

ESTTA Tracking number: **ESTTA637846**

Filing date: **11/10/2014**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	BuzzBallz, L.L.C.		
Entity	Corporation	Citizenship	Texas
Address	2114 McDaniel Drive Carrollton, TX 75006 UNITED STATES		

Attorney information	John T. Wilson Wilson Legal Group P.C. 16610 Dallas Parkway, Suite 1000 Dallas, TX 75248 UNITED STATES ecf@wilsonlegalgroup.com Phone:972-248-8080		
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Registration Subject to Cancellation

Registration No	4618174	Registration date	10/07/2014
Registrant	BuzzBox Beverages, Inc. 73-525 El Paseo, Suite E-2516 Palm Desert, CA 99260 UNITED STATES		

Goods/Services Subject to Cancellation

Class 033. First Use: 2013/10/14 First Use In Commerce: 2013/10/14 All goods and services in the class are cancelled, namely: Alcoholic beverages, excluding beer and wine; alcoholic carbonated beverages, excluding beer; alcoholic cocktail mixes; alcoholic fruit cocktail drinks; prepared alcoholic cocktail beverages; liquor and liqueur beverages; and spirits
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Grounds for Cancellation

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	4498235	Application Date	10/01/2013
Registration Date	03/18/2014	Foreign Priority Date	NONE
Word Mark	BUZZBALLZ		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 2009/03/01 First Use In Commerce: 2009/10/01 Alcoholic beverages except beers; Alcoholic beverages, namely, mixed alcoholic drinks and wine, namely rum/coke, gin and tonic, vodka tonic, martinis, whiskey sour, cosmopolitan, manhattan, mojito, red wine, white wine, pink wine, scotch and water, scotch and soda, margaritas, and other mixed alcoholic beverages except beers; Alcoholic cocktail mixes

U.S. Registration No.	3865524	Application Date	07/23/2009
Registration Date	10/19/2010	Foreign Priority Date	NONE

Word Mark	BUZZBALLZ
Design Mark	
Description of Mark	The mark consists of "BuzzBallz" in Gill Sans Ultra Bold font. The balls in the design are rounded and depict a drink container.
Goods/Services	Class 033. First use: First Use: 2009/03/01 First Use In Commerce: 2009/10/01 Alcoholic beverages except beers; Alcoholic beverages, namely, mixed alcoholic drinks or wine, such as rum/coke, gin and tonic, vodka tonic, martinis, whiskey sour, cosmopolitan, manhattan, mojito, red wine, white wine, pink wine, scotch and water, scotch and soda, margaritas, and other mixed alcoholic beverages; Alcoholic cocktail mixes

Attachments	86079308#TMSN.png(bytes) 77788504#TMSN.png(bytes) Petition to Cancel.pdf(1581205 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/John T. Wilson/
Name	John T. Wilson

Date	11/10/2014
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of trademark Registration No. 4,618,174

For the mark “**BUZZBOX**”

Registered on October 7, 2014

BuzzBallz, L.L.C.,

Petitioner,

v.

Cancellation No. _____

BuzzBox Beverages, Inc.,

Registrant.

To the Commissioner for Trademarks:

Petition to Cancel

COMES NOW, Petitioner, BuzzBallz, L.L.C. (“Petitioner”), by its attorneys of record, believing that it has been and will continue to be damaged by Registration No. 4,618,174 for the mark BUZZBOX, and hereby submits its *Petition to Cancel*, as follows:

1. Since at least as early as March 1, 2009, Petitioner has adopted and continuously used the trademark BUZZBALLZ in connection with the sale of alcoholic beverages except beers and other related goods in International Class 33.

2. Petitioner has obtained the following United States Trademark Registrations covering the trademark for “[a]lcoholic beverages except beers; alcoholic beverages, namely, mixed alcoholic drinks and wine, namely rum/coke, gin and tonic, vodka tonic, martinis, whiskey sour, cosmopolitan, manhattan, mojito, red wine, white wine, pink wine, scotch and water, scotch and soda, margaritas, and other mixed alcoholic beverages except beers; [a]lcoholic cocktail

mixes” (hereinafter, collectively referred to as the “BuzzBallz Marks”). A copy of the Trademark Registration Certificates for the BuzzBallz Marks are attached hereto as “Exhibit A” and “Exhibit B,” respectively.

