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

Proceeding	92061629
Party	Plaintiff StrongVolt, Inc.
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Date	05/11/2016
Attachments	StrongVolt Motion to Quash Notice of Deposition.pdf(211270 bytes )

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

STRONGVOLT, INC.,

Petitioner,

v.

MATEY MICHAEL GHOMESHI,

Respondent.

Cancellation No.: 92061629

Regarding Registration No.: 3,798,681

**PETITIONER’S MOTION TO QUASH RESPONDENT’S NOTICE TO TAKE  
DEPOSITION OF PETITIONER PURSUANT TO RULE 30(B)(6)**

Pursuant to Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) Section 521, Petitioner StrongVolt, Inc. (“StrongVolt”) hereby moves the Trademark Trial and Appeal Board (“Board”) to quash Respondent Matey Michael Ghomeshi’s (“Ghomeshi”) Notice to Take Deposition of Petitioner Pursuant to Rule 30(b)(6) (a true and correct copy of which is attached as Exhibit A) on the grounds that the deponent is unavailable on the date and time stated in the Notice. StrongVolt further objects to the deposition notice on the grounds that the matters on which examination is requested is vague, overly broad, and not within the scope of discoverable information as set forth by the TBMP; the noticed deposition location is improper; and that the deposition notice does not indicate the manner of recording.

**I. Deponent is Unavailable.**

StrongVolt objects to Ghomeshi’s deposition notice on the grounds that the officer most qualified to testify on its behalf is unavailable. Where the deposition of a corporation is sought, the notice of deposition is directed to the entity itself. *Mattel Inc. v. Walking Mountain*

*Productions*, 353 F.3d 792, 798 fn. 4 (9th Cir. 2003). The corporation is obligated to produce the “most qualified” person to testify on its behalf. *Id.*

Ghomeshi noticed the deposition for StrongVolt, Inc., and StrongVolt has designated Adam Weiler as the most qualified person to testify on its behalf. Despite being provided with dates of StrongVolt’s availability for the deposition, Ghomeshi unilaterally noticed the deposition for a date and time (May 16, 2016 at 10:00 a.m.) that the deponent was stated as being unavailable. As previously communicated to Ghomeshi, Mr. Weiler will be out of the country at the stated date and time. StrongVolt’s counsel has attempted to, and will continue to coordinate with Ghomeshi to select a date and time that is mutually convenient to the parties.

## **II. Objections to Matters on Which Examination is Requested**

StrongVolt further objects to the specific matters on which examination is requested as follows:

Ghomeshi has requested the deposition of StrongVolt concerning the following: “market research and business plans, including but not limited to those relating to Petitioner’s Mark and/or the products identified by Petitioner’s Mark” and “the manner in which Petitioner receives and processes consumer inquiries, comments, and/or complaints.” StrongVolt objects in that these requests are vague, overly broad, and not within the scope of discoverable information as set forth by the TBMP. *See* TBMP § 414; *Sunkist Growers, Inc. v. Benjamin Ansehl Company*, 229 USPQ 147, 149 n.2 (TTAB 1985) (information regarding goods other than those in involved application and registration irrelevant); *Volkswagenwerk Aktiengesellschaft v. Thermo-Chem, Corp.*, 176 USPQ 493 (TTAB 1973) (applicant need not provide information as to its other marks or its other products).

In further objecting, StrongVolt asserts that Ghomeshi improperly seeks information that is protected from disclosure as set forth in the protective order. More specifically, StrongVolt's "current, and future intended use, advertising, and promotion," "market research and business plans," customer communications, and "revenues" are designated as highly confidential and/or trade secret and commercially sensitive. The protective order restricts parties from gaining access to the above types of information, and Ghomeshi cannot avoid the protective order and seek information that the Board intended to protect.

### **III. Objections to Deposition Location**

StrongVolt objects to the deposition location on the basis that the deposition is not within the proper Federal judicial district. The deposition must be taken in the federal district where the deponent resides or is regularly employed. 37 CFR § 2.120(b); *McCarthy's on Trademarks and Unfair Competition* § 20:108 (4th ed.). The general rule for the deposition of a corporation is that the deposition should ordinarily be taken at the corporation's principal place of business. *Cadent Ltd. v. 3M Unitek Corp.*, 232 FRD 625, 628 (C.D. Cal. 2005); 8A Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, *Federal Practice and Procedure* § 2112 (3d ed.). The general rule is subject to modification in the interest of justice. *Id.*

The federal district that both StrongVolt and Adam Weiler reside in is the Southern District of California. Accordingly, the deposition must take place in San Diego, California. Ghomeshi improperly designated Upland, California as the deposition location, which is not within the Southern District of California but is instead near the area of Ghomeshi's P.O. Box in Ontario, California. Thus, StrongVolt objects to the deposition location and respectfully requests that the Board move the deposition location to San Diego.

