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

|                        |   |
|------------------------|---|
| Proceeding             | 92059305  |
| Party                  | Plaintiff<br>MWR Holdings, LLC  |
| Correspondence Address | WILLIAM W STROEVER<br>GREENBERG TRAUIG LLP<br>200 PARK AVENUE, PO BOX 677<br>FLORHAM PARK, NJ 07932-0677<br>UNITED STATES<br>stroeverw@gtlaw.com, ameliom@gtlaw.com, njdocket@gtlaw.com |
| Submission             | Motion for Summary Judgment   |
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| Signature              | /William W. Stroever/   |
| Date                   | 08/12/2015  |
| Attachments            | MWR - Motion for Summary Judgment.pdf(1614543 bytes )   |

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

MWR HOLDINGS, LLC,

Petitioner,

v.

THEODORE A. STONER,

Registrant.

Cancellation No. 92059305

Mark: BONGO BI-LINGO BUDDY

Reg. No.: 3,700,403

Registered: October 20, 2009

**PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Fed. R. Civ. P. 56, Petitioner MWR Holdings, LLC (“MWR”), by its undersigned counsel, hereby moves the Trademark Trial and Appeal Board (the “Board”) for summary judgment cancelling Registrant Theodore A. Stoner’s (“Stoner”) registration for the mark BONGO BI-LINGO BUDDY, U.S. Reg. No. 3,700,403 (the “‘403 Registration”). This is a situation in which Stoner has registered a mark for services that he does not provide in commerce. Rather, as admitted by Stoner, the services serve only as an advertising conduit for other goods sold by Stoner, and on which Stoner owns separate trademark registrations. Stoner’s continued registration of the ‘403 Registration for its identified services is contrary to well established caselaw, and the ‘403 Registration should be cancelled as *void ab initio*.

**BACKGROUND**

The undisputed material facts are as follows:

On February 10, 2006, Stoner filed an application for the mark BONGO BI-LINGO BUDDY, Serial Number 78/812,529. (See registration certificate for U.S. Reg. No. 3,700,403, attached hereto as Exhibit A). After a three-year prosecution, the application eventually matured

into U.S. Registration No. 3,700,403 on October 20, 2009. (See Exhibit A). The services identified in the '403 Registration are "Entertainment in the nature of live theatrical performances by mixed media of live characters, puppetry and animation for children; Organizing cultural events for children; education services, namely, providing professional training in the field of bilingual learning" (the "'403 Services"). (See Exhibit A).

Along with the '403 Registration, Stoner owns several other trademark registrations for the BONGO BI-LINGO BUDDY mark, including:

- U.S. Reg. No. 3,551,765 as applied to "Plush toys, hand puppets, board games, card games, stuffed toy animals, musical toy instruments, namely, drums, brass and percussion."
- U.S. Reg. No. 3,446,416 as applied to "prerecorded dvds, prerecorded compact discs; CD-ROM featuring music and motion picture sound tracks; interactive multimedia software programs for entertainment, namely, adventure stories and animated stories; interactive multimedia software for playing games; compact discs featuring music, stories, activities and other such educational and entertainment topics for children; dvd's featuring animated entertainment."
- U.S. Reg. No. 3,541,730 as applied to "T-shirts."
- U.S. Reg. No. 3,437,568 as applied to "Printed matter, namely, series of fiction books, decals, and children's interactive electronic books."

(See registration certificates attached hereto as Exhibit B).

On June 5, 2014, Petitioner filed a Petition for Cancellation, commencing the instant litigation. (See docket list for Cancellation No. 92059305, entry No. 1). As part of the discovery process in this cancellation, Petitioner served several discovery requests on Stoner, including

interrogatories, document requests, and requests for admission. Petitioner's fifth interrogatory to Stoner requested the following: "For each month from Registrant's date of first use of Registrant's Mark until the present, state the sales volume of services provided by Registrant under Registrant's Mark." (See Petitioner's First Set of Interrogatories, attached hereto as Exhibit C, at p. 6). Stoner responded to this interrogatory with the statement that: "Registrant does not have any sales figures relating to Registrant's Services at issue in this proceeding as the International Class 41 services are offered to promote Registrant's Mark in connection with Registrant's other goods." (See Stoner's responses to Petitioner's first set of interrogatories, attached hereto as Exhibit D, at pp. 2-3).

In response to Petitioner's document requests, Stoner produced a total of 111 pages of documents. Stoner subsequently confirmed that he is not in possession of any additional documents responsive to Petitioner's document requests. (See Stoner's supplemental responses to Petitioner's first set of document requests, attached hereto as Exhibit E, at pp. 1-3). Of the 111 pages of documents produced, seventy-seven (77) pages consisted of the electronic file history of the '403 Registration and the docket of the instant Cancellation Proceeding. Despite Stoner's allegation that he had been rendering the BONGO BI-LINGO BUDDY mark in connection with the '403 Services since at least as early as 2008, Stoner could not produce a single document showing that any customer had ever purchased the '403 Services from him. Stoner could not produce any documents showing offers of the '403 Services for sale, or inviting prospective customers to purchase the '403 Services. Nor could Stoner produce any documents even suggesting that Stoner had an ongoing business rendering the '403 Services in commerce – no order forms, no invoices, no scripts or playbills to be used for live theatrical performances, no textbooks or lessons showing that he was providing professional training in the field of bilingual

learning. In short, Stoner produced no documents to support the position that the BONGO BI-LINGO BUDDY mark was used in the sale or advertising of the ‘403 Services, or that the ‘403 Services were rendered either in commerce or in any state of the United States.

