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

Proceeding	92057182
Party	Defendant Pasquale Rotella and Insomniac Holdings, LLC
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Submission	Motion to Compel Discovery
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Signature	/Christopher T. Varas/
Date	02/05/2016
Attachments	2016-02-05 Third Motion to Compel.pdf(36481 bytes) 2016-02-05 Varas Declaration re Third Motion to Compel.pdf(16422 bytes) Varas MTC Ex.1 (4th Rogs).pdf(375479 bytes) Varas MTC Ex.2 (Answers to 4th Rogs).pdf(170012 bytes) Varas MTC Ex.3 (M&C Letter).pdf(45831 bytes) Varas MTC Ex.4 (Answer to M&C Letter).pdf(52455 bytes) Varas MTC Ex.5 (Supp. Answers to 4th Rogs).pdf(158647 bytes) Varas MTC Ex.6 (Park Decl.).pdf(132063 bytes) Varas MTC Ex.7 (Article).pdf(125678 bytes)

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

In the Matter of Registration Nos. 3,777,422 and 4,090,760
Marks: ELECTRIC DAISY CARNIVAL; EDC
Issued: April 20, 2010; January 24, 2012

Stephen R. Enos,

Petitioner,

v.

Insomniac Holdings, LLC,

Respondent.

Cancellation No. 92057182 (parent)

Gary Richards,

Petitioner,

v.

Insomniac Holdings, LLC,

Respondent.

Cancellation No. 92061310

**RESPONDENT'S THIRD MOTION TO COMPEL DISCOVERY FROM PETITIONER
STEPHEN R. ENOS, AND BRIEF IN SUPPORT THEREOF**

Respondent Insomniac Holdings, LLC (“Insomniac Holdings”), through its undersigned counsel and pursuant to 37 C.F.R. §2.120(e), hereby moves the Board to overrule Petitioner Stephen R. Enos’ (“Petitioner” or “Enos”) objections to certain interrogatories served by Insomniac Holdings, and to enter an order compelling Petitioner to supplement his answers to those interrogatories. Insomniac Holdings also requests that the discovery period be re-set to close no less than fifty-two days after the date the Board issues an order with respect to this motion.

The facts supporting this motion, including Insomniac Holdings' good faith but ultimately unsuccessful efforts pursuant to 37 C.F.R. § 2.120(e) to resolve these issues without the need for motion practice are set forth below and in the accompanying Declaration of Christopher Varas in Support of Insomniac Holdings' Third Motion to Compel (the "Varas Decl."). As its brief in support of this motion, Insomniac Holdings advises the Board as follows:

I. INTRODUCTION

This motion accompanies Insomniac Holdings' motion for evidentiary sanctions against Mr. Enos. The motion for sanctions is based in large part on Mr. Enos' bad faith concealing and manipulation of evidence relating to third party testimony. This motion to compel also relates in large part to Mr. Enos' withholding of facts that are relevant to assessing third party testimony he has solicited. Specifically, Insomniac Holdings is entitled to know: 1) the date on which Mr. Enos first spoke with his counsel of record about the issues in this proceeding; and 2) the date on which Mr. Enos retained his counsel of record. In addition, Insomniac Holdings is entitled to definitive answers to its two interrogatories requiring Mr. Enos to identify the Bates numbers of documents he contends support particular facts on which he bears the burden of proof.

As set forth in the Varas Decl., Insomniac Holdings has met and conferred with Mr. Enos' counsel regarding these issues and the parties have reached an impasse. In light of this impasse – and also in light of Mr. Enos' extensive history of discovery gamesmanship and manipulation of evidence detailed in Insomniac Holdings' other motions – Insomniac Holdings is entitled to an order compelling Mr. Enos to serve complete and unqualified answers to these interrogatories.

II. PROCEDURAL FACTS

The long procedural history of this case has been fully briefed in prior motions. The facts relevant to this motion are as follows.

Insomniac Holdings served its Fourth Set of Interrogatories on Mr. Enos on November 25, 2015. (Varas Decl., Ex. 1.) Following an agreed extension of Mr. Enos' deadline to respond, Mr. Enos served his answers on January 6, 2016. (*Id.*, Ex. 2.) On January 12, 2016, Insomniac Holdings' counsel wrote to Mr. Enos' counsel detailing several deficiencies with Mr. Enos' answers to the interrogatories, including but not limited to Interrogatory Nos. 42, 43, 44, 45, 47 and 48. (*Id.*, Ex. 3.) Insomniac Holdings requested that Mr. Enos withdraw his objections and serve supplemental answers.

Mr. Enos' counsel responded on January 21, 2016. (Varas Decl., Ex. 4.) He confirmed that Mr. Enos would not withdraw his objections to Interrogatories 42, 43, 44 or 45, and insisted that those interrogatories be withdrawn. Mr. Enos served supplemental but still deficient answers to Interrogatories 47 and 48. (*Id.*, Ex. 5.)

III. ARGUMENT

A. Mr. Enos Should Be Compelled to Answer Interrogatories 42 through 45.

Interrogatories 42 through 45 require Mr. Enos to state: 1) the date(s) on which he first spoke with his attorneys Christopher Rudd and Harry Malkonian about this matter¹; and 2) the date(s) on which he retained Mr. Rudd and Mr. Malkonian. (*See* Varas Decl., Ex. 1 at

¹ Mr. Malkonian is the attorney identified by the email address <harloon@bigpond.net.au> on the TTAB's docket.

Interrogatories 42 through 45.) Insomniac Holdings has not asked Mr. Enos to disclose the substance of his communications with Mr. Rudd or Mr. Malkonian.

The dates on which Mr. Enos first spoke with his attorneys regarding this matter and the dates on which he retained his attorneys are not privileged. *See Goodyear Tire & Rubber Co.*, 186 U.S.P.Q. (BNA) ¶ 207 (P.T.O. Apr. 21, 1975) (compelling disclosure of the date(s) on which counsel rendered opinions regarding particular topics); *see also* Trademark Board Manual of Procedure, § 406.04(c) (noting that the “most common way” to particularize a claim of privilege is to produce a privilege log that identifies the names of the people making/receiving an allegedly privileged communication, the date of the communication and the subject matter of the communication).

This information is also relevant. Evidence is relevant, and therefore discoverable, if it has any tendency to make a fact that is of consequence in determining the action more or less probable than it would be without the evidence. Federal Rule of Evidence 401; *see also* Trademark Board Manual of Procedure § 402.01 (“Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense”). The dates Insomniac Holdings has requested are relevant to Insomniac Holdings’ defense, including without limitation the credibility of the declaration Mr. Enos solicited from Caroline Park.

As the Board is aware from Insomniac Holdings’ first motion to compel and its pending sanctions motion, Ms. Park is one of several witnesses from whom Mr. Enos solicited declarations to support his claims in this case. (*See* Dkt. No. 18 at pp. 2-3 (discussing the declaration of Ms. Park, among others).) Ms. Park’s declaration purports to recite in great detail conversations that allegedly occurred between Mr. Enos and third party witness Phil Blaine in

April of 2013.² (*See* Varas Decl., Ex. 6, ¶¶ 7-12.) As recounted by Ms. Park, Mr. Enos allegedly made very specific statements about his ownership of the mark and about discussions that had supposedly occurred more than sixteen years earlier. (*See* *id.*, ¶¶ 8, 10.)

Mr. Enos has not produced a single document indicating that he ever made a written claim of ownership in the ELECTRIC DAISY CARNIVAL mark, let alone any written claim that he was Mr. Rotella's licensor, between 1997 and his alleged April, 2013 conversation with Mr. Blaine. Now Mr. Enos has produced a declaration from Ms. Park purporting to recount a highly legalistic conversation he claims to have had just weeks before he filed his cancellation petition on May 10, 2013 (and after rumors began circulating that Insomniac was worth up to \$100 million and might be negotiating with Live Nation and other potential partners - *see, e.g.*, Varas Decl., Ex. 7.) Mr. Enos introduced this conversation into the record. Insomniac Holdings is entitled to discover all non-privileged facts surrounding that conversation, including whether Mr. Enos had already spoken with and/or retained his attorneys when he allegedly made the statements related in the Park Declaration.

