccordingly, the Mark does nothing more than announce that another Rat Pack tribute show is being produced for nostalgic audiences”; (c) “the Board must recognize that adding ‘is back’ to a generic term does nothing special to the generic term so that the relevant public can distinguish TRP's tribute show from any other collection of Rat Pack impersonators”; and (d) “such analysis is one of first impressions, not one contingent upon fact.” See DVP Genericness MSJ, p. 5. Again, none of

these “factual” statements and/or arguments are supported by any evidence, and DVP’s contention that the “is back” genericness inquiry is not governed by fact contravenes clear law that whether a mark is generic is a question of fact. In re HOTELS.COM, L.P., 573 F.3d 1300, 1301-1302 (Fed. Cir. 2009); 2 J.T. McCarthy Trademarks and Unfair Competition (“McCarthy”), § 12.12, p. 12-38 (4th Ed. 2009). In addition to deposition testimony, TRP is also entitled to any and all responsive documents in the possession of DVP’s Rule 26(a) witnesses Classique, and Destinations, which support any of DVP’s far-fetched factual assertions.

23. Finally, TRP is entitled to discovery regarding DVP’s prosecution of its Registration No. 3220387 (“387 Reg.”) for “Direct From Vegas the Rat Pack” – the Registration at issue in this Proceeding. Specifically, in DVP’s application for that mark, DVP did not disclaim “the Rat Pack” or “Rat Pack” from that application. A true and correct copy of DVP’s application is attached hereto as Exhibit V. As such, this may be used as evidence against DVP “as admissions against interest and the like.” TBMP 704.04, citing American Rice, Inc. v. H.I.T. Corp., 231 USPQ 793, 798 (TTAB 1986)(holding that the fact that opposer took a position in its application inconsistent with its position in an inter partes proceeding may be considered as evidence). At the very least, TRP is entitled to at least ask DVP about its inconsistent position in an oral deposition.

24. Before having to respond to DVP’s premature summary judgment motion, which was filed approximately three (3) weeks prior to the discovery cutoff date, TRP should be given an opportunity to obtain the information and documentation identified above, as well as depose DVP, Harmony, Classique, and Destinations about these disputed facts. This information, documentation, and testimony is important in defending against the premature DVP SJ Motions because TRP contends it will contradict the statements, alleged “facts,” and arguments made in the those Motions.

25. Again, no depositions have taken place although TRP negotiated with DVP in good faith to schedule a date for DVP and attempted to take third party depositions which were

cancelled due to the filing of DVP's premature Motions for Partial Summary Judgment and the ensuing December 11, 2009 suspension order. See Docket No. 14. Additionally, and again, TRP has not had the opportunity to obtain documents from DVP's Rule 26(a) witnesses aside from Harmony, and is entitled to such discovery to defeat the DVP SJ Motions. See supra.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his own knowledge are true; and all statements made on information and belief are believed to be true.

Dated: January 19, 2010

WATSON ROUNDS

By: 
Matthew D. Francis
WATSON ROUNDS
5371 Kietzke Lane
Reno, Nevada 89511
(775) 324-4100

Attorneys for Petitioner/Counterdefendant
TRP Entertainment, LLC

Exhibit A

Exhibit A

1 JACOB L. HAFTER, ESQ.
Intellectual Property Bar No. 51083
Nevada State Bar No. 9303
2 LAW OFFICE OF JACOB L. HAFTER & ASSOCIATES
7201 W. Lake Mead Boulevard, Suite 210
3 Las Vegas, Nevada 89128
Tel: (702) 405-6700
4 Fax: (702) 685-4184

5 Attorneys for Plaintiff

6
7 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
8

9
10
11 TRP ENTERTAINMENT, LLC, a Nevada
Limited Liability Company,

12 Petitioner,

13 vs.

14 DIRECT FROM VEGAS PRODUCTIONS,
INC., a California Corporation,

15 Registrant.
16
17

Registration No: 3220387
Mark: DIRECT FROM VEGAS THE RAT
PACK
Cancellation No.: 92050557

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**REGISTRANT'S INITIAL DISCLOSURE
PURSUANT TO RULE 26(a)(1)**

Registrant, Direct From Vegas Productions, Inc., by and through its attorneys of record, JACOB L. HAFTER, ESQ., of the Law Office of Jacob Hafter & Associates, hereby provides its initial disclosures pursuant to FRCP 26(a)(1) as follows.

The following disclosures, including the list of documents and identification of potential witnesses, is a preliminary list that is inconclusive and subject to modification, revisions and additions. As new information is identified through the discovery process which would warrant reliance on additional documents or testimony of new witnesses, the following disclosures shall be supplemented accordingly

///

///

7201 W. Lake Mead Blvd., Suite 210
Las Vegas, Nevada 89128
(702) 405-6700 Telephone
(702) 685-4184 Facsimile



1 **(A) The name and, if known, the address and telephone number of each individual likely**
2 **to have discoverable information — along with the subjects of that information — that**
3 **the disclosing party may use to support its claims or defenses:**

4 (1) Steve Apple
5 c/o Jacob L. Hafter
6 7201 Lake Mead Blvd., Suite 210
7 Las Vegas, Nevada 89128
8 (702) 405 6700

9 Mr. Apple is owner of the Registrant in this matter, and is expected to testify
10 concerning the facts and circumstances surrounding this lawsuit.

11 (2) Representative of Harmony Artists, Inc.
12 c/o Jacob L. Hafter
13 7201 Lake Mead Blvd., Suite 210
14 Las Vegas, Nevada 89128
15 (702) 405 6700

16 Harmony Artists, Inc. is Registrant's agent, and is expected to testify concerning the
17 facts and circumstances surrounding this lawsuit

18 (3) Sandy Hackett
19 c/o Matthew Francis
20 Watson Rounds
21 5371 Kietzke Lane
22 Reno, Nevada 89511

23 Mr. Hackett is an owner of the Petitioner in this matter and is expected to testify
24 concerning the facts and circumstances surrounding this lawsuit.

25 (4) Dick Feeney
26 c/o Matthew Francis
27 Watson Rounds
28 5371 Kietzke Lane
Reno, Nevada 89511

Mr. Feeney is an owner of the Petitioner in this matter and is expected to testify
concerning the facts and circumstances surrounding this lawsuit.

(B) A copy of, or a description by category and location of, all documents, data
compilations, and tangible things that are in the possession, custody, or control of the
party and which are discoverable under Rule 26(b)

Registrant has provided documents as part of his responses to Petitioner's requests for
discovery. Registrant reserves the right to introduce as evidence any documents produced or

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Las Vegas, Nevada 89128
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(702) 685-4184 Facsimile



1 identified by other parties to this litigation and to supplement his document list at a later date.
2 Discovery is ongoing.

3
4 **(C) A computation of any category of damages claimed by the disclosing party, making**
5 **available for inspection and copying as under Rule 34 the documents or other evidentiary**
6 **matter, not privileged or protected from disclosure, on which such computation is based,**
7 **including materials bearing on the nature and extent of injuries suffered.**

8 N/A.

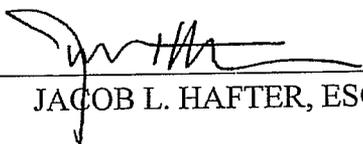
9 **(D) For inspection and copying as under Rule 34 any insurance agreement under which**
10 **any person carrying on an insurance business may be liable to satisfy part or all of a**
11 **judgment which may be entered in the action or to indemnify or reimburse for payment**
12 **made to satisfy the judgment and any disclaimer or limitation of coverage or reservation**
13 **of rights under any such insurance agreement:**

14 At this time, it does not appear that there is applicable insurance.

15 Plaintiff reserves the right to introduce as evidence any documents produced or
16 identified by other parties to this litigation and to supplement his document list at a later date.
17 Discovery is ongoing.

18 Dated this 24th day of July, 2009.

19 LAW OFFICE OF JACOB HAFTER & ASSOCIATES.

20 By: 
21 JACOB L. HAFTER, ESQ.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

7201 W. Lake Mead Blvd., Suite 210
Las Vegas, Nevada 89128
(702) 405-6700 Telephone
(702) 685-4184 Facsimile



1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 24th day of July, 2009, I personally sent a true and correct
3 copy of the attached document via e-mail and regular mail to the following registrants:

4 Michael D. Rounds, Esq.
5 WATSON ROUNDS
6 5371 Kietzke Lane
7 Reno, Nevada 89511
8 Mfrancis@watsonrounds.com

9 
10 Michael Naethe, Esq

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7201 W. Lake Mead Blvd., Suite 210
Las Vegas, Nevada 89128
(702) 405-6700 Telephone
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Exhibit B

Exhibit B

Matt Francis

From: Carla Ousby
Sent: Friday, July 24, 2009 10:36 AM
To: 'jhafter@hafterlaw.com'
Cc: 'mnaethe@hafterlaw.com'
Subject: TRP v. Direct from Vegas Productions
Attachments: 2009.07.24 Ltr to J Hafter.pdf

Dear Mr. Hafter,

Please see the attached letter from Mr. Francis.

Sincerely,



Carla Ousby
Assistant to Matthew D.
Francis and Cassandra P.
Joseph

WATSON ROUNDS
5371 Kietzke Lane
Reno, NV 89511

Telephone: (775) 324-4100
Facsimile: (775) 333-8171

cousby@watsonrounds.com

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IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by U.S. Treasury Regulation Circular 230, we inform you that any U.S. federal tax advice contained in this

communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.



KELLY G. WATSON ¹
MICHAEL D. ROUNDS ¹
MATTHEW D. FRANCIS ²

ARTHUR A. ZORIO ¹
CASSANDRA P. JOSEPH ¹
MELISSA P. BARNARD
RYAN E. JOHNSON
TARA A. SHIROFF
MATTHEW G. HOLLAND
ADAM P. McMILLEN ²
ELIZA BECHTOLD ³
RAFAEL A. NONES

OF COUNSEL-
MARC D. FOODMAN ^{1,3}

¹ Also licensed in California
² Also licensed in Utah
³ Also licensed in Massachusetts
⁴ Licensed only in California

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One Market-Steuart Tower
Suite 1600
San Francisco, CA 94105
(415)243-4090
Fax (415)243-0226

www.watsonrounds.com

Reply to: Reno

July 24, 2009

VIA EMAIL

Jacob Hafter
Jacob Hafter and Associates
7201 Lake Mead Blvd.
Las Vegas, NV 89128

Re: *TRP v. Direct from Vegas Productions*

Dear Jacob:

We have had an opportunity to review Registrant's Amended Answers to Petitioner's First Sets of Interrogatories and Requests for Production. There are numerous deficiencies in Defendants' responses and production, which are identified and discussed below.

A. Registrant's Amended Responses to Petitioner's First Set of Interrogatories

Interrogatory No. 1 requests that your client: "Identify and describe in detail what goods and services you sell, have sold, offer for sale, offered for sale, provide, and/or provided under the Registered Mark." In response, you state: "Respondent sells or has sold entertainment services, namely live and televised appearances by one or more professional entertainers." This response does not come close to satisfying the "identify" and "describe in detail" Guidelines contained in Petitioner's First Set of Interrogatories. We are entitled to know, at a minimum, what kind of entertainment services are provided, where the services are provided, and who provides or has provided them. Please provide a supplemental response and produce any responsive documents by August 3, 2009.

Interrogatory No. 8 requests that your client: "Identify and describe in detail what channels of trade the Registered Mark is used in." In response, you state in part: "Respondent's agent, Harmony Artists, Inc., also pursues opportunities on Respondent's behalf." What "opportunities" are you referring to? Please provide a supplemental response and produce any responsive documents by August 3, 2009.

Jacob Hafter
July 24, 2009
Page 2

Interrogatory No. 10 requests that your client: "Identify and describe in detail all facts and evidence supporting the allegations in paragraph 31 of your Counterclaim that: "Counterpetitioner believes that it will be damaged by the continued registration of Registration No. 2640066 for the designation 'The Rat Pack is Back' owned by Counterrespondent." In response, you state: "Petitioner engages in intimidation towards others of marks using the term 'Rat Pack'. See Respondent's production of documents setting forth the tactics utilized by petitioner to intimidate agents, theater owners and others from booking shows using the term "Rat Pack." This response is far from sufficient under the Federal Rules.

