

ESTTA Tracking number: **ESTTA751801**

Filing date: **06/10/2016**

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	Reply in Support of Motion
Filer's Name	Matey Michael Ghomeshi
Filer's e-mail	mg@mobileblackbox.com
Signature	/Matey Michael Ghomeshi/
Date	06/10/2016
Attachments	Respondent Reply to Petitioner Opposition to Motion to Dismiss.pdf(56924 bytes ) EXHIBIT E.pdf(78775 bytes ) EXHIBIT F.pdf(54213 bytes ) EXHIBIT G.pdf(2280699 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 REPLY TO PETITIONER’S OPPOSITION**  
**TO RESPONDENT’S MOTION TO DISMISS**

Respondent reiterates the arguments set forth in its Motion to Dismiss and submits this Reply to Petitioner’s Opposition to Respondent’s Motion to Dismiss (“Opposition to Motion”).

**I. Statute of limitation Expired**

- a) Respondent Motion to Dismiss based on statute of limitation can be invoked at any time during discovery period.
- b) There is **no leeway** when it comes to the Lanham Act 14(1), 37 C.F.R. §2.111(b); petition for cancellation period expired for this proceeding on June 08, 2015. Petitioner served Petition For Cancellation on Respondent on June 25, 2015.

## II. Respondent Never Waived His Statutory Rights

- a) Respondent has never waived his Lanham Act statutory rights.
- b) When Respondent received Petition For Cancellation, he was an individual without counsel. When Respondent eventually retained counsel; his counsel never requested to examine the envelope the Petition was served in, but rather it is customary for trademark attorneys to download proceeding documents directly from the TTABVUE website. One can only assume that Respondent's counsel accepted Petitioner prima facie proof of service in Petitioner's certificate of service (with the Petition) as being accurate and truthful.
- c) It was only after Respondent became pro se (post counsel) that he was able to properly evaluate all documents and legal statute. It was during this period of discovery that Respondent became aware of inaccuracies in Petitioner's filed documents.
- d) Based on Petitioner **false** Certificate of Service this proceeding should have **never** been instituted. In fact, the petition should **not** have been accepted and would not have been accepted but for the false service of process affirmation.
- e) Respondent has not brought this Motion To Dismiss based on any topics in FRCP 12(b) 2-5. It is true that FRCP 12(b) 2-5 must be raised no later than the answer. However, FRCP 12(b)1 can be raised at **anytime** during the proceeding, TTAB no longer has jurisdiction over this matter because it was commenced after the 5 year anniversary of Respondent's registration. The case cited by the Petitioner in Opposition to Motion to Dismiss; *Resolution Trust Corp v Starkey* 41 F.3d 1018, 1021 (5<sup>th</sup> Cir. 1995) has absolutely no relevance because this motion is not based on service. This is a statute of limitation argument that cannot be cured by the Petitioner, therefore Motion to Dismiss must be granted by the board.

### **III. Prima Facie Proof Is Accepted Until Rebutted**

Rule 37 CFR 2.119 states that prima facie proof of service is acceptable; that is so until that presumption is rebutted as Respondent has shown in this Motion. Here, Respondent raises sufficient proof for rebuttal by having a Petition For Cancellation with served envelope (“Petition Envelope”) **without** postage or postmark (EXHIBIT C).

In Petitioner’s Opposition to Motion To Dismiss, they claim to have placed postage on the Petition Envelope and mailed it through the USPS system. If this is true, the Petition Envelope would have **both** a.) the metered postage printed on the envelope **and** b.) postmark and/or other bar code indicators at the bottom of the envelope which is printed by the USPS to indicate that the envelope was processed through their system, similar to other envelopes mailed to Respondent by the Petitioner (EXHIBIT G). The Petition Envelope (EXHIBIT C) does **NOT** any of these indicators, which means postage was **never** applied to the envelope by the Petitioner and it was **never** processed through the USPS system.

One can only conclude that Petitioner knew they had missed the petition for cancellation deadline and chose to hand deliver the Petition, without postage, as to not leave any ‘**postmark date**’ indicators on the envelope.