The relevance of Insomniac Holdings' interrogatories is particularly clear in this case because Insomniac Holdings has already shown in its accompanying sanctions motion that Mr. Enos has concealed evidence and manipulated the testimony of several of his other declarants. (*See* Accompanying motion for sanctions and supporting documents, including evidence that Mr. Enos concealed damaging communications with Phil Blaine and manipulated the testimony of

² Insomniac Holdings reserves all objections to the admissibility of Ms. Park's declaration, including but not limited to hearsay.

Ron Dedmon, Paul Graham and Richard Hamilton.) Regardless of how the Board rules on the sanctions motion, Insomniac Holdings is entitled to fully explore the facts surrounding all of Mr. Enos' declarations, including the dates on which Mr. Enos spoke with and retained his attorneys.

B. Mr. Enos Should be Compelled to Fully Answer Interrogatories 47 and 48.

Interrogatories 47 and 48 require Mr. Enos to state the Bates number of each document produced in this proceeding that he contends evidences: 1) his use of the subject marks prior to the date Mr. Enos contends he granted the alleged license (Interrogatory 47); and 2) the existence of the alleged license (Interrogatory 48). (Varas Decl., Ex. 1 at Interrogatories 47, 48.)

In both cases, Mr. Enos' original answer stated that the list of responsive documents "includes, but is not limited to" certain documents he identified by Bates number. (Varas Decl., Ex. 2 at Interrogatories 47, 48.) Mr. Enos also reserved the right to supplement his answers. (*Id.*) Insomniac Holdings' meet and confer letter emphasized that Mr. Enos is obligated to provide a complete answer to these interrogatories.³ (*Id.*, Ex. 3 at p. 4.) Mr. Enos responded by removing the phrase "but not limited to" from his answers. (*Id.*, Ex. 5 at Interrogatories 47, 48.) Once again Mr. Enos reserved the right to supplement his answers at some unspecified point in the future. (*Id.*)

Mr. Enos' amended answers to Interrogatories 47 and 48 are still insufficient. The word "includes" is, by definition, not exhaustive. Mr. Enos is obligated to list each and every responsive document produced in the case. A non-exhaustive "inclusive" list does not satisfy

³ Insomniac Holdings' letter also addressed Mr. Enos meritless objections to both interrogatories. (*See* Varas Decl., Ex. 3 at p. 4.)

Mr. Enos' obligations. Mr. Enos' non-exhaustive answer is particularly inappropriate because he has coupled it with a purported reservation of rights to supplement his answers at some unspecified point in the future. Insomniac Holdings is entitled to clear, unequivocal answers identifying each and every document produced in this case that Mr. Enos contends evidence: 1) his use of the mark during the relevant time period; and 2) the alleged license at the heart of his case. If the list Mr. Enos has provided is complete he must say so. If it is not he must supplement it so that it is complete.

Mr. Enos' equivocation must also be considered in light of his gamesmanship and manipulation throughout discovery, including multiple instances of withholding information from Insomniac Holdings and from the Board. Insomniac Holdings is entitled to clear, complete answers to its straightforward interrogatories.

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IV. CONCLUSION

For the foregoing reasons, Insomniac Holdings respectfully requests that the Board enter an order overruling Mr. Enos' objections to Interrogatories 42, 43, 44, 45, 47 and 48 and compelling him to provide complete, unequivocal answers to those interrogatories. Insomniac Holdings also requests that the discovery period be re-set to close no less than fifty-two days after the date the Board issues an order with respect to this motion.

DATED: February 5, 2016

Respectfully submitted,

KILPATRICK TOWNSEND & STOCKTON LLP

By: /Christopher T. Varas/

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LLC

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

In the Matter of Registration Nos. 3,777,422 and 4,090,760
Marks: ELECTRIC DAISY CARNIVAL; EDC
Issued: April 20, 2010; January 24, 2012

Stephen R. Enos,

Petitioner,

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Respondent.

Cancellation No. 92057182 (parent)

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Insomniac Holdings, LLC,

Respondent.

Cancellation No. 92061310

**DECLARATION OF CHRISTOPHER VARAS IN SUPPORT OF INSOMNIAC
HOLDINGS' THIRD MOTION TO COMPEL**

I, Christopher Varas, declare as follows:

1. My name is Christopher Varas. I am an attorney with the law firm of Kilpatrick Townsend & Stockton, LLP, counsel for Insomniac Holdings, LLC in these consolidated proceedings. I am over the age of eighteen, have personal knowledge of the matters stated herein and would testify competently thereto if called upon to do so.

2. Attached hereto as **Exhibit 1** is a true and correct copy of Insomniac Holdings' Fourth Set of Interrogatories to Petitioner Stephen R. Enos ("Petitioner") in this matter.

3. Attached hereto as **Exhibit 2** is a true and correct copy of Petitioner's answers to Insomniac Holdings' Fourth Set of Interrogatories.

4. Attached hereto as **Exhibit 3** is a true and correct copy of my meet-and-confer letter to Petitioner's counsel discussing deficiencies in Petitioner's answers to Insomniac Holdings' Fourth Set of Interrogatories.

5. Attached hereto as **Exhibit 4** is a true and correct copy of the letter I received from Petitioner's counsel in response to my meet and confer letter attached as Exhibit 3.

6. Attached as **Exhibit 5** is a true and correct copy of Petitioner's supplemental answers to certain of the interrogatories contained in Insomniac Holdings' Fourth Set of Interrogatories.

7. Attached hereto as **Exhibit 6** is the declaration of Caroline Park, produced by Petitioner in this matter.

8. Attached hereto as **Exhibit 7** is a true and correct copy of an article titled "Has Live Nation Entertainment Acquired Insomniac Events?" printed from the website <examiner.com>.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 5th Day of February, 2016 at Seattle, Washington.

/Christopher T. Varas/
Christopher T. Varas

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

In the Matter of Registration Nos. 3,777,422 and 4,090,760

Marks: ELECTRIC DAISY CARNIVAL; EDC

Issued: April 20, 2010; January 24, 2012

Stephen R. Enos.)	
)	Cancellation No. 92057182
Petitioner,)	
)	
v.)	
)	
)	
Insomniac Holdings, LLC,)	
)	
Respondents.)	
_____)	

**INSOMNIAC HOLDINGS, LLC'S FOURTH SET OF
INTERROGATORIES TO STEPHEN R. ENOS**

PROPOUNDING PARTY: INSOMNIAC HOLDINGS, LLC

RESPONDING PARTY: STEPHEN R. ENOS

SET NO.: FOUR

Pursuant to 37 CFR §2.120 and Federal Rule of Civil Procedure (“Federal Rule”) 33, Respondent Insomniac Holdings, LLC hereby requests that Petitioner Stephen R. Enos answer under oath the following Interrogatories (each an “Interrogatory”) within the time specified by 37 CFR §2.120(a)(3) and Federal Rule 33(b).

DEFINITIONS

1. The singular and plural forms of words are used interchangeably, as are the masculine and feminine forms and the present and past tenses of verbs.
2. The terms “and” and “or” mean either the conjunctive or the disjunctive as context may require so that the meaning of the term is inclusive rather than exclusive.
3. The terms “any” and “all” mean “any or all.”
4. “COMMUNICATION” means an exchange or transmittal of information by any means, including but not limited to exchange or transmittal by DOCUMENT, in person meeting, conversation, correspondence, wire, telephone, telecopy, telegram, telex or other electronic transmission, including electronic mail transmissions.
5. “DOCUMENT” has the same meaning as in the Federal Rules of Civil Procedure and includes the original and any non-identical copy, regardless of origin or location, of any written, typewritten, drawn, charted, recorded, transcribed, punched, taped, filmed or graphic matter, however produced or reproduced, now or formerly in your possession, custody or control, including, but not limited to, any drawing, photograph, book, pamphlet, periodical, letter, correspondence, telegram, invoice, contract, purchase order, estimate, report, memorandum, COMMUNICATION, computer databases, data sheets, data processing cards, tapes, disc recordings, electronic mail, computer files, computer notes, computer images, diskettes, memoranda, work papers, work sheets, work records, literature, reports, notes, drafts, diaries, messages, telegrams, books, ledgers, publications, advertisements, brochures, price lists, cost sheets, estimating sheets, bills, bids, time cards, invoices, receipts, purchase orders, contracts, telephone records, and any other records, writings, or computer input or output, working paper, record, study, paper, chart, graph, index, and any transcription(s) thereof, and

all other memorialization(s) of any conversations(s), meeting(s), and conference(s), by telephone or otherwise. The term DOCUMENT also means every copy of a DOCUMENT where such copy is not an identical duplicate of the original, whether because of deletions, underlinings, showing of blind copies, initialing, signatures, receipt stamps, comments, notations, differences in stationery or any other difference or modification of any kind.