<p style="text-align: center;">BuzzBallz “Exhibit A”</p>	<p style="text-align: center;">Registration No. 4,498,235 (Registration Date: March 18, 2014)</p>	<p style="text-align: center;">International Class 33</p>
<p style="text-align: center;"> “Exhibit B”</p>	<p style="text-align: center;">Registration No. 3,865,524 (Registration Date: October 19, 2010)</p>	<p style="text-align: center;">International Class 33</p>

3. Petitioner’s BuzzBallz Marks have been heavily advertised and promoted in connection with Petitioner’s goods. As a result of Petitioner’s extensive use, the BuzzBallz Marks have developed and established considerable and valuable consumer goodwill in its goods sold under the BuzzBallz Marks, having built up a nationwide distribution and sales network and a substantial online presence in marketing and social media.

4. Registrant, BuzzBox Beverages, Inc. (“Registrant”), is the record owner of U.S. Trademark Registration No. 4,618,174, issued on October 7, 2014, for the standard character mark BUZZBOX (hereinafter, the “BuzzBox Mark”). A copy of the Trademark Registration Certificate for the BuzzBox Mark is attached hereto as “Exhibit C.”

5. According to the application, Registrant registered the BuzzBox Mark for “[a]lcoholic beverages, excluding beer and wine; alcoholic carbonated beverages, excluding beer; alcoholic cocktail mixes; alcoholic fruit cocktail drinks; prepared alcoholic cocktail beverages; liquor and liqueur beverages; and spirits.”

6. Further, Registrant alleged that the BuzzBox Mark has been in use in connection with the aforementioned goods in International Class 33 since October 14, 2013.

7. Since at least as early as March 1, 2009, Petitioner has used and continues to use the BuzzBallz Marks in connection with alcoholic beverages, except for beer, including alcoholic carbonated beverages, alcoholic cocktail mixes, alcoholic fruit cocktail drinks, prepared alcoholic cocktail beverages, liquor and liqueur beverages, and spirits.

8. The goods offered by Petitioner under the BuzzBallz Marks and the goods offered by Registrant under the BuzzBox Mark are identical or substantially similar as both BUZZBALLZ and BUZZBOX are used in connection with alcoholic beverages, except for beers, including alcoholic carbonated beverages, alcoholic cocktail mixes, alcoholic fruit cocktail drinks, prepared alcoholic cocktail beverages, liquor and liqueur beverages, and spirits. Accordingly, BUZZBALLZ and BUZZBOX are registered in the same international class: International Class 33.

9. Petitioner's BuzzBallz Marks and Registrant's BuzzBox Mark operate in connection with alcoholic beverages, except for beers, in the same marketplace, and the respective products of Petitioner and Registrant have appeared side-by-side in distilled beverage award competitions. Specifically, both BUZZBALLZ and BUZZBOX appear consecutively in a listing of award winners for the 2014 International Craft Awards Competition, attached hereto as "Exhibit D" and is incorporated by reference as if fully set forth herein.

10. Petitioner has priority of use to the BuzzBallz Marks as evidenced, in part, by the alleged, respective first-use dates of the BuzzBallz Marks and the BuzzBox Mark and the registration issuance of at least one BuzzBallz Mark preceding the alleged date of first use for the BuzzBox Mark.

11. BUZZBALLZ and BUZZBOX are both compound words, as both marks feature a first term – "buzz" – followed by a second term – "ballz" or "box," respectively.

12. The use of alliteration with the “b” sound in Registrant’s BUZZBOX is identical to the use of alliteration with the “b” sound in Petitioner’s BUZZBALLZ.

13. Both BUZZBALLZ, perceived in the market as “BuzzBallz,” and BUZZBOX, perceived in the market as “BuzzBox,” feature capitalizations of the letter “B” beginning the respective second terms of the marks (i.e., “Ballz” in BUZZBALLZ and “Box” in BUZZBOX).

14. Accordingly, the BuzzBox Mark is substantially similar to the BuzzBallz Marks. Specifically, regarding the literal element of all marks, both BUZZBALLZ and BUZZBOX incorporate the term “buzz” followed by a second term alliteratively beginning with a capitalized “B” and involving a rounded vowel sound. Further, both items involve the same number of syllables, the same pattern of percussive beats, and the same emphases. Amidst such similarities, the only difference between BUZZBALLZ and BUZZBOX is the difference in the ending sounds of “llz” and “x,” respectively.

15. Given the substantial similarities between the BuzzBallz Marks and BuzzBox Mark and the identical or substantially similar nature of the goods offered by Petitioner under the BuzzBallz Marks and Registrant under the BuzzBox Mark, the overall commercial impressions of the BuzzBallz Marks and BuzzBox Mark are substantially similar, which erroneously suggests an affiliation between Petitioner and Registrant.