To begin with, our client is entitled to know specifically what "intimidation" it allegedly engages in, and that should be spelled out in your client's response. Additionally, while Rule 33(d) allows a party to produce business records in lieu of providing a written response when the burden on the parties in ascertaining the answer is substantially the same, the responding party must specify: "the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could." Here, the burden on the parties here is not substantially the same, and you have not specified what records must be reviewed. In fact, none of the documents you have produced are bates numbered. As such, please provide a supplemental response listing all alleged "intimidation." Additionally, please bates number your documents and identify exactly what documents are responsive to this Interrogatory. Please do so by August 3, 2009.

Interrogatory No. 11 requests that your client: "Identify and describe in detail all facts and evidence supporting the allegations in paragraph 33 of your Counterclaim that: "The designation 'The Rat Pack is back' is generic and the public has ceased to identify any trademark utilizing the term 'The Rat Pack' with a particular source of a product or service, but rather identifies the mark with a class of products or services regardless of source." In response, you state in part: "Respondent relies upon case law, Petitioner's admissions and personal knowledge of the Rat Pack." What case law and what admissions are you referring to? Please let me know by August 3, 2009.

In your client's responses to Interrogatory Nos. 12-14, you incorporate by reference your client's response to Interrogatory No. 10. Again, the response to Interrogatory No. 10 is insufficient. See supra. As such, please provide a supplemental response listing all alleged wrongful conduct by our client.

Additionally, please bates number your documents and identify exactly what documents are responsive to this Interrogatory. Please do so by August , 2009.

Interrogatory No. 15 requests that your client: "Identify and describe in detail what bookings you have lost as a direct result of "Counterrespondent's aggressive actions towards Counterpetitioner for utilizing the term 'The Rat Pack.'" In response, you state: "Respondent is still working on compiling this information and reserves the right to supplement this response." Please advise me by August 3, 2009 when we will receive this information.

Interrogatory No. 16 requests that your client: "Identify and describe in detail all performances you have performed using the Registered Mark." In response you state: "Plaintiff objects to this interrogatory as irrelevant or unlikely to lead to any admissible evidence." You provide no further response. Your objections are meritless and you have not clarified, explained, or supported the objections.

Fed. R. Civ. P. 26(b)(1) permits discovery of "any matter, not privileged, that is relevant to the claim or defense of any party." This Rule, and all the discovery rules, are liberally interpreted and construed to permit wide ranging discovery of information. 8 Charles A. Wright, Arthur R. Miller, Federal Practice and Procedure, § 2001 (2009)(citations omitted); Hickman v. Taylor, 329 U.S. 495, 500 (1947); Martin v. Reynolds Metals Corp., 297 F.2d 49, 56 (9th Cir. 1961)(discussing Rule 34). This is true even if the information may ultimately not be admissible at trial. O'Connell v. Chapman University, 245 F.R.D. 646, 648 (C.D. Cal. 2007). A party who resists discovery has the burden to show discovery should not be allowed, and has the burden of clarifying, explaining, and supporting its objections. Id., citing Blankenship v. Hearst Corp., 519 F.2d 418, 429 (9th Cir. 1975).

Here, your client's use of the Registered Mark is directly at issue in this proceeding and is relevant to TRP's claims. As such, we are entitled to a proper response to Interrogatory No. 16. Please provide a supplemental response and produce any responsive documents by August 3, 2009.

Interrogatory No. 17 requests that your client: "Identify and describe in detail all performances you have performed in the State of Nevada using the Registered Mark." Like your response to Interrogatory No. 16, you state: "Plaintiff objects to this interrogatory as irrelevant or unlikely to lead to any admissible evidence." You provide no further response. As you know, TRP has alleged that your client's

“mark” is a geographically deceptively misdescriptive mark. As such, your client’s use of the Registered Mark in Nevada is directly at issue in this proceeding. As such, we are entitled to a proper response to Interrogatory No. 17. Please provide a supplemental response and produce any responsive documents by August 3, 2009.

Interrogatory No. 18 requests that your client: “Identify and describe in detail all facts and evidence that support the Affirmative Defenses contained in your Answer and Counterclaim for Cancellation.” In response, you state: “Unknown. Respondent will supplement as appropriate.” What does “as appropriate” mean? Please advise me and provide any supplemental response by August 3, 2009.

Finally, you have not provided a verification as required by Rule 33(b)(5). Please provide a verification by August 3, 2009.

B. Registrant’s Amended Responses to Petitioner’s First Set of Requests for Production

Request for Production No. 11 requests: “All documents and things supporting the allegations in paragraph 33 of your Counterclaim that: ‘The designation ‘The Rat Pack is back’ is generic and the public has ceased to identify any trademark utilizing the term ‘The Rat Pack’ with a particular source of a product or service, but rather identifies the mark with a class of products or services regardless of source.’” In response, you state: “Respondent relies upon case law, Petitioner’s admissions and thorough personal knowledge of the Rat Pack. Petitioner’s admissions are contained in its briefs filed in civil court, *DRDC Production, Inc. v. TRP Entertainment, LLC*, Docket No. 2:05CV00673. You did not produce any responsive documents supporting these allegations. Please produce any responsive documents in your possession, custody or control by August 3, 2009.

Request for Production No. 16 requests: “All documents and things showing all performances you have performed using the Registered Mark.” In response, you state: “Respondent objects to this request as overly broad, irrelevant and unlikely to lead to any admissible evidence.” Again, your client’s use of the Registered Mark is directly at issue in this proceeding and is relevant to TRP’s claims. As such, we are entitled to a proper response and supporting documents. Please provide a supplemental response and produce any responsive documents by August 3, 2009.

Jacob Hafter
July 24, 2009
Page 5

Request for Production No. 17 requests: "All documents and things showing the performances you have performed in the State of Nevada using the Registered Mark." In response, you state: "Respondent objects to this request as overly broad, irrelevant and unlikely to lead to any admissible evidence." Again, TRP has alleged that your client's "mark" is primarily a geographically deceptively misdescriptive mark. As such, your client's use of the Registered Mark in Nevada is directly at issue in this proceeding. We are entitled to a proper response and supporting documents. Please provide a supplemental response and produce any responsive documents by August 3, 2009.

Request for Production No. 18 requests: "All documents and things supporting the Affirmative Defenses contained in your Answer and Counterclaim for Cancellation." In response, you state: "Unknown. Respondent will supplement as appropriate." Again, what does "as appropriate" mean? Please advise me and provide a supplemental response and produce any responsive documents by August 3, 2009.

If you would like to discuss these issues over the telephone, I would be happy to do so prior to August 3rd. If we do not receive adequate responses and documents by August 3rd, we will be forced to file a motion to compel. This letter does not constitute a waiver of any rights belonging to our client.

Please call me with any questions.

Sincerely,



Matthew D. Francis
WATSON ROUNDS
A Professional Corporation

cc: Client

Exhibit C

Exhibit C

Matt Francis

From: Carla Ousby
Sent: Friday, July 24, 2009 10:42 AM
To: Matt Francis
Subject: FW: TRP v. Direct from Vegas Productions

From: Jacob Hafter [mailto:jhafter@hafterlaw.com]
Sent: Friday, July 24, 2009 10:40 AM
To: Carla Ousby
Cc: Michael Naethe; Steve Apple (seapple@earthlink.net)
Subject: RE: TRP v. Direct from Vegas Productions

Thank you for providing us with a detailed description of your concerns regarding our discovery responses. While there is a fine line between objecting to/requesting clarification of existing responses and serving additional interrogatories through the form of an objection letter, we will work diligently to try to expound upon these issues where practicable. In the interim, however, if you truly are concerned about receiving substantive answers to your questions where you can ask all the follow up questions you desire, we invite you to come to our office (or pay for my client and myself to come to your office) for a deposition of Mr. Apple.

Jay

From: Carla Ousby [mailto:Cousby@watsonrounds.com]
Sent: Friday, July 24, 2009 10:36 AM
To: Jacob Hafter
Cc: Michael Naethe
Subject: TRP v. Direct from Vegas Productions

Dear Mr. Hafter,

Please see the attached letter from Mr. Francis.

Sincerely,



Carla Ousby
Assistant to Matthew D.
Francis and Cassandra P.
Joseph

WATSON ROUNDS
5371 Kietzke Lane

Exhibit D

Exhibit D

Matt Francis

From: Matt Francis
Sent: Tuesday, November 17, 2009 11:37 AM
To: 'Jacob Hafter'
Cc: Michael Naethe
Subject: FW: TRP v. Direct from Vegas Productions

Jay:

I haven't heard back from you regarding deposition dates discussed in my 11/6 email below. Will December 1 and 2 work for 30(b)(6) depositions of Direct from Vegas and Harmony Artists respectfully? If I do not hear back from you today, I will assume the dates will work and I will serve deposition notices. Also, I propose that the depositions take place at our offices in Las Vegas.

Thanks,

Matt

From: Matt Francis
Sent: Friday, November 06, 2009 1:14 PM
To: 'Tracie Jefcik'
Cc: 'Jacob Hafter'; Michael Naethe
Subject: RE: TRP v. Direct from Vegas Productions

Thank you Tracie. I will review. Also, please let me know when Mr. Apple and a 30(b)(6) representative(s) from Harmony Artists are available for deposition on or before December 2nd. I tentatively propose December 1 and 2 for these depositions. Matt

From: Tracie Jefcik [mailto:tjefcik@hafterlaw.com]
Sent: Friday, November 06, 2009 1:10 PM
To: Matt Francis
Cc: Steve Apple (seapple@earthlink.net); Jacob Hafter; Michael Naethe
Subject: TRP v. Direct from Vegas Productions

Mr. Francis,

Please see attached.

Thank you,

Tracie Jefcik



7201 West Lake Mead Blvd, Suite 210
Las Vegas, Nevada 89128
702-405-6700 Telephone
702-685-4184 Facsimile

tjfcik@hafterlaw.com

Visit us online at www.hafterlaw.com

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Exhibit E

Exhibit E

Matt Francis

From: Robert Hunter
Sent: Wednesday, November 18, 2009 4:25 PM
To: 'jhafter@hafterlaw.com'; 'mnaethe@hafterlaw.com'
Cc: Matt Francis
Subject: TRP v. Direct
Attachments: 2009.11.18 Direct Depo Notice.pdf; 2009.11.18 Harmony Depo Notice.pdf

Counsel,

Please see the attached deposition notices regarding the above-referenced matter. Feel free to contact our offices if you have any questions or concerns. Thank you.



Robert Hunter

Assistant to Michael D. Rounds, Esq.

WATSON ROUNDS
5371 Kietzke Lane
Reno, NV 89511

Telephone: (775) 324-4100

Direct Line: (775) 398-3811
Facsimile: (775) 333-8171

rhunter@watsonrounds.com

5. The similarity of Petitioner's and Registrant's marks.
6. The similarity and nature of Petitioner's and Registrant's services under their marks.
7. The similarity of Petitioner's and Registrant's marketing and trade channels.
8. The conditions under which, and buyers to whom, sales of Registrant's services are made.
9. The fame of the Petitioner's "The Rat Pack is Back" mark.
10. The number and nature of similar marks in use for similar services (if any).
11. The nature and extent of any actual confusion.
12. The market interface between Registrant's and Petitioner's respective marks.
13. The extent to which Registrant has a right to exclude others from use of its mark on its services.
14. The extent of potential confusion, i.e., whether *de minimis* or substantial.
15. The strength of Registrant's mark.
16. Registrant's knowledge of Petitioner, including when Registrant became aware of Petitioner and its use of its "The Rat Pack is Back" mark.
17. Registrant's policies and practices for policing, investigating, and enforcing its "Direct from Vegas The Rat Pack" mark.
18. Registrant's prosecution of Registration No. 3220387 ("387 Reg.").
19. Registrant's contracts and communications with Harmony Artists, Inc.
20. Registrant's responses to Petitioner's First Set of Interrogatories to Registrant.
21. Registrant's responses to Petitioner's First Set of Requests for Production to Registrant.