6. “IDENTIFY” means:

- a. when used in reference to a natural person, to state the individual’s full name, present or last known residence and business addresses and phone numbers, all known email addresses, social security number (if known), and present or last known employer and position;
- b. when used in reference to a corporation, partnership, or other entity, to state the full and complete (corporate) name, the organizational format (e.g., corporation, partnership) and the present or last known address of its principal place of business;
- c. when used in reference to a DOCUMENT, to state the date and (if applicable) title of the DOCUMENT, IDENTIFY every PERSON who received the DOCUMENT, and provide a brief topical description of the DOCUMENT’s contents;

7. The “LICENSE” means and refers to the purported license alleged in Paragraphs 8 and 12 of YOUR Third Amended Petition for Cancellation filed in this cancellation proceeding on or about November 17, 2015.

8. “PERSON” or “PERSONS” means any or all natural persons and entities, including, but not limited to, any or all individuals, single proprietorships, associations, companies, firms, partnerships, joint ventures, corporations, employees or former employees, or any other business, governmental, or labor entity, and any divisions, departments, or other units thereof.

9. The “SUBJECT MARKS” means and refers collectively and individually to the

ELECTRIC DAISY CARNIVAL and EDC marks (Registration Nos. 3,777,422 and 4,090,760) at issue in this proceeding.

10. “YOU” and “YOUR” mean and refer to Stephen R. Enos, including any and all names by which he has been known, including without limitation Stephen Hauptfuhr, Steve Kool-Aid and Mr. Kool-Aid, including his agents, servants, employees, representatives, licensees, attorneys, consultants and any other PERSON purporting to act directly or indirectly on behalf of, for the benefit of or under the control or direction of Stephen R. Enos.

INSTRUCTIONS

1. YOU are to answer each interrogatory separately and fully unless it is objected to in which case the reason(s) for the objection should be stated. The answers are to be signed by YOU and the objections, if any, are to be signed by the attorney making them.

2. The specific or duplicative or overlapping nature of any of the interrogatories set forth below shall not be construed to limit the generality or breadth of any other interrogatories contained in this or any other set of interrogatories.

3. When, after a reasonable and thorough investigation using due diligence, YOU are unable to answer any interrogatory, or some part thereof, because of the lack of information available to YOU, specify, in full and complete detail, the reason the information is not available to YOU and what has been done to locate such information. In addition, specify what knowledge YOU do have concerning the unanswered portion of the interrogatory and set forth the facts upon which such knowledge is based.

4. Where an interrogatory does not request a specific fact, but where a specific fact or facts are necessary to make the answer to the interrogatory either comprehensible, complete or not misleading, YOU shall include such fact or facts as part of the answer and the interrogatory shall be deemed specifically to request such fact or facts.

5. In answering these interrogatories, YOU are to furnish all information available to you, including information in the possession of YOUR attorneys, and not merely such information known of YOUR personal knowledge. If YOU refer to a DOCUMENT,

memorandum, record, paper, letter or written or printed material of any kind for the purpose of answering any interrogatory, IDENTIFY such DOCUMENT as defined herein.

6. Unless otherwise stated, the relevant time period for these Interrogatories is from January 1 of 1990 to the present.

7. If, because of a claim of privilege, YOU do not answer any interrogatory, or you withhold any DOCUMENT or thing, YOU shall set forth the privilege claimed, the facts upon which YOU rely to support the claim of privilege, and furnish a list identifying each DOCUMENT or thing for which the privilege is claimed, together with the following information:

- a. a brief description of the nature and subject matter of the DOCUMENT or thing, including the title and type of DOCUMENT (i.e. whether it is a letter, memorandum, drawing, etc.) or thing;
- b. the DOCUMENT'S or thing's date of creation;
- c. the identity of the author(s) or creator(s);
- d. the identity of the PERSON(S) to whom the DOCUMENT is addressed or to whom the thing has been provided, including all PERSON(S) who received copies, reproductions, or other representations of the DOCUMENT or thing;
- e. the identity of the PERSON(S) to whom the DOCUMENT or thing was sent;
- f. the total number of pages for the DOCUMENT; and
- g. the interrogatory to which the DOCUMENT, withheld information, or thing is otherwise responsive.

8. These interrogatories are continuing, requiring YOU to supplement YOUR responses in accordance with Federal Rule of Civil Procedure 26(e) and Trademark Trial and Appeal Board Rule ("Trademark Rule") 408.03 with respect to any DOCUMENTS, tangible things, or information within the scope of these interrogatories as may be located or acquired following YOUR initial responses.

INTERROGATORIES

INTERROGATORY NO. 42. State the date on which YOU first contacted Christopher L. Rudd regarding Pasquale Rotella's or Insomniac Holdings LLC's use of the SUBJECT MARKS.

INTERROGATORY NO. 43. State the date on which YOU retained Christopher L. Rudd as YOUR attorney.

INTERROGATORY NO. 44. State the date on which YOU first contacted Harry Melkonian regarding Pasquale Rotella's or Insomniac Holdings LLC's use of the SUBJECT MARKS.

INTERROGATORY NO. 45. State the date on which YOU retained Harry Melkonian as YOUR attorney.

INTERROGATORY NO. 46. State the date and describe the manner in which YOU "revoked" the "permission/license to use the Trademarks", as alleged in paragraph 8 of YOUR Third Amended Petition for Cancellation.

INTERROGATORY NO. 47. State the Bates number of each DOCUMENT produced in this proceeding that YOU contend evidences YOUR use of the SUBJECT MARKS prior to the date YOU contend YOU granted the LICENSE.

INTERROGATORY NO. 48. State the Bates number of each DOCUMENT produced in this proceeding that YOU contend evidences the existence of the LICENSE.

INTERROGATORY NO. 49. State the Bates number of each DOCUMENT produced in this proceeding that YOU have provided to George Wade.

INTERROGATORY NO. 50. State all facts and IDENTIFY all DOCUMENTS supporting YOUR allegation that "After discussion between Rotella and Petitioner, at Rotella's

request, Petitioner, with the consent of Gary Richards, granted Rotella an oral license to use the trademark Electric Daisy Carnival for dance music festivals and events”, as alleged in paragraph 12 of YOUR Third Amended Petition for Cancellation.



Dated: November 25, 2015

Larry W. McFarland
Christopher T. Varas
Kilpatrick Townsend & Stockton LLP
Attorneys for Respondent Insomniac
Holdings, LLC
9720 Wilshire Blvd., Penthouse Suite
Beverly Hills, CA 90212
Telephone: (310) 248-3830

CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2015, a true and correct copy of the foregoing

**INSOMNIAC HOLDINGS, LLC'S FOURTH SET OF
INTERROGATORIES TO STEPHEN R. ENOS**

has been served by hand delivery on:

Christopher L. Rudd, Esq.
The Rudd Law Firm
15233 Ventura Blvd.
Suite 320
Sherman Oaks, CA 91403


Jessica Wilson

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

In the Matter of Registration Nos. 3,777,422 and 4,090,760

Marks: ELECTRIC DAISY CARNIVAL; EDC

Issued: April 20, 2014; January 24, 2012

Stephen R. Enos.

Petitioner,

v.

Insomniac Holdings, LLC,

Respondent.