16. The foregoing similarities between the BuzzBallz Marks and the BuzzBox Mark and the similarities between the goods offered in connection with the respective marks have already lead to consumers conflating and/or associating Registrant and/or its products with Petitioner and/or its products. By way of example, users of the social media website www.iconosquare.com have commented on images of Registrant’s product, stating: “[sic] those have a s**t ton of alcohol content if they’re like the buzz balls” (expletives omitted). A true and

correct copy of said webpage and comment is attached hereto as “Exhibit E” and is incorporated by reference as if fully set forth herein.

17. Considering Petitioner’s priority of use, the similarity of the BuzzBallz Marks and the BuzzBox Mark, and the identical or substantially similar nature of the parties’ respective goods, Petitioner believes that it has been and will likely continue to be damaged by the continued existence of the registration for the BuzzBox Mark. In particular, the BuzzBox Mark so resembles the BuzzBallz Marks that the consuming public is likely to be confused, mistaken, or deceived into believing that Registrant’s goods originate from Petitioner or are in some way related to, associated with, or sponsored by Petitioner.

18. Accordingly, Petitioner’s continued and legal use of the BuzzBallz Marks will be impaired by the continued registration of the BuzzBox Mark. Registration of the BuzzBox Mark should therefore be canceled pursuant to the provisions of § 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), in that the BuzzBox Mark consists of or comprises a mark which so resembles Petitioner’s BuzzBallz Marks in respect to related goods as to be likely to cause the consuming public to be confused, mistaken, or deceived.

WHEREFORE, Petitioner prays that this Petition to Cancel be sustained and granted in favor of Petitioner and that Registration No. 4,618,174 be canceled and removed from the Principal Register.

DATED: November 10, 2014

Respectfully submitted,
WILSON LEGAL GROUP P.C.

By: /s/John T. Wilson

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**ATTORNEYS FOR PETITIONER
BUZBALLZ, L.L.C.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and complete copy of the foregoing Petition to Cancel has been served on Registrant BuzzBox Beverages, Inc.'s attorney of record, Mr. Roman M. Whittaker, and its correspondent, Mr. Shaun M. Murphy, by mailing said copy on November 10, 2014, via First Class Mail, postage prepaid to:

Mr. Roman M. Whittaker
Anderholt Whittaker L.L.P.
73525 El Paseo, Ste. E2516
Palm Desert, California 92260

Mr. Shaun M. Murphy
Slovak, Baron, Empey, Murphy & Pinkney L.L.P.
1800 East Tahquitz Canyon Way
Palm Springs, California 92270

/s/John T. Wilson

John T. Wilson

“EXHIBIT A”

United States of America
United States Patent and Trademark Office

BuzzBallz

Reg. No. 4,498,235

Registered Mar. 18, 2014

Int. Cl.: 33

TRADEMARK

PRINCIPAL REGISTER

BUZZBALLZ, LLC (TEXAS LIMITED LIABILITY COMPANY)
2114 MCDANIEL DRIVE
CARROLLTON, TX 75006

FOR: ALCOHOLIC BEVERAGES EXCEPT BEERS; ALCOHOLIC BEVERAGES, NAMELY, MIXED ALCOHOLIC DRINKS AND WINE, NAMELY RUM/COKE, GIN AND TONIC, VODKA TONIC, MARTINIS, WHISKEY SOUR, COSMOPOLITAN, MANHATTAN, MOJITO, RED WINE, WHITE WINE, PINK WINE, SCOTCH AND WATER, SCOTCH AND SODA, MARGARITAS, AND OTHER MIXED ALCOHOLIC BEVERAGES EXCEPT BEERS; ALCOHOLIC COCKTAIL MIXES, IN CLASS 33 (U.S. CLS. 47 AND 49).

FIRST USE 3-1-2009; IN COMMERCE 10-1-2009.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 3,865,524.

SER. NO. 86-079,308, FILED 10-1-2013.

ALICE BENMAMAN, EXAMINING ATTORNEY



Michelle K. Lee

Deputy Director of the United States
Patent and Trademark Office

“EXHIBIT B”

United States of America

United States Patent and Trademark Office

BuzzBallz

Reg. No. 3,865,524

Registered Oct. 19, 2010

Int. Cl.: 33

TRADEMARK

PRINCIPAL REGISTER

BUZZBALLZ, LLC (TEXAS LIMITED LIABILITY COMPANY)
1711 BRIERCROFT COURT
STE 100
CARROLLTON, TX 75006

FOR: ALCOHOLIC BEVERAGES EXCEPT BEERS; ALCOHOLIC BEVERAGES, NAMELY, MIXED ALCOHOLIC DRINKS OR WINE, SUCH AS RUM/COKE, GIN AND TONIC, VODKA TONIC, MARTINIS, WHISKEY SOUR, COSMOPOLITAN, MANHATTAN, MOJITO, RED WINE, WHITE WINE, PINK WINE, SCOTCH AND WATER, SCOTCH AND SODA, MARGARITAS, AND OTHER MIXED ALCOHOLIC BEVERAGES; ALCOHOLIC COCKTAIL MIXES, IN CLASS 33 (U.S. CLS. 47 AND 49).

