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Filing date: **08/29/2016**

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	Motion to Amend/Amended Answer or Counterclaim
Filer's Name	Matey Michael Ghomeshi
Filer's e-mail	mg@mobileblackbox.com
Signature	/Matey Michael Ghomeshi/
Date	08/29/2016
Attachments	Motion To Amend Answer.pdf(33762 bytes ) EXHIBIT A - First Amended Answer.pdf(51869 bytes ) EXHIBIT B - Petition To Cancel Envelope.pdf(399193 bytes ) EXHIBIT C - Declaration of Matey Michael Ghomeshi.pdf(414300 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.	)	
	)	
	)	

**MOTION TO LEAVE TO FILE FIRST AMENDED ANSWER**

Pursuant to FRCP 15; 37 CFR § 2.115 and TBMP 507.02, Matey Michael Ghomeshi (“Respondent”) respectfully requests that the Trademark Trial And Appeal Board (“Board”) grant Respondent leave to file his First Amended Answer (“Amended Answer”) to Petition For Cancellation (“Petition To Cancel”) filed by Strongvolt Inc. (“Petitioner”). In support of his motion, Respondent states the following:

1. On July 14, 2015, Respondent by and through former counsel filed his original Answer to Petition To Cancel filed by Petitioner.
2. Respondent’s asserts that his former counsel was defective and
  - a.) failed to properly confirm validity of certificate of service included with the Petition To Cancel.
  - b.) failed to validate the merits of the Petition To Cancel.
  - c.) failed to evaluate and apply Federal statute as it related to Respondent’s defense.
  - d.) did not properly understand Respondent’s products and the use of his trademark.
3. The Answer filed by Respondent’s former counsel was not properly evaluated nor signed by the Respondent.

4. On January 02, 2016 Respondent notified the Board that he will represent himself (pro se) in this proceeding.
5. As a pro se Respondent, Respondent was required to reevaluate all filings submitted by his former counsel. It was at this stage of discovery that Respondent believes that an Amended Answer is warranted to properly present an effective defense.
6. Under FRCP 15, the board should “freely give leave [to amend] when justice so requires.”

THEREFORE, Respondent respectfully requests that Board grant leave to allow Respondent to file his First Amended Answer (attached as EXHIBIT A).

Dated: August 29, 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 **MOTION TO LEAVE TO FILE FIRST AMENDED ANSWER** has been served on Petitioner, StrongVolt, Inc., by mailing said copy on August 29, 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: August 29, 2016

By:            / Matey Michael Ghomeshi /

# EXHIBIT A

**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.	)	
	)	
	)	

**FIRST AMENDED ANSWER TO PETITION FOR CANCELLATION**

Respondent, Matey Michael Ghomeshi (“Respondent”), as and for its answer to the Petition For Cancellation (“Petition to Cancel”) filed by Petitioner, StrongVolt, Inc. (“Petitioner”) before the Trademark Trial And Appeal Board (“Board”), hereby states as follows:

With regard to the Preamble to the Petition to Cancel, Respondent lacks sufficient knowledge and information to form a belief as to the truth of the allegations regarding Petitioner’s address and the jurisdiction of Petitioner’s organization and therefore denies the same. Respondent denies the remaining allegations in the Preamble and further denies that Petitioner is entitled to the relief it seeks.

With regard to the numbered paragraphs of the Petition to Cancel, Respondent states as follows:

1. Respondent admits that he is an individual with a correspondence address of P.O. Box 95, Ontario, California 91762-8095. Respondent further admits that he is the owner of record of the registration referenced in Paragraph 1.

2. Respondent admits that the print-up of the TSDR record attached to the Petition to Cancel as Exhibit B identifies Petitioner as the owner of record of U.S. Trademark Application No. 86312338.

Respondent lacks sufficient knowledge and information to form a belief as to the truth of the remaining

allegations in Paragraph 2, including the validity of Petitioner's claim to own said application, and, therefore, denies the same.

3. The allegations in Paragraph 3 consist of legal conclusions to which no response is required. To the extent that any response is required, Respondent denies the allegations in Paragraph 3.

4. Respondent lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 4 regarding Petitioner's alleged use of the BLKBOX trademark and, therefore, denies the same, and otherwise denies the remaining allegations in Paragraph 4.

5. Respondent lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 5 regarding the prosecution history of Petitioner's trademark application referenced in such paragraph and, therefore, denies the same.

6. Respondent denies the allegations in Paragraph 6 that Respondent was not using the MOBILEBLACKBOX trademark as of January 16, 2003, as of the time of filing Respondent's trademark application for MOBILEBLACKBOX or since the time of filing of Respondent's trademark application in connection with the following goods: portable electronic devices for transmitting data and sound files, audio speakers for computers and analog and digital audio signal transmitters. Respondent admits that, at the time of filing his application for the MOBILEBLACKBOX trademark, he was not selling the remainder of the goods set forth in Respondent's registration (i.e., those not listed above) under the MOBILEBLACKBOX trademark. Respondent denies the remaining allegations in Paragraph 6.

