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13 TRP Entertainment, LLC.

14 UNITED STATES DISTRICT COURT
15 DISTRICT OF NEVADA

16 TRP ENTERTAINMENT, LLC., a)
17 Nevada limited liability company,)

Case No. 2:08-cv-00579-LDG-CWH

18 Plaintiff,)

~~(PROPOSED)~~ **DEFAULT JUDGMENT**

19 v.)

20 BC ENTERTAINMENT, INC., a)
21 Nevada corporation, BARRIE)
22 CUNNINGHAM, an individual,)

23 Defendants.)

24 And Related Counterclaims.

25 Plaintiff TRP Entertainment ("Plaintiff") filed its Complaint on September 29, 2011,
26 and the Complaint and Summonses were served on Defendants BC Entertainment, Inc.
27 ("BCEI") and Barrie Cunningham ("Cunningham") (collectively "Defendants") on June 17,
28 2008 (#12 and #13). Former defense counsel Weide & Miller, Ltd. answered on behalf of
Defendants on July 14, 2008 (#15).

On December 2, 2008, defense counsel filed a Motion to Withdraw as Counsel of
Record for Defendants/Counterclaimants BC Entertainment, Inc. and Barrie Cunningham
Pursuant to LR IA 10-6 (#34), which this Court granted on January 15, 2009 (#42).

On February 13, 2009, Plaintiff filed Plaintiff's Motion to Compel Appearance of
Counsel for BC Entertainment, Inc. or, in the Alternative, Motion to Strike Answer and

1 Counterclaims (#44), which this Court granted on February 17, 2009 (#45). On April 8,
2 2009, this Court struck the Answer and Counterclaims of BC Entertainment, Inc (#47).
3 Default was entered against BC Entertainment, Inc. on September 29, 2009 (#50).

4 On June 12, 2013, Magistrate Judge Hoffman issued a Report and Recommendation,
5 recommending that remaining Defendant Cunningham's Answer be stricken, and that Default
6 Judgment be entered against Cunningham (#103). On July 11, 2013, this Court adopted
7 Magistrate Judge Hoffman's Report and Recommendation (#103) in its entirety, ordered that
8 Cunningham's Answer be stricken, and ordered that Plaintiff prepare a proposed Default
9 Judgment. (#108). On July 15, 2013, Default was entered against Cunningham (#110). On
10 July 25, 2013, Plaintiff submitted a Declaration of Matthew D. Francis in Support of Default
11 Judgment (# 111).

12 After reviewing all relevant pleadings and papers on file in this matter, THIS COURT
13 FINDS AS FOLLOWS:

14 1. Plaintiff is the owner of all rights, title, and interest in the service mark and
15 trademark "The Rat Pack is Back," and corresponding incontestable U.S. Registration Nos.
16 2640066 and 2578115 for "The Rat Pack is Back."

17 2. Plaintiff is the owner of the common law service mark and trademark "The
18 Tribute to Frank, Sammy, Joey and Dean."

19 3. Defendants filed for and obtained U.S. Registration No. 3884657 for "A Tribute
20 to the Rat Pack Frank, Dean & Sammy A BC Entertainment, Inc. Production" on December 7,
21 2010.

22 4. Commencing after Plaintiff's adoption and use of the "The Rat Pack is Back"
23 and "The Tribute to Frank, Sammy, Joey and Dean" marks, Defendants commenced using the
24 marks "The Rat Pack A Tribute to Frank, Dean & Sammy" and "RAT PACK – Frank, Sammy
25 and Dean."

26 5. Without Plaintiff's permission or consent, the marks "The Rat Pack is Back"
27 and "The Rat Pack A Tribute to Frank, Dean & Sammy" were used in conjunction with the
28

1 advertising and promotion of a December 31, 2007 New Years Eve show at the Gold Coast
2 Casino in Las Vegas, Nevada.

3 6. Defendants received \$17,500.00 in gross profits for the December 31, 2007 New
4 Years Eve show at the Gold Coast Casino in Las Vegas, Nevada.

5 Based on these facts, THIS COURT FURTHER FINDS AS FOLLOWS:

6 1. The use of "The Rat Pack is Back" constitutes trademark infringement pursuant
7 to 15 U.S.C. § 1114, as well as unfair competition under the 15 U.S.C. § 1125(a) and the
8 common law, which entitles Plaintiff to damages and injunctive relief.

9 2. The use of "The Rat Pack A Tribute to Frank, Dean & Sammy" and "A Tribute
10 to the Rat Pack Frank, Dean & Sammy A BC Entertainment, Inc. Production" constitutes unfair
11 competition under 15 U.S.C. § 1125(a) and the common law, which entitles Plaintiff to
12 damages, injunctive relief, and cancellation of the U.S. Registration No. 3884657.

13 BASED ON THE FOREGOING, IT IS HEREBY ORDERED AS FOLLOWS:

14 Judgment is hereby entered for Plaintiff and against Defendants, jointly and severally,
15 in the sum of \$52,500.00 for compensatory and treble damages pursuant to 15 U.S.C. §
16 1117(a).

17 IT IS FURTHER ORDERED that Defendants and their servants, agents, employees,
18 successors and assigns, and all persons acting in concert or privity with them, enjoining each of
19 them, singly and collectively, from: (a) any further use of the "The Rat Pack is Back," "The Rat
20 Pack A Tribute to Frank, Dean & Sammy," and any mark confusingly similar thereto, including
21 but not limited to: "The Tribute to Frank, Sammy, Joey and Dean," "A Tribute to the Rat Pack
22 Frank, Dean & Sammy A BC Entertainment, Inc. Production," and "RAT PACK – Frank,
23 Sammy and Dean"; and (b) further holding themselves out to the public as being affiliated with
24 or sponsored by Plaintiff in any manner, or committing any acts likely to imply any such
25 relationship or affiliation.

26 IT IS FURTHER ORDERED that, pursuant to 15 U.S.C. § 1119, the Director of the
27 United States Patent and Trademark Office is hereby ordered to cancel BCEI's U.S. Trademark
28 Registration No. 3884657.

1 IT IS FURTHER ORDERED that Plaintiff shall recover from the Defendants
2 reasonable attorneys' fees and costs.

3 IT IS FURTHER ORDERED that this Judgment, and any subsequent Order awarding
4 attorneys' fees and costs, bear interest at the rate in accordance with 28 U.S.C. § 1961.

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6 IT IS SO ORDERED:

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8 UNITED STATES DISTRICT JUDGE

9 Dated: 1 Aug 2013
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2 **CERTIFICATE OF SERVICE**

3 Pursuant to Fed. R. Civ. P. 5(b), I certify that I am an employee of the law offices of
4 Watson Rounds, and that on this date a true and correct copy of the foregoing document,
5 **(Proposed) Default Judgment**, was served upon the following individual via First Class Mail:

6 Barrie Cunningham
7 3307 76 Country Blvd.
8 Branson, MO 65616

9 DATED: July 25, 2013.

/s/ Jeff Tillison
An employee of Watson Rounds