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Filing date: **05/26/2016**

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

Proceeding	92061629
Party	Defendant Matey Michael Ghomeshi
Correspondence Address	MATEY MICHAEL GHOMESHI MOBILE BLACK BOX P O BOX 95 ONTARIO, CA 91762-8095 UNITED STATES mg@mobileblackbox.com
Submission	Opposition/Response to Motion
Filer's Name	Matey Michael Ghomeshi
Filer's e-mail	mg@mobileblackbox.com
Signature	/Matey Michael Ghomeshi/
Date	05/26/2016
Attachments	Response to motion to quash deposition.pdf(55029 bytes) EXHIBIT A - Notice of Deposition.pdf(47225 bytes) EXHIBIT B - Revised Notice Of Deposition.pdf(45087 bytes) EXHIBIT C - Certificate Of Nonappearance.pdf(4278286 bytes) EXHIBIT D - Email Between Respondent-Petitioner.pdf(1041092 bytes) EXHIBIT E - Loopnet - Strongvolt Office size.pdf(930183 bytes)

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

In the Matter of Registration No. 3,798,681

STRONGVOLT, INC.,)	
)	
Petitioner,)	
)	
v.	)	Cancellation No. 92061629
)	
MATEY MICHAEL GHOMESHI,)	
)	
Respondent.)	
)	
)	

RESPONDENT’S RESPONSE TO PETITIONER’S MOTION TO QUASH DEPOSITION

Matey Michael Ghomeshi (“Respondent”) responds to and opposes Strongvolt Inc. (“Petitioner”) Motion To Quash Deposition (“Quash Motion”) filed on 05/11/16. Respondent respectfully requests Trademark Trial And Appeal Board (“Board”) to **DENY** Quash Motion and impose sanctions on Petitioner for a.) Petitioner’s non-compliance to Respondent’s discovery requests b.) Petitioner’s non-compliance to Interlocutory Attorney’s order to comply with discovery and c.) Petitioner’s nonappearance at noticed deposition.

FACTUAL BACKGROUND

- A. On 05/02/16 Respondent served Notice Of Deposition (“Notice”) on Petitioner on, (EXHIBIT A).
- B. On 05/06/16 telephone conference (“Interlocutory Conference”) was held between Respondent, Petitioner and USPTO Interlocutory Attorney Mr. Benjamin U. Okeke (“Interlocutory”). During Interlocutory Conference: a.) Petitioner’s counsel did **NOT** object to availability dates of client for noticed deposition b.) Petitioner’s counsel did **NOT** object to specific line of discovery in the deposition notice, but rather to ALL discovery in general; to which Interlocutory **ordered** Petitioner to cooperate in all discovery matters cited in Petitioner’s own Petition For Cancellation. To date, Petitioner has still NOT complied with Interlocutory order. c.) Petitioner’s counsel did **NOT** object to ‘Manner of Recording’ in noticed deposition d.) Petitioner counsel **only** objected to ‘location

of deposition'. The interlocutory agreed with the Respondent that the distance between the Respondent and Petitioner was minimal. Furthermore, there is no presumption that deposition must be held in corporate headquarters, this is further manifested by Interlocutory failing to direct the same.

- C. Respondent revised Notice of Deposition on Petitioner on 05/09/16 with minor changes to cited rule(s) in the Notice (EXHIBIT B).
- D. Deposition held at location and time in Respondent's Notice on 05/16/16. Petitioner did not appear at the Noticed Deposition as indicated in the Certification of Nonappearance (EXHIBIT C).