Cancellation No. 92057182

**STEPHEN R. ENOS' RESPONSE TO INSOMNIAC HOLDINGS, LLC'S
FOURTH SET OF INTERROGATORIES**

PROPOUNDING PARTY: INSOMNIAC HOLDINGS, LLC

RESPONDING PARTY: STEPHEN R. ENOS

SET NO.: FOUR

RESPONDING PARTY, Claimant Stephen R. Enos or "Claimant," by and through his undersigned counsel, hereby responds and objects to PROPOUNDING PARTY Insomniac Holdings LLC's (or "INSOMNIAC's") Fourth Set of INTERROGATORIES (the "INTERROGATORIES") as follows:

GENERAL OBJECTIONS

1. Claimant objects to each instruction and definition set forth in Petitioner's First Set of Special Interrogatories to the extent that any such definition or instruction exceeds the scope of discovery permissible under the rules of the Trademark Trial and Appeal Board ("TTAB") and the Federal Rules of Civil Procedure.

2. Claimant objects to each Interrogatory to the extent that it seeks information that is not in Claimant's possession, custody or control.

3. Claimant objects to each Interrogatory to the extent that it requires disclosure of information protected by the attorney-client privilege, the work product doctrine, Claimant's right to privacy, and/or any other applicable privilege. Any disclosure of such information is strictly inadvertent and shall not be construed as a waiver of the applicable privilege(s).

4. Claimant objects to each Interrogatory to the extent that it requires disclosure of confidential, proprietary, trade secret and other competitively sensitive business information.

5. Claimant has not completed his discovery and investigation of the facts relating to this opposition proceeding. All of the responses contained herein are based only upon such information and documents as are presently available, and specifically known, to Claimant. The following responses are given without prejudice to Claimant's right to

produce evidence of any subsequently discovered fact or facts. Claimant reserves the right to conduct additional investigation and discovery, to rely on additional facts, information, documents or materials and to supplement these responses to the extent required by the TIAB.

6. The foregoing General Objections apply to each Interrogatory and are hereby specifically incorporated into each response to each such Interrogatory. Any failure to repeat all or any part of such General Objection in any specific response shall not constitute a waiver or other relinquishment of such objection.

RESPONSE TO INTERROGATORIES

INTERROGATORY NO. 42: State the date on which YOU first contacted Christopher L. Rudd regarding Pasquale Claimant's or Insomniac Holdings LLCs use of the SUBJECT MARKS.

RESPONSE TO INTERROGATORY NO. 42:

Objection. This request improperly seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence. RESPONDING PARTY objects to this request on the grounds that it is vague and ambiguous as to what is meant by the terms "contacted" and "use." RESPONDING PARTY also objects on the grounds that the request seeks information protected by the attorney-client privilege, the attorney work product doctrine and/or other privileges, protections, or doctrines of similar effect.

INTERROGATORY NO. 43: State the date on which YOU retained Christopher L. Rudd as YOUR attorney.

RESPONSE TO INTERROGATORY NO. 43

Objection. This request improperly seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence. RESPONDING PARTY also objects on the grounds that the request seeks information protected by the attorney-client privilege, the attorney work product doctrine and/or other privileges, protections, or doctrines of similar effect.

INTERROGATORY NO. 44:

State the date on which YOU first contacted Harry Melkonian regarding Pasquale Claimant's or Insomniac Holding LLC's use of the SUBJECT MARKS.

RESPONSE TO INTERROGATORY NO. 44:

Objection. This request improperly seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence. RESPONDING PARTY objects to this request on the grounds that it is vague and ambiguous as to what is meant by the terms "contacted" and "use." RESPONDING PARTY also objects on the grounds that the request seeks information protected by the attorney-client privilege, the attorney work product doctrine and/or other privileges, protections, or doctrines of similar effect.

INTERROGATORY NO. 45: State the date on which YOU retained Harry Melkonian as YOUR attorney.

RESPONSE TO INTERROGATORY NO.45:

Objection. This request improperly seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence. RESPONDING PARTY also objects on the grounds that the request seeks information protected by the attorney-client privilege, the attorney work product doctrine and/or other privileges, protections, or doctrines of similar effect.

INTERROGATORY NO. 46: State the date and describe the manner in which YOU "revoked" the "permission/license to use the Trademarks", as alleged in paragraph 8 of YOUR Third Amended Petition for Cancellation.

RESPONSE TO INTERROGATORY NO. 46:

RESPONDING PARTY objects to this interrogatory as duplicative of previous discovery served upon him. RESPONDING PARTY further objects to this interrogatory on the ground that it is vague, overbroad and overly burdensome. RESPONDING PARTY also objects to this interrogatory on the ground that such information is equally accessible to PROPOUNDING PARTY, who already possesses it. Without waiving and subject to these objections, Responding Party answers as follows: RESPONDING PARTY is available for a deposition which has not yet

been taken by PROPOUNDING PARTY to answer this interrogatory. Discovery is continuing, and Responding Party reserves the right to supplement this response.

INTERROGATORY NO. 47: State the Bates number of each DOCUMENT produced in this proceeding that YOU contend evidences YOUR use of the SUBJECT MARKS prior to the date YOU contend YOU granted the LICENSE.

RESPONSE TO INTERROGATORY NO. 47

Objection. This request is vague and ambiguous to the extent that Propounding Party has failed to adequately define the terms “contend”, and “use.” Responding Party objects to this request to the extent it improperly calls for a legal conclusion. RESPONDING PARTY objects to this Interrogatory insofar as the response to the special interrogatory would necessitate the preparation or making of a compilation, abstract, audit, or summary of or from documents in possession of Propounding Party and the burden or expense of making or compiling such a compilation, abstract, audit or summary would be the same for Propounding Party in violation of Code of Civil Procedure section 2030.230.

Without waiving and subject to these objections, Responding Party answers as follows: Bates Numbers of documents produced by Mr. Enos evidencing use of the marks includes, but is not limited to: ENOS 000895, ENOS 000909, ENOS 000586-000592, ENOS 000381, ENOS000397, ENOS 000455-000458, ENOS 000535, ENOS 000474-484.

Discovery is continuing, and Responding Party reserves the right to supplement this response.

INTERROGATORY NO. 48:

State the Bates number of each DOCUMENT produced in this proceeding that YOU contend evidences the existence of the LICENSE.

RESPONSE TO INTERROGATORY NO. 48:

Objection. Responding Party objects to this request to the extent it improperly calls for a legal conclusion. This request is vague and ambiguous to the extent that Propounding Party has failed to adequately define the terms “contend”. RESPONDING PARTY objects to this Interrogatory

insofar as the response to the special interrogatory would necessitate the preparation or making of a compilation, abstract, audit, or summary of or from documents in possession of Propounding Party and the burden or expense of making or compiling such a compilation, abstract, audit or summary would be the same for Propounding Party in violation of Code of Civil Procedure section 2030.230.

Without waiving and subject to these objections, Responding Party answers as follows: Bates Numbers of documents produced by Mr. Enos evidencing use of the marks includes, but is not limited to: ENOS 000895, ENOS 001002, ENOS 000911-925, ENOS 000514-515, ENOS 000474-484.

Discovery is continuing, and Responding Party reserves the right to supplement this response.

INTERROGATORY NO. 49: State the Bates number of each DOCUMENT produced in this proceeding that YOU have provided to George Wade.

RESPONSE TO INTERROGATORY NO. 49:

Objection. RESPONDING PARTY further objects to this interrogatory on the ground that it is vague, overbroad and overly burdensome. Responding Party objects to this Interrogatory insofar as the response to the special interrogatory would necessitate the preparation or making of a compilation, abstract, audit, or summary of or from documents in possession of Propounding Party and the burden or expense of making or compiling such a compilation, abstract, audit or summary would be the same for Propounding Party in violation of Code of Civil Procedure section 2030.230.

Without waiving and subject to these objections, and to the extent it understands this request, Responding Party answers as follows: Responding Party did not provide any documents in this proceeding to Mr. Wade imprinted with a bates number. Discovery is continuing, and Responding Party reserves the right to supplement this response.