22. Registrant's responses to Petitioner's First Set of Requests for Admission to Registrant.
23. Registrant's responses to Petitioner's Second Set of Interrogatories to Registrant.
24. Registrant's responses to Petitioner's Second Set of Requests for Production to Registrant.
25. Registrant's counterclaims.

Said examination will be upon oral examination, pursuant to the Federal Rules of Civil Procedure, before an officer authorized to administer oaths. The deposition will continue from day-to-day until completed. You are invited to attend and cross examine.

Dated: November 18, 2009

WATSON ROUNDS

By: 

Michael D. Rounds
Matthew D. Francis
WATSON ROUNDS
5371 Kietzke Lane
Reno, Nevada 89511
(775) 324-4100

Attorneys for Petitioner TRP Entertainment,
LLC

CERTIFICATE OF SERVICE

I certify that I am an employee of the Law Offices of Watson Rounds, a Professional Corporation, and on this day I deposited a true and correct copy in the United States mail, first class postage prepaid, of the within document entitled **Petitioner's Notice of Discovery**

Deposition of Direct from Vegas Productions, Inc., addressed as follows:

JACOB L. HAFTER, ESQ.
LAW OFFICE OF JACOB L. HAFTER & ASSOCIATES
7201 W. Lake Mead Boulevard, Suite 210
Las Vegas, Nevada 89128

Dated: November 18, 2009



Robert Hunter

7. The conditions under which, and buyers to whom, sales of Registrant's services are made.
8. The fame of the Petitioner's "The Rat Pack is Back" mark.
9. The number and nature of similar marks in use for similar services (if any).
10. The nature and extent of any actual confusion.
11. The market interface between Registrant's and Petitioner's respective marks.
12. The extent to which Registrant has a right to exclude others from use of its mark on its services.
13. The extent of potential confusion, i.e., whether *de minimis* or substantial.
14. The strength of Registrant's mark.
15. Registrant's knowledge of Petitioner, including when Registrant became aware of Petitioner and its use of its "The Rat Pack is Back" mark.
16. Registrant's policies and practices for policing, investigating, and enforcing its "Direct from Vegas The Rat Pack" mark.
17. Registrant's prosecution of Registration No. 3220387 ("387 Reg.").
18. Registrant's contracts and communications with Harmony Artists, Inc.

Said examination will be upon oral examination, pursuant to the Federal Rules of Civil Procedure, before an officer authorized to administer oaths. The deposition will continue from day-to-day until completed. You are invited to attend and cross examine.

Dated: November 18, 2009

WATSON ROUNDS

By: 

Michael D. Rounds
Matthew D. Francis
WATSON ROUNDS
5371 Kietzke Lane
Reno, Nevada 89511
(775) 324-4100

Attorneys for Petitioner TRP Entertainment,
LLC

CERTIFICATE OF SERVICE

I certify that I am an employee of the Law Offices of Watson Rounds, a Professional Corporation, and on this day I deposited a true and correct copy in the United States mail, first class postage prepaid, of the within document entitled **Petitioner's Notice of Discovery**

Deposition of Harmony Artists, Inc., addressed as follows:

JACOB L. HAFTER, ESQ.
LAW OFFICE OF JACOB L. HAFTER & ASSOCIATES
7201 W. Lake Mead Boulevard, Suite 210
Las Vegas, Nevada 89128

Dated: November 18, 2009



Robert Hunter

Exhibit F

Exhibit F

Matt Francis

From: Matt Francis
Sent: Wednesday, November 25, 2009 9:26 AM
To: 'Jacob Haffer'
Cc: Michael Naethe
Subject: TRP - Apple

Jacob:

I just called your office, but you were not in yet. I left a message on Mike's voicemail. Following up on our conversation yesterday, I need to know (today) whether the depositions are going to go forward next week so I can purchase a plane ticket, make hotel reservations, book a court reporter, etc. If other dates would work better for Mr. Apple and Harmony, I am not opposed to rescheduling. However, if you would like to reschedule, then I would like to get a stipulation on file to extend case management deadlines. If I don't hear from you today, I will assume the depositions are going forward as scheduled.

Please call me when you get into the office to discuss.

Thanks,

Matt

Exhibit G

Exhibit G

Matt Francis

From: Michael Naethe [mnaethe@hafterlaw.com]
Sent: Wednesday, December 02, 2009 11:47 AM
To: Matt Francis
Cc: Jacob Hafter
Subject: RE: Dates

Matt,

I have left him a message and will let you know when I hear from him. As far as Harmony is concerned, a phone deposition would be fine as far as Jay and I are concerned. I will check with them to make sure once I talk w/Steve.
Mike

From: Matt Francis [mailto:Mfrancis@watsonrounds.com]
Sent: Wednesday, December 02, 2009 11:44 AM
To: Michael Naethe
Cc: Jacob Hafter
Subject: RE: Dates

Mike:

Thanks for the email. Perhaps I can take the Harmony deposition over the phone. However, I would like to take Steve's deposition live. Is he willing to travel to Vegas? If so, we could do his deposition on 12/11, and perhaps take the Harmony deposition sometime the following week over the phone? Would that work? Please let me know.

Thanks,

Matt



Matthew D. Francis
Partner

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Telephone: (775) 324-4100
Facsimile: (775) 333-8171

<http://www.watsonrounds.com>

From: Michael Naethe [mailto:mnaethe@hafterlaw.com]
Sent: Wednesday, December 02, 2009 11:27 AM
To: Matt Francis
Cc: Jacob Hafter
Subject: RE: Dates

Matt,

Just spoke w/Jay and perhaps both depositions can take place on the 11th. However, I am uncertain how much time you need for each (I presume it depends on the thoroughness of the discovery responses). I believe Harmony was looking to

get travel and room paid for, but if your client is only willing to throw \$50 at a non-party, then perhaps it would be in the witnesses' best interests to have the depositions in LA.

As far as I understand, and Jay can certainly correct me, but it appears that Harmony would be willing to show up, but for the expense.

Let me know if the 11th would provide sufficient time.

Thanks

Mike

From: Matt Francis [mailto:Mfrancis@watsonrounds.com]

Sent: Tuesday, December 01, 2009 4:39 PM

To: Jacob Hafter

Cc: Michael Naethe

Subject: FW: Dates

Jay:

I am still waiting to hear back from you regarding the email I sent yesterday. That said, I am now unavailable on December 10th for deposition. Please call me so we can figure out these deposition issues.

Thank you.

Matt



Matthew D. Francis
Partner

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From: Matt Francis

Sent: Monday, November 30, 2009 9:28 AM

To: 'Jacob Hafter'

Cc: Michael Naethe

Subject: RE: Dates

Jay:

Since your initial disclosures (attached) listed both Mr. Apple and Harmony "c/o Jacob L. Hafter" at your West Lake Mead address in Las Vegas, it was my understanding (until last Wednesday) that Las Vegas would be your preferred venue for conducting depositions and that there was no issue relating to reimbursement or subpoenas. Under Rule 30(b)(6), unless the parties otherwise agree, the deposition of a party takes place at the location where the deponent resides or is regularly employed. If the party to be deposed is a party, officer, director, or managing agent of a party, or

an individual designated under Rule 30(b)(6), the deposition can be held on notice alone. See Consolidated Foods Corp. v. Ferro Corp., 189 U.S.P.Q. 582 (TTAB 1976). Since Mr. Apple is a party to this proceeding, I do not have to subpoena him and he is not entitled to reimbursement for travel. Again, I am willing to travel to California to take his deposition if you would prefer.

With regard to Harmony, until last Wednesday, it was my belief (again based on your initial disclosures) that (1) you represented Harmony, (2) that Las Vegas would be your preferred venue for conducting depositions, and (3) that there was no issue relating to reimbursement or subpoenas. Since Harmony is not a party to this proceeding, I will subpoena them for deposition if they will not agree to voluntarily appear. Please let me know as soon as possible whether they will voluntarily agree to appear or not. Again, since Harmony is located in California, I am willing to travel to California to conduct Harmony's deposition. Under Rule 45, TRP would be obligated to pay Harmony a witness fee of \$50 to appear for a deposition in California. If Harmony would rather come to Nevada for the deposition, then that is their own choice. TRP would pay them the \$50, but I do not believe TRP would be willing to pay anything more. That said, what kind of expenses is Harmony seeking? Airplane, hotel, meals? Without waiving any rights, please let me know.

Thanks,

Matt



Matthew D. Francis
Partner

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<http://www.watsonrounds.com>

From: Jacob Hafter [mailto:jhafter@hafterlaw.com]
Sent: Friday, November 27, 2009 12:41 PM
To: Matt Francis
Cc: Michael Naethe; seapple@earthlink.net
Subject: Dates

I have spoken to both Harmony and Mr. Apple. The 10th and 11th will work for them. There is significant concerns about travel reimbursement. As we are located in Las Vegas, doing the depositions in California would not be a better solution. Please let us know your position on paying for travel for the deponents so we can determine how we proceed.

Thanks

Jacob L. Hafter, Esq.



LAS VEGAS PHOENIX

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Exhibit H

Exhibit H

Matt Francis

From: Michael Naethe [mnaethe@hafterlaw.com]
Sent: Friday, December 04, 2009 3:42 PM
To: Matt Francis
Cc: Jacob Hafter; Steve Apple
Subject: RE: Deposition

Matt,

I have little understanding of the LA area, but I do know that Jay suggested I not fly into LAX, but John Wayne. So if that narrows our geographical location based on the airport, then so be it. Sorry about the vagaries, but I don't believe the location of the deposition, Westminster or otherwise, is a huge issue.

As far as Harmony is concerned, they will require a subpoena. It has indicated a lack of comfort with the scope of the proposed deposition (e.g. questions beyond generalities about marketing channels), as has our client. Therefore, an overly intrusive 30(b)(6) notice will lead to a motion to quash either by them or by DFVP.

That being said, the 17th is open all day and the 18th is open until 2pm, pending the notice as not too intrusive.

Thanks
Mike

From: Matt Francis [mailto:Mfrancis@watsonrounds.com]
Sent: Friday, December 04, 2009 2:49 PM
To: Michael Naethe
Cc: Jacob Hafter; Steve Apple
Subject: RE: Deposition

Mike:

Can you let me know where in LA you want the deposition to take place ASAP? If it is in Westminster that is fine. I just need to know.

Also, do you know how many people Harmony would designate under Rule30(b)(6)? If it is a bunch, it would be easier to conduct the deposition live than over the phone. If I have to go to LA anyway, I would rather just do the Harmony deposition on 12/18. If you don't want to stay in a hotel, you could appear via telephone while I conduct the deposition live. Do you know if they are open on 12/18? If they are not available that date, when are they available? Also, is Harmony willing to appear without a subpoena? Please let me know ASAP.

I am trying to be flexible, but I need to get these things set before the holidays start.

Thanks,

Matt



Matthew D. Francis

Partner

WATSON ROUNDS
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Telephone: (775) 324-4100
Facsimile: (775) 333-8171

<http://www.watsonrounds.com>

From: Michael Naethe [mailto:mnaethe@hafterlaw.com]
Sent: Friday, December 04, 2009 2:25 PM
To: Matt Francis
Cc: Jacob Hafter; Steve Apple
Subject: RE: Deposition

Matt,

Sorry about the delay. I wanted to discuss the financial arrangement w/Jay first before I responded. Our hope is that the Harmony deposition can be conducted via telephone so that a hotel will not be necessary. Any flexibility you are able to provide would be appreciated. I don't see a problem with deposing Steve on the 17th, but where in LA is not my area of expertise.

Thanks
Mike

From: Matt Francis [mailto:Mfrancis@watsonrounds.com]
Sent: Friday, December 04, 2009 2:18 PM
To: Michael Naethe
Cc: Jacob Hafter
Subject: FW: Deposition

Mike:

I haven't heard back from you regarding my email I sent earlier today. That said, I need to find a court reporter and an office for the depositions. I assume we would be traveling to Westminster. Is that correct? Or, were you thinking another location in the greater LA area? Please let me know so I can book a court reporter and send out amended notices of deposition.