RESPONSE TO PETITIONER'S MOTION

I. In response to paragraph (I) in Petitioner's Quash Motion ("**Deponent is Unavailable**"):

Respondent initially emailed Petitioner's counsel and proposed three dates for the deposition 05/05/16, 05/06/16 and 05/09/16, email is provided as EXHIBIT D. Petitioner's counsel noted that BOTH qualified officers Ian Sells and Adam Weiler were not available for the three dates noticed. Petitioner's counsel never stated any other dates that his clients were NOT available. Respondent then served Notice of Deposition on Petitioner for 05/16/16. Petitioner has never objected to this date in any communication since the Notice of Deposition was served. In 05/09/16 email received from Petitioner counsel offered to have their client deposed via phone conference instead. If Petitioner is truly NOT available as stated in Petitioner's Quash Motion, how are they then available for a phone conference deposition? Petitioner has not provided any proof that validates their claim that deponent(s) are not available. Furthermore, on 05/06/16 Interlocutory Conference, Petitioner's counsel did **NOT** object as to the availability of her client for noticed deposition.

II. In response to paragraph (II) in Petitioner's Quash Motion titled "**Objections to Matters on Which Examination is Requested**"; In all communications with the Respondent, the Petitioner did **NOT** object to 'subject matter' noted in the Respondent's Notice of Deposition. Petitioner references a 'Protective order' in the Quash Motion, Respondent is NOT aware of any protective order issued in this cancellation proceeding. As it is clearly stated in TBMP 412.06(b) "*Except in those cases where it is readily apparent that propounded discovery requests*

are so oppressive as to constitute clear harassment, it is generally improper to respond to a request for discovery by filing a motion for protective order.” In fact, it is improper to move to quash or for a protective order for purposes of harassment of one’s adversary as Petitioner has done here.

Respondent has only requested general information pertaining to Petitioner’s products and mark cited in Petitioner’s Petition for Cancellation. Furthermore, on 05/06/16 Interlocutory Conference, Petitioner did **NOT** object to any ‘subject matter’ in the Noticed deposition.

III. In response to paragraph (III) in Petitioner’s Quash Motion “**Objections to Deposition Location**”; Petitioner is a corporation and not subject to rule 37 CFR § 2.120(b) which applies only for natural person(s). The Petitioner’s ‘headquarters’ is actually a small office of 190-390 square feet with no conference room. According to third-party internet office space search site loopnet.com; the typical office suite within Petitioner’s actual office building is only a few hundred square feet and can only occupy up to 2-3 people (EXHIBIT E). The location of the deposition in Respondent’s Notice is a neutral conference room location that is 1.5 hour drive time from Petitioner’s location. Respondent offered the Petitioner the option to have deposition in Petitioner’s neighboring Orange County, California, but received no response from Petitioner’s counsel. Orange County California is the mid-way point between Petitioner and Respondent. The presumption that depositions should be taken at the corporation’s principle place of business is not an absolute and does not apply in this case. In *Cadent Ltd vs 3M Unitek Corp 232 f.r.d. 625*, the Court considered several factors and principally for this current proceeding it is in the equities. Respondent is already being forced, at his own expense, to conduct depositions because Petitioner has NOT been compliant with discovery requests. Thus the offer of Respondent to conduct deposition at a midpoint of Petitioner and Respondent, promotes the just, speedy and inexpensive determination of the action as required by FRCP.

IV. In response to paragraph (IV) in Petitioner’s Quash Motion “**Objections to Notice of Deposition and the Manner of Recording**”; FRCP Rule 30(b)(3)(A) Allows depositions to be recorded with prior notice to other party. Petitioner has never objected to the ‘manner of recording’ in any communication with the Respondent since the Notice of deposition was served. If Petitioner would have communicated their objections as to ‘Manner of recording’ to Respondent or Interlocutory attorney; it would have been clarified and resolved through standard discovery conference.

Furthermore, on 05/06/16 Interlocutory Conference, Petitioner never objected to the 'manner of recording' when the topic of the deposition was discussed.