FIRST USE 3-1-2009; IN COMMERCE 10-1-2009.

THE MARK CONSISTS OF "BUZZBALLZ" IN GILL SANS ULTRA BOLD FONT. THE BALLS IN THE DESIGN ARE ROUNDED AND DEPICT A DRINK CONTAINER.

SN 77-788,504, FILED 7-23-2009.

THEODORE MCBRIDE, EXAMINING ATTORNEY



David J. Kyfos

Director of the United States Patent and Trademark Office

“EXHIBIT C”

United States of America
United States Patent and Trademark Office

BUZZBOX

Reg. No. 4,618,174

BUZZBOX BEVERAGES, INC. (NEVADA CORPORATION)
73-525 EL PASEO, SUITE E-2516
PALM DESERT, CA 99260

Registered Oct. 7, 2014

Int. Cl.: 33

FOR: ALCOHOLIC BEVERAGES, EXCLUDING BEER AND WINE; ALCOHOLIC CARBONATED BEVERAGES, EXCLUDING BEER; ALCOHOLIC COCKTAIL MIXES; ALCOHOLIC FRUIT COCKTAIL DRINKS; PREPARED ALCOHOLIC COCKTAIL BEVERAGES; LIQUOR AND LIQUEUR BEVERAGES; AND SPIRITS, IN CLASS 33 (U.S. CLS. 47 AND 49).

TRADEMARK

PRINCIPAL REGISTER

FIRST USE 10-14-2013; IN COMMERCE 10-14-2013.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 85-851,976, FILED 2-16-2013.

CHARLOTTE CORWIN, EXAMINING ATTORNEY



Michelle K. Lee

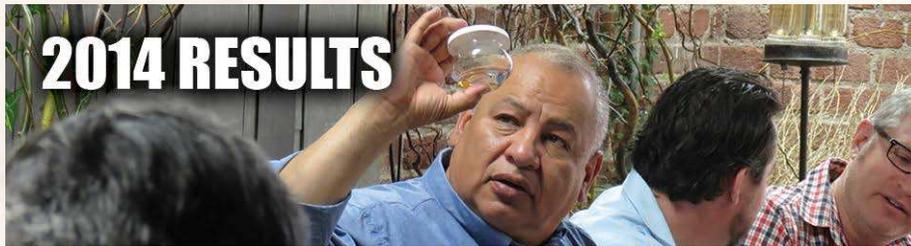
Deputy Director of the United States
Patent and Trademark Office

“EXHIBIT D”