Thanks,

Matt



Matthew D. Francis
Partner

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Facsimile: (775) 333-8171

<http://www.watsonrounds.com>

From: Matt Francis
Sent: Friday, December 04, 2009 1:35 PM
To: 'Michael Naethe'
Cc: Jacob Hafter
Subject: RE: Deposition

Mike:

Could we do the 17th for Steve and the 18th for Harmony – both in LA?

Matt



Matthew D. Francis
Partner

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Facsimile: (775) 333-8171

<http://www.watsonrounds.com>

From: Michael Naethe [mailto:mnaethe@hafterlaw.com]
Sent: Friday, December 04, 2009 9:49 AM
To: Matt Francis
Cc: Jacob Hafter; Steve Apple
Subject: Deposition

Matt,

In response to whether Mr. Apple is available on the 11th, unfortunately, he now has a prior engagement that would prevent him from participating on that day. However, he is available on the 17th and 18th for a deposition in Los Angeles. Let me know if that will work.

Also, I would prefer to pursue the option of holding the Harmony deposition via telephone, regardless of the date we decide to reschedule.

Thanks

Michael Naethe, Esq.



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Visit us online at www.hafterlaw.com

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Exhibit I

Exhibit I

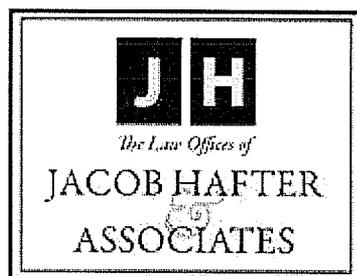
Matt Francis

From: Michael Naethe [mnaethe@hafterlaw.com]
Sent: Friday, December 04, 2009 8:28 PM
To: Matt Francis
Cc: Jacob Hafter
Subject: TRP v. DFVP Interrogatories and RFP
Attachments: Answers to Second Interrog 120409.pdf; Answers to Second RFP 120409.pdf

Matt,

Please see attached. While I have referenced the amended initial disclosures, I will need until Monday to place them on a disk and get them to you. They are quite voluminous and cannot be sent via email. Thanks

Michael Naethe, Esq.



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mnaethe@hafterlaw.com

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Exhibit J

Exhibit J

Matt Francis

From: Matt Francis
Sent: Tuesday, December 08, 2009 4:57 PM
To: 'Jacob Hafter'; Michael Naethe
Cc: Steve Apple
Subject: RE: TRP v. DFVP
Attachments: 1st Amended Notice of Depo of Direct.pdf

Jay:

Please email the documents to me tomorrow. I got your message regarding discovery - I will file a motion. The rest of your comments do not merit a response.

Attached is an amended deposition notice for DFVP for the 17th.

Matt



Matthew D. Francis
Partner

WATSON ROUNDS
5371 Kietzke Lane
Reno, Nevada 89511

Telephone: (775) 324-4100
Facsimile: (775) 333-8171

<http://www.watsonrounds.com>

From: Jacob Hafter [mailto:jhafter@hafterlaw.com]
Sent: Tuesday, December 08, 2009 4:37 PM
To: Matt Francis; Michael Naethe
Cc: Steve Apple
Subject: RE: TRP v. DFVP

We will ship out the rest of the documents tomorrow.

We are not consenting to any more extensions in discovery.

Moreover, it is poignant to point out that at the present you have submitted absolutely no evidence that supports your claims that there is confusion in the marketplace because of my client's mark. As such, should we file a motion for summary judgment, there would be no evidence of a disputed fact which would allow the TTAB to rule in such a fashion where our motion would not be granted. If you have evidence of such confusion, I strongly suggest that you provide such to our office as soon as possible. Otherwise, my suggestion that your claims are frivolous stands.

Jay

From: Matt Francis [mailto:Mfrancis@watsonrounds.com]
Sent: Tuesday, December 08, 2009 4:21 PM

To: Jacob Hafter; Michael Naethe
Subject: RE: TRP v. DFVP

Jay:

We can fight about the merits of the case for hours. Obviously, TRP disagrees with your assessment of the case. That said, TRP is still entitled to take discovery under the liberal discovery policies of Rule 26. Furthermore, TRP has no obligation to pay for your expenses. Your other statements are entirely without merit and do not merit a response. When will I receive the revised disclosures and documents?

Matt
A



Matthew D. Francis
Partner

WATSON ROUNDS
5371 Kietzke Lane
Reno, Nevada 89511

Telephone: (775) 324-4100
Facsimile: (775) 333-8171

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From: Jacob Hafter [mailto:jhafter@hafterlaw.com]
Sent: Tuesday, December 08, 2009 4:03 PM
To: Matt Francis; Michael Naethe
Subject: RE: TRP v. DFVP

Provide me with one substantial piece of evidence that you have a viable claim. You are fishing at this point and it is unacceptable. Previously, you hung your hat on the geographic diversity argument – we have destroyed that argument of yours. We cannot see how in good faith, your demands for additional depositions would lead to discoverable evidence that we are not otherwise working to provide you. You will get the revised disclosures and the numerous documents.

Jay

From: Matt Francis [mailto:Mfrancis@watsonrounds.com]
Sent: Tuesday, December 08, 2009 4:01 PM
To: Jacob Hafter; Michael Naethe
Subject: RE: TRP v. DFVP

Jay:

You did not disclose the identity of the new third parties until last Friday. I haven't gotten your revised initial disclosures. I have not received the numerous documents Mike says he is reviewing. You and Mike did not tell me until 4 days ago that Harmony would require a subpoena. The bottom line is that I am entitled to the discovery I am requesting, and I am not "inflating the cost of litigation." I can certainly file a motion with the TTAB, but I would rather not – to avoid additional fees and costs.

I would ask that you reconsider your position.

Matt



Matthew D. Francis
Partner

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5371 Kietzke Lane
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<http://www.watsonrounds.com>

From: Jacob Hafter [mailto:jhafter@hafterlaw.com]
Sent: Tuesday, December 08, 2009 3:39 PM
To: Matt Francis; Michael Naethe
Cc: Steve Apple
Subject: RE: TRP v. DFVP

Matt,

I am very concerned about your tactics. You are prolonging the expense. We are ready to file a motion for summary judgment once we have Mr. Apple's testimony. You are inflating the cost of this frivolous litigation. Moreover, you have purposely chosen this venue so that you would not have to pay legal fees if you lose, which, at this point, since your only argument is a poor claim on geographic diversity, you will lose. If you want to depose people, feel free, but do it between now and the end of the month and please be prepared to pay for the costs (travel and our attorney costs) for these frivolous depositions. If you do not like this response, feel free to complain to the USPTO.

Jay

From: Matt Francis [mailto:Mfrancis@watsonrounds.com]
Sent: Tuesday, December 08, 2009 3:31 PM
To: Michael Naethe
Cc: Jacob Hafter
Subject: RE: TRP v. DFVP

Mike:

I am also going to want to take the depositions of the other third parties identified in your recent discovery responses and in our last conversation, and subpoena them as well. Logistically speaking, I don't think we can accomplish all of the depositions by 1/1/09. Would you guys stipulate to continue discovery for at least another 30 days? Please let me know ASAP.

Thanks,

Matt



Matthew D. Francis
Partner

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From: Michael Naethe [mailto:mnaethe@hafterlaw.com]
Sent: Tuesday, December 08, 2009 3:21 PM
To: Matt Francis
Cc: Jacob Hafter
Subject: RE: TRP v. DFVP

Matt,

I just fired an email over to Harmony to see what their specific objections are/were. We are still in the process of compiling our documents and amending the initial disclosures to reflect the scope of their expected testimony. Sorry about the delay.

Mike

From: Matt Francis [mailto:Mfrancis@watsonrounds.com]
Sent: Tuesday, December 08, 2009 2:55 PM
To: Michael Naethe
Subject: TRP v. DFVP

Mike:

Any word on the deposition issues we discussed yesterday? Please call to discuss.

Thanks,

Matt



Matthew D. Francis
Partner

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Facsimile: (775) 333-8171

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marks.

7. The similarity of Petitioner's and Registrant's marketing and trade channels.

8. The conditions under which, and buyers to whom, sales of Registrant's services are made.

9. The fame of the Petitioner's "The Rat Pack is Back" mark.

10. The number and nature of similar marks in use for similar services (if any).

11. The nature and extent of any actual confusion.

12. The market interface between Registrant's and Petitioner's respective marks.

13. The extent to which Registrant has a right to exclude others from use of its mark on its services.

14. The extent of potential confusion, i.e., whether *de minimis* or substantial.

15. The strength of Registrant's mark.

16. Registrant's knowledge of Petitioner, including when Registrant became aware of Petitioner and its use of its "The Rat Pack is Back" mark.

17. Registrant's policies and practices for policing, investigating, and enforcing its "Direct from Vegas The Rat Pack" mark.

18. Registrant's prosecution of Registration No. 3220387 ("387 Reg.").

19. Registrant's contracts and communications with Harmony Artists, Inc.

20. Registrant's responses to Petitioner's First Set of Interrogatories to Registrant.

21. Registrant's responses to Petitioner's First Set of Requests for Production to Registrant.

22. Registrant's responses to Petitioner's First Set of Requests for Admission to Registrant.

23. Registrant's responses to Petitioner's Second Set of Interrogatories to Registrant.

24. Registrant's responses to Petitioner's Second Set of Requests for Production to Registrant.

25. Registrant's counterclaims.

Said examination will be upon oral examination, pursuant to the Federal Rules of Civil Procedure, before an officer authorized to administer oaths. The deposition will continue from day-to-day until completed. You are invited to attend and cross examine.

Dated: December 8, 2009

WATSON ROUNDS

By: 

Michael D. Rounds

Matthew D. Francis

WATSON ROUNDS

5371 Kietzke Lane

Reno, Nevada 89511

(775) 324-4100

Attorneys for Petitioner TRP Entertainment,
LLC

CERTIFICATE OF SERVICE

I certify that I am an employee of the Law Offices of Watson Rounds, a Professional Corporation, and on this day I deposited a true and correct copy in the United States mail, first class postage prepaid, of the foregoing document entitled **Petitioner's First Amended Notice of Discovery Deposition of Direct from Vegas Productions, Inc.**, addressed as follows:

JACOB L. HAFTER, ESQ.
LAW OFFICE OF JACOB L. HAFTER & ASSOCIATES
7201 W. Lake Mead Boulevard, Suite 210
Las Vegas, Nevada 89128

Dated: December 8, 2009



Robert Hunter

Exhibit K

Exhibit K

Matt Francis

From: Robert Hunter
Sent: Wednesday, December 09, 2009 12:10 PM
To: 'jhafter@hafterlaw.com'; 'mnaethe@hafterlaw.com'
Cc: Matt Francis
Subject: TRP v. Direct from Vegas
Attachments: 2009.12.09 Second Amended Notice of Depo of Direct.pdf

Counsel,

Attached please find the Second Amended Notice of Deposition of Direct From Vegas Productions. A hard copy is also being sent via first-class mail. The only change from the first amended notice is the time at which the deposition is scheduled to start. Feel free to contact our offices if you have any questions.



Robert Hunter

Assistant to Michael D. Rounds, Esq.

WATSON ROUNDS
5371 Kietzke Lane
Reno, NV 89511

Telephone: (775) 324-4100

Direct Line: (775) 398-3811
Facsimile: (775) 333-8171

rhunter@watsonrounds.com

marks.

7. The similarity of Petitioner's and Registrant's marketing and trade channels.

8. The conditions under which, and buyers to whom, sales of Registrant's services are made.

9. The fame of the Petitioner's "The Rat Pack is Back" mark.

10. The number and nature of similar marks in use for similar services (if any).

11. The nature and extent of any actual confusion.

12. The market interface between Registrant's and Petitioner's respective marks.

13. The extent to which Registrant has a right to exclude others from use of its mark on its services.

14. The extent of potential confusion, i.e., whether *de minimis* or substantial.

15. The strength of Registrant's mark.

16. Registrant's knowledge of Petitioner, including when Registrant became aware of Petitioner and its use of its "The Rat Pack is Back" mark.

17. Registrant's policies and practices for policing, investigating, and enforcing its "Direct from Vegas The Rat Pack" mark.