### **IV. Envelope(s) Received From Petitioner**

The envelope Respondent received Petition For Cancellation in, was the **only** envelope that was addressed to the Respondent by the default USPTO contact name and address. All Subsequent served documents by Petitioner were either served electronically to Respondent’s

former counsel OR served to Respondent via postal mail; and addressed to Respondent which included the company name “**Mobile Black Box**” in the delivery address (EXHIBIT G).

- a) The Petition For Cancellation was the first document the Petitioner served on Respondent. Therefore, the Petition For Cancellation envelope (EXHIBIT C) was the **ONLY** envelope in this entire proceeding that could have been addressed as shown, with the Respondent’s **default** USPTO mailing name and address. All subsequent envelopes were addressed and included the text line “**Mobile Black Box**” in the delivery address (EXHIBIT G).
- b) According to TTABVUE, there was only **one** document served by Petitioner on Respondent’s former counsel (EXHIBIT E), which was emailed to Respondent’s former counsel via **electronic service only** on 09/14/15; as indicated in the Certificate Of Service of EXHIBIT E.
- c) On 11/25/15 Respondent’s former counsel filed a Request to Withdraw As Counsel with the TTAB, in that request a new correspondence address was included for the Respondent’s PO Box address which **added** “**Mobile Black Box**” in the address line; as indicated in EXHIBIT F. All subsequent served document ‘envelopes’ from the Petitioner’s counsel included the “**Mobile Black Box**” text in the delivery address; as shown on envelopes received from the Petitioner in EXHIBIT G.
- d) The envelope the Petitioner served the Petition For Cancellation in (EXHIBIT C) is clearly from the Petitioner counsel’s law office with the logo clearly printed in color in the top-left corner of the envelope and matches all other (no. 9 standard) envelopes received from Petitioner’s counsel.

- e) All **original** specimen envelopes and original contents served to Respondent by the Petitioner will be available to the Board as exhibit evidence if requested by the Board or Interlocutory Attorney.

#### **V. No Consent To Electronic Service**

Electronic transmission of service of a Petition For Cancellation is not an acceptable means of service, unless there is a mutual agreement between the parties. 37 C.F.R. 2.119(b)(6). Pro se Respondent has never entered into any agreement nor consented to electronic service by Petitioner. Petitioner has not asserted any evidence demonstrating that it obtained consent or came to an agreement with Respondent relating to electronic service.

Respondent deems any and all exhibits submitted by the Petitioner in regards to ‘Electronic Read Receipts’ to be inadmissible, subject to tampering and requests that the Board disregard such exhibits.

#### **VI. US Postal Service Is Not Infallible**

- a) Petitioner only provides speculation that ALL USPS clerks follow USPS manual rules.
- b) Respondent will not speculate on how Petitioner or anyone representing the Petitioner persuaded a USPS clerk or employee to place the Petition For Cancellation envelope into Respondent’s PO Box.
- c) Respondent and company have been receiving mail at the same PO Box address for more than 15 years, virtually all employees at Respondent’s post office are familiar with Respondent and his PO BOX number. So one can only speculate that when a clerk at the

Respondent's post office is presented with an envelope addressed to the Respondent, the clerk would have placed it in Respondent's PO Box, perhaps as a courtesy.

- d) Petitioner's counsel in Opposition to Motion To Dismiss (*See* Opposition To Motion To Dismiss, Section III) describes how typical outgoing mail is handled at their law firm. This does **NOT** have any bearing on how and when the actual Petition For Cancellation and envelope were served to the Respondent. Does the Petitioner's counsel expect the Board to believe that their law firm never hand delivers or personally serves documents to opposing parties?

### **Conclusion**

Petitioner is asking the board to ignore the fact that it provided a **false** Certificate of Service with Petition For Cancellation it filed with the TTAB and also served on the Respondent. One can only conclude that this was done by the Petitioner in order to circumvent the five year limit to file petition for cancellation set forth in Lanham ACT 14(1); 37 C.F.R. §2.111(b).