### ARGUMENT

Summary judgment is a pretrial device intended to save the time and expense of a full trial when the moving party is able to demonstrate, prior to trial, that there is no genuine dispute of material fact, and that it is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A fact dispute is genuine only if, on the evidence of record, a reasonable fact finder could resolve the matter in favor of the non-moving party. *See Opryland USA Inc. v. Great Am. Music Show Inc.*, 970 F.2d 847 (Fed. Cir. 1992). In reviewing a motion for summary judgment, the evidentiary record and all reasonable inferences to be drawn from the undisputed facts must be viewed in the light most favorable to the nonmoving party. *Old Tyme Foods Inc. v. Roundy’s Inc.*, 961 F.2d 200 (Fed. Cir. 1992).

In the present case, there is no genuine dispute of material fact that Stoner has not used his BONGO BI-LINGO BUDDY mark in commerce for the services identified in the ‘403 Registration, and accordingly that registration should be cancelled by the Board. The registration of a mark that does not meet the use in commerce requirement is void ab initio. *Couture v. Playdom, Inc.*, 778 F.3d 1379, 1381 (Fed. Cir. 2015)<sup>1</sup>. The term “use in commerce” means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. 15 U.S.C. § 1127. More specifically, a service mark is “in use in commerce” if:

1. The mark is used or displayed in the sale or advertising of services and

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<sup>1</sup> The Federal Circuit has noted that it is clear from the wording of the Lanham Act that applications for service mark registrations are subject to the same statutory criteria as are trademarks. *Aycock Engineering v. Airflite, Inc.*, 560 F.3d 1350, 1357 (Fed. Cir. 2009). Thus, it is immaterial that the ‘403 Registration is directed to services as opposed to goods.

2. Either

- a. The services are rendered “in commerce,” or
- b. The services are rendered in more than one State or in the United States and a foreign country and the user is engaged “in commerce” in connection with the services.

*Id.* Stoner has not met any of these requirements, much less each of the required elements to constitute “use in commerce”, and the ‘403 Registration should be cancelled.

**1. The BONGO BI-LINGO BUDDY Mark Is Not Used In The Sale or Advertising Of the ‘403 Services.**

First, Stoner has not used the BONGO BI-LINGO BUDDY mark in the sale or advertising of the ‘403 Services. According to Stoner, the ‘403 Services have never been sold, but rather are “offered to promote Registrant’s Mark in connection with Registrant’s other goods.” (See Exhibit D at pp. 2-3). That is, Stoner is using the BONGO BI-LINGO BUDDY mark not in the sale or advertising of the ‘403 Services, as required by 15 U.S.C. § 1127, but merely as a conduit to advertise Registrant’s other goods and other registered marks.

The Federal Circuit faced a similar situation in *Lens.com, Inc. v. 1-800 Contacts, Inc.*, in which the court considered whether software associated with a retailer’s website was a separate good in and of itself, or merely a conduit through which the retailer provided its services. 686 F.3d 1376 (Fed. Cir. 2012). The court noted the well-established rule that when an article has no independent value apart from the services, such article is not likely to be an independent good in trade. *Id.* at 1380. Several factors the court considered were: (1) whether the goods were sold separately from the services; (2) whether the goods had any independent value apart from the services; and (3) whether the owner of the putative trademark owned separate registrations for the services and goods. *Id.* at 1380-82. In the end, the court concluded that “[w]hile Lens.com’s

software may provide greater value to Lens.com's online retailer services by enhancing the overall consumer experience, there is no evidence that it has any independent value apart from in rendering the service." *Id.* at 1382.

This same analysis highlights the fact that Stoner does not provide its entertainment and educational services as a separate service in trade, but rather only incidentally as advertising for Stoner's sale of other goods. Stoner has made no sales of the '403 Services separately apart from his other goods, and there is no evidence that the '403 Services have any independent value apart from Stoner's other goods. Stoner also owns several other registrations for the BONGO BI-LINGO BUDDY mark for its various goods, including: U.S. Reg. No. 3,446,416 for various DVD's and CD ROMs; U.S. Reg. No. 3,437,568 for fiction books, decals and electronic books; U.S. Reg. No. 3,541,730 for t-shirts; and U.S. 3,551,765 for various toys. Following the analysis of *Lens.com*, it is clear that Stoner's BONGO BI-LINGO BUDDY mark is not used in the sale or advertising of services, but rather the mark is used in the sale or advertising of Stoner's *other goods*. This usage does not meet the requirements of 15 U.S.C. § 1127, and justifies cancellation of the '403 Registration.

