

ESTTA Tracking number: **ESTTA498173**

Filing date: **10/04/2012**

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

Proceeding	92054139
Party	Plaintiff Phenix Brands, LLC
Correspondence Address	DEBRA DEARDOURFF FAULK GRAY ROBINSON PA 201 NORTH FRANKLIN STREET SUITE 2200 TAMPA, FL 33601 UNITED STATES ptotpa@gray-robinson.com
Submission	Request to Withdraw as Attorney
Filer's Name	Debra Deardourff Faulk
Filer's e-mail	ptotpa@gray-robinson.com
Signature	/Debra Deardourff Faulk/
Date	10/04/2012
Attachments	Phenix_Amended_Motion_to_Withdraw.pdf (8 pages)(433709 bytes)

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

PHENIX BRANDS, LLC,

Petitioner,

v.

STILETTO BRANDS, LLC,

Respondent.

Cancellation No. 92054139

Mark: STILETTO

Registration No. 3712427

AMENDED MOTION TO WITHDRAW AS COUNSEL

Pursuant to 37 CFR § 2.19(b), come Debra D. Faulk, Esq., and the law firm of GrayRobinson, P.A. (“Withdrawing Attorneys”), attorneys of record for Petitioner, Phenix Brands, LLC, who respectfully request to withdraw as counsel of record for Phenix Brands, LLC, in the above-captioned cancellation proceeding. In compliance with 37 CFR §§ 2.19(b), 10.40 (c)(1)(iv) and 10.40 (c)(1)(vi), Withdrawing Attorneys’ make the following required statements.

1. Statement of the reason for the request to withdraw:

Client’s “other conduct renders it unreasonably difficult for the practitioner to carry out the employment effectively.” More specifically, client has been non-responsive to practitioner’s requests and correspondence and client has failed to pay one or more bills rendered by the practitioner for an unreasonable period of time.

2. Petitioner and Respondent were engaged in settlement discussions and agreements were set in place for both sides to agree to toll discovery and deadlines pending the outcome of settlement negotiations.

3. Petitioner is represented by General Counsel, M. Scott Montgomery. Mr. Montgomery has directed Withdrawing Attorneys to forward all communication and files to his office located at 2808 S. Ingram Mill Road, Springfield, MO 65804.

4. Withdrawing Attorneys have notified Phenix Brands, LLC in writing of the withdrawal and of the status of the case. *See* attached Exhibit "A" of an email dated August 9, 2012 advising client of the intent to withdraw. Withdrawing Attorneys have delivered and mailed this written notice and all papers and property in the Withdrawing Attorneys' file concerning the cancellation proceeding to which client is entitled to: Phenix Brands, LLC, c/o M. Scott Montgomery, The Montgomery Law Firm, Phenix Brands, LLC, is 2808 S. Ingram Mill Road, Springfield, MO 65804. *See* Exhibit "B."

Please kindly change the correspondence address and direct all future correspondence to client's present mailing address indicated above. Proof of service of this request upon the client and upon every other party to the proceeding will be sent on this same below-given date by copy of this request by U.S. mail.

WHEREFORE, Debra D. Faulk, Esq. and the law firm of GrayRobinson, P.A. file this Motion to Withdraw as Counsel and respectfully submits that it has complied with all of the requirements for a Request for Permission to Withdraw as attorney of Record pursuant to 37 CFR § 2.19(b) and 10.40.