INTERROGATORY NO. 50:

State all facts and IDENTIFY all DOCUMENTS supporting YOUR allegation that “After discussion between Claimant and Petitioner, at Claimant’s request, Petitioner, with the consent of Gary Richards, granted Claimant an oral license to use the trademark Electric Daisy Carnival for dance music festivals and events”, as alleged in paragraph 12 of YOUR Third Amended Petition for Cancellation.

RESPONSE TO INTERROGATORY NO. 50:

Objection. Responding Party objects to this interrogatory as duplicative of previous discovery served upon him. Responding Party objects to this Interrogatory as overbroad and unduly burdensome to the extent it seeks information in the possession or under the control of any third party and/or equally available to Propounding Party. Responding Party further objects to this Interrogatory as overbroad and unduly burdensome to the extent it is not limited in time.

Responding Party objects to this request to the extent it improperly calls for a legal conclusion.

Without waiving and subject to these objections, Responding Party answers as follows:

RESPONDING PARTY is available for a deposition which has not yet been taken by PROPOUNDING PARTY to answer this interrogatory. Discovery is continuing, and Responding Party reserves the right to supplement this response.

Dated: January 4, 2015

THE RUDD LAW FIRM, P.C.

By: /s/Christopher Rudd
Christopher L. Rudd

Attorneys for Petitioner Stephen Enos

VERIFICATION

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I have reviewed and read the foregoing **PETITIONER STEPHEN ENOS'**
RESPONSES TO INSOMNIAC HOLDING'S FOURTH SET OF
INTERROGATORIES and know its contents, and declare such responses to be true
and correct, under penalty of perjury of the laws of the state of California.

Executed on January 4, 2016, at Sherman Oaks, California.



STEPHEN ENOS

Suite 3700, 1420 Fifth Avenue
Seattle, WA 98101
t 206 467 9600 f 206 623 6793

direct dial 206 516 3088
CVaras@kilpatricktownsend.com

January 12, 2016

Jinny Cain
The Rudd Law Firm
15233 Ventura Blvd.
Suite 320
Sherman Oaks, CA 91403
Email: jcain@ruddlawpc.com

Re: *Meet and Confer Regarding Mr. Enos' Deficient Discovery Answers*

Dear Jinny:

This letter is to meet and confer with you regarding the deficiencies in Mr. Enos' answers to Insomniac Holdings' third and fourth sets of interrogatories and Mr. Enos' answer to Insomniac Holdings' Document Request No. 289. Mr. Enos must serve amended answers to the discovery requests discussed below and produce his responsive documents no later than next Tuesday, January 19, 2016 at 5:00 p.m. Pacific Time. If Mr. Enos has not fully cured the deficiencies discussed in this letter at that time we will have no choice but to file a third motion to compel.

Interrogatories 29, 30 and 46

These three interrogatories require Mr. Enos to state the date and describe the manner in which he contends he revoked the alleged license to Mr. Rotella. Mr. Enos has not provided a responsive answer and his objections are meritless. The objections to the terms "manner", "notified" and "revoked" are frivolous, and the interrogatories are clear. Mr. Enos' objection that the requested information is already known to Insomniac Holdings is also invalid. First, as you know Insomniac Holdings disputes that any license ever existed, much less that any license was ever revoked. Second, the burden is on Mr. Enos to come forward with evidence to support his allegations and claims, including but not limited to his allegation that he has revoked the alleged license. The objections that the interrogatory calls for speculation and for a legal conclusion are also frivolous.

Mr. Enos' answers to these interrogatories are also not responsive. His identical answers to Interrogatories 29 and 30 do not even state whether Mr. Enos contends that he revoked the license in the "final messages" referenced in the answer, let alone describe the manner in which any revocation was communicated to Mr. Rotella. Mr. Enos also cannot refuse to answer this interrogatory on the grounds that he will be deposed later in the case (see response to Interrogatory 46). Insomniac Holdings is entitled to conduct discovery in the manner it sees fit,

and Mr. Enos has an obligation to provide a complete, unqualified amended answer to these interrogatories before it deposes Mr. Enos.

Interrogatory 31

Mr. Enos' objections to this interrogatory are meritless and his answer is non-responsive. The terms "manner", "notified" and "revoked" are all clear on their face. Mr. Enos' objection that the interrogatory is burdensome because the information sought may be otherwise available to Insomniac Holdings has no merit. The interrogatory is directed to Mr. Enos' communications with a third party, and Mr. Enos is obligated to provide a responsive answer. The objections that the interrogatory is speculative and calls for a legal conclusion are frivolous. All of these objections must be withdrawn.

Moreover, Mr. Enos' answer to the interrogatory is not responsive. The interrogatory requires Mr. Enos to state the manner in which he contends he notified Philip Blaine that he had revoked the alleged license. Mr. Enos' answer refers vaguely to conversations with Mr. Blaine but does not say anything about how (if at all) Mr. Enos contends he notified Mr. Blaine that the alleged license had been revoked. Mr. Enos must withdraw his objections and serve a complete, unqualified amended answer to this interrogatory.

Interrogatories 35 through 38

Mr. Enos' objections to these interrogatories are meritless, and he has had more than enough time to prepare responsive answers. The vagueness objections are frivolous and do not provide any basis for Mr. Enos to withhold responsive information. The interrogatories are also not "overbroad as to time and scope." Each of them relates to one or more specific events at which Mr. Enos contends he used the marks at issue in this proceeding. The interrogatories also do not require Mr. Enos to speculate, nor do the identities of people who performed at the specified events require a legal conclusion that would excuse Mr. Enos from answering. Mr. Enos must provide whatever information is known or reasonably available to him regarding the referenced events that he and/or his company produced or promoted. Also, the identities of the performers at events where Mr. Enos contends he used the subject marks are reasonably calculated to lead to the discovery of admissible evidence regarding Mr. Enos' allegations and claims, including but not limited to his alleged use of the subject marks. The interrogatories are complete in and of themselves; the references to Mr. Enos' prior interrogatory answers serve only to specify the events at issue in the interrogatories. The objection based on California Code of Civil Procedure § 2030.230 is meritless, as this proceeding is governed by the Federal Rules of Civil Procedure, as adapted for application in the TTAB. The objection fails under FRCP 33(d) because Mr. Enos has not specified any documents from which the responsive information could be gleaned.

Mr. Enos' only answer to these interrogatories was to state that discovery is continuing and he might supplement his answers in the future. Mr. Enos has had more than enough time to prepare his answers and he must serve complete, unqualified amended answers.

Interrogatory 39

Mr. Enos' objections to self-explanatory terms in this interrogatory are frivolous. The time frame and scope of the interrogatory are appropriate to reach information reasonably calculated to lead to discoverable evidence that is relevant to Mr. Enos' claims and to Insomniac Holdings' affirmative defenses. The requested information is also necessary for Insomniac Holdings to test Mr. Enos' assertions of privilege regarding his discussions with attorneys other than Mr. Rudd. The interrogatory does not require Mr. Enos to speculate. He must provide all information that is known or reasonably available to him regarding the discussions at issue. The objection based on California Code of Civil Procedure § 2030.060(f) is meritless, as this proceeding is governed by the Federal Rules of Civil Procedure, as adapted for application in the TTAB. The interrogatory is consistent and permissible under Federal Rule of Civil Procedure 30 as applied in the TTAB. Mr. Enos also has no basis to object to this interrogatory on the grounds of privilege. Even if some of the discussions responsive to this interrogatory were privileged, the dates and participants in attorney/client communications are not privileged and are routinely disclosed in privilege logs to allow opposing parties to test any assertion of privilege.

We also confirm that this interrogatory also excludes discussions with any attorney or staff person who was working with Chris Rudd (for example yourself and Harry Melkonian) at the time the discussion occurred. Mr. Enos must withdraw his objections and serve a complete, unqualified amended answer to this interrogatory.

Interrogatory 40

Mr. Enos' objections to this interrogatory have no merit and his answer is not responsive. The meaning of the interrogatory is clear and does not require Mr. Enos to speculate. The interrogatory is also complete in and of itself, as the reference to Mr. Enos' prior interrogatory answer only serves to specify the subject matter of the interrogatory.