## **2. Stoner Has Never Engaged In Commerce In Connection With The Relevant Services.**

Even assuming, *arguendo*, that Stoner did use the BONGO BI-LINGO BUDDY mark in the sale or advertising of the '403 Services, the '403 Registration must still be cancelled because Stoner neither renders the '403 Services in commerce, nor renders them "in commerce" in more than one State or in the United States and a foreign country.

First, Stoner does not have an entertainment business; he has a CD and book and toy company that allegedly advertises using live performances. This alleged advertising is not done to promote the sale of the '403 Services, but rather to promote the sale of Stoner's other goods.

Moreover, even if Stoner argues that the ‘403 Services were being provided for free in order to advertise potential sales of the ‘403 Services (which makes no sense), advertising alone will not support a registration. In addressing the question of whether use of a trademark was in commerce or merely advertising, Professor McCarthy noted that “[t]o be more than just advertising, the use must be calculated to consummate a sale”. *McCarthy on Trademarks*, § 19:108. Here, Stoner has admitted that the ‘403 Services are not offered for the purpose of selling the services, but “are offered to promote Registrant’s Mark in connection with Registrant’s other goods.” (See Exhibit D at pp. 2-3).

The court in *Burlington Northern Santa Fe Corp. v. Purdy* addressed a similar situation in considering whether a trademark registration should be cancelled as *void ab initio* on the grounds that it had not been used in commerce. 204 F.3d 1114 (5th Cir. 1999). In that case, the Fifth Circuit found that the registrant had used the trademark publicly and for advertising purposes on the relevant services. *Id.* However, the registrant had only sporadic and insubstantial transactions under the mark, including a handful of instances in which he was paid for his services. Accordingly, the court found that the registrant was not “engaged in trade or commerce” using the relevant trademark and cancelled the registration. *Id.* In the present case, Stoner has even less evidence that he has used the BONGO BI-LINGO BUDDY mark in trade or commerce for the ‘403 Services, and no paid transactions for the ‘403 Services.

In *Aycock Engineering, Inc. v. Airflite, Inc.*, the registrant for a mark for chartering flights in the air taxi industry had advertised his services, had entered into contracts with certain air taxi operators in furtherance of actually providing services, and had even collected some modest initiation fees. 560 F.3d 1350, 1353-54 (Fed. Cir. 2009). However, the registrant had never arranged for a single passenger to fly on a chartered flight. *Id.* The Court cancelled the

registration at issue, finding that the registrant had not actually given a potential customer the chance to purchase and use his service. *Id.* at 1361. Stoner has proffered no evidence that he has made any progress toward offering the ‘403 Services for sale to a customer, much less actually providing them. Accordingly, like the registrant in *Aycock Engineering*, Stoner should have his ‘403 Registration cancelled.

Nor can Stoner argue that the advertising he performed through the ‘403 Services is enough to support registration of the mark in that class, despite any sales to date for those services. The Federal Circuit has plainly noted that, “[w]ithout question, advertising or publicizing a service that the applicant intends to perform in the future will not support registration.” *Couture*, 778 F.3d at 1381. Thus, even if Stoner were to argue that the advertising he conducted was for the ‘403 Services instead of for his other goods, the ‘403 Registration should still be cancelled. In *Couture*, the registrant argued that its registration should not be cancelled even though its services had not been rendered in commerce before registration. However, the court there cancelled the registration, holding that rendering services in commerce requires actual provision of services to consumers of those services. Stoner cannot remedy his failure to render services in commerce by rendering them at some point in the future, or after the ‘403 Registration issued on October 20, 2009. First, registration of a mark that does not meet the use in commerce requirement is void ab initio. *Couture*, 778 F.3d at 1381. Second, the use of a mark in connection with advertising, promotion and preparatory activities for services to be available at some time in the future cannot support registration. *In re The Port Authority of New York*, 3 USPQ2d 1453, 1455 (TTAB 1987). Stoner has admitted that the mark in the ‘403 Registration is used only to advertise his other goods, and he can produce no evidence that he has

engaged in commerce in connection with the '403 Services. Stoner has not met the requirements of 15 U.S.C. § 1127, and the '403 Registration must be cancelled.

**CONCLUSION**

For the foregoing reasons, Petitioner respectfully submits that there is no genuine dispute of material fact, and that Petitioner is entitled to judgment as a matter of law that Stoner has failed to meet the requirements of 15 U.S.C. § 1127 with respect to the '403 Registration. Accordingly, the '403 Registration should be cancelled as *void ab initio*.

