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

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|---------------------------|---|
| Proceeding | 92057182 |
| Party | Defendant Pasquale Rotella |
| Correspondence Address | PASQUALE ROTELLA 648 NORTH ST ANDREWS PL LOS ANGELES, CA 90004 UNITED STATES |
| Submission | Answer |
| Filer's Name | Gary Jay Kaufman |
| Filer's e-mail | gary@kaufmanlawgrouppla.com, colin@kaufmanlawgrouppla.com |
| Signature | /s Gary Jay Kaufman/ |
| Date | 06/21/2013 |
| Attachments | Pldg - Enos Answer 6-21-13 Final.pdf(21037 bytes) |

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

In the matter of Trademark Registration Nos. 3777422 and 4090760
For the marks: **ELECTRIC DAISY CARNIVAL** and **EDC**
Dates registered: April 20, 2010 and January 24, 2012
Registrant's name: Pasquale Rotella

STEPHEN R. ENOS,

Petitioner,

v.

Cancellation Petition No.: 92057182

PASQUALE ROTELLA,

Registrant.

**REGISTRANT PASQUALE ROTELLA'S
ANSWER TO PETITION FOR CANCELLATION**

Registrant Pasquale Rotella hereby answers Petitioner Stephen R. Enos' Petition for Cancellation (the "Petition") as follows:

1. Rotella admits that Rotella registered the marks **ELECTRIC DAISY CARNIVAL** U.S. Reg. No. 3777422 and **EDC** U.S. Reg. No. 4090760 ("EDC Marks"). Except as so admitted, Rotella denies the allegations of paragraph 1.
2. Rotella admits that Petitioner was involved in the promotion of and/or performed at Electronic Dance Music ("EDM") events promoted under the name "Electric Daisy Carnival" in or around Los Angeles, California, in or about 1991 or 1992. Except as so admitted, Rotella denies the allegations of paragraph 2.

3. Rotella admits that in or around 1995, Rotella was promoting his own EDM events. Except as so admitted, Rotella denies the allegations of paragraph 3.
4. Rotella denies the allegations of paragraph 4.
5. Rotella denies the allegations of paragraph 5.
6. Rotella admits that the **EDC** mark was, at the time of its original adoption, an acronym for “Electric Daisy Carnival.” Except as so admitted, Rotella denies the allegations of paragraph 6.
7. Rotella denies the allegations of paragraph 7.
8. Rotella denies the allegations of paragraph 8.
9. Rotella denies the allegations of paragraph 9.

AFFIRMATIVE DEFENSES

Rotella alleges and asserts the following defenses in response to the allegations contained in the Petition, undertaking the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated herein:

1. Rotella has made exclusive, continuous and substantial use of the EDC Marks since the date of Rotella’s first use. The EDC Marks are valuable assets of Rotella and carry considerable goodwill and consumer acceptance of the products and services sold under the EDC Marks. Such goodwill and usage have made the EDC Marks distinctive to Rotella. Rotella is informed and believes and on that basis alleges that Petitioner has not used the **ELECTRIC DAISY CARNIVAL** mark in over 20 years and has never used the **EDC** mark.
2. Assuming that Petitioner ever had any rights in the EDC Marks, which Rotella expressly denies, Petitioner abandoned and/or forfeited such rights prior to the date of the license agreement alleged in the Petition and/or prior to Rotella’s first uses of the EDC Marks.

3. Assuming that Petitioner ever had any rights in the EDC Marks, Petitioner abandoned and/or forfeited those rights by failing to exercise control over the nature and quality of the goods or services offered and sold under the EDC Marks, resulting in a naked license.

4. Petitioner's claims are barred by the equitable doctrines of acquiescence, estoppel, laches and/or waiver. Rotella has used the EDC Marks in interstate commerce for more than 16 years, without objection, despite Petitioner's actual knowledge of Rotella's exclusive, continuous and substantial use.

5. Rotella previously obtained registration of the **ELECTRIC DAISY CARNIVAL** mark on August 20, 2002, U.S. Reg. No. 2608995. Petitioner failed to object to that previous registration at any point prior to the cancellation of said mark in 2009, or after re-registration of the mark in 2010. Thus, Petitioner has acquiesced in such use and has not been, and cannot be, damaged within the meaning of Section 13 of the Lanham Act.

6. Rotella has priority in the use of the EDC Marks in interstate commerce in connection with the relevant or similar goods and services.

7. Rotella's **EDC** mark is not confusingly similar to any other mark in commerce.

8. Petitioner's claims are barred by his unclean hands. Petitioner instituted the instant proceeding in bad faith to force a substantial cash payment to Petitioner, despite the fact that: 1) Petitioner has sustained no damages; and 2) damages are not recoverable in a cancellation proceeding before the Trademark Trial and Appeal Board (the "Board").

9. The Petition fails to state any claim upon which relief can be granted.

10. The agreements alleged in the Petition are barred by the statute of frauds.

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WHEREFORE, Rotella respectfully requests that the Board deny Petitioner's requested relief and dismiss the Petition with prejudice.

Respectfully submitted,

DATED: June 21, 2013

THE KAUFMAN LAW GROUP

By: /s Gary Jay Kaufman/

Gary Jay Kaufman

Colin Hardacre

1901 Avenue of the Stars, Suite 1010

Los Angeles, CA 90067

Tel: (310) 286-2202

Fax: (310) 712-0023

Attorneys for Registrant,
Pasquale Rotella

CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2013, I caused a true and correct copy of the foregoing

REGISTRANT PASQUALE ROTELLA'S ANSWER TO PETITION FOR

CANCELLATION to be sent via First Class Mail to counsel for Petitioner:

Christopher L. Rudd, Esq.
C2 Law Group, P.C.
16255 Ventura Blvd., Suite 925
Encino, CA 91436

/s Colin Hardacre/