

ESTTA Tracking number: **ESTTA302878**

Filing date: **08/26/2009**

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

Proceeding	91188339
Party	Defendant Pisano, John, Hofrichter, Edward
Correspondence Address	Mark Lebow Young & Thompson 209 Madison Street, Suite 500 Alexandria, VA 22314 UNITED STATES mlebow@young-thompson.com
Submission	Response to Board Order/Inquiry
Filer's Name	Mark Lebow
Filer's e-mail	mlebow@young-thompson.com
Signature	/ml/
Date	08/26/2009
Attachments	2009-08-26 Amended Response to Board Order of August 7, 2009.pdf ( 2 pages ) (55975 bytes ) Exhibit Page A.pdf ( 1 page )(11488 bytes ) 2009-07-17 Scanned Fully Executed Agreement.pdf ( 4 pages )(185247 bytes )

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

RUSSEL G. WEINER,

Opposer,

v.

JOHN PISANO and EDWARD HOFRICHTER,

Applicants.

Opposition No. 91188339

Serial No. 77501585

**AMENDED RESPONSE TO BOARD ORDER OF AUGUST 7, 2009**

In response to the Board's Order of August 7, 2009, Applicants hereby make of record the settlement agreement between the parties (Exhibit A), which provides Opposer's consent to delete all of the goods contained in Class 21. The Agreement was signed by both parties, including Opposer Mr. Weiner.

As indicated in paragraph 1 of the attached Agreement prepared and signed by Opposer, Opposer requires Applicants to amend the application by deleting the goods described as "beverage glassware, mugs, beer mugs, ceramic figurines, and stone coasters,"<sup>1</sup> which the Board has noted was requested via Applicants' amendment request filed on July 17, 2009. The aforementioned goods make up the entirety of the goods in Class 21.

Respectfully submitted,

/Mark Lebow/

Mark Lebow

Attorney for Applicant

Young & Thompson

209 Madison Street, Suite 500

Alexandria, VA 22314

August 26, 2009

---

<sup>1</sup> Although incorrect captioned by Opposer as being Class 25 goods in the Agreement, the specific goods are identified.

Certificate of Service

I hereby certify the foregoing AMENDED RESPONSE TO BOARD ORDER OF AUGUST 7, 2009 was sent via first class mail, postage prepaid, to Seth I. Appel, Attorney for Opposer, Harvey Siskind LLP, Four Embarcadero Center, 39<sup>th</sup> Floor, San Francisco, CA 94111 this 26th day of August 2009.

/hue morrison/

Hue Morrison

EXHIBIT A

## SETTLEMENT AGREEMENT

THIS AGREEMENT (the "Agreement") is entered into by and between Russell G. Weiner, an individual residing in Los Angeles, California ("Opposer"), on the one hand, and John Pisano and Edward Hofrichter, individuals residing in Vista, California ("Applicants"), on the other. Opposer and Applicants are collectively referred to hereinafter as the "Parties."

WHEREAS, Opposer offers products under the marks ROCKSTAR, PARTY LIKE A ROCKSTAR, ROCKSTAR ENERGY DRINK, ROCKSTAR JUICED, ROCKSTAR ROASTED, and other marks that contain the word ROCKSTAR, and is the owner of several U.S. trademark registrations for such marks, including Registration Nos. 2545247, 2613067, 2784403, 3190229, 3398516, and 3423897; and

WHEREAS, Applicants intended to offer products under the mark DIVE BAR ROCK STAR, and have filed a U.S. trademark application (Serial No. 77501585) to register such mark; and

WHEREAS, a dispute has arisen between the Parties concerning Applicants' intended use and registration of DIVE BAR ROCK STAR, and that dispute has led to Opposition No. 91188339 currently pending before U.S. Patent and Trademark Office, Trademark Trial and Appeal Board; and

WHEREAS, the Parties wish to resolve their dispute, to settle Opposition No. 91188339, and to avoid litigation;

NOW, THEREFORE, for and in consideration of the mutual representations, terms, and conditions contained herein, and intending to be bound, Opposer and Applicants agree as follows:

1. Amendment to Trademark Application

Within ten (10) days of execution of this Agreement, Applicants agree to amend U.S. trademark application Serial No. 77501585 by deleting the following goods: all goods in Class 25, namely, beverage glassware, mugs, beer mugs, ceramic figurines, and stone coasters; and coasters of paper. The execution date of this Agreement shall be the date of the latest signature below.