18. Registrant's prosecution of Registration No. 3220387 ("387 Reg.").

19. Registrant's contracts and communications with Harmony Artists, Inc.

20. Registrant's responses to Petitioner's First Set of Interrogatories to Registrant.

21. Registrant's responses to Petitioner's First Set of Requests for Production to Registrant.

22. Registrant's responses to Petitioner's First Set of Requests for Admission to Registrant.

23. Registrant's responses to Petitioner's Second Set of Interrogatories to Registrant.

24. Registrant's responses to Petitioner's Second Set of Requests for Production to Registrant.

25. Registrant's counterclaims.

Said examination will be upon oral examination, pursuant to the Federal Rules of Civil Procedure, before an officer authorized to administer oaths. The deposition will continue from day-to-day until completed. You are invited to attend and cross examine.

Dated: December 9, 2009

WATSON ROUNDS

By: 

Michael D. Rounds

Matthew D. Francis

WATSON ROUNDS

5371 Kietzke Lane

Reno, Nevada 89511

(775) 324-4100

Attorneys for Petitioner TRP Entertainment,
LLC

CERTIFICATE OF SERVICE

I certify that I am an employee of the Law Offices of Watson Rounds, a Professional Corporation, and on this day I deposited a true and correct copy in the United States mail, first class postage prepaid, of the foregoing document entitled **Petitioner's Second Amended Notice of Discovery Deposition of Direct from Vegas Productions, Inc.**, addressed as follows:

JACOB L. HAFTER, ESQ.
LAW OFFICE OF JACOB L. HAFTER & ASSOCIATES
7201 W. Lake Mead Boulevard, Suite 210
Las Vegas, Nevada 89128

Dated: December 9, 2009



Robert Hunter

Exhibit L

Exhibit L

UNITED STATES DISTRICT COURT
for the
Southern District of California

TRP ENTERTAINMENT, LLC
Plaintiff
v.
DIRECT FROM VEGAS PRODUCTIONS, INC.
Defendant
Civil Action No. 92050557
(If the action is pending in another district, state where:

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES

To: Harmony Artists, Inc.
6399 Wilshire Blvd., Suite 914, Los Angeles, CA 90048

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: SEE ATTACHED EXHIBIT A

Place: Sullivan & Co. Court Reporters
420 North McCadden Place, Los Angeles, CA 90004
Date and Time:
12/22/2009 10:00

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:
Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 12/09/2009

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Handwritten signature of attorney

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party)

TRP ENTERTAINMENT, LLC, who issues or requests this subpoena, are:

Matthew D. Francis, Esq. - WATSON ROUNDS
5371 Kietzke Lane, Reno, NV 89511; mfrancis@watsonrounds.com; 775.324.4100

Civil Action No. 92050557

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena to *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because _____; or

other *(specify)*:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information.

These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

UNITED STATES DISTRICT COURT

for the Southern District of California

TRP ENTERTAINMENT, LLC
Plaintiff
v.
DIRECT FROM VEGAS PRODUCTIONS, INC.
Defendant

Civil Action No. 92050557

(If the action is pending in another district, state where:

SUBPOENA TO TESTIFY AT A DEPOSITION OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION

To: Harmony Artists, Inc.
6399 Wilshire Blvd., Suite 914, Los Angeles, CA 90048

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: Place and Date and Time. Place: Sullivan & Co. Court Reporters, 420 North McCadden Place, Los Angeles, CA 90004. Date and Time: 12/29/2009 10:00

The deposition will be recorded by this method: Stenographic Means

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 12/09/2009

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) TRP ENTERTAINMENT, LLC, who issues or requests this subpoena, are: Matthew D. Francis, Esq. - WATSON ROUNDS 5371 Kietzke Lane, Reno, NV 89511; mfrancis@watsonrounds.com; 775.324.4100

UNITED STATES DISTRICT COURT

for the Southern District of California

TRP ENTERTAINMENT, LLC
Plaintiff
v.
DIRECT FROM VEGAS PRODUCTIONS, INC.
Defendant

Civil Action No. 92050557

(If the action is pending in another district, state where:

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES

To: Harmony Artists, Inc.
6399 Wilshire Blvd., Suite 914, Los Angeles, CA 90048

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: SEE ATTACHED EXHIBIT A

Place: Sullivan & Co. Court Reporters
420 North McCadden Place, Los Angeles, CA 90004
Date and Time: 12/22/2009 10:00

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:
Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 12/09/2009

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party)

TRP ENTERTAINMENT, LLC

, who issues or requests this subpoena, are:

Matthew D. Francis, Esq. - WATSON ROUNDS
5371 Kietzke Lane, Reno, NV 89511; mfrancis@watsonrounds.com; 775.324.4100

Civil Action No. 92050557

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* 12/10/09.

I personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena to *(name of individual)* Jerry Ross, who is
designated by law to accept service of process on behalf of *(name of organization)* Harmony Artists, Inc
6399 Wilshire Blvd Ste 914 Los Angeles, CA. on *(date)* 12/10/09 1:30pm; or

I returned the subpoena unexecuted because _____ ; or

other *(specify)*: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ 80.00 for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: 12/14/09



Server's signature

Carlos Canas - Process server

Printed name and title

CC Solutions
2511 W. 3rd St #209 Los Angeles, Ca. 90057
T(213)386-7039 F(213)386-7049

Server's address

Additional information regarding attempted service, etc:

Civil Action No. 92050557

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* 12/10/09 .

I personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the subpoena on *(name of individual)* Jerry Ross , who is
designated by law to accept service of process on behalf of *(name of organization)* Harmony Artists, Inc
6399 Wilshire Blvd #914 Los Angeles, Ca. 90048 on *(date)* 12/10/09 1:30pm ; or

I returned the subpoena unexecuted because _____ ; or

Other *(specify)*:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ 40.00 for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: 12/14/09



Server's signature

Carlos Canas - Process server

Printed name and title

CC Solutions
2511 W. 3rd ST #209 Los Angeles, CA. 90057
T(213)386-7039 F(213)386-7049

Server's address

Additional information regarding attempted service, etc:

Exhibit M

Exhibit M

UNITED STATES DISTRICT COURT

for the
District of Nevada

TRP ENTERTAINMENT, LLC
Plaintiff
v.
DIRECT FROM VEGAS PRODUCTIONS, INC.
Defendant
Civil Action No. 92050557
(If the action is pending in another district, state where:

SUBPOENA TO TESTIFY AT A DEPOSITION
OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION

To: Classique Productions, Inc.
4625 West Nevos Drive, Suites 2 & 3, Las Vegas, NV 89103

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: Place and Date and Time. Place: WATSON ROUNDS, 777 N. Rainbow Blvd., Suite 350, Las Vegas, NV 89107. Date and Time: 12/30/2009 10:00

The deposition will be recorded by this method: Stenographic Means

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

SEE ATTACHED EXHIBIT A

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 12/09/2009

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party)

TRP ENTERTAINMENT, LLC, who issues or requests this subpoena, are:

Matthew D. Francis, Esq. - WATSON ROUNDS
5371 Kietzke Lane, Reno, NV 89511; mfrancis@watsonrounds.com; 775.324.4100

Civil Action No. 92050557

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because _____; or

Other *(specify)*:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney’s fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party’s officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party; or

(iii) a person who is neither a party nor a party’s officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information.

These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty’s failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

AFFIDAVIT OF SERVICE

STATE OF NEVADA)
)
COUNTY OF CLARK)

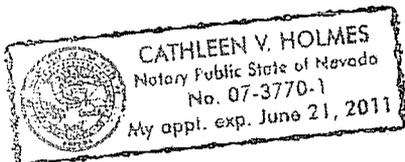
MARIO ROBINSON, being duly sworn deposes and says: that at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the state of Nevada under license #389, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received on Thursday December 10 2009; 1 copy(ies) of the:

SUBPOENA TO TESTIFY AT A DEPOSITION OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION, PETITIONER'S NOTICE OF DISCOVERY DEPOSITION OF CLASSIQUE PRODUCTIONS, INC., AND \$45.00 WITNESS FEE CHECK

I served the same on Thursday December 10 2009 at 03:05PM by:

Serving Witness CLASSIQUE PRODUCTIONS, INC., BY SERVING GROBL & ASSOCIATES, LTD.

Substituted Service, by leaving the copies with or in the presence of: SCOTT R. PARKER, RECEPTIONIST, ON BEHALF OF GROBL & ASSOCIATES, LTD., REGISTERED AGENT, PURSUANT TO NRS 14.020, AS A PERSON OF SUITABLE AGE AND DISCRETION AT THE ADDRESS BELOW, WHICH ADDRESS IS THE ADDRESS OF THE REGISTERED AGENT AS SHOWN ON THE CURRENT CERTIFICATE OF DESIGNATION FILED WITH THE SECRETARY OF STATE. Authorized Agent. at the Witness's Business located at 4625 W. NEVOS DR., #2 & 3, Las Vegas, NV 89103.



SUBSCRIBED AND SWORN to before me on this
Friday December 11 2009

Cathleen V. Holmes

Notary Public

A handwritten signature in black ink, appearing to read "M. Robinson", written over a horizontal line.

Affiant: MARIO ROBINSON
LEGAL WINGS, INC. - NV LIC #389
1118 FREMONT STREET
Las Vegas, NV 89101
(702) 384-0305, FAX (702) 384-8638

Exhibit N

Exhibit N

Matt Francis

From: Robert Hunter
Sent: Wednesday, December 09, 2009 7:15 PM
To: 'jhaffer@hafferlaw.com'; 'mnaethe@hafferlaw.com'
Cc: Matt Francis
Subject: TRP v. Direct from Vegas Productions
Attachments: 2009.12.09 1st Amended Notice of Depo of Harmony.pdf; 2009.12.09 Notice of Depo of Classique.pdf

Counsel,

Please see the attached notices of deposition. A hard copy will also be sent via first class mail. Contact our offices if you have any questions.



Robert Hunter

Assistant to Michael D. Rounds, Esq.

WATSON ROUNDS
5371 Kietzke Lane
Reno, NV 89511

Telephone: (775) 324-4100

Direct Line: (775) 398-3811
Facsimile: (775) 333-8171

rhunter@watsonrounds.com

6. The similarity of Petitioner's and Registrant's marketing and trade channels.
7. The conditions under which, and buyers to whom, sales of Registrant's services are made.
8. The fame of the Petitioner's "The Rat Pack is Back" mark.
9. The number and nature of similar marks in use for similar services (if any).
10. The nature and extent of any actual confusion.
11. The market interface between Registrant's and Petitioner's respective marks.
12. The extent to which Registrant has a right to exclude others from use of its mark on its services.
13. The extent of potential confusion, i.e., whether *de minimis* or substantial.
14. The strength of Registrant's mark.
15. Registrant's knowledge of Petitioner, including when Registrant became aware of Petitioner and its use of its "The Rat Pack is Back" mark.
16. Registrant's policies and practices for policing, investigating, and enforcing its "Direct from Vegas The Rat Pack" mark.
17. Registrant's prosecution of Registration No. 3220387 ("387 Reg.").
18. Registrant's contracts and communications with Harmony Artists, Inc.
19. Harmony's response to Petitioner's Subpoena Duces Tecum, and documents relating thereto.

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Said examination will be upon oral examination, pursuant to the Federal Rules of Civil Procedure, before an officer authorized to administer oaths. The deposition will continue from day-to-day until completed. You are invited to attend and cross examine.