Mr. Enos' answer to this interrogatory is not responsive. Mr. Enos must state the date – to the best of his knowledge – when he first became aware of the “website attribution”. His answer stating that he became aware of it “when it was initially made” is no answer at all. Mr. Enos must withdraw his objections and serve a complete, unqualified amended answer.

Interrogatories 42 and 44

Mr. Enos' answer to each of these interrogatories consists of the same copied-and-pasted boilerplate objections. All of the objections are without merit. The date(s) on which Mr. Enos first contacted Mr. Rudd and Mr. Melkonian are reasonably calculated to lead to the discovery of admissible evidence, including without limitation evidence that bears on the credibility of testimony by Mr. Enos and Ms. Park and evidence that is relevant to Insomniac Holdings' affirmative defenses. The objection that the terms “contacted” and “use” are vague is equally meritless. Both terms are clear in the context of these interrogatories. Finally, the date of a communication with an attorney is not privileged. As you know, privilege logs routinely identify the date and subject matter of communications with counsel. The date of Mr. Enos' first

communications with Mr. Rudd and with Mr. Melkonian are discoverable. Mr. Enos must withdraw his objections and serve complete, unqualified amended answers to these interrogatories.

Interrogatories 43 and 45

Mr. Enos' answer to each of these interrogatories also consists of the same copied-and-pasted boilerplate objections. These objections are also without merit. The date Mr. Enos retained his counsel of record is reasonably calculated to lead to the discovery of admissible evidence, including without limitation evidence that bears on the credibility of testimony by Mr. Enos and Ms. Park and evidence that is relevant to Insomniac Holdings' affirmative defenses. The date an attorney was retained is also not privileged. If you have authority to the contrary we will be happy to review it. Absent such authority, Mr. Enos must withdraw his objections and serve complete, unqualified amended answers to these interrogatories.

Interrogatories 47 and 48

Mr. Enos' objections to these interrogatories have no merit. The interrogatories are clear on their face and do not call for any conclusions that would excuse Mr. Enos from answering. The objections based on California Code of Civil Procedure § 2030.230 is invalid, both because that statute does not govern this proceeding as discussed above, and because the interrogatory on its face calls for a listing of documents as contemplated by Federal Rule of Civil Procedure 33(d).

Mr. Enos' answers to these interrogatories are not responsive because they are incomplete. Mr. Enos must identify every responsive document produced in this proceeding. He may not provide a list with the qualification that responsive documents "include but [are] not limited to" the documents specified in his answer. Mr. Enos must withdraw his objections and must serve complete, unqualified amended answers to these interrogatories.

Interrogatory 49

Mr. Enos' objections to this interrogatory are meritless. The interrogatory is not vague, overbroad or burdensome. Parties are routinely required to disclose documents provided to expert witnesses. The objection based on California Code of Civil Procedure § 2030.230 is invalid for the reasons discussed above.

Mr. Enos' answer to this interrogatory is not responsive. The interrogatory requires Mr. Enos to identify by Bates number every document that has been produced in the case that has been provided to Mr. Wade. Mr. Enos' answer states, in essence, that the documents he has provided to Mr. Wade did not have Bates numbers. To be clear, if any documents provided to Mr. Wade have been produced, Mr. Enos must identify them by Bates number, regardless of whether the copies provided to Mr. Wade included Bates numbers. Mr. Enos must provide an amended responsive answer to this interrogatory. We also remind you that Mr. Enos has a continuing obligation to supplement his discovery responses as the case continues.

Interrogatory 50

Mr. Enos' objections to this interrogatory are also without merit. As to duplicativeness, none of Mr. Enos' other discovery responses contain the specific information requested by this interrogatory, which is based specifically on an allegation in Mr. Enos' operative Third Amended Petition. Mr. Enos also has no basis to object to this interrogatory based on information that may or may not be known to any other parties. The requested information goes to the basis for Mr. Enos' allegation in his petition, and Insomniac Holdings is entitled to discover what factual basis, if any, Mr. Enos has for that allegation. The objections regarding time frame and "legal conclusion" are frivolous in the context of this interrogatory, which request the factual basis for Mr. Enos' own allegation. Finally, Mr. Enos cannot refuse to answer this interrogatory on the grounds that he will be deposed later in the case. Insomniac Holdings is entitled to conduct discovery in the manner it sees fit, and Mr. Enos must serve an unqualified answer to this interrogatory prior to being deposed.

Document Request 289

Mr. Enos' objections to this request are without merit. First, the requested communications are between Mr. Enos and/or his attorneys on the one hand, and Mr. Richards and/or his attorneys on the other hand. By definition they do not include Insomniac Holdings. The time frame for the request comes from Mr. Enos' and Mr. Richards' own allegations regarding their alleged joint ownership in the mark at issue and is therefore not overbroad.

With respect to privilege, we agree that the parties need not log or otherwise identify privileged common interest communications. To our knowledge, the earliest a common interest might have arisen between Mr. Enos and Mr. Richards was November 17, 2015. We are not aware of any basis for a privilege objection with respect to documents evidencing communications prior to that date, and expect all such documents to be produced. Obviously communications between Mr. Enos and Mr. Richards occurring outside the presence of counsel would not be privileged no matter when they occurred, and all of those must be produced.

We appreciate Mr. Enos' agreement to produce responsive documents but as you know, Insomniac Holdings was previously forced to file a motion to compel after Mr. Enos made similar promises and then refused to produce a single page until the Board ordered him to do so. In light of that record, we will proceed with a motion to compel without further notice if Mr. Enos has not withdrawn his objections and served an amended answer stating that he has produced all responsive documents within his possession, custody or control by 5:00 p.m. next Tuesday, January 19.

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Jinny Cain
January 12, 2016
Page 6

If you would like to discuss these matters further I am available to speak by phone at your convenience. However, given the clear deficiencies with Mr. Enos' responses and the long delays that have already occurred in this case as a result of Mr. Enos' failure to comply with his discovery obligations we are prepared to file our motion to compel if all of the above issues are not fully resolved by 5:00 p.m. next Tuesday.

Sincerely,

A handwritten signature in blue ink, appearing to be 'CTV' or similar, written in a cursive style.

Christopher T. Varas



THE RUDD LAW FIRM, P.C.

January 21, 2016

VIA Mail and Email

Attn: Chris Varas, Esq.
Kilpatrick Townsend & Stockton LLP
1420 Fifth Ave. Suite 4400
Seattle, WA 98101

Re: Stephen R. Enos v. Insomniac Holdings, LLC Cancellation No. 92057182

Dear Chris:

We are in receipt of your correspondence dated January 12, 2016, regarding the discovery responses of Petitioner Enos. While we are willing to provide supplemental responses to some of Insomniac's discovery requests, Mr. Enos maintains his objections to a number of the interrogatories.

Interrogatory No. 38

Insomniac's request that Petitioner identify EVERY person who performed at ANY event produced promoted by Petitioner where petitioner advertised, promoted or displayed one or both of the subject marks is overbroad and vague as to time and scope. Petitioner fails to understand how the names are possibly relevant to this proceeding, as Petitioner has already identified and provided names of all relevant individuals and witnesses related to this proceeding.

However, in an effort to cooperate with the discovery proceedings, Petitioner agrees to provide a supplemental response (to the best of Petitioner's knowledge and recollection) the names of persons who performed at the events relating to the supplemental documents produced (bates stamped ENOS 000943-000949) which occurred during 1994 – 1997.

Interrogatory 42 and 44

Petitioner maintains his objections to these requests. The date he first contacted his counsel is irrelevant to this proceeding, and these requests are intended only to harass and annoy Petitioner. Further, your January 12th letter fails to elucidate any possible relevance this information has to this trademark cancellation proceeding. Petitioner requests that these interrogatories be withdrawn.

Interrogatory 43 and 45

Petitioner maintains his objections to these requests. The date he retained his counsel is irrelevant, suffice



to say that Mr. Rudd and Mr. Melkonian has represented Mr. Enos throughout this cancellation proceeding. Your January 12th letter fails to elucidate the relevance of this information with the trademark cancellation proceeding, other than to vaguely state that it goes to the credibility of the testimony by Mr. Enos and Ms. Park. Petitioner requests these requests be withdrawn.