Conclusion

Respondent has become frustrated with the Petitioner's lack of cooperation during the discovery phase of this proceeding. The Petitioner and counsel have been obstructionists during the entire discovery phase of this proceeding. The Petitioner has refused to comply with any discovery matters relating to Petitioner and their BLKBOX mark as cited in Petitioner's own Petition For Cancellation No. 92061629. Respondent only proceeded with Notice of Deposition AFTER Petitioner REFUSED to comply with Respondent's discovery requests via; served Interrogatories, Request for Admissions, phone calls and follow-up emails. Even after Petitioner was **ordered** by the Interlocutory to comply with Respondent's discovery requests, Petitioner refused to make proper disclosure. The Petitioner's whole objective seems to be to obstruct and frustrate the Pro Se Respondent by a tactic of non-cooperation. As the deadline for discovery period is approaching, the Respondent feels that he cannot effectively present a proper defense against a Petitioner who refuses to cooperate during discovery.

WHEREFORE, Respondent respectfully prays that Petitioner's Motion to Quash Deposition be **DENIED** and requests sanctions to be imposed on Petitioner pursuant to TBMP Section 527 a.) for refusing to cooperate during discovery b.) refusing to cooperate during discovery even after **ordered** by the Interlocutory c.) for non-appearance at Noticed deposition. Furthermore, Respondent respectfully requests that the Board extend or reset discovery period by 90 days to allow Respondent to properly gather facts to present a proper defense.

Dated: May 26, 2016

Respectfully submitted,

By: / Matey Michael Ghomeshi /

Matey Michael Ghomeshi
Mobile Black Box
PO Box 95
Ontario, CA 91762-8095
Tel: (909) 215-8869

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Respondent's Response To Petitioner's Motion To Quash Deposition has been served on Petitioner, StrongVolt, Inc., by mailing said copy on May 26, 2016, via First Class Mail, postage prepaid, to:

Charles F. Reidelbach, Jr, Esq.
Higgs, Fletcher & Mack LLP
401 West "A" Street, Suite 2600
San Diego, CA 92101-7910

Dated: May 26, 2016

By: / Matey Michael Ghomeshi /

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 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 02, 2016, via First Class Mail, postage prepaid, to counsel for Petitioner's at the following address:

Charles F. Reidelbach, Jr, Esq.
Higgs, Fletcher & Mack LLP
401 West "A" Street, Suite 2600
San Diego, CA 92101-7910

Dated: May 02, 2016

By: / Matey Michael Ghomeshi /

EXHIBIT B

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 /

EXHIBIT C

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ORIGINAL

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

STRONGVOLT, INC.,)	
	)	Cancellation
Petitioner	)	No. 92061629
)	
vs.	)	Regarding Registration
	)	No. 3,798,681
)	
MATEY MICHAEL GHOMESHI,)	
	)	AFFIDAVIT OF
Respondent.	)	CERTIFIED COURT
	)	REPORTER IN RE
	)	NONAPPEARANCE
	)	OF WITNESS

STATE OF CALIFORNIA)	
	)	ss.
COUNTY OF SAN BERNARDINO)	

I, the undersigned, KARINA RUIZ, CSR No. 12818, a Certified Shorthand Reporter within and for the County of San Bernardino and State of California, do hereby certify:

Non-Appearance - May 16, 2016

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That pursuant to Notice, I appeared at
123 East 9th Street, Upland, California at 10:00 a.m., on
the 16th of May 2016, at which time and place there also
appeared MATEY MICHAEL GHOMESHI, in pro per;

That at said time there was no appearance
made by the Petitioner, STRONGVOLT, INC.,
named in the Notice;

That we remained at said place until 10:30 a.m.
on said date.

Witness my hand this 16th day of May 2016, at
Rancho Cucamonga, California.



Certified Shorthand Reporter in and
for the County of San Bernardino and
State of California

EXHIBIT D

From: Reidelbach, Charles F. [Reidelbach@higgslaw.com]
Sent: Tuesday, April 19, 2016 5:25 PM
To: mg@mobileblackbox.com
Cc: Rivera, Meilani N.
Subject: FW: Cancellation No. 92061629 - (AMENDED) scheduled depositions - Response Required [IWOV-WORKSITE.FID710352]

Mr. Ghomeshi,

Some alternative dates for the depositions of Ian and Adam are 6/6,6/7 or 6/10.