Dated: December 9, 2009

WATSON ROUNDS

By: 

Michael D. Rounds

Matthew D. Francis

WATSON ROUNDS

5371 Kietzke Lane

Reno, Nevada 89511

(775) 324-4100

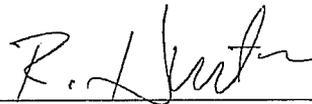
Attorneys for Petitioner TRP Entertainment,
LLC

CERTIFICATE OF SERVICE

I certify that I am an employee of the Law Offices of Watson Rounds, a Professional Corporation, and on this day I deposited a true and correct copy in the United States mail, first class postage prepaid, of the within document entitled **Petitioner's First Amended Notice of Discovery Deposition of Harmony Artists, Inc.**, addressed as follows:

JACOB L. HAFTER, ESQ.
LAW OFFICE OF JACOB L. HAFTER & ASSOCIATES
7201 W. Lake Mead Boulevard, Suite 210
Las Vegas, Nevada 89128

Dated: December 9, 2009



Robert Hunter

7. The conditions under which, and buyers to whom, sales of Registrant's services are made.

8. The fame of the Petitioner's "The Rat Pack is Back" mark.

9. The number and nature of similar marks in use for similar services (if any).

10. The nature and extent of any actual confusion.

11. The market interface between Registrant's and Petitioner's respective marks.

12. The extent to which Registrant has a right to exclude others from use of its mark on its services.

13. The extent of potential confusion, i.e., whether *de minimis* or substantial.

14. The strength of Registrant's mark.

15. Registrant's knowledge of Petitioner, including when Registrant became aware of Petitioner and its use of its "The Rat Pack is Back" mark.

16. Registrant's policies and practices for policing, investigating, and enforcing its "Direct from Vegas The Rat Pack" mark.

17. Registrant's prosecution of Registration No. 3220387 ("387 Reg.").

18. Registrant's contracts and communications with Classique.

19. Classique's response to Petitioner's Subpoena Duces Tecum, and documents related thereto.

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Said examination will be upon oral examination, pursuant to the Federal Rules of Civil Procedure, before an officer authorized to administer oaths. The deposition will continue from day-to-day until completed. You are invited to attend and cross examine.

Dated: December 9, 2009

WATSON ROUNDS

By 

Michael D. Rounds

Matthew D. Francis

WATSON ROUNDS

5371 Kietzke Lane

Reno, Nevada 89511

(775) 324-4100

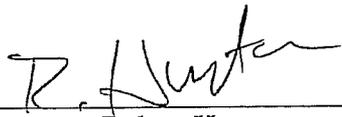
Attorneys for Petitioner TRP Entertainment,
LLC

CERTIFICATE OF SERVICE

I certify that I am an employee of the Law Offices of Watson Rounds, a Professional Corporation, and on this day I deposited a true and correct copy in the United States mail, first class postage prepaid, of the within document entitled **Petitioner's Notice of Discovery Deposition of Classique Productions, Inc.**, addressed as follows:

JACOB L. HAFTER, ESQ.
LAW OFFICE OF JACOB L. HAFTER & ASSOCIATES
7201 W. Lake Mead Boulevard, Suite 210
Las Vegas, Nevada 89128

Dated: December 9, 2009



Robert Hunter

Exhibit O

Exhibit O

Matt Francis

From: Tracie Jefcik [tjefcik@hafterlaw.com]
Sent: Wednesday, December 09, 2009 4:05 PM
To: Matt Francis
Cc: Steve Apple (seapple@earthlink.net); Jacob Hafter; Michael Naethe
Subject: TRP vs. DFVP - Second Amended Initial Disclosures
Attachments: Second Amended Initial Disclosures.120909.pdf

Mr. Francis,

Please see attached. The original was sent out via U.S. Mail today along with the exhibits.

Thank you,

Tracie Jefcik



7201 West Lake Mead Blvd, Suite 210
Las Vegas, Nevada 89128
702-405-6700 Telephone
702-685-4184 Facsimile

tjefcik@hafterlaw.com

Visit us online at www.hafterlaw.com

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under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein.

1 JACOB L. HAFTER, ESQ.
Intellectual Property Bar No. 51083
Nevada State Bar No. 9303
2 LAW OFFICE OF JACOB L. HAFTER & ASSOCIATES
7201 W. Lake Mead Boulevard, Suite 210
3 Las Vegas, Nevada 89128
Tel: (702) 405-6700
4 Fax: (702) 685-4184

5 Attorneys for Plaintiff

6
7 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
8
9

10
11 TRP ENTERTAINMENT, LLC, a Nevada
Limited Liability Company,

12 Petitioner,

13 vs.

14 DIRECT FROM VEGAS PRODUCTIONS,
INC., a California Corporation,

15 Registrant.
16
17

Registration No: 3220387
Mark: DIRECT FROM VEGAS THE RAT
PACK
Cancellation No.: 92050557

**REGISTRANT'S SECOND AMENDED
INITIAL DISCLOSURE PURSUANT TO
RULE 26(a)(1)**

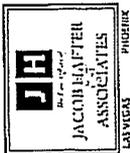
18
19 Registrant, Direct From Vegas Productions, Inc., by and through its attorneys of
20 record, JACOB L. HAFTER, ESQ., of the Law Office of Jacob Hafter & Associates, hereby
21 amends its initial disclosures pursuant to FRCP 26(a)(1) as follows.

22 The following disclosures, including the list of documents and identification of
23 potential witnesses, is a preliminary list that is inconclusive and subject to modification,
24 revisions and additions. As new information is identified through the discovery process which
25 would warrant reliance on additional documents or testimony of new witnesses, the following
26 disclosures shall be supplemented accordingly

27 ///

28 ///

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Las Vegas, Nevada 89128
(702) 405-6700 Telephone
(702) 685-4184 Facsimile



1 (A) The name and, if known, the address and telephone number of each individual likely
2 to have discoverable information — along with the subjects of that information — that
3 the disclosing party may use to support its claims or defenses:

3 (1) Steve Apple
4 c/o Jacob L. Hafter
5 7201 Lake Mead Blvd., Suite 210
6 Las Vegas, Nevada 89128
7 (702) 405 6700

8 Mr. Apple is owner of the Registrant in this matter, and is expected to testify
9 concerning the facts and circumstances surrounding this lawsuit.

10 (2) Representative of Harmony Artists, Inc.
11 6399 Wilshire Blvd, Suite #914
12 Los Angeles, CA 90048
13 323-655-5007

14 Harmony Artists, Inc. is Registrant's agent, and is expected to testify concerning the
15 facts and circumstances surrounding this lawsuit.

16 (3) Sandy Hackett
17 c/o Matthew Francis
18 Watson Rounds
19 5371 Kietzke Lane
20 Reno, Nevada 89511

21 Mr. Hackett is an owner of the Petitioner in this matter and is expected to testify
22 concerning the facts and circumstances surrounding this lawsuit.

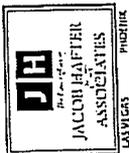
23 (4) Dick Feeny
24 c/o Matthew Francis
25 Watson Rounds
26 5371 Kietzke Lane
27 Reno, Nevada 89511

28 Mr. Feeny is an owner of the Petitioner in this matter and is expected to testify
concerning the facts and circumstances surrounding this lawsuit.

(5) Arthur Petrie
c/o Matthew Francis
Watson Rounds
5371 Kietzke Lane
Reno, Nevada 89511

Mr. Petrie is an owner of the Petitioner in this matter and is expected to testify
concerning the facts and circumstances surrounding this lawsuit.

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Las Vegas, Nevada 89128
(702) 405-6700 Telephone
(702) 685-4184 Facsimile



1 (6) Representative of Classique Productions
2 7400 Bisonwood Avenue
3 Las Vegas, NV 89131-3321
4 (702) 639-6550

5 Classique Production has been Registrant's agent, and is expected to testify concerning
6 the facts and circumstances surrounding this lawsuit.

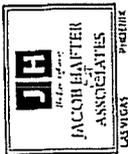
7 (7) Representative of Destinations by Design
8 901 Grier Drive
9 Las Vegas, NV 89119-3702
10 (702) 798-9555

11 Destinations by Design has been Registrant's agent, and is expected to testify
12 concerning the facts and circumstances surrounding this lawsuit.

13 **(B) A copy of, or a description by category and location of, all documents, data**
14 **compilations, and tangible things that are in the possession, custody, or control of the**
15 **party and which are discoverable under Rule 26(b)**

Exhibit	Document	Attorney's Eyes Only
1	March 1997 Esquire Sections	Attorney's Eyes Only
2	July 21, 1999 Review of Rat Pack is Back	Attorney's Eyes Only
3	July 23, 1999 Neon Guide Review of The Rat Pack is Back @ Desert Inn	Attorney's Eyes Only
4	July 23, 1999 Las Vegas Israelite Article	Attorney's Eyes Only
5	August 15, 1999 Showbiz Weekly	Attorney's Eyes Only
6	October 18, 1999 Post-Tribune Article on "The Rat Pack Show"	Attorney's Eyes Only
7	Spring 2001: City of Big Bear Lake Newsletter	Attorney's Eyes Only
8	May 2001: Big Bear Today	Attorney's Eyes Only
9	January 11, 2002 Santa Barbara News-Press Article	Attorney's Eyes Only
10	January 18, 2002 The Star	Attorney's Eyes Only

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Las Vegas, Nevada 89128
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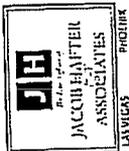


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Las Vegas, Nevada 89128
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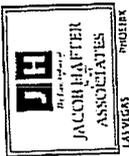
1	11	January 23, 2002 Santa Barbara News-Press Article	Attorney's Eyes Only
2			
3	12	January 25, 2002 Press Enterprise Article (from CCS Corsearch)	Attorney's Eyes Only
4	13	January 31, 2002 The Press-Enterprise/The Source	Attorney's Eyes Only
5	14	February 2, 2002 The Press-Enterprise Review	Attorney's Eyes Only
6			
7	15	July 18, 2002 Californian Article	Attorney's Eyes Only
8		June 27, 2002 Crystal Zarpas Letter to Apple (Privileged)	Attorney's Eyes Only
9	16	July 18, 2002: Review of Pechanga show	Attorney's Eyes Only
10			
11	17	April 8, 2003 Daily Southtown	Attorney's Eyes Only
12	18	June 13, 2003 Daily Variety	Attorney's Eyes Only
13		June 27, 2003 Email from Zarpas to Apple (Privileged)	
14		June 27, 2003 Letter from Abrahams to Apple (Privileged)	
15		July 1, 2003 Zarpas Letter to Apple (Privileged)	
16	19	July 15, 2003 Playbill Article	Attorney's Eyes Only
17		July 21, 2003 Zarpas Letter to Apple (Privileged)	
18	20	July 31, 2003 Carola Ross Letter - Kodak	Attorney's Eyes Only
19	21	2003 Script Cover	Attorney's Eyes Only
20	22	Specimen	Attorney's Eyes Only
21	23	March 4, 2004 Office Action	Attorney's Eyes Only
22		April 2, 2004 Zarpas Letter to Apple (Privileged)	
23	24	August 17, 2004 Response to Office Action	Attorney's Eyes Only
24		August 17, 2004 Zarpas Letter to Apple (Privileged)	
25	25	Rat Pack Vegas TESS Record	Attorney's Eyes Only
26	26	January 3, 2005 Notice of Suspension by USPTO	Attorney's Eyes Only
27		January 24, 2005 Zarpas Letter to Apple (Privileged)	
28		February 17, 2005 Zarpas Letter to Apple (Privileged)	

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Las Vegas, Nevada 89128
(702) 405-6700 Telephone
(702) 685-1184 Facsimile



1	27	February 18, 2005 Colfin Letter to Apple	Attorney's Eyes Only
2		February 24, 2005 Zarpas Letter to Apple (Privileged)	
3		March 10, 2005 Zarpas Letter to Apple (Privileged)	
4	28	April 5, 2005 Abrahams Letter to Colfin	Attorney's Eyes Only
5	29	May 31, 2005 DRDC v. TRP Preliminary Injunction	Attorney's Eyes Only
6		May 31, 2005 DRDC v. TRP Temporary Restraining Order	Attorney's Eyes Only
7			Attorney's Eyes Only
8	30	June 14, 2005 Response to Office Action	Attorney's Eyes Only
9	31	June 24, 2005 DRDC v. TRP PI Opposition	Attorney's Eyes Only
10			Attorney's Eyes Only
11	32	July 7, 2005 TRP Supp PI Opposition	Attorney's Eyes Only
12	33	July 5, 2005 DRDC v. TRP PI Reply	Attorney's Eyes Only
13	34	July 5, 2005 DRDC v. Apple Complaint	Attorney's Eyes Only
14			Attorney's Eyes Only
15	35	July 8, 2005: DRDC v. TRP First Amended Complaint November 15, 2005 Letter from Mann to Apple (Privileged)	
16			Attorney's Eyes Only
17	36	March 6, 2006 Examiner's Amendment to Mark	Attorney's Eyes Only
18	37	April 26, 2006 Notice of Publication	Attorney's Eyes Only
19	38	August 8, 2006 Notice of Allowance Date	Attorney's Eyes Only
20	39	November 7, 2006 Statement of Use Extension Request	Attorney's Eyes Only
21			Attorney's Eyes Only
22	40	November 8, 2006 Statement of Use	Attorney's Eyes Only
23	41	January 2, 2007 Approval of Extension	Attorney's Eyes Only
24	42	January 27, 2007 Conveyance of Mark from Apple to DFVP, Inc.	Attorney's Eyes Only
25			Attorney's Eyes Only
26	43	March 20, 2007 Certificate of Registration March 28, 2007 Letter from Zarpas to Apple (Privileged)	
27		March 13, 2009 Letter from Mann to Apple (Privileged)	
28	44	September 28, 2009 George Order from District Court	Attorney's Eyes Only