Interrogatories 47 and 48

Petitioner has provided a complete answer to this request and listed the bates numbers of documents provided thus far in this proceeding that are responsive to Insomniac's requests. However, in an effort to cooperate with the discovery proceedings, Petitioner will provide an amended response and withdraw the phrase, "include, but are not limited to."

Interrogatory 49

Petitioner maintains that no documents were provided to George Wade that include bates numbers. However, in an effort to cooperate with the discovery proceedings, Petitioner will provide an amended response.

Please confirm that you will withdraw Interrogatories 42-45.

Thank you.

Very truly yours,
The Rudd Law Firm

/s/Christopher Rudd

Christopher Rudd

Cc: Gary Kaufman by email
Colin Hardacre by email
Larry McFarland by email

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

In the Matter of Registration Nos. 3,777,422 and 4,090,760

Marks: ELECTRIC DAISY CARNIVAL; EDC

Issued: April 20, 2014; January 24, 2012

Stephen R. Enos.)	
)	
Petitioner,)	Cancellation No. 92057182
)	
v.)	
)	
)	
Insomniac Holdings, LLC,)	
)	
Respondent.)	
_____)	

**STEPHEN R. ENOS' AMENDED RESPONSE TO INSOMNIAC HOLDINGS, LLC'S
FOURTH SET OF INTERROGATORIES**

PROPOUNDING PARTY: INSOMNIAC HOLDINGS, LLC

RESPONDING PARTY: STEPHEN R. ENOS

SET NO.: FOUR

RESPONDING PARTY, Claimant Stephen R. Enos or "Claimant," by and through his undersigned counsel, hereby responds and objects to PROPOUNDING PARTY Insomniac Holdings LLC's (or "INSOMNIAC's") Fourth Set of INTERROGATORIES (the "INTERROGATORIES") as follows:

GENERAL OBJECTIONS

1. Claimant objects to each instruction and definition set forth in Petitioner's First Set of Special Interrogatories to the extent that any such definition or instruction exceeds the scope of discovery permissible under the rules of the Trademark Trial and Appeal Board ("TTAB") and the Federal Rules of Civil Procedure.

2. Claimant objects to each Interrogatory to the extent that it seeks information that is not in Claimant's possession, custody or control.

3. Claimant objects to each Interrogatory to the extent that it requires disclosure of information protected by the attorney-client privilege, the work product doctrine, Claimant's right to privacy, and/or any other applicable privilege. Any disclosure of such information is strictly inadvertent and shall not be construed as a waiver of the applicable privilege(s).

4. Claimant objects to each Interrogatory to the extent that it requires disclosure of confidential, proprietary, trade secret and other competitively sensitive business information.

5. Claimant has not completed his discovery and investigation of the facts relating to this opposition proceeding. All of the responses contained herein are based only upon such information and documents as are presently available, and specifically known, to Claimant. The following responses are given without prejudice to Claimant's right to

produce evidence of any subsequently discovered fact or facts. Claimant reserves the right to conduct additional investigation and discovery, to rely on additional facts, information, documents or materials and to supplement these responses to the extent required by the TIAB.

6. The foregoing General Objections apply to each Interrogatory and are hereby specifically incorporated into each response to each such Interrogatory. Any failure to repeat all or any part of such General Objection in any specific response shall not constitute a waiver or other relinquishment of such objection.

RESPONSE TO INTERROGATORIES

INTERROGATORY NO. 46: State the date and describe the manner in which YOU “revoked” the “permission/license to use the Trademarks”, as alleged in paragraph 8 of YOUR Third Amended Petition for Cancellation.

AMENDED RESPONSE TO INTERROGATORY NO. 46:

Without waiving any of the objections above, Responding Party states:

Through his attorney, Christopher Rudd, Responding Party revoked the oral revocable license granted to Pasquale Rotella for the use of the marks on May 22, 2013. See bates-stamped document ENOS 000935.

INTERROGATORY NO. 47: State the Bates number of each DOCUMENT produced in this proceeding that YOU contend evidences YOUR use of the SUBJECT MARKS prior to the date YOU contend YOU granted the LICENSE.

AMENDED RESPONSE TO INTERROGATORY NO. 47

Without waiving and subject to his previous objections, Responding Party answers as follows: Bates Numbers of documents produced by Mr. Enos as of this date evidencing use of the marks includes: ENOS 000895, ENOS 000909, ENOS 000784 – 791, ENOS 000586-000610, ENOS

000381, ENOS000397, ENOS 000455-000458, ENOS 000535, ENOS 000474-481 (duplicates), ENOS 000935-939; ENOS 000942 - 949.

Discovery is continuing, and Responding Party reserves the right to supplement this response.

INTERROGATORY NO. 48:

State the Bates number of each DOCUMENT produced in this proceeding that YOU contend evidences the existence of the LICENSE.

AMENDED RESPONSE TO INTERROGATORY NO. 48:

Objection. Responding Party objects to this request to the extent it improperly calls for a legal conclusion. This request is vague and ambiguous to the extent that Propounding Party has failed to adequately define the terms "contend". RESPONDING PARTY objects to this Interrogatory insofar as the response to the special interrogatory would necessitate the preparation or making of a compilation, abstract, audit, or summary of or from documents in possession of Propounding Party and the burden or expense of making or compiling such a compilation, abstract, audit or summary would be the same for Propounding Party in violation of Code of Civil Procedure section 2030.230.

Without waiving and subject to these objections, Responding Party answers as follows: Bates Numbers of documents produced by Mr. Enos evidencing use of the marks includes: ENOS 000895 (website attribution), ENOS 001002 (email w/ Phil Blaine), ENOS 000911-925 (phone records), ENOS 000514-518 (emails w/Gary Tate), ENOS 000474-484 (declarations), ENOS 000942 (text message), 935-939(cease and desist letter).

Discovery is continuing, and Responding Party reserves the right to supplement this response.

INTERROGATORY NO. 49: State the Bates number of each DOCUMENT produced in this proceeding that YOU have provided to George Wade.

AMENDED RESPONSE TO INTERROGATORY NO. 49:

Objection. RESPONDING PARTY further objects to this interrogatory on the ground that it is vague, overbroad and overly burdensome. Responding Party objects to this Interrogatory insofar as the response to the special interrogatory would necessitate the preparation or making of a

compilation, abstract, audit, or summary of or from documents in possession of Propounding Party and the burden or expense of making or compiling such a compilation, abstract, audit or summary would be the same for Propounding Party in violation of Code of Civil Procedure section 2030.230.

Without waiving and subject to these objections, and to the extent it understands this request, Responding Party answers as follows: Documents provided to Mr. Wade that have been produced in this action thus far include:

-Declarations in support of Petitioner: ENOS 000784 - 791

-Answer to Petition –LN 000331 – 336

-Rotella's Initial Disclosures - LN 000 346 - 348

-Rotella's RFP to Enos, Set One – LN 353 – 366

Rotella's First Set of Interrogs: LN 368-378

Discovery is continuing and responding party maintains the right to supplement this response.

INTERROGATORY NO. 50:

State all facts and IDENTIFY all DOCUMENTS supporting YOUR allegation that "After discussion between Claimant and Petitioner, at Claimant's request, Petitioner, with the consent of Gary Richards, granted Claimant an oral license to use the trademark Electric Daisy Carnival for dance music festivals and events", as alleged in paragraph 12 of YOUR Third Amended Petition for Cancellation.

AMENDED RESPONSE TO INTERROGATORY NO. 50:

Responding Party objects to this interrogatory as duplicative of previous discovery served upon him. Without waiving and subject to his previous objections, Responding Party answers as follows: In late 1996, Pasquale Rotella approached Mr. Enos, Richard Hamilton and Tom Allain in a parking structure where he asked Mr. Enos permission to use the Electric Daisy Carnival mark. Mr. Enos declined the request. In early 1997, Mr. Enos became aware of an event being promoted by Pasquale Rotella as "Electric Daisy Carnival." Mr. Enos had an attorney issue a cease and desist letter to Mr. Rotella and later to Mr. Philip Blaine. At some point, it is believed

that Mr. Rotella approached Gary Richards to request his permission for use of the subject marks. Gary Richards, as co-creator and co-promoter of Double Hit Mickey, consented to the use, but on the condition that Steve Enos consents to the use as well. Subsequently, Enos orally agreed to license the marks to Mr. Rotella subject to certain conditions.

