

ORIGINAL

FILED RECEIVED
ENTERED SERVED BY
2009 NOV -5 P 3:34
U.S. DISTRICT COURT
DISTRICT OF NEVADA

1 Barrie Cunningham
69 Ice Fall Ave.
2 Las Vegas, NV 89183-8507
Telephone: (702) 898-7542
3 Facsimile: (702) 898-7542

4 *In Pro Per*

5 UNITED STATES DISTRICT COURT DEPUTY
6 DISTRICT OF NEVADA

8 TRP ENTERTAINMENT, LLC,
9 Plaintiff,

Case No. 2:08-cv-0579-LDG (RJJ)

10 v.

PARTIAL JUDGMENT

11 BC ENTERTAINMENT, INC., *et al.*,
12 Defendants.
13

15 BC ENTERTAINMENT, INC., *et al.*,
16 Counterclaimants,
17

18 v.
19 TRP ENTERTAINMENT, LLC,
20 Counterdefendant.
21

22 The Court, having reviewed and considered the Motion for Partial Summary
23 Judgment (Document #23) filed by Defendant/Counterclaimant Barrie Cunningham
24 ("Cunningham"), the Opposition filed by Plaintiff/Counterdefendant TRP Entertainment,
25 LLC ("TRP") (Documents #27 and 28), and Cunningham's Reply (Document #29), hereby
26 enters the following partial summary judgment in favor of Cunningham on Cunningham's
27 First Counterclaim for Declaratory Relief and on Cunningham's Second Counterclaim
28 requesting Modification of TRP Entertainment, LLC's Trademark Registration No.
2,640,066 to add a disclaimer of the term "RAT PACK" consistent with this Court's Order

1 dated September 28, 2009 (Document No. 49):

2 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that partial summary
3 judgment be entered in favor of Barrie Cunningham as to Barrie Cunningham's First
4 Counterclaim for Declaratory Relief of Genericness;

5 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the term "The Rat
6 Pack" is generic in the context of live shows about or in tribute to members of the Rat
7 Pack;

8 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the mere fact that
9 any third party uses the term "The Rat Pack" in connection with a Rat Pack tribute show
10 does not and cannot infringe TRP Entertainment, LLC's Trademark Registration No.
11 2,640,066 for "THE RAT PACK IS BACK";

12 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that TRP Entertainment,
13 LLC cannot appropriate the term "The Rat Pack" for its exclusive use;

14 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that partial summary
15 judgment be entered in favor of Barrie Cunningham as to Barrie Cunningham's Second
16 Counterclaim requesting Modification of TRP Entertainment, LLC's Trademark
17 Registration No. 2,640,066 to add a disclaimer of the term "RAT PACK;" and

18 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that, pursuant to 15
19 U.S.C. § 1119, the Director of the United States Patent and Trademark Office is hereby
20 ordered to rectify the Principal Trademark Register with respect to TRP Entertainment,
21 LLC's Trademark Registration No. 2,640,066 for the mark THE RAT PACK IS BACK by
22 entering a disclaimer upon said registration that NO CLAIM IS MADE TO THE
23 EXCLUSIVE RIGHT TO USE "THE RAT PACK" APART FROM THE MARK AS SHOWN.

24 **IT IS SO ORDERED.**



25
26 UNITED STATES DISTRICT JUDGE

27 DATED: 19 May 2011

28