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Las Vegas, Nevada 89128
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(702) 685-4184 Facsimile



1	45	October 3, 2001 Dawson Order from District Court	Attorney's Eyes Only
2	46	March 24, 2004 Vegas show at Mirage. SBC.	Attorney's Eyes Only
3	47	March 16, 2004 Vegas Show at Green Valley Ranch	Attorney's Eyes Only
4	48	May 1, 2004 Vegas Show at Ritz Carlton	Attorney's Eyes Only
5	49	March 1, 2005 Show at Caesar's Palace	Attorney's Eyes Only
6	50	April 29, 2008 Show at Wynn	Attorney's Eyes Only
7	51	May 16, 2006 Publication for Opposition	Attorney's Eyes Only
8	52	Articles of Incorporation for DFVP	Attorney's Eyes Only
9	53	April 28, 2003 Show at Venetian	Attorney's Eyes Only
10	54	May 8, 2003 Show at Ceasar's	Attorney's Eyes Only
11	55	CCH Corsearch Report	Attorney's Eyes Only
12	56	November 6, 2009 Letter from Jacob Hafter to Matthew Francis	Attorney's Eyes Only
13	57	Promotional Docs	Attorney's Eyes Only
14	58	Misc Contracts	Attorney's Eyes Only
15	59	Posters	Attorney's Eyes Only
16	60	Trademark Application	Attorney's Eyes Only

23 **(C) A computation of any category of damages claimed by the disclosing party, making**
24 **available for inspection and copying as under Rule 34 the documents or other evidentiary**
25 **matter, not privileged or protected from disclosure, on which such computation is based,**
26 **including materials bearing on the nature and extent of injuries suffered.**

26 N/A.

27 **(D) For inspection and copying as under Rule 34 any insurance agreement under which**
28 **any person carrying on an insurance business may be liable to satisfy part or all of a**

1 judgment which may be entered in the action or to indemnify or reimburse for payment
2 made to satisfy the judgment and any disclaimer or limitation of coverage or reservation
3 of rights under any such insurance agreement:

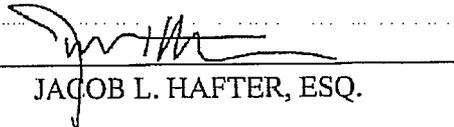
4 At this time, it does not appear that there is applicable insurance.

5 Plaintiff reserves the right to introduce as evidence any documents produced or
6 identified by other parties to this litigation and to supplement his document list at a later date.
7 Discovery is ongoing.

8 Dated this 9th day of December, 2009.

9 LAW OFFICE OF JACOB HAFTER & ASSOCIATES.

10
11
12 By: _____

13 
14 JACOB L. HAFTER, ESQ.

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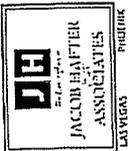
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Las Vegas, Nevada 89128
(702) 405-6700 Telephone
(702) 685-4184 Facsimile



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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of December, 2009, I personally sent a true and correct copy of the foregoing DOCUMENTS by email and depositing in the United States Post Office, at Las Vegas, Nevada, in a sealed envelope with postage fully pre-paid thereon addressed to:

Michael D. Rounds, Esq.
Matthew Francis, Esq.
WATSON ROUNDS
5371 Kietzke Lane
Reno, Nevada 89511
Mfrancis@watsonrounds.com


Tracie Jefcik

7201 W. Lake Mead Blvd., Suite 210
Las Vegas, Nevada 89128
(702) 405-6700 Telephone
(702) 685-4184 Facsimile

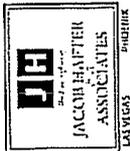


Exhibit P

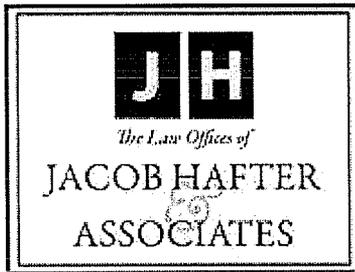
Exhibit P

Matt Francis

From: Michael Naethe [mnaethe@hafterlaw.com]
Sent: Wednesday, December 09, 2009 7:21 PM
To: Matt Francis; Robert Hunter
Cc: Jacob Hafter; Steve Apple
Subject: TRP v. DFVP Discovery
Attachments: Second Amended Answers to First Interrogatories.pdf; Second Amended Responses to First RFP120909.pdf

Please see attached for Registrants Second Amended Responses to First Set of Interrogatories and RFP.

Michael Naethe, Esq.



7201 West Lake Mead Blvd, Suite 210
Las Vegas, Nevada 89128
702-405-6700 Telephone
702-685-4184 Facsimile

mnaethe@hafterlaw.com

Visit us online at www.hafterlaw.com

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Exhibit Q

Exhibit Q

Matt Francis

From: Jacob Hafter [jhafter@hafterlaw.com]
Sent: Friday, December 11, 2009 3:06 PM
To: Robert Hunter; Matt Francis
Cc: Steve Apple; Michael Naethe
Subject: TRP v Direct From Vegas

Gentlemen:

Below please find an excerpt from Chapter 500, Section 528.03, of the Trademark Trial and Appeal Board Manual of Procedure (TBMP):

When a party files a timely motion for summary judgment, the Board will suspend proceedings in the case with respect to all matters not germane to the motion (if the motion was untimely filed, the Board, in its discretion, may issue an immediate action denying the motion for that reason). The filing of a summary judgment motion does not, in and of itself, automatically suspend proceedings in a case: rather, proceedings are suspended when the Board issues an order to that effect. However, on a case-by-case basis, the Board may find that the filing of a motion for summary judgment provides a party with good cause for not complying with an otherwise outstanding obligation, for example, responding to discovery requests.

Accordingly, as the Board has issued the Order to Suspend, as we first learned today after we filed our second motion for partial summary judgment, we are of the position that all discovery obligations are also stayed. Accordingly, we will not be attending any of the pending depositions. Additionally, until further order, we will not be further defending this case.

Thank you for your cooperation.

Happy Holidays,
Jay

Jacob L. Hafter, Esq.



7201 West Lake Mead Blvd, Suite 210
Las Vegas, Nevada 89128
702-405-6700 Telephone
702-685-4184 Facsimile
702-716-8004 mobile

jhafter@hafterlaw.com

Visit us online at www.hafterlaw.com

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Exhibit R

Exhibit R



KELLY G. WATSON¹
MICHAEL D. ROUNDS¹
MATTHEW D. FRANCIS²

ARTHUR A. ZORIO¹
CASSANDRA P. JOSEPH¹
MELISSA P. BARNARD
RYAN E. JOHNSON
TARA A. SHIROFF
MATTHEW G. HOLLAND
ADAM P. McMILLEN²
ELIZA BECHTOLD⁴

OF COUNSEL-
MARC D. FOODMAN^{1,3}

¹ Also licensed in California
² Also licensed in Utah
³ Also licensed in Massachusetts
⁴ Licensed only in California

5371 Kietzke Lane
Reno, Nevada 89511
(775) 324-4100
Fax (775) 333-8171
e-mail: reno@watsonrounds.com

777 North Rainbow Boulevard
Suite 350
Las Vegas, Nevada 89107
(702) 636-4902
Fax (702) 636-4904

One Market-Stewart Tower
Suite 1600
San Francisco, CA 94105
(415)243-4090
Fax (415)243-0226

www.watsonrounds.com

Reply to: Reno

December 21, 2009

VIA EMAIL

Jacob Hafter
Jacob Hafter and Associates
7201 Lake Mead Blvd.
Las Vegas, NV 89128

Re: *TRP v. Direct from Vegas Productions*

Dear Jacob:

On December 11, 2009, you advised me for the first time that you had filed two motions for summary judgment. We have not received copies of those motions from you yet.

As I assume you are aware, all papers filed in the TTAB must be served upon the other parties in the proceeding. 37 C.F.R. § 2.119(a). Service must be made upon opposing counsel, and may be accomplished in the following ways:

- (1) By delivering a copy of the paper to the person served;
- (2) By leaving a copy at the usual place of business of the person served, with someone in the person's employment;
- (3) When the person served has no usual place of business, by leaving a copy at the person's residence, with a member of the person's family over 14 years of age and of discretion;
- (4) Transmission by the "Express Mail Post Office to Addressee" service of the United States Postal Service or by first-class mail, which may also be certified or registered; or
- (5) Transmission by overnight courier. 37 C.F.R. § 2.119(b).

"If service is made by first-class mail, "Express Mail," or overnight courier, the date the paper was mailed or delivered to the overnight courier will be considered the date of service." 37 C.F.R. § 2.119(c); see also 4B Charles A. Wright, Arthur R. Miller, Federal Practice and Procedure 3d, § 1148 (2009)(citations omitted).

Simply put, it does not appear that the motions for summary judgment were mailed or otherwise served. Please provide me immediately with proof that you have served those motions properly, including proof that you mailed them, and the date

Jacob Hafter
December 21, 2009
Page 2

that you deposited them for mailing. If you have not yet served the motions, please serve them today in accordance with 37 C.F.R. § 2.119.

Please call me with any questions.

Sincerely,



Matthew D. Francis
WATSON ROUNDS
A Professional Corporation

cc: Client

Exhibit S

Exhibit S

Matt Francis

From: Jacob Hafter [jhafter@hafterlaw.com]
Sent: Wednesday, December 23, 2009 8:39 AM
To: Matt Francis
Cc: Michael Naethe
Subject: RE: TRP v. Direct from Vegas Productions

That is fine.

From: Matt Francis [mailto:Mfrancis@watsonrounds.com]
Sent: Wednesday, December 23, 2009 8:37 AM
To: Jacob Hafter
Cc: Michael Naethe
Subject: FW: TRP v. Direct from Vegas Productions

Jay:

Is this Stipulation acceptable?

Matt



Matthew D. Francis
Partner

WATSON ROUNDS
5371 Kietzke Lane
Reno, Nevada 89511

Telephone: (775) 324-4100
Facsimile: (775) 333-8171

<http://www.watsonrounds.com>

From: Matt Francis
Sent: Tuesday, December 22, 2009 12:43 PM
To: 'Jacob Hafter'
Cc: Michael Naethe; Tracie Jefcik
Subject: RE: TRP v. Direct from Vegas Productions

Jay:

I don't understand the animosity in your emails, and I do not know what "tactics" you are referring to. I am simply trying to understand whether your motions were served or not. If they were not mailed in the first instance, then the clock runs from yesterday - when they were purportedly served. I want to avoid briefing on this issue and I would like to enter into a stipulation simply stating that the time to respond to the summary judgment motions will run from yesterday in accordance with 37 C.F.R. § 2.119. I have attached a proposed draft stipulation for your review. If it is acceptable, please sign and email back. If you have a problem with it, please call me to discuss. I have tried to make it as even-handed as possible.

Thanks,

Matt



Matthew D. Francis
Partner

WATSON ROUNDS
5371 Kietzke Lane
Reno, Nevada 89511

Telephone: (775) 324-4100
Facsimile: (775) 333-8171

<http://www.watsonrounds.com>

From: Jacob Hafter [mailto:jhafter@hafterlaw.com]
Sent: Tuesday, December 22, 2009 9:51 AM
To: Matt Francis
Cc: Michael Naethe; Tracie Jefcik
Subject: RE: TRP v. Direct from Vegas Productions

We have sent them to you previously. You received them through the electronic system as well. As usual, your tactics are suspect, and they are becoming increasingly suspect.