Respectfully submitted,

/s/Debra D. Faulk
Debra D. Faulk
GrayRobinson, P.A.
401 E. Jackson Street, Suite 2700
Tampa, FL 33602
Tel: (813) 273-5000/Fax: (813) 273-5145
debra.faulk@gray-robinson.com
Attorney for Petitioner Phenix Brands, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing MOTION TO WITHDRAW AS COUNSEL was served upon the parties by depositing one copy thereof in the United States Mail, first class postage prepaid, on October 4th 2012, addressed as follows:

Stiletto Brands, LLC
1836 Beach Boulevard
Biloxi, MS 39531

M. Scott Montgomery
The Montgomery Law Firm,
Phenix Brands, LLC
2808 S. Ingram Mill Road,
Springfield, MO 65804

/s/Debra D. Faulk
Debra D. Faulk

3483253 - # 3374732 v1

Debra Deardourff Faulk

From: Debra Deardourff Faulk
Sent: Thursday, August 09, 2012 3:42 PM
To: 'M. Scott Montgomery'
Cc: Ray Edwards
Subject: RE: Stiletto Cancellation Proceedings

Thanks Scott.

Yes, I am in the process of preparing and filing a motion to withdraw in the cancellation proceeding and I will be withdrawing as attorney of record in the other trademark files as well. The outstanding AR is over ~~\$50,000.00~~ As you can understand, my law firm does not allow work to continue when AR is that high and over a year old.

Do you want me to send you the files? Or do you want met to direct all of the files to Ray?

I will send you a copy of the motion to withdraw. According to the order, if Stiletto does not file anything, a default will be entered against them. I will make sure you have the agreement from Stiletto's former counsel that we stayed all the deadlines due to settlement negotiations. If it comes down to it, it will not be hard to get the TTAB to re-open the case for discovery. I had already issued discovery on the side, many months ago, and then settlement negotiations started. Stiletto never responded to any of my outstanding discovery.

Thanks,
Debra

From: M. Scott Montgomery [mailto:scott@montgomerylaw.org]
Sent: Monday, August 06, 2012 5:21 PM
To: Debra Deardourff Faulk
Cc: Ray Edwards
Subject: Fwd: Stiletto Cancellation Proceedings

I am the managing member of and general counsel for Phenix Brands, LLC. Please cc me on future communications.

I don't know the amount of your bill, but I doubt Phenix can pay it in full in the near future.

It appears to me that I need to file a request to re-open discovery and the trial period asap. What happens if Wooldridge files a document tomorrow stating that he will represent himself?

Is the case closed due to our failure to present any evidence ?

Do you have to withdraw before I can enter my appearance and file a request on behalf of Phenix ?

thanks.

M. Scott Montgomery
The Montgomery Law Firm, LLC
2808 S. Ingram Mill Road

Springfield, MO 65804

417-889-4766

Fax : 417-889-4792

www.montgomerylaw.org

NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri lawyers to notify all recipients of e-mail that (1) e-mail communication is not a secure method of communication, (2) any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from us to you or vice versa, (3) persons not participating in our communication may intercept our communications by improperly accessing your computer or our computers or even some computer unconnected to either of us which the e-mail passed through. We are communicating to you via e-mail because you have consented to receive communications via this medium. If you change your mind and want future communications to be sent in a different fashion, please let us know AT ONCE.

Begin forwarded message:

From: Ray Edwards <ray@phenixbrands.com>
Date: August 6, 2012 3:15:21 PM CDT
To: scott Montgomery <monty707@me.com>, stephanie@phenixspirits.com
Subject: FW: Stiletto Cancellation Proceedings
Reply-To: ray@phenixbrands.com

From: Debra Deardourff Faulk [<mailto:Debra.Faulk@gray-robinson.com>]
Sent: Monday, August 06, 2012 2:20 PM
To: ray@phenixbrands.com
Cc: Harvey Wagar; Richard Blau; Jim Mrvosh
Subject: Stiletto Cancellation Proceedings
Importance: High

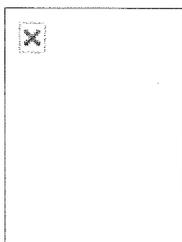
Ray,

Attached is an order from the TTAB that I received today. Counsel for Stiletto brands has withdrawn from the case and the TTAB is giving Stiletto 30 days to find new counsel or respond. Because we have been involved in settlement negotiations, there were no trial briefs submitted to the TTAB. I had an agreement with Stiletto's former counsel that no action would be taken in the TTAB unless settlement negotiations failed and we had an agreement to toll the discovery time period. Our last discussion with Ray Wooldridge was left with you going to contact him with a proposed agreement for a buyout of the mark in exchange for possible portion of equity in Phenix Brands. Did you ever come up with something to give to Ray? At this point, we will need to file a request to re-open discovery and the trial period and explain the situation to the TTAB.

