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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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Submission	Other Motions/Papers
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Attachments	First Amended Petition for Cancellation.pdf (5 pages)(159201 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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<p>TRP ENTERTAINMENT, LLC, a Nevada limited liability company,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>DIRECT FROM VEGAS PRODUCTIONS, INC., a California corporation,</p> <p style="text-align: center;">Registrant.</p>	<p>Registration No.: 3220387</p> <p>Mark: DIRECT FROM VEGAS THE RAT PACK</p> <p>Cancellation No.: 92050557</p>
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FIRST AMENDED PETITION FOR CANCELLATION

Petitioner, TRP Entertainment, LLC (“TRP” or “Petitioner”), believes it will be damaged by the continued registration of Registration No. 3220387 (“387 Reg.”) for the designation “Direct From Vegas The Rat Pack” owned by Direct From Vegas Productions, Inc. (“Registrant”), and therefore petitions the Board to cancel same. Pursuant to 37 C.F.R. §§ 2.111 and 2.112(a), and as grounds for cancellation, Petitioner alleges as follows:

1. Petitioner is a Nevada corporation with its principal place of business located at 7910 Bermuda Road, Las Vegas, NV 89123.
2. Upon information and belief, Registrant is a California corporation located at 7871 Colgate Avenue, Westminster, CA 92683.
3. TRP is the assignee and owner of all rights, title, and interest in the mark “The Rat Pack is Back” (the “Mark”) and corresponding incontestable Registration No. 2640066 (“066 Reg.”), which covers entertainment services, namely live stage musical productions in International Class 41.
4. Since the adoption of the Mark, the Mark has been used continuously. Further, since the Mark’s adoption and use, millions of dollars have been spent advertising and promoting the Mark and accompanying live stage musical productions, hundreds of thousands of people

have seen TRP's shows, and TRP has made millions of dollars from its shows.

5. Since approximately May of 2006, TRP has continuously used the Mark in commerce in Nevada, and in numerous other states pursuant to its previous license/enforcement agreement with its former licensor, DRDC Production, Inc. ("DRDC"). Prior to assigning the Mark to TRP in April of 2008, DRDC used that Mark in commerce since 1999.

6. Prior to Registrant's infringing uses of the Mark, the Mark had become recognized and relied upon by consumers as identifying the quality entertainment services and goods of TRP (and DRDC) and distinguishing those services and goods from the services and goods of others. The Mark therefore represents the goodwill belonging exclusively to TRP.

7. On August 18, 2003, Registrant filed Application Serial No. 76538531 ("531 App.") for the mark "Direct From Vegas The Rat Pack" in International Class 41 (Entertainment services, namely live and televised appearances by a professional entertainer, live performances by a musical band and live music concerts).

8. The '531 App. matured into the '387 Reg. on March 20, 2007.

9. Upon information and belief, Registrant uses the mark "Direct From Vegas The Rat Pack" in connection with the provision of entertainment services that are virtually identical to those offered by Petitioner, to identical consumers, through the same or similar channels of trade.

10. When used in connection with the services of Registrant, "Direct From Vegas The Rat Pack" will be immediately understood by the relevant public as a geographic indicator signifying entertainment services that originate from Las Vegas, Nevada. Las Vegas, Nevada is where Petitioner has its headquarters and where most of its entertainment services are provided. Additionally, Las Vegas is where Frank Sinatra, Sammy Davis Jr., Dean Martin, and Joey Bishop primarily performed. Believing they are attending a "Rat Pack" tribute show that originates and is based in Las Vegas, Nevada, when in fact they are not, consumers are likely to be influenced in their purchasing decisions by Registrant's use of "Direct From Vegas The Rat Pack." Upon information and belief, Registrant has never performed its competing

entertainment services in Las Vegas, Nevada, and is in fact based in Westminster, California.

11. Petitioner will be damaged by the continued registration of the '387 Reg. because the "Direct From Vegas The Rat Pack" mark so resembles Petitioner's Mark as to be likely to cause consumer confusion, mistake, and/or deception in the minds of the purchasing public. The purchasing public is likely to assume that the services identified by Registrant are sold by Petitioner, or that such services originate with, or are authorized or approved by, or in some way connected to, Petitioner, in violation of 15 U.S.C. § 1052(d).

12. Upon information and belief, when used in connection with Registrant's services in International Class 41, "Direct From Vegas The Rat Pack" is a deceptive mark and therefore may not be registered pursuant to Section 2(a) of the Trademark Act, § 15 U.S.C. 1052(a).

13. Upon information and belief, when used in connection with Registrant's services in International Class 41, "Direct From Vegas The Rat Pack" is primarily a geographically deceptively misdescriptive mark and therefore may not be registered pursuant to Section 2(e)(3) of the Trademark Act, § 15 U.S.C. 1052(e)(3).

14. Upon information and belief, a continued grant of registration to Registrant of the '387 Reg. would bestow upon Registrant the right to use a mark which confuses consumers into mistakenly believing that Registrant's services are of the same geographic origin, and of a comparable level of quality, as those of Petitioner, thereby creating damage to Petitioner.

15. For the foregoing reasons, the '387 Reg. should therefore be cancelled pursuant to 15 U.S.C. § 1064, et seq.

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WHEREFORE, Petitioner prays that Registrant's Registration No. 3220387 be cancelled.

Dated: March 3, 2009

Respectfully Submitted,

By: 

Michael D. Rounds
Matthew D. Francis
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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 **First Amended Petition for**

Cancellation, addressed as follows:

Direct From Vegas Productions, Inc.
7871 Colgate Avenue
Westminster, CA 92683

Crystal A. Zarpas
Mann & Zarpas LLP
15233 Ventura Blvd. Ste. 714
Sherman Oaks, CA 91403

Dated: March 3, 2009