Dated: August 12, 2015

GREENBERG TRAURIG, LLP

By:  \_\_\_\_\_

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stroeverw@gtlaw.com

Attorneys for Petitioner  
MWR Holdings, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing PETITIONER'S MOTION FOR SUMMARY JUDGMENT has been served on Theodore A. Stoner by mailing said copy on August 12, 2015, via First Class Mail, postage prepaid to:

Matthew H. Swyers  
The Trademark Company PLLC  
344 Maple Ave. W, Suite 151  
Vienna, VA 22180



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William W. Stroever

# EXHIBIT A

# United States of America

United States Patent and Trademark Office

## BONGO Bi-LINGO BUDDY

**Reg. No. 3,700,403** STONER, THEODORE A (UNITED STATES INDIVIDUAL)  
Registered Oct. 20, 2009 99 S. DOWNING ST. #501  
DENVER, CO 80209

**Int. Cl.: 41** FOR: ENTERTAINMENT IN THE NATURE OF LIVE THEATRICAL PERFORMANCES BY MIXED MEDIA OF LIVE CHARACTERS, PUPPETRY AND ANIMATION FOR CHILDREN; ORGANIZING CULTURAL EVENTS FOR CHILDREN; EDUCATION SERVICES, NAMELY, **SERVICE MARK** PROVIDING PROFESSIONAL TRAINING IN THE FIELD OF BILINGUAL LEARNING, IN **PRINCIPAL REGISTER** CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 6-8-2004; IN COMMERCE 6-18-2008.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 78-812,529, FILED 2-10-2006.

JORDAN BAKER, EXAMINING ATTORNEY



*David J. Kyffers*

Director of the United States Patent and Trademark Office

# EXHIBIT B

**Int. Cl.: 16**

**Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38, and 50**

**United States Patent and Trademark Office**

**Reg. No. 3,437,568**

**Registered May 27, 2008**

**TRADEMARK  
PRINCIPAL REGISTER**

**BONGO Bi-Lingo  
Buddy**

STONER, THEODORE, A. (UNITED STATES IN-  
DIVIDUAL)  
99 S. DOWNING ST. #501  
DENVER, CO 80209

FOR: PRINTED MATTER, NAMELY, SERIES OF  
FICTION BOOKS, DECALS, TRADING CARDS,  
AND CHILDREN'S INTERACTIVE ELECTRONIC  
BOOKS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38  
AND 50).

FIRST USE 3-28-2008; IN COMMERCE 3-28-2008.

THE MARK CONSISTS OF STANDARD CHAR-  
ACTERS WITHOUT CLAIM TO ANY PARTICULAR  
FONT, STYLE, SIZE, OR COLOR.

SN 78-407,552, FILED 4-24-2004.

REBECCA EISINGER, EXAMINING ATTORNEY

**Int. Cl.: 9**

**Prior U.S. Cls.: 21, 23, 26, 36, and 38**

**Reg. No. 3,446,416**

**United States Patent and Trademark Office**

**Registered June 10, 2008**

**TRADEMARK  
PRINCIPAL REGISTER**

**BONGO Bi-lingo  
Buddy**

STONER, THEODORE, A. (UNITED STATES IN-  
DIVIDUAL)  
99 S. DOWNING ST. #501  
DENVER, CO 80209

FOR: PRERECORDED VIDEO TAPES AND  
DVDS, PRERECORDED COMPACT DISCS; CD-  
ROM FEATURING MUSIC AND MOTION PIC-  
TURE SOUND TRACKS; INTERACTIVE MULTI-  
MEDIA SOFTWARE PROGRAMS FOR  
ENTERTAINMENT, NAMELY, ADVENTURE  
STORIES AND ANIMATED STORIES; INTERAC-  
TIVE MULTIMEDIA SOFTWARE FOR PLAYING  
GAMES; COMPACT DISCS FEATURING MUSIC,  
STORIES, ACTIVITIES AND OTHER SUCH EDUCA-

TIONAL AND ENTERTAINMENT TOPICS FOR  
CHILDREN; DVD'S FEATURING ANIMATED EN-  
TERTAINMENT, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36  
AND 38).

FIRST USE 3-15-2004; IN COMMERCE 3-15-2004.

THE MARK CONSISTS OF STANDARD CHAR-  
ACTERS WITHOUT CLAIM TO ANY PARTICULAR  
FONT, STYLE, SIZE, OR COLOR.

SN 78-379,060, FILED 3-5-2004.

CHERYL CLAYTON, EXAMINING ATTORNEY

**Int. Cl.: 25**

**Prior U.S. Cls.: 22 and 39**

**United States Patent and Trademark Office**

**Reg. No. 3,541,730**

**Registered Dec. 2, 2008**

**TRADEMARK  
PRINCIPAL REGISTER**

**BONGO Bi-lingo  
Buddy**

STONER, THEODORE, A. (UNITED STATES IN-  
DIVIDUAL)  
99 S. DOWNING ST. #501  
DENVER, CO 80209

THE MARK CONSISTS OF STANDARD CHAR-  
ACTERS WITHOUT CLAIM TO ANY PARTICULAR  
FONT, STYLE, SIZE, OR COLOR.

FOR: T-SHIRTS, HEADWEAR, IN CLASS 25 (U.S.  
CLS. 22 AND 39).

SN 78-388,806, FILED 3-22-2004.

FIRST USE 7-1-2005; IN COMMERCE 7-1-2005.