2. Dismissal of Opposition

Within ten (10) days of entry of the amendment required by Paragraph 1 above, Opposer agrees to withdraw his Notice of Opposition in Opposition No. 91188339 with prejudice. Each party shall bear its own costs and attorneys' fees arising from or related to that proceeding.

3. Applicants' Use

Applicants agree not to use the mark DIVE BAR ROCK STAR, or any confusingly similar variations thereof, in connection with the following goods: beverage glassware, mugs, beer mugs,

ceramic figurines, stone coasters, or coasters of paper. Insofar as Applicants have already begun use of the mark DIVE BAR ROCK STAR, or any confusingly similar variations thereof, in connection with any of these goods, Applicants agree to immediately cease such use.

4. Binding Effect

This Agreement shall extend to, inure to the benefit of, and be binding upon the Parties and their respective heirs, employees, agents, representatives, partners, licensees, assignees, business entities, affiliates, predecessors, and successors.

5. Territory

The geographic territory of this Agreement shall be worldwide in scope and effect.

6. Entire Agreement

This Agreement constitutes the complete statement of all the arrangements between Opposer and Applicants with respect to the subject matter, and may not be amended, altered, modified or otherwise changed in any respect except in a writing signed by the Parties.

7. Representation by Counsel

The parties to this Agreement acknowledge that they are represented by counsel concerning the matter resolved by this Agreement and the Agreement itself.

8. Notices

All notices and other communications under this Agreement shall be in writing and shall be considered given when delivered personally or by registered or certified mail, return receipt requested, or by reputable courier, to the Parties at the following addresses (or at such other address as a Party may subsequently specify by notice to the others):

If to Opposer:            Ian K. Boyd, Esq.  
                                  Seth I. Appel, Esq.  
                                  Harvey Siskind LLP  
                                  Four Embarcadero Center, 39<sup>th</sup> Floor  
                                  San Francisco, CA 94111

If to Applicants:        Mark Lebow, Esq.  
                                  Young & Thompson  
                                  209 Madison Street, Suite 500  
                                  Alexandria, VA 22314

9. Breach

It is hereby expressly acknowledged by all Parties to this Agreement that a breach hereof by Applicants will cause immediate and irreparable harm and that preliminary and permanent injunctive relief would be appropriate in the event of such breach.

10. Attorneys' Fees

In the event that any legal action becomes necessary to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled, in addition to any other relief granted by the court, to an award of reasonable costs and attorneys' fees incurred in connection with such legal action.

11. Waiver

The failure of any Party at any time or times to demand strict performance by the other Party(ies) of any of the terms or conditions of this Agreement shall not be construed as a permanent or continuing waiver or relinquishment thereof, and any Party may at any time demand strict and complete performance of said terms and conditions.

12. Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such determination shall not affect the validity of the remaining provisions unless it causes this Agreement to fail in any of its essential purposes.

13. Headings

The headings of the Paragraphs of this Agreement are for convenience only and in no way limit, define, or affect the terms or conditions of this Agreement.

14. Execution of Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15. Governing Law

This Agreement and the rights and obligations of the parties under it will be governed by, and construed and enforced in accordance with, the laws of the State of California.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the dates written below.

RUSSELL G. WEINER



---

Date:

JOHN PISANO



---

Date: 6/9/09

EDWARD HOFRICHTER



---

Date: 6/10/09