If we do not file anything with the TTAB, the TTAB will dismiss the action. In turn, your trademark application for SHPILKA will not proceed to registration.

As you are aware, I cannot perform any legal services on this case until your AR is paid in full. Please let me know how you would like to proceed.

Thanks,
 Debra



Debra Deardourff Faulk

Intellectual Property

GrayRobinson, P.A.

201 North Franklin Street, Suite 2200

P.O. Box 3324 (33601-3324)

Tampa, Florida 33602

Main: 813-273-5000 | Fax: 813-273-5145

Direct: 813-273-5156 |

Email: Debra.Faulk@gray-robinson.com

GRAY | ROBINSON

ATTORNEYS AT LAW

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Please be advised that this law firm may be acting as a debt collector and is attempting to collect a debt and any information provided will be used for that purpose.

Debra Deardourff Faulk

From: Debra Deardourff Faulk
Sent: Friday, August 10, 2012 1:27 PM
To: 'M. Scott Montgomery'
Cc: 'ray@phenixbrands.com'; Richard Blau
Subject: FW: ESTTA. Request to Withdraw as Attorney confirmation receipt ID: ESTTA488480

Attachments: phenix mtw.pdf



phenix mtw.pdf (14 KB)

Scott,

Attached is our Motion to Withdraw as Counsel in the STILETTO cancellation proceeding that was filed today. I will be sending you the files by regular mail.

Thanks,
Debra

From: estta-server@uspto.gov [SMTP:ESTTA-SERVER@USPTO.GOV]
Sent: Friday, August 10, 2012 1:24:49 PM
To: PTOTPA
Subject: ESTTA. Request to Withdraw as Attorney confirmation receipt ID: ESTTA488480 Auto forwarded by a Rule

Cancellation No.: 92054139

Tracking No: ESTTA488480

ELECTRONIC SYSTEM FOR TRADEMARK TRIALS AND APPEALS Filing Receipt

We have received your Cancellation No.: 92054139 submitted through the Trademark Trial and Appeal Board's ESTTA electronic filing system. This is the only receipt which will be sent for this paper. If the Board later determines that your submission is inappropriate and should not have been accepted through ESTTA, you will receive notification and appropriate action will be taken.

Please note:

Unless your submission fails to meet the minimum legal requirements for filing, the Board will not cancel the filing or refund any fee paid.

If you have a technical question, comment or concern about your ESTTA submission, call 571-272-8500 during business hours or e-mail at estta@uspto.gov.

The status of any Board proceeding may be checked using TTABVUE which is available at <http://ttabvue.uspto.gov> Complete information on Board proceedings is not available through the TESS or TARR databases. Please allow a minimum of 2 business days for TTABVUE to be updated with information on your submission.

The Board will consider and take appropriate action on your filing in due course.

Printable version of your request is attached to this e-mail.

ESTTA server at <http://estta.uspto.gov>

ESTTA Tracking number: ESTTA488480
Filing date: 08/10/2012

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

Proceeding: 92054139
Party: Plaintiff
Phenix Brands, LLC

Correspondence Address: DEBRA DEARDOURFF FAULK GRAY ROBINSON PA
201 NORTH FRANKLIN STREET SUITE 2200
TAMPA, FL 33601
UNITED STATES
ptotpa@gray-robinson.com Phone:

Submission: Request to Withdraw as Attorney

Filer's Name: Debra Deardourff Faulk
Filer's e-mail: ptotpa@gray-robinson.com
Signature: /debra deardourff faulk/
Date: 08/10/2012

Attachments: phenix mtw.pdf (3 pages)