REBECCA EISINGER, EXAMINING ATTORNEY

**Int. Cl.: 28**

**Prior U.S. Cls.: 22, 23, 38, and 50**

**United States Patent and Trademark Office**

**Reg. No. 3,551,765**

**Registered Dec. 23, 2008**

**TRADEMARK  
PRINCIPAL REGISTER**

**BONGO Bi-lingo  
Buddy**

STONER, THEODORE, A. (UNITED STATES IN-  
DIVIDUAL)  
99 S. DOWNING ST. #501  
DENVER, CO 80209

FOR: PLUSH TOYS, HAND PUPPETS, BOARD  
GAMES, CARD GAMES, STUFFED TOY ANIMALS,  
MUSICAL TOY INSTRUMENTS, NAMELY,  
DRUMS, BRASS AND PERCUSSION, IN CLASS 28  
(U.S. CLS. 22, 23, 38 AND 50).

FIRST USE 1-26-2008; IN COMMERCE 2-1-2008.

THE MARK CONSISTS OF STANDARD CHAR-  
ACTERS WITHOUT CLAIM TO ANY PARTICULAR  
FONT, STYLE, SIZE, OR COLOR.

SN 78-379,062, FILED 3-5-2004.

ANDREA BUTLER, EXAMINING ATTORNEY

# EXHIBIT C

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

MWR HOLDINGS, LLC,

Petitioner,

v.

THEODORE A. STONER,

Registrant.

Cancellation No. 92059305

Mark: BONGO BI-LINGO BUDDY

Reg. No.: 3,700,403

Registered: October 20, 2009

**PETITIONER'S FIRST INTERROGATORIES TO REGISTRANT**

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rules 26 and 33 of the Federal Rules of Civil Procedure, Petitioner MWR Holdings, LLC (“MWR”), by its undersigned counsel, hereby requests that Registrant Theodore A. Stoner (“Stoner”) answer the following interrogatories in writing and under oath, within thirty (30) days of the date of service hereof.

These interrogatories seek information as of the date of response and, as to those interrogatories addressed to matters falling within Rule 26(e)(1) & (2) of the Federal Rules of Civil Procedure, shall impose a continuing obligation on Registrant to serve upon Petitioner such further answers promptly after Registrant has acquired such knowledge.

**I. INSTRUCTIONS**

1. These interrogatories are addressed to Registrant and his (i) present or former employees, representatives, agents, heirs, successors and assigns or affiliated entities that were in existence during the applicable period of time covered by these

interrogatories; (ii) any other person or entity acting on Registrant's behalf or on whose behalf Registrant acted; and (iii) any other person or entity otherwise subject to Registrant's control or who controls Registrant, or with whom Registrant is under common control.

2. Registrant's answers must include all information concerning the matters inquired about that is available to Registrant's attorneys, and to investigators or other agents for Registrant and its attorneys.

3. If Registrant cannot answer any interrogatory fully and completely after exercising due diligence to make inquiry and secure the information necessary to do so, please so state and answer each such interrogatory to the fullest extent Registrant deems possible, specify the portion of each interrogatory that Registrant claims to be unable to answer fully and completely, state the facts upon which Registrant relies to support its contention that it is unable to answer the interrogatory fully and completely, and state what knowledge, information or belief Registrant has concerning the unanswered portion of each such interrogatory.

4. In the event that the answer to all or any part of any interrogatory is not presently known or available, Registrant shall include a statement to that effect, furnish the information known or available, and respond to the entire interrogatory by supplemental answer in writing and under oath within ten days from the time the entire answer becomes known or available. These Interrogatories seek responses as of the date hereof but shall be *deemed to be continuing* so that any additional information relating in any way to these interrogatories which Registrant acquires or which becomes known to Registrant up to and including the time of trial shall be furnished to Petitioner promptly

after such information is acquired or becomes known as required by Rule 26(e) of the Federal Rules of Civil Procedure.

## **II. DEFINITIONS**

1. “And” and “or” shall be construed conjunctively or disjunctively, whichever makes the requests more inclusive. The term “all” shall mean “any and all,” and the term “any” shall mean “any and all.” The singular of any word or phrase shall include the plural of such word or phrase, and the plural of any word or phrase shall include the singular of such word or phrase.

2. The term “Communications” means any oral or written transmittal, correspondence, and/or receipt of words or information, whether such was by chance, pre-arranged, formal or informal, and specifically includes but is not limited to conversations in person, telephone conversations, telegrams, telexes, facsimiles, letters, emails, reports or memoranda, formal statements, newspaper stories, notes of telephone conversations, notes of meetings, data compilations, and electronically stored data. References to Communications with business entities shall be deemed to include Communication with all officers, directors, employees, agents, attorneys or other representatives of such entities.