Respondent has provided irrefutable facts supporting his Motion To Dismiss; furthermore he has also provided the copy of the actual envelope the Petition For Cancellation was received in. This is **irrefutable** proof that the 'Discussion' in Petitioner's Opposition To Motion To Dismiss is **inaccurate** and mere puffery.

If the Board requires, Respondent will also provide any and all **original** envelopes (with contents) received from Petitioner.

WHEREFORE, Respondent respectfully prays that its Motion to Dismiss be **GRANTED** with prejudice.

Dated: June 10, 2016

Respectfully submitted,

By:           / Matey Michael Ghomeshi /  
Matey Michael Ghomeshi  
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 **RESPONDENT'S REPLY TO PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION TO DISMISS** was served on Petitioner, StrongVolt, Inc., by mailing said copy on June 10, 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: June 10, 2016

By:            / Matey Michael Ghomeshi /

# EXHIBIT E

ESTTA Tracking number: **ESTTA695634**

Filing date: **09/14/2015**

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

Proceeding	92061629
Party	Plaintiff StrongVolt, Inc.
Correspondence Address	CHARLES F REIDELBACH JR HIGGS FLETCHER & MACK LLP 401 WEST A STREET, SUITE 2600 SAN DIEGO, CA 92101-7910 UNITED STATES trademarks@higgslaw.com
Submission	Stipulated/Consent Motion to Extend
Filer's Name	Charles F. Reidelbach, Jr.
Filer's e-mail	trademarks@higgslaw.com
Signature	/charlesfreidelbachjr/
Date	09/14/2015
Attachments	MOBILEBLACKBOX 9-14-15 Consent Motion to Extend Dates.pdf(92861 bytes )



Email addresses for Petitioner and Registrant are provided so that any order on this motion may be issued electronically by the Board.

Dated: September 14, 2015

Respectfully submitted,



Charles F. Reidelbach, Jr., Esq.  
Michael J. Hoisington, Esq.  
Higgs Fletcher & Mack, LLP  
401 West "A" Street, Suite 2600  
San Diego, CA 92101-7910  
T: 619.236.1551 F: 619.696.1410  
Email: [trademarks@higgslaw.com](mailto:trademarks@higgslaw.com)  
ATTORNEY FOR PETITIONER



#### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Extend Deadlines with Consent was served on September 14, 2015 to Jeffrey A. Cohen and Veronica Besmer, attorneys of record for Registrant Matey Michael Ghomeshi, via email to [jcohen@cohenblg.com](mailto:jcohen@cohenblg.com), [vbesmer@cohenblg.com](mailto:vbesmer@cohenblg.com) (by mutual agreement).



Meilani N. Rivera

# EXHIBIT F

ESTTA Tracking number: **ESTTA711136**

Filing date: **11/25/2015**

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

Proceeding	92061629
Party	Defendant Matey Michael Ghomeshi
Correspondence Address	JEFFREY A COHEN COHEN BUSINESS LAW GROUP 10990 WILSHIRE BLVD, STE 1025 LOS ANGELES, CA 90024 UNITED STATES jcohen@cohenblg.com, vbesmer@cohenblg.com
Submission	Request to Withdraw as Attorney
Filer's Name	Veronica Besmer
Filer's e-mail	vbesmer@cohenblg.com, jcohen@cohenblg.com
Signature	/Veronica Besmer/
Date	11/25/2015
Attachments	P-Motion to Withdraw.pdf(176970 bytes )

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

Registration No. 3798681  
Cancellation No. 92061629

_____ STRONGVOLT, INC.,	)	
	)	
Petitioner,	)	COHEN BUSINESS LAW GROUP,
	)	APC, JEFFREY A. COHEN AND
v.	)	VERONICA BESMER'S NOTICE
	)	OF WITHDRAWAL AS COUNSEL
MATEY MICHAEL GHOMESHI,	)	
	)	
Respondent.	)	
_____	)	

**NOTICE OF WITHDRAWAL AS COUNSEL**

TO THE TRADEMARK TRIAL AND APPEAL BOARD, ALL PARTIES, AND  
THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT the Cohen Business Law Group, apc, Jeffrey A. Cohen, Esq. and Veronica Besmer, Esq., hereby apply for withdrawal as attorney of record for potential respondent MATEY MICHAEL GOMESHI, as there has been a break-down in the attorney-client relationship and a conflict of interest has arisen.

