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

Proceeding	92060348
Party	Defendant BuzzBox Beverages, Inc.
Correspondence Address	SHAUN M MURPHY SLOVAK BARON EMPEY MURPHY & PINKNEY LLP 1800 EAST TAHQUITZ CANYON WAY PALM SPRINGS, CA 92262 UNITED STATES murphy@sbemp.com, tala@sbemp.com
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Signature	/Shaun M. Murphy/
Date	09/09/2016
Attachments	Response to OSC.pdf(27574 bytes) SMM Declaration ISO Response to OSC.pdf(26459 bytes)

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

BuzzBallz, L.L.C.,

v.

Cancellation No. 92060348
Cancellation No. 92061050

BuzzBox Beverages, Inc.

RESPONDENT’S RESPONSE TO ORDER TO SHOW CAUSE

By order dated August 11, 2016, the United States Patent and Trademark Office, Trademark Trial and Appeal Board, in the matters set forth above, directed Respondent BuzzBox Beverages, Inc. (“**BuzzBox Beverages**”) to show cause why Cancellation No. 92061050 should not be sustained. BuzzBox Beverages responds as follows:

1. Following entry of the judgment in the civil action styled *BuzzBallz, L.L.C. v. BuzzBox Beverages, Inc. et al.*, Case No. 5:14-cv-01725, BuzzBallz and BuzzBox Beverages engaged in negotiations regarding: a) a phase-out period for the sale of BuzzBox Beverages’ existing inventory of products bearing the disputed logo/graphic mark; and b) a new design mark.
2. On or about July 12, 2016, the parties agreed, in writing, to a phase out period through November 30, 2016. Accompanying this Response is a declaration from Buzzbox Beverages’ counsel with the written confirmation attached as an exhibit. In that writing, BuzzBallz’ counsel, confirmed as follows: “Shaun [Murphy], [¶] BuzzBallz is agreeable to phase-out through November 30, 2016. I will begin preparing a formal agreement to that

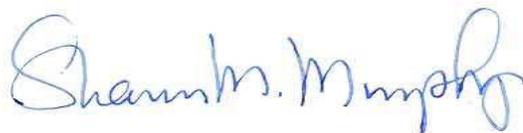
effect, based upon our prior discussions, for your review and will include preliminary provisions for agreement to the new BuzzBox graphic so that we can incorporate it once finalized and approved. Thanks. [¶] Regards, Paul T. Beeler.”

3. BuzzBox Beverages is currently selling its existing inventory using the disputed design mark in accordance with the parties’ phase-out agreement. BuzzBox Beverages will continue to sell its existing inventory using the disputed design mark either until all products are sold or until November 30, 2016, whichever is sooner.
4. BuzzBox Beverages’ existing inventory bears the disputed logo/graphic mark along with the circle R designation as a registered trademark. If Cancellation No. 92061050 is sustained immediately, BuzzBox Beverages may be in violation of labeling regulations and potentially subject itself to false designation claims.
5. For the reasons set forth herein, BuzzBox Beverages objects to sustaining the action at this time. BuzzBox Beverages therefore contends that Cancellation No. 92061050 should not be sustained at least until after the expiration of the phase-out period of November 30, 2016.
6. BuzzBox Beverages also reserves the right to respond or object to any response filed by BuzzBallz to the Order to Show Cause regarding Cancellation No. 92060348.

Dated: September 9, 2016

Respectfully Submitted,
SLOVAK BARON EMPEY MURPHY & PINKNEY LLP

By:



Shaun M. Murphy
Attorney for Registrant BuzzBox Beverages, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and complete copy of the foregoing Respondent's Response to Order to Show Cause has been served on Petitioner BuzzBallz, L.L.C.'s attorney of record, Mr. John T. Wilson, by mailing said copy on September 9, 2016 via First Class Mail, postage prepaid to John T. Wilson, Esq., Wilson Legal Group P.C., 16610 Dallas Parkway, Suite 1000, Dallas, Texas 75248.

By:



Shaun M. Murphy

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

BuzzBallz, L.L.C.,

v.

Cancellation No. 92060348
Cancellation No. 92061050

BuzzBox Beverages, Inc.

To the Commissioner of Trademarks:

**DECLARATION OF SHAUN M. MURPHY IN SUPPORT OF RESPONDENT'S RESPONSE TO ORDER TO
SHOW CAUSE**

I, Shaun Murphy, declare under penalty of perjury under the laws of the State of California that the facts stated in this declaration are true. I am over the age of 18 years and I know the facts in this declaration to be true based on my own personal knowledge.

1. I am litigation counsel for Defendant BuzzBox Beverages, Inc. in this matter and all related matters pending before the Board and the United States District Court for the Central District of California. I am admitted to practice law before the state and federal courts in the states of Michigan, California, Texas, and New York and am admitted to practice before the United States Supreme Court.

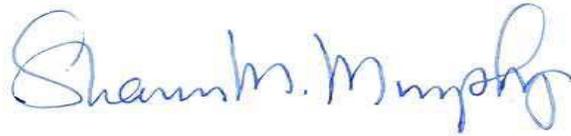
2. Attached hereto as Exhibit "A" is a true and correct copy of an email exchange between me and Paul Beeler of Wilson Legal Group P.C. dated July 11 and 12, 2016. Exhibit A is the culmination of discussions we had following the verdict in the civil action between the parties.

3. As indicated by the content of Exhibit A, the subject of the discussions was to negotiate a reasonable and appropriate phase-out period for BuzzBox

Beverages to sell off existing inventory. Exhibit A confirms the agreement reached by the parties.

Dated: September 9, 2016

SLOVAK BARON EMPEY MURPHY & PINKNEY LLP



By:

Shaun M. Murphy
Attorney for Registrant/Defendant BuzzBox
Beverages, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and complete copy of the foregoing Declaration of Shaun M. Murphy in Support of Respondent's Response to Order to Show Cause has been served on Petitioner BuzzBallz, L.L.C.'s attorney of record, Mr. John T. Wilson, by mailing said copy on September 9, 2016 via First Class Mail, postage prepaid to John T. Wilson, Esq., Wilson Legal Group P.C., 16610 Dallas Parkway, Suite 1000, Dallas, Texas 75248.

By:



Shaun M. Murphy