Nonetheless, if this is your way of asking for an extension, you may have an extension.

With respect to the depositions, there is nothing to consider on our side. The case is suspended and any depositions that you take will be struck.

Jay

From: Matt Francis [mailto:Mfrancis@watsonrounds.com]
Sent: Tuesday, December 22, 2009 9:34 AM

To: Jacob Hafter
Cc: Michael Naethe; Tracie Jefcik
Subject: RE: TRP v. Direct from Vegas Productions

Jay:

It does not appear that you ever served us previously. As such, the service date will run from yesterday (if the documents were properly served). Please let me know if you disagree with this.

I will advise you regarding the depositions shortly.

Matt.



Matthew D. Francis
Partner

WATSON ROUNDS
5371 Kietzke Lane
Reno, Nevada 89511

Telephone: (775) 324-4100
Facsimile: (775) 333-8171

<http://www.watsonrounds.com>

From: Jacob Hafter [mailto:jhafter@hafterlaw.com]
Sent: Tuesday, December 22, 2009 9:27 AM
To: Matt Francis
Cc: Michael Naethe; Tracie Jefcik
Subject: RE: TRP v. Direct from Vegas Productions

We have served you twice. The second being a new set which we mailed out yesterday.

Furthermore, it is my understanding that you intend to proceed with the depositions of non-parties in this matter later this month. As you are aware, proceedings in this matter have been suspended. Please confirm that these depositions have been cancelled. If you do not cancel them, we will move to have any depositions taken struck as being improper.

Jay

From: Matt Francis [mailto:Mfrancis@watsonrounds.com]
Sent: Tuesday, December 22, 2009 9:25 AM
To: Jacob Hafter
Cc: Michael Naethe
Subject: FW: TRP v. Direct from Vegas Productions

Jay:

Did you receive this letter? May I have your response?

Thanks,

Matt



Matthew D. Francis
Partner

WATSON ROUNDS
5371 Kietzke Lane
Reno, Nevada 89511

Telephone: (775) 324-4100
Facsimile: (775) 333-8171

<http://www.watsonrounds.com>

From: Carla Ousby
Sent: Monday, December 21, 2009 10:01 AM
To: 'jhafter@hafterlaw.com'
Cc: 'mnaethe@hafterlaw.com'
Subject: TRP v. Direct from Vegas Productions

Mr. Hafter,

Please see the attached letter from Mr. Francis.

Sincerely,



Carla Ousby

Assistant to Matthew D. Francis and Cassandra P. Joseph

WATSON ROUNDS

5371 Kietzke Lane
Reno, NV 89511

Telephone: (775) 324-4100
Facsimile: (775) 333-8171

cousby@watsonrounds.com

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Exhibit T

Exhibit T

Matt Francis

From: Jacob Hafter [jhafter@hafterlaw.com]
Sent: Thursday, December 24, 2009 5:57 AM
To: Michael Naethe; jross@harmonyartists.com; acrane-ross@harmonyartists.com
Cc: Steve Apple; Matt Francis
Subject: RE: TRP v. Direct
Attachments: Notice of Suspension.121109.pdf

Mr. Ross,

It is my understanding that the depositions in this case are still being held. Pursuant to the attached order, all proceedings have been suspended by the United States Patent & Trademark Office. We encourage you to speak with your counsel about the effects of the attached order. With respect to our client, we will not be attending any discovery actions in this matter until the suspension is lifted. Moreover, please be advised that should TRP engage in any further discovery, we will move to have such materials struck.

Happy Holidays,
Jay

Jacob L. Hafter, Esq.



7201 West Lake Mead Blvd, Suite 210
Las Vegas, Nevada 89128
702-405-6700 Telephone
702-685-4184 Facsimile
702-716-8004 mobile

jhafter@hafterlaw.com

Visit us online at www.hafterlaw.com

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Exhibit U

Exhibit U

Matt Francis

From: Matt Francis
Sent: Monday, December 28, 2009 9:29 AM
To: 'Jacob Hafter'; Michael Naethe; jross@harmonyartists.com; acrane-ross@harmonyartists.com
Cc: Steve Apple
Subject: RE: TRP v. Direct

Dear Mr. Ross:

Without waiving any rights, the deposition set for tomorrow is now off calendar. Please let me know if you have any questions.

Thank you very much.

Sincerely,

Matt Francis



Matthew D. Francis
Partner

WATSON ROUNDS
5371 Kietzke Lane
Reno, Nevada 89511

Telephone: (775) 324-4100
Facsimile: (775) 333-8171

<http://www.watsonrounds.com>

From: Jacob Hafter [mailto:jhafter@hafterlaw.com]
Sent: Thursday, December 24, 2009 5:57 AM
To: Michael Naethe; jross@harmonyartists.com; acrane-ross@harmonyartists.com
Cc: Steve Apple; Matt Francis
Subject: RE: TRP v. Direct

Mr. Ross,

It is my understanding that the depositions in this case are still being held. Pursuant to the attached order, all proceedings have been suspended by the United States Patent & Trademark Office. We encourage you to speak with your counsel about the effects of the attached order. With respect to our client, we will not be attending any discovery actions in this matter until the suspension is lifted. Moreover, please be advised that should TRP engage in any further discovery, we will move to have such materials struck.

Happy Holidays,
Jay

Jacob L. Hafter, Esq.



7201 West Lake Mead Blvd, Suite 210
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702-716-8004 mobile

jhafter@hafterlaw.com

Visit us online at www.hafterlaw.com

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Matt Francis

From: Matt Francis
Sent: Monday, December 28, 2009 10:00 AM
To: 'classique2@cox.net'
Cc: 'Jacob Hafter'; Michael Naethe; Carla Ousby
Subject: TRP v. Direct Deposition
Attachments: Affidavit for Classique Produciton Inc .pdf; 2009.12.09 Depo Subpoena - Classique.pdf

To Whom it May Concern:

Please be advised that the deposition of Classique Productions currently scheduled for Wednesday, December 30, 2009, has been taken off calendar. See attached. Nothing in this email constitutes a waiver of any rights belonging to TRP Entertainment.

Please call me with any questions.

Sincerely,

Matthew D. Francis



Matthew D. Francis
Partner

WATSON ROUNDS
5371 Kietzke Lane
Reno, Nevada 89511

Telephone: (775) 324-4100
Facsimile: (775) 333-8171

<http://www.watsonrounds.com>

Exhibit V

Exhibit V



08-18-2003

U.S. Patent & TMOfo/TM Mail Rcpt Dt. #51

76538531

TRADEMARK APPLICATION SERIAL NO. _____

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

08/25/2003 SWILSON1 00000060 76538531

01 FC:6001

335.00 0P

***EMBEDDED
MARK***

PTO-1555
(5/87)

U.S. Patent & TM Ofc/TM



76538531

Law Offices
MANN & ZARPAS, LLP

5850 CANOGA AVENUE, SUITE 400
WOODLAND HILLS, CALIFORNIA 91367

TELEPHONE: (818) 710-2714

FACSIMILE: (818) 710-2717

WWW.MANNZARPAS.COM

WRITER'S E-MAIL
czarpas@mannzarpas.com

August 15, 2003

VIA U.P.S. NEXT DAY AIR

Commissioner for Trademarks
Box-New App-Fee
2900 Crystal Drive
Arlington, VA 22202-3513

Re: Our Client: Steve Apple
Trademark: "Direct From Vegas The Rat Pack"

Dear Sir or Madam:

Enclosed please find the Trademark/Service Mark Application - Intent to Use, for our client, Steve Apple, an individual for the trademark "Direct From Vegas The Rat Pack".

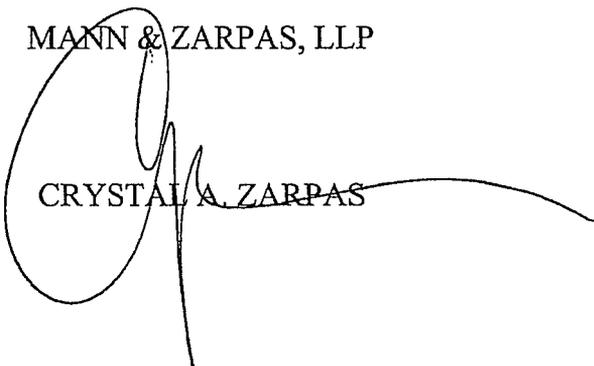
Also enclosed, please find this firm's check in the amount of \$325.00 as the Application fee.

Please confirm receipt of this Application by stamping and returning the enclosed postcard provided herewith.

Thank you for your attention to the above.

Very truly yours,

MANN & ZARPAS, LLP


CRYSTAL A. ZARPAS

CAZ:dlr
Enclosures
cc: Mr. Steve Apple

PTO Form 1478 (Rev 9/98)
OMB Control #0651-0009 (Exp. 08/31/2004)



Trademark/Service Mark Application

08-18-2003

*** To the Commissioner for Trademarks ***

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #31

<DOCUMENT INFORMATION>
<TRADEMARK/SERVICEMARK APPLICATION>
<VERSION 1.22>

<APPLICANT INFORMATION>
<NAME> STEVE APPLE
<STREET> 7871 Colgate Avenue
<CITY> Westminster
<STATE> CA
<COUNTRY> USA
<ZIP/POSTAL CODE> 92683
<TELEPHONE NUMBER> (714) 891-3752

<APPLICANT ENTITY INFORMATION>
<INDIVIDUAL: COUNTRY OF CITIZENSHIP> United States

<TRADEMARK/SERVICEMARK INFORMATION>

<M  DIRECT FROM VEGAS THE RAT PACK

<TYPED FORM> Yes
~ Applicant requests registration of the above-identified trademark/service mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. §1051 et seq., as amended). ~

<BASIS FOR FILING AND GOODS/SERVICES INFORMATION>
<INTENT TO USE: SECTION 1(b)> Yes
~ Applicant has a bona fide intention to use or use through a related company the mark in commerce on or in connection with the below-identified goods/services. (15 U.S.C. §1051(b), as amended.) ~
<INTERNATIONAL CLASS NUMBER> 041
<LISTING OF GOODS AND/OR SERVICES> Entertainment services, namely live and televised appearances by a professional entertainer, live performances by a musical band and live music concerts.

<ATTORNEY INFORMATION>
<NAME> Crystal A. Zarpas, Esq.
<STREET> 5850 Canoga Avenue, Suite 400
<CITY> Woodland Hills
<STATE> CA
<COUNTRY> USA
<ZIP/POSTAL CODE> 91367
<FIRM NAME> MANN & ZARPAS, LLP

76538531

<TELEPHONE NUMBER> (818) 710-2714

<FAX NUMBER> (818) 710-2717

<FEE INFORMATION>

<TOTAL FEES PAID> 335

<NUMBER OF CLASSES PAID> 1

<NUMBER OF CLASSES> 1

<LAW OFFICE INFORMATION>

<E-MAIL ADDRESS FOR CORRESPONDENCE> N/A

<SIGNATURE AND OTHER INFORMATION>

~ **PTO-Application Declaration:** The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. §1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true. ~

<SIGNATURE> Steve Apple * please sign here*

<DATE> 8-08-03

<NAME> STEVE APPLE

<TITLE> Individual

The information collected on this form allows the PTO to determine whether a mark may be registered on the Principal or Supplemental register, and provides notice of an applicant's claim of ownership of the mark. Responses to the request for information are required to obtain the benefit of a registration on the Principal or Supplemental register. 15 U.S.C. §§1051 et seq. and 37 C.F.R. Part 2. All information collected will be made public. Gathering and providing the information will require an estimated 12 or 18 minutes (depending if the application is based on an intent to use the mark in commerce, use of the mark in commerce, or a foreign application or registration). Please direct comments on the time needed to complete this form, and/or suggestions for reducing this burden to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington D.C. 20231. Please note that the PTO may not conduct or sponsor a collection of information using a form that does not display a valid OMB control number.