▼ NAVIGATION MENU

2014 AWARD WINNERS A-F



8 FEATHERS IDAHO MOONSHINE

8 Feathers Distillery | Boise, ID, USA |
8FeathersDistillery.com

33 STRAIGHT BOURBON WHISKEY

Cutler's Artisan Spirits | Santa Barbara, CA,



USA | CutlersArtisan.com



ACADIANAS OWN SWEET CRUDE RUM

Rank Wildcat Spirits, LLC | Youngsville, LA, USA | RankWildcat.com



AGAVE 99 TEQUILA AÑEJO

Worldwide Beverage Imports, LLC | Los Angeles, CA, USA | Agave99Tequila.com



AGAVE 99 TEQUILA REPOSADO

Worldwide Beverage Imports, LLC | Los Angeles, CA, USA | Agave99Tequila.com



AGAVE 99 TEQUILA SILVER

Worldwide Beverage Imports, LLC | Los Angeles, CA, USA | Agave99Tequila.com



AZZURRE VODKA

Azzurre Spirits | Las Vegas, NV, USA | AzzurreSpirits.com.com



BARROW'S INTENSE GINGER

Proof of Concept, LLC | Brooklyn, NY, USA | BarrowsIntense.com/



BAYOU RUM SILVER

Louisiana Spirits | Lacassine, LA, USA | BayouRum.com



BAYOU RUM SPICED

Louisiana Spirits | Lacassine, LA, USA |
BayouRum.com



BEER BARREL BOURBON

New Holland Brewing | Holland, MI, USA |
NewHollandBrew.com



BRECKENRIDGE BITTERS

Breckenridge Distillery | Breckenridge, CO,
USA | BreckenridgeDistillery.com



BRECKENRIDGE BOURBON

Breckenridge Distillery | Breckenridge, CO,
USA | BreckenridgeDistillery.com



BRECKENRIDGE VODKA

**Breckenridge Distillery | Breckenridge, CO,
USA | BreckenridgeDistillery.com**



BRINLEY GOLD SHIPWRECK COCONUT RUM

**Brinley & Company | Manhasset, NY, USA |
BrinleyGoldShipwreck.com**



BRINLEY GOLD SHIPWRECK SPICED RUM

**Brinley & Company | Manhasset, NY, USA |
BrinleyGoldShipwreck.com**



BRINLEY GOLD SHIPWRECK SPICED RUM

**Brinley & Company | Manhasset, NY, USA |
BrinleyGoldShipwreck.com**



BROCKMANS PREMIUM GIN

Brockmans Genuine Ltd. | Surrey, United Kingdom | BrockmansGin.com



BROTHERS OLD TOM GIN

Left Turn Distilling | Albuquerque, NM, USA | Facebook.com/LeftTurnDistilling



BUZZBALLZ CHOC TEASE

BuzzBallz, LLC | Carrollton, TX, USA | BuzzBallz.com



BUZZBALLZ LOTTA COLADA

BuzzBallz, LLC | Carrollton, TX, USA | BuzzBallz.com



BUZZBALLZ STRAWBERRY RUM JOB

BuzzBallz, LLC | Carrollton, TX, USA |
BuzzBallz.com



BUZZBALLZ TEQUILA RITA

BuzzBallz, LLC | Carrollton, TX, USA |
BuzzBallz.com



BUZZBOX PREMIUM COCONUT VODKA

BuzzBox Beverages, Inc. | Rancho Mirage,
CA, USA | BuzzBoxBeverages.com



BYEJOE DRAGON FIRE

Byejou USA | N. Charleston, SC, USA |
Byejoe.com



BYEJOE RED

Byejou USA | N. Charleston, SC, USA |
Byejoe.com



CARDINAL SIN STARKA

St. Louis Distillery | St. Louis, MO, USA |
CardinalSinVodka.com



COUGAR JUICE VODKA

Calistoga Distillery | Calistoga, CA, USA |
CJVodka.com



CUTLER'S GIN

Cutler's Artisan Spirits | Santa Barbara, CA,
USA | CutlersArtisan.com



CUTLER'S VODKA

Cutler's Artisan Spirits | Santa Barbara, CA,
USA | CutlersArtisan.com



DARK CORNER MOONSHINE CORN WHISKEY

Dark Corner Distillery | Greenville, SC, USA |
DarkCornerDistillery.com



DEFIANT AMERICAN SINGLE MALT WHISKEY

Blue Ridge Distillery, Co. | Bostic, NC, USA |
DefiantWhisky.com



DON FERMIN PLATA TEQUILA

Destileria Leyros | Tequila, Jalisco, Mexico |
LeyrosTequila.com



DON FERMIN REPOSADO TEQUILA

Destileria Leyros | Tequila, Jalisco, Mexico |
LeyrosTequila.com



DON REYES DOMINICAN RUM AÑEJO

BYJ&J Spirits | Santo Domingo, República
Dominicana | LusciousVines.com



DOS LUNAS TEQUILA REPOSADO

Dos Lunas Spirits, LLC | Tequila, Jalisco,
Mexico | DosLunas.com



DOUBLE CROSS VODKA

Old Nassau Imports | Manhasset, NY, USA |
DoubleCrossVodka.com



ENCHANTED ROCK PEACH VODKA

Rebecca Creek Distillery | San Antonio, TX,
USA | TexasVodka.com



EVOL

EAFD, LLC | Los Angeles, CA, USA |
EvolSpirits.com

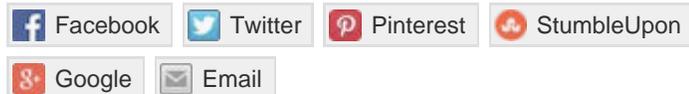


FUZZYS ULTRA PREMIUM VODKA

Fuzzy's Spirits, LLC | Bend, OR, USA |
FuzzyVodka.com

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“EXHIBIT E”

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7:51 pm 6/22/2014



amyyy_niiicole

Amy Shelp

yummy buzzbox shakeitbaby perfectmargarita ithinkiminlove juicebox genius kthx adultjuicebox illtakeacaseofeach mylifeiscomplete

13 Like

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5 Comments

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- d4ysh4 about a month ago those have a shit ton of alcohol content if they're like the buzz balls
- amyyy_niiicole about a month ago 15% alc/vol 😊 #yummy @d4ysh4
- dredre_rbk about a month ago O.. 🍷🍹🍸

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