Regards,

Charles

Charles F. Reidelbach, Jr. | Chair, Intellectual Property Group

Phone (619) 236.1551
Fax (619) 696.1410
Email Reidelbach@higgslaw.com

From: Reidelbach, Charles F.
Sent: Tuesday, April 19, 2016 5:05 PM
To: 'mg@mobileblackbox.com'
Cc: Rivera, Meilani N. (Riveram@higgslaw.com)
Subject: RE: Cancellation No. 92061629 - (AMENDED) scheduled depositions - Response Required [IWOV-WORKSITE.FID710352]

Mr. Ghomeshi,

I am not sure of the source of your information, but the rules are clear about the place of the deposition. The place of the deposition shall be in the Federal judicial district where the proposed deponent resides or is regularly employed. TBMP § 404.03(a); 37 CFR 2.120(b). My clients reside and are regularly employed in the Southern District, or San Diego. Thus, if you plan to depose my clients, the only proper place for the deposition is in San Diego.

My client are out of the country on the three dates you indicated. They are available the week of May 25th, but I am out of town. Do you have some alternative dates after that week that I can consider?

Finally, I received a number of emails from you. To the extent the emails allude to our discovery responses, we stand by our previous responses and objections. We will however amend our response to your Discovery Request #2. To resolve any of the other discovery disputes, we request a meet and confer or a phone call with the interlocutory attorney in order to move the process forward.

Regards,

Charles

From: M. Ghomeshi [<mailto:mg@mobileblackbox.com>]

Sent: Monday, April 18, 2016 2:58 PM

To: Reidelbach, Charles F.

Subject: RE: Cancellation No. 92061629 - (AMENDED) scheduled depositions - Response Required [IWOV-WORKSITE.FID710352]

Mr. Reidelbach,

Thank you for getting back to me.

The arrangement that you are proposing is not how it works.

The deposition will take place in a neutral location in the Ontario, CA (or inland empire area) area; the location and stenographer costs will be paid by me.

Sincerely,
Matey Ghomeshi

From: Reidelbach, Charles F. [<mailto:Reidelbach@higgslaw.com>]

Sent: Monday, April 18, 2016 1:55 PM

To: mg@mobileblackbox.com

Subject: RE: Cancellation No. 92061629 - (AMENDED) scheduled depositions - Response Required [IWOV-WORKSITE.FID710352]

Mr. Ghomeshi,

I am conferring with the client on their availability for a deposition and will get back to you with some dates. Any deposition will be in San Diego at our offices and you will be required to arrange and pay for the associated costs.

Regards,

Charles



Charles F. Reidelbach, Jr. | Chair,
Intellectual Property Group

Phone (619) 236.1551
Fax (619) 696.1410
Email Reidelbach@higgslaw.com

401 West A Street, Suite 2600, San Diego, CA 92101

www.higgslaw.com

Please read the [legal disclaimers](#) that govern this e-mail and any attachments.

TAX ADVICE: Any federal tax advice contained in this communication (including attachments) is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code or promoting, marketing, or recommending any transaction or matter discussed herein.

From: M. Ghomeshi [<mailto:mg@mobileblackbox.com>]
Sent: Monday, April 18, 2016 1:09 AM
To: Reidelbach, Charles F.
Subject: Cancellation No. 92061629 - (AMENDED) scheduled depositions - Response Required

Mr. Reidelbach,

I am setting up a deposition time for your client Strongvolt, Inc. "Petitioner" Ian Sells and Adam Weiler in the Ontario, California area with your choice of the following dates:

There are three dates available: 5/5/16, 5/6/16 or 5/9/16.

Your clients need to be available with their counsel for 4-5 hours for this deposition.

Let me know which date (above) the Petitioner prefers.

If you don't choose a date by 4/22/16, one will be chosen by Respondent and scheduled. You will then be notified of the date, time and address for the deposition.