3. The term “Document” shall mean and include any type of written, recorded, electronic, graphic or photographic matter of any kind or character, however produced or reproduced. The term thus includes, without limiting the generality of the foregoing, all photographs, sketches, drawings, videotapes, audiotapes, letters, telegrams, telexes, facsimiles, electronic mail, correspondence, brochures, manuals, press releases, transcripts of interviews, transcripts of speeches, product guides, contracts, consulting

agreements, other agreements, business plans, deeds, drafts, work papers, plans, blueprints, specifications, comparisons, surveys, data sheets, analyses, calculations, files (and their contents), notes to the files, reports, publications, mechanical and electronic sound recordings or transcripts thereof, calendar or diary entries, memoranda of telephone or personal conversations or of meetings or conferences, maps, studies, reports, charts, interoffice communications, minutes of meetings, articles, announcements, ledgers, vouchers, checks, receipts and invoices, tax records and forms, court pleadings and papers, discovery requests and responses including originals and copies of any of the foregoing, and any material underlying, supporting or used in preparing any Document.

4. The term “Entity” includes organizations, corporations, partnerships, associations, joint ventures and any other individual or group of individuals which has the purpose of conducting business.

5. The word “Identify”, or any variation of the word Identify, shall mean to specify the full name; present position and business affiliation; last known physical address (including apartment number, if applicable); email address; telephone number and facsimile number with respect to a Person. In the case of a company, the word Identify shall mean to specify the name; officers or other persons having knowledge of the matter with respect to which the company is named; place of incorporation; address and principal place of business. In the case of a “document”, the word Identify shall mean to specify the persons originating and preparing it; the sender; its general type (e.g., letter, memo, report, invoice, etc.); title; identifying number; general nature of its subject matter; addressees and recipients; date(s) of preparation; dates and manner of transmission, distribution and publication; location of each copy (including title, index

number and location of the file in which it is kept or from which it was removed); present custodian or person responsible for its filing or other disposition; and persons who can authenticate or Identify it and, if privilege against production is claimed, the specific basis therefore and a complete specification and description of every fact upon which the claim of privilege is based.

6. The term “Person” includes any natural person, firm, association, organization, partnership, business, trust, governmental entity, joint venture, corporation or public entity. Additionally, the singular and plural forms are used interchangeably, as are the masculine and feminine forms.

7. The terms “Petitioner” or “MWR” means MWR Holdings, LLC, and shall include any officers, directors, corporate parents, subsidiaries, affiliates, predecessors or successors of MWR Holdings, LLC, as well as any employees, partners, agents, sales representatives, attorneys and all other persons acting or purporting to act on behalf of said entities, inclusively.

8. The terms “Registrant” or “Stoner” mean Theodore A. Stoner, and shall include any employees, representatives, agents, heirs, successors and assigns of Theodore A. Stoner, as well as any other persons acting or purporting to act on behalf of said entities, inclusively.

9. A Document “Refers” to a subject if, for example, it constitutes, comprises, describes, sets forth, reflects, analyzes, refers to, evidences, comments upon, mentions, is connected to, discusses, contains data relating to, or pertains to the subject.

10. As used herein, “Registrant’s Mark” refers to the mark identified in Registrant’s Trademark Registration, Reg. No. 3,700,403, namely, BONGO BI-LINGO BUDDY.

11. The term “Registrant’s Services” shall refer to each of the services identified in Registrant’s Trademark Registration, Reg. No. 3,700,403, namely: “Entertainment in the nature of live theatrical performances by mixed media of live characters, puppetry and animation for children; Organizing cultural events for children; Education services, namely, providing professional training in the field of bilingual learning.”

12. The term “Petitioner’s Mark” shall refer to the mark identified in Petitioner’s Trademark Application, Serial No. 86/146,757, namely BONGO BEAR.

### **III. REQUESTS**

1. Identify each individual involved on behalf of Registrant in the provision of services under Registrant’s Mark.

2. Describe in detail the circumstances surrounding Registrant’s alleged first use of Registrant’s Mark anywhere, which purportedly occurred on June 8, 2004.

3. Describe in detail the circumstances surrounding Registrant’s alleged first use of Registrant’s Mark in commerce, which purportedly occurred on June 18, 2008.

4. Identify each individual who participated in the creation and adoption of Registrant’s Mark.

5. For each month from Registrant’s date of first use of Registrant’s Mark until the present, state the sales volume of services provided by Registrant under Registrant’s Mark.

6. Describe the target class of consumers to whom Registrant provides Registrant's Services.

7. Identify the date Registrant first became aware of Petitioner's use of Petitioner's Mark in the United States.

8. Describe with particularity all advertising conducted by Registrant relating to Registrant's Mark.

9. For each year since Registrant's date of first use of Registrant's Mark until the present, state the annual advertising and promotion expenditures in the United States for Registrant's Services.

10. State all facts upon which Registrant intends to rely to prove that there is no likelihood of confusion between Registrant's Mark and Petitioner's Mark.