**INTRODUCTION**

On or about June 8, 2015, COHEN BUSINESS LAW GROUP, APC ("Attorney") was retained to represent potential respondent MATEY MICHAEL GOMESHI ("Respondent")

Similarly, California Rules of Professional Conduct 3-700(C)(1)(d) and (f) allow for permissive withdrawal when a client breaches its obligations relating to the attorney's expenses or fees, or make it unreasonably difficult for counsel to effectively represent the client.

Since Attorney's representation began, there has been a break-down in the attorney-client relationship such that withdrawal of Attorney's representation is warranted. Withdrawal of attorney will not prejudice Respondent, as Respondent will have an opportunity to retain new counsel or oppose Petitioner's petition for cancellation. Further, Attorney has notified Respondent and discussed this withdrawal with Respondent via telephone numerous times and Respondent is in possession of the entire case file. Additionally, Attorney does not possess any unearned fees belonging to Respondent.

Moreover, should Attorney remain as counsel of record, an actual conflict of interest will occur between Attorney and Respondent regarding performance of Attorney's services that makes withdrawal mandatory under the California Rules of Professional Conduct.

Upon withdrawal of Attorney, all further correspondence shall be delivered to

the Respondent as follows:

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

///

///

///

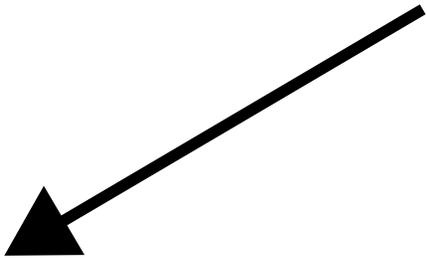
///

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing NOTICE OF WITHDRAWAL AS COUNSEL OF RECORD is being deposited with the U.S. Postal Service with sufficient postage as first class mail this 25th day of November, 2015, in an envelope addressed to Petitioner's counsel of record at the following address:

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

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



COHEN BUSINESS LAW GROUP

By: \_\_\_\_\_/s/\_\_\_\_\_

Jeffrey A. Cohen, Esq.  
Veronica Besmer, Esq.  
10990 Wilshire Boulevard  
Suite 1025  
Los Angeles, California 90024  
Telephone: (310) 469-9600  
Fax: (310) 469-9610

# EXHIBIT G

HR



HIGGS  
FLETCHER  
& MACK<sup>LLP</sup>

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

FIRST-CLASS MAIL

Hasler

02/10/2016

US POSTAGE \$000.48<sup>5</sup>



ZIP 92101

011D11649398

RETURN  
SERVICE  
REQUESTED

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

917628095 6101



FIRST CLASS  
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03/02/2016

US POSTAGE

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ZIP 92101  
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# First Class Mail



HIGGS  
FLETCHER  
& MACK

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

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

CFR 110794-00002

FIRST-CLASS MAIL

Hasler

04/07/2016

US POSTAGE \$001.42



ZIP 92101

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RETURN  
SERVICE

REQUESTED



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FLETCHER  
& MACK

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

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

CFR 110794-00002

CFR

**HFM** HIGGS  
FLETCHER  
& MACK, LLP

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

SAN DIEGO  
CA 92101  
03 MAY 2016  
PM 11 SERVICE

REQUESTED

Hasler  
05/03/2016  
US POSTAGE \$000.46<sup>5</sup>



ZIP 92101  
011D11649398

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

91762809595



Hasler

FIRST-CLASS MAIL  
INTL

05/11/2016

US POSTAGE

\$002.71<sup>0</sup>



ZIP 92101  
011D11649398



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

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

CFR 110794-00002

CFR



HIGGS  
FLETCHER  
& MACK<sup>LLP</sup>

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

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SERVICE  
REQUESTED

Hasler

05/13/2016

US POSTAGE

FIRST-CLASS MAIL  
INTL

\$001.15<sup>0</sup>



ZIP 92101

011D11649398

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

917628095 2101