Assuming, *arguendo*, that 37 CFR § 2.120(b) does not apply to StrongVolt, the general rule for deposition of a corporation requires that the deposition takes place in San Diego, StrongVolt's principal place of business. The general rule is not subject to modification because Ghomeshi has not shown that there is any injustice if the deposition occurs in San Diego. On the contrary, Ghomeshi initiated the deposition request and seeks information from StrongVolt. In order for Ghomeshi to obtain such information, he must travel approximately one hundred and fifteen miles to San Diego. Ghomeshi has not demonstrated that the interests of justice require the Board to deviate from the general rule. Therefore, the general rule should apply here and StrongVolt should not be forced to travel to Upland so that Ghomeshi can obtain the information he requests.

#### **IV. Objections to Notice of Deposition and the Manner of Recording**

StrongVolt objects to the notice of deposition because it fails to state the method for recording the testimony. The party who notices the deposition must state in the notice the method for recording the testimony. Fed. R. Civ. P. 30(b)(3)(A). Here, Ghomeshi's deposition notice stated, "[t]he deposition(s) *may* be recorded by stenographic, audio, and video or other means." (emphasis added). Ghomeshi does not identify the means by which he intends to record the deposition, or that he intends to record the deposition at all. Thus, StrongVolt objects to the notice of deposition and the manner of recording.

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**V. Conclusion**

Based on the foregoing, StrongVolt respectfully requests that the Board **GRANT** StrongVolt's Motion to Quash Ghomeshi's Notice to Take Deposition of Petitioner Pursuant to Rule 30(b)(6).

DATED: May 11, 2016

Respectfully Submitted,

HIGGS, FLETCHER & MACK LLP



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ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

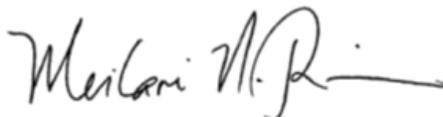
I hereby certify that a true and complete copy of the foregoing PETITIONER'S MOTION TO QUASH RESPONDENT'S NOTICE TO TAKE DEPOSITION OF PETITIONER PURSUANT TO RULE 30(B)(6) was served on May 11, 2016 to Registrant Matey Michael Ghomeshi via first class mail to:

Matey Michael Ghomeshi  
Mobile Black Box  
P.O. Box 95  
Ontario, CA 91762-8095

With a courtesy copy sent via email to [mg@mobileblackbox.com](mailto:mg@mobileblackbox.com).

Dated: May 11, 2016

By:

A handwritten signature in black ink, appearing to read "Meilani N. Rivera", written over a horizontal line.

Meilani N. Rivera, Paralegal

# **EXHIBIT A**



## SCHEDULE A

Respondent incorporates by reference the definitions and instructions set forth in Respondent's First Set of Interrogatories.

1. Petitioner's selection, adoption, and clearance of Petitioner's Mark.
2. Petitioner's past, current, and future intended use, advertising, and promotion of Petitioner's Mark.
3. Market research and business plans, including but not limited to those relating to Petitioner's Mark and/or the products identified by Petitioner's Mark.
4. The manner in which Petitioner receives and processes consumer inquiries, comments, and/or complaints.
5. Petitioner's knowledge of third party trademarks, service marks, and trade names, containing the term "BLKBOX" or any variation of that term, including but not limited to marks Petitioner intends to rely upon in this action.
6. All interaction and communication with third-parties relating to Respondent and/or Respondent's Mark.
7. All allegations and denials that Petitioner asserts and intends to assert in this case, including but not limited to those set forth in Petitioner's Petition for Cancellation No. 92061629.
8. Petitioner's knowledge of Respondent, its products and services, and Respondent's Mark.
9. Petitioner's document retention policy and its compliance with discovery.
10. Revenues derived from the sale of products and services bearing Petitioner's Mark.
11. The documents Petitioner produced in this action.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of (REVISED) Notice To Take Deposition Of Petitioner Pursuant To Rule 30(b)(6) has been served on Petitioner, StrongVolt, Inc., by mailing said copy on May 09, 2016, via First Class Mail, postage prepaid, to counsel for Petitioner's at the following address:

Justine K. Wong  
Higgs, Fletcher & Mack LLP  
401 West "A" Street, Suite 2600  
San Diego, CA 92101-7910

Dated: May 09, 2016

By: / Matey Michael Ghomeshi /