If you have any questions you may call me at (909) 215-8869.

Respectfully,
Matey Ghomeshi
Respondent

EXHIBIT E

This Office Property is For Lease.

3930 Oregon Street

\$1.51 /SF/Month

San Diego, CA 92104 · 393 SF · Office For Lease



Oregon Street Offices

Rental Rate	\$1.51 /SF/Month	Building Class	B
Total Space Available	393 SF	Year Built	1985

Property Type	Office	Lot Size	7,000 SF
Property Sub-type	Office Building	Zoning Description	Office
Building Size	7,278 SF		

[Find out more...](#)

Listing ID: 19180642

Date Created: 04/06/2015

Last Updated: 05/16/2016

1 Space Available

Display Rental Rate as [Entered](#) 

Space 220			
Rental Rate	\$595 /Month	Lease Term	12 Months
Space Available	393 SF	Date Available	May 2016
Space Type	Office Building	No. Parking Spaces	1
Additional Space Types	Street Retail Creative/Loft	Pct. Procurement Fee	2.50%
Lease Type	Full Service		
2nd floor space with 2 offices. Hardwood floor. Perfect for up to 3 people.			

Description

Prime North Park creative office space for rent located at 3930 Oregon Street. This bright and vibrant building features 24/7 access, skylights and solar-tubes, restrooms on both floors, reserved parking for larger offices, modern design and it's just steps from everything that North Park has to offer. The units are perfect for any type of office or creative use. Great mix of professional tenants in the building including an architect, design studio, real estate appraiser, general contractor and more. Private reserved parking lot behind the building and plenty of street parking available. Located ¼ block North of University Avenue close to all of the hot spots in downtown North Park. Shops, bars, restaurants and cafes all within walking distance. This is a great opportunity for people who live locally and need an inexpensive work space close to home. Most of the other tenants live in the neighborhood and walk or ride their bike to work! 1 year lease minimum. All utilities included except for air conditioning usage. 1 month's rent and 1 month security deposit due at signing.

Located at 3930 Oregon Street just 1/2 block North of University Avenue.

Highlights

- OFFICE SUITES RANGE FROM 190-1,200 SQUARE FEET
- GREAT OFFICE SPACE AVAILABLE IN NORTH PARK JUST OFF OF UNIVERSITY AVENUE
- RENT INCLUDES ALL UTILITIES, JUST PAY FOR AIR CONDITIONING USAGE
- 2 STORY OFFICE BUILDING WITH SECURE FRONT AND REAR ENTRANCE-24/7 ACCESS
- PERFECT FOR ANY TYPE OF OFFICE AND CREATIVE USE: TONS OF NATURAL LIGHT
- CLOSE TO SHOPS, RESTAURANTS, NIGHTLIFE, AND EVERYTHING NORTH PARK HAS TO OFFER

Research

3930 Oregon Street, San Diego, CA 92104 (San Diego County)

[Property Record Data](#) - Historical Listings, current tax, mortgage, owners & tenant info for this property

[San Diego Market Trends](#) - Asking price index trends, sale price trends, asking rent trends

[Demographics](#) - Review demographics in this neighborhood

Alex Mickle's Other Listings



560 Carlsbad Village Drive

Carlsbad, CA 92008
For Lease · \$30 /SF
22,221 SF Building
Creative/Loft



6184 University Avenue

San Diego, CA 92115
For Lease · \$14.96 /SF
1,600 SF GLA
Strip Center



14168 Poway Road

Poway, CA 92064
For Lease · \$19.20 - \$20.16 /SF
23,000 SF GLA
Neighborhood Center



314 Wisconsin Avenue

Oceanside, CA 92054
For Lease · \$15.42 /SF
3,580 SF Building
Free Standing Bldg

Contact Listing Broker

Contact Listing Broker

Presented by AVM Properties



Alex Mickle
Commercial Real Estate Broker

San Diego, CA · 619-307-3782

AVM Properties is a boutique San Diego based commercial real... [more](#) ||