Dated: January 21, 2015

THE RUDD LAW FIRM, P.C.

By: /s/Christopher Rudd
Christopher L. Rudd

Attorneys for Petitioner Stephen Enos

VERIFICATION

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I have reviewed and read the foregoing **PETITIONER STEPHEN ENOS'**
RESPONSES TO INSOMNIAC HOLDING'S FOURTH SET OF
INTERROGATORIES and know its contents, and declare such responses to be true
and correct, under penalty of perjury of the laws of the state of California.

Executed on January 21, 2016, at Sherman Oaks, California.

STEPHEN ENOS



PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 15233 Ventura Blvd. Suite 320, Sherman Oaks, CA, 91423, I served the within document(s) described as:

**STEPHEN R. ENOS' AMENDED RESPONSE TO INSOMNIAC HOLDINGS, LLC'S
FOURTH SET OF INTERROGATORIES**

on the interested parties in this action, by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Gary R. Kaufman, Esq. The Kaufmann Law Group 1901 Avenue of the Stars, Suite 1010 Los Angeles, CA 90067 Tel: (310) 286-2202 Fax: (310) 712-0023 Email: gary@kaufmanlawgrouppla.com	Colin Hardacre, Esq. The Kaufmann Law Group 1901 Avenue of the Stars, Suite 1010 Los Angeles, CA 90067 Tel: (310) 286-2202 Fax: (310) 712-0023 Email: colin@kaufmanlawgrouppla.com
Christopher Varas , Esq. Kilpatrick Townsend & Stockton LLP 1420 Fifth Avenue, Suite 4400 Seattle, WA 98101 Tel: 206 516 3088 Fax: 206 623 6793 Email: cvaras@kilpatricktownsend.com	

[x] BY FIRST CLASS MAIL AND EMAIL

I declare under penalty of perjury under the laws of the United States and the State of California that the above is true and correct. I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on January 21, 2016 at Los Angeles County, CA



Kellee Smith

I, Caroline Park, declare and state as follows,

1. I make this declaration in support of a petition by Stephen Enos to cancel the trademark registration by Pasquale Rotella in the name "Electric Daisy Carnival." Except where set forth on information and belief the facts set forth herein are true and correct of my own personal knowledge. If called upon to testify, I would and could competently testify thereto.
2. I have known Steve Enos since approximately 2004. In April of this year, 2013, Steve Enos and I together attended the second weekend of the Coachella music festival in Indio, near Palm Springs, CA.
3. At the invitation of Phil Blaine (legal name Philip Wharton), Steve Enos and I came out to stay the house of a friend of Mr. Blaine's, located in Palm Springs, while we all attended the second weekend of the Coachella music festival together.
4. Phil Blaine was a guest at my rented house during the first weekend of the Coachella festival and became friendly over the course of the next few days, so we decided to spend more time together over the next weekend. On Saturday, April 20th, Steve Enos picked me up at the Riverside airport and drove the both of us out to the Coachella festival, where we met up with Phil Blaine.
5. Throughout the course of that weekend, many conversations took place between Phil Blaine and Steve Enos in my presence regarding the Electric Daisy Carnival trademark and name. These conversations involved the usage of the Electric Daisy Carnival name by Pasquale Rotella in connection with Electronic Dance Music ("EDM") events produced by Mr. Rotella, Mr. Blaine and Insomniac. On more than one occasion, I was actively engaged in those conversations.
6. During one such conversation, Phil Blaine said he, in fact, not only funded the first Insomniac produced Electric Daisy Carnival in 1997, but that he and Mr. Rotella had produced it together. Phil Blaine also let it be known, that he himself was the one who originally said it was okay to use Steve Enos' trademark name, Electric Daisy Carnival.
7. I believe Mr. Blaine's exact words, as he was speaking to Steve Enos were, "I said it was okay to use your name, Electric Daisy Carnival". Phil explained that he had decided this after speaking with Gary Richards, who, in the past had been partners with Steve Enos in producing EDM events but was at that time partners with Phil Blaine in a record label, "1500 Records." Phil Blaine further acknowledged that he understood that Gary Richards had no right to the mark Electric Daisy Carnival and that it generated and owned by Steve Enos but was told by Gary Richards that he did not think Steve Enos, would care.
8. Steve Enos' response to this was: "That's interesting. He [Gary] knew he had no

right to the name. I came up with it before I even knew him, and the only reason I can think of why he [Gary] would think that I wouldn't care, is because *he* didn't care, simply because he [Gary] didn't have a right to the Electric Daisy Carnival name."

9. Phil Blaine responded that he "was glad after [Steve Enos'] conversation with Gary Richards" that he, Rotella, and Insomniac "were allowed to continue using the name for the first and subsequent Electric Daisy Carnivals."

10. Steve Enos then said, almost verbatim:

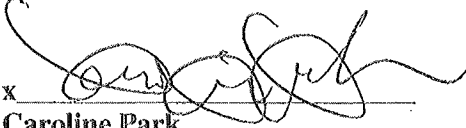
"Yes, I have to admit, I did not actually want you to use the name at all, but I realized it would be bad for me as a promoter for the Electric Daisy Carnival name to end it after promotion had already started, as most people would not understand what had really happened, and the situation would have also been detrimental to me, as a promoter for this same reason, so I agreed that you could use the name but not own it, as long as it stayed true to the original theme."

11. All of us present, as EDM fans, understood what the original theme was; an outdoor, electronic music festival, with carnival rides and other artistic elements, such as performers and entertainers.

12. Steven Enos continued: "So, as long as that is the case, and I own the name and continue to get credit for it, the agreement is fine with me". Phil Blaine said, "Yeah," and further responded by both nodding his understanding and indicating his agreement with Steve Enos' description of the agreement between himself and Rotella, Blaine and Insomniac, i.e. that Mr. Enos owned the Electric Daisy Carnival mark and that it had been and was being used by Mr. Rotella and Insomniac only with Mr. Enos' permission.

I declare under penalty of perjury of the laws of the United States of America and the state of California that the foregoing is true and correct.

Executed by me, Caroline Park, on the 5th of September, 2013, at San Francisco, CA

x 
Caroline Park

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Has Live Nation Entertainment acquired Insomniac Events?

February 22, 2013

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Insomniac Events

Insomniac Events

Electronic dance music has become a lucrative industry so it is no surprise that major corporations are now wanting a piece of the EDM pie. Last month, reports surfaced that companies like [Live Nation Entertainment](#), SFX Entertainment, AEG Live and Red Light Management, were all bidding to buy anywhere from 50-100% of EDM giant, [Insomniac Events](#). Sources are now claiming that Live Nation Entertainment may have actually acquired 51% ownership of Insomniac.

Insomniac Events, was founded 20 years ago by Pasquale Rotella, and is now reportedly valued somewhere between \$70- \$100 million. The company sold more than one million tickets last year to various events and their largest event, Electric Daisy Carnival in Las Vegas, had more than 300,000 people in attendance during the three-day festival.

The possible sale of Insomniac will be the latest notch on Live Nation's bedpost, which currently also includes Los Angeles Based Hard Events, and British promoter Cream Holdings, the promoter behind Creamfields, both of which were bought in 2012. Earlier this year, Live Nation also signed a 25-year contract with San Manuel Amphitheater to hold EDM events at the venue. Conveniently, Insomniac's Beyond Wonderland festival, which was previously held at the National Orange Show in San Bernardino, will be held at San Manuel Amphitheater on March 16th.

Pasquale Rotella has spoken out against corporate deals in the past, including during a panel discussion at the EDMbiz Conference last June.

Representatives from the companies have yet to comment on the matter.

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