Dated: October 2, 2014

GREENBERG TRAURIG, LLP

By:  \_\_\_\_\_

William W. Stroever  
200 Park Avenue  
P.O. Box 677  
Florham Park, NJ 07932-0677  
Tel. 973-443-3524  
Fax 973-295-1291  
stroeverw@gtlaw.com

Attorneys for Petitioner  
MWR Holdings, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing First Interrogatories to Registrant has been served on Theodore A. Stoner by mailing said copy on October 2, 2014, via First Class Mail, postage prepaid to:

Matthew H. Swyers  
The Trademark Company PLLC  
344 Maple Ave. W, Suite 151  
Vienna, VA 22180

  
Susan Schuchard

# EXHIBIT D

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
The Trademark Trial and Appeal Board**

In the matter of U.S. Registration 3,700,403  
For the mark BONGO BI-LINGO BUDDY  
Registered on the Principal Register on October 20, 2009

|                      |   |                           |
|----------------------|---|---------------------------|
| MWR Holdings, LLC,   | : |                           |
|                      | : |                           |
| Petitioner,          | : |                           |
|                      | : |                           |
| vs.                  | : | Cancellation No. 92059305 |
|                      | : |                           |
| Stoner, Theodore A., | : |                           |
|                      | : |                           |
| Registrant.          | : |                           |

**REGISTRANT’S ANSWERS AND OBJECTIONS TO  
PETITIONER’S FIRST SET OF INTERROGATORIES**

TO: MWR HOLDINGS, LLC c/o William W. Stroever, Greenberg Traurig, LLP, 200 Park Ave, Florham Park, NJ 07932.

FROM: THEODORE A. STONER c/o Matthew H. Swyers, Esq., The Trademark Company, PLLC, 344 Maple Avenue West, PBM 151, Vienna, VA 22180.

COMES NOW the Registrant Theodore A. Stoner (hereinafter “Registrant”) and provides the instant Answers to Petitioner MWR Holdings, LLC’s (hereinafter “Petitioner”) First Set of Interrogatories providing as follows:

**INTERROGATORIES**

**INTERROGATORY NO. 1:**

Identify each individual involved on behalf of Registrant in the provision of services under Registrant's Mark.

**ANSWER:** Theodore A. Stoner  
127 West Fairbanks Ave, #492  
Winter Park, FL 32789

**INTERROGATORY NO. 2:**

Describe in detail the circumstances surrounding Registrant's alleged first use of Registrant's Mark anywhere, which purportedly occurred on June 8, 2004.

**ANSWER:** Registrant first used Registrant's Mark at a New York trade show where Registrant performed a live performance under Registrant's Mark.

**INTERROGATORY NO. 3:**

Describe in detail the circumstances surrounding Registrant's alleged first use of Registrant's Mark in commerce, which purportedly occurred on June 18, 2008.

**ANSWER:** Upon further review Registrant first used Registrant's Mark in interstate commerce at the New York trade show that took place on June 8, 2004 where Registrant first performed the show outside of Colorado.

**INTERROGATORY NO. 4:**

Identify each individual who participated in the creation and adoption of Registrant's Mark.

**ANSWER:** Theodore A. Stoner  
127 West Fairbanks Ave, #492  
Winter Park, FL 32789

**INTERROGATORY NO. 5:**

For each month from Registrant's date of first use of Registrant's Mark until the present, state the sales volume of services provided by Registrant under Registrant's Mark.

**ANSWER:** Registrant does not have any sales figures relating to Registrant's Services at issue in this proceeding as the International Class 41 services are offered to promote Registrant's Mark in connection with Registrant's other goods.

**INTERROGATORY NO. 6:**

Describe the target class of consumers to whom Registrant provides Registrant's Services.

**ANSWER:** Registrant targets children ages 3 to 6.

**INTERROGATORY NO. 7:**

Identify the date Registrant first became aware of Petitioner's use of Petitioner's Mark in the United States.

**ANSWER:** Registrant first became aware of Petitioner's use of Petitioner's Mark in the United States when Petitioner filed the instant Cancellation Proceeding on June 5, 2014.

**INTERROGATORY NO. 8:**

Describe with particularity all advertising conducted by Registrant relating to Registrant's Mark.

**ANSWER:** Registrant has advertised Registrant's Mark through Registrant's websites, social media accounts, personal sales and live shows to various children's institutions, public relations articles, and live trade shows.

**INTERROGATORY NO. 9:**

For each year since Registrant's date of first use of Registrant's Mark until the present, state the annual advertising and promotion expenditures in the United States for Registrant's Services.

**ANSWER:** Registrant has spent about \$5,000 average annually since first beginning to use Registrant's Mark in advertising and promotion expenditures.

**INTERROGATORY NO. 10:**

State all facts upon which Registrant intends to rely to prove that there is no likelihood of confusion between Registrant's Mark and Petitioner's Mark.

**ANSWER:** Applicant objects to the instant request on the grounds that it is overly broad and burdensome given the inclusion of the term "All" and that it calls for information protected by the attorney client privilege and / or work product doctrine.

Respectfully submitted this 11<sup>th</sup> day of March, 2015.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

Matthew H. Swyers, Esq.

344 Maple Avenue West, Suite 151

Vienna, VA 22180

Tel. (800) 906-8626

Facsimile (270) 477-4574

mswyers@TheTrademarkCompany.com

Counsel for Registrant

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
The Trademark Trial and Appeal Board**

In the matter of U.S. Registration 3,700,403  
For the mark BONGO BI-LINGO BUDDY  
Registered on the Principal Register on October 20, 2009

|                      |   |                           |
|----------------------|---|---------------------------|
| MWR Holdings, LLC,   | : |                           |
|                      | : |                           |
| Petitioner,          | : |                           |
|                      | : |                           |
| vs.                  | : | Cancellation No. 92059305 |
|                      | : |                           |
| Stoner, Theodore A., | : |                           |
|                      | : |                           |
| Registrant.          | : |                           |

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I caused a copy of the foregoing this 11<sup>th</sup> day of March, 2015,  
to be served, via first class mail, postage prepaid, upon:

William W. Stroever  
Greenberg Traurig, LLP  
200 Park Ave  
Florham Park, NJ 07932

/Matthew H. Swyers/  
Matthew H. Swyers

# EXHIBIT E

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**The Trademark Trial and Appeal Board**

In the matter of U.S. Registration 3,700,403  
For the mark BONGO BI-LINGO BUDDY  
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|                      | : |                           |
| Petitioner,          | : |                           |
|                      | : |                           |
| vs.                  | : | Cancellation No. 92059305 |
|                      | : |                           |
| Stoner, Theodore A., | : |                           |
|                      | : |                           |
| Registrant.          | : |                           |

**REGISTRANT’S SUPPLEMENTAL ANSWERS AND OBJECTIONS TO  
PETITIONER’S FIRST SET OF DOCUMENT REQUESTS**

TO: MWR HOLDINGS, LLC c/o William W. Stroeveer, Greenberg Traurig, LLP, 200 Park Ave, Florham Pak, NJ 07932.

FROM: THEODORE A. STONER c/o Matthew H. Swyers, Esq., The Trademark Company, PLLC, 344 Maple Avenue West, PBM 151, Vienna, VA 22180.

COMES NOW the Registrant Theodore A. Stoner (hereinafter “Registrant”) and provides the instant Supplemental Answers and Objections to Petitioner MWR Holdings, LLC’s (hereinafter “Petitioner”) First Set of Document Requests providing as follows:

**DOCUMENT REQUESTS**

**REQUEST NO. 3:**

All documents and things sufficient to identify each occasion on which Registrant has provided Registrant's Services under Registrant's Mark.

**RESPONSE:** Registrant objects to the instant request on the grounds that it is overly broad and burdensome given the inclusion of the term “All”. Subject to said objection, Registrant states:

Please see attached. Furthermore, Registrant is not in possession of any additional documentation responsive to the instant document request beyond what has been provided.

**REQUEST NO. 4:**

All documents and things concerning Registrant's alleged first use of Registrant's Mark anywhere, which purportedly occurred on June 8, 2004.

**RESPONSE:** Registrant objects to the instant request on the grounds that it is overly broad and burdensome given the inclusion of the term "All". Subject to said objection, Registrant states:

Please see attached. Furthermore, Registrant is not in possession of any additional documentation responsive to the instant document request beyond what has been provided.

**REQUEST NO. 6:**

All documents and things concerning the creation and adoption of Registrant's Mark.

**RESPONSE:** Registrant objects to the instant request on the grounds that it is overly broad and burdensome given the inclusion of the term "All". Subject to said objection, Registrant states:

Please see attached. Furthermore, Registrant is not in possession of any additional documentation responsive to the instant document request beyond what has been provided.

**REQUEST NO. 8:**

All documents and things concerning any advertising conducted by Registrant relating to Registrant's Mark.

**RESPONSE:** Registrant objects to the instant request on the grounds that it is overly broad and burdensome given the inclusion of the term “All”. Subject to said objection, Registrant states:

Please see attached. Furthermore, Registrant is not in possession of any additional documentation responsive to the instant document request beyond what has been provided.

**REQUEST NO. 9:**

All documents and things concerning the channels of trade through which Registrant provides Registrant's Services.

**RESPONSE:** Registrant objects to the instant request on the grounds that it is overly broad and burdensome given the inclusion of the term “All”. Subject to said objection, Registrant states:

Please see attached. Furthermore, Registrant is not in possession of any additional documentation responsive to the instant document request beyond what has been provided.

Respectfully submitted this 20<sup>th</sup> day of March, 2015.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/  
Matthew H. Swyers, Esq.  
344 Maple Avenue West, PMB 151  
Vienna, VA 22180  
Tel. (800) 906-8626 x100  
Facsimile (270) 477-4574  
mswyers@TheTrademarkCompany.com  
Counsel for Registrant

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
The Trademark Trial and Appeal Board**

In the matter of U.S. Registration 3,700,403  
For the mark BONGO BI-LINGO BUDDY  
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|                      | : |                           |
| vs.                  | : | Cancellation No. 92059305 |
|                      | : |                           |
| Stoner, Theodore A., | : |                           |
|                      | : |                           |
| Registrant.          | : |                           |

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I caused a copy of the foregoing this 20<sup>th</sup> day of March, 2015,  
to be served, via first class mail, postage prepaid, upon:

William W. Stroeve  
Greenberg Traurig, LLP  
200 Park Ave  
Florham Park, NJ 07932

/Matthew H. Swyers/  
Matthew H. Swyers