7. The allegations in Paragraph 7 consist of legal conclusions to which no response is required. To the extent that any response is required, Respondent denies that Petitioner, as the junior user, would suffer the harm recited therein.

8. The "WHEREFORE" clause of the Petition to Cancel is a Prayer for Relief that requires no response.

9. Certificate Of Service provided by Petitioner with the Petition to Cancel is **FALSE**, as Petition To Cancel was not mailed but was hand delivered and placed in Respondent's PO Box on June 25, 2015.

A photocopy of the envelope which Petition To Cancel was delivered to Respondent in; is attached as

**EXHIBIT B:**

- a) Declaration of Respondent, Matey Michael Ghomeshi, attached hereto as **EXHIBIT C**.
- b) The Petition To Cancel envelope does **not** have any postage affixed or printed onto it.
- c) The Petition To Cancel envelope does **not** have a post mark printed onto it.
- d) The Petition To Cancel envelope does **not** have any US Postal Service (“USPS”) Intelligent Mail Barcode (“IMB”) printed onto it; therefore it was **never** processed by the USPS.
- e) Pursuant to 37 C.F.R. §2.111(a) A cancellation proceeding is commenced by filing with the Board a timely petition for cancellation with the required fee. The petition must include proof of service on the owner of record for the registration, or the owner's domestic representative of record, at the correspondence address of record at the USPTO, as detailed in §§ 2.111(b); §2.111(c)(4) and 2.119. Proof of service assumes actual service on the Respondent; *Springfield Inc. v. XD*, 86 USPQ2d 1063, 1064 (TTAB 2008). Since, Petitioner did not actually serve Respondent until June 25, 2015, Petitioner **did not** comply with the minimum requirements set forth in Lanham ACT 14(1); 37 C.F.R. §2.111(b) to institute a cancellation proceeding.

10. All allegations not specifically admitted above are hereby denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

10. The Petition To Cancel must be dismissed due to lack of timely service. The petition for cancellation period expired on June 08, 2015. The Petition to Cancel was hand delivered and placed in Respondent’s PO Box on June 25, 2015; therefore the Petition To Cancel was NOT timely served within the 5 year petition for cancellation period allowed under Lanham ACT 14(1); 37 C.F.R. §2.111(b).

Respondent requests dismissal of Petition To Cancel under FRCP 12(b)1; as the Board no longer has subject matter jurisdiction.

SECOND AFFIRMATIVE DEFENSE

11. The Petition to Cancel fails to state a claim upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

12. The Petition to Cancel fails to state a legally valid ground for cancelling the registration at issue herein.

FOURTH AFFIRMATIVE DEFENSE

13. The Petition to Cancel is barred by the doctrine of waiver.

FIFTH AFFIRMATIVE DEFENSE

14. The Petition to Cancel is barred by the doctrine of estoppel.

SIXTH AFFIRMATIVE DEFENSE

15. The Petition to Cancel is barred by the doctrine of laches.

SEVENTH AFFIRMATIVE DEFENSE

15. The Petition to Cancel is barred by the doctrine of acquiescence.

WHEREFORE, the Petition To Cancel contained a false certificate of service and was **not** served within the petition for cancellation period, it should be dismissed as a nullity. Due to **lack of timely service** by the Petitioner, the Respondent requests that the Petition to Cancel be dismissed with prejudice under FRCP 12(b)1; as the Board no longer has subject matter Jurisdiction over this proceeding; and that the Board grant to Respondent such other and further relief as the Board deems just and proper.

Dated: August 29, 2016

Respectfully submitted,

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

# EXHIBIT B

CFR

**HFM** | HIGGS  
FLETCHER  
& MACK<sup>LLP</sup>

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

Matey Michael Ghomeshi  
P.O. Box 95  
Ontario, California 91762-8095

# EXHIBIT C

**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,	)	
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v.	)	Cancellation No. 92061629
	)	
MATEY MICHAEL GHOMESHI,	)	
	)	
Respondent.	)	
	)	
	)	

**DECLARATION OF MATEY MICHAEL GHOMESHI**

1. I, Matey Michael Ghomeshi, with address at PO Box 95, Ontario, CA 91762, am the Registrant for U.S. Trademark No. 3,798,681, for the mark MobileBlackBox.
2. On June 15, 2015; I received from the USPTO; the Trademark Trial and Appeal Board's order instituting Cancellation Petition No. 92061629. The envelope was mailed via first class mail and postmarked June 09, 2015.
3. On June 25, 2015; I received a copy of the Petition For Cancellation from Petitioner's counsel of record. The Petition For Cancellation was placed in my USPTO address of record at PO Box 95, Ontario, CA 91762.
4. The Petition For Cancellation I received from the Petitioner did **not** have any postage **nor** USPS postmark affixed or printed onto the envelope it was delivered in.
5. I am personally aware of no attempts by Petitioner to effect service of process on me at my address of record, PO Box 95, Ontario, CA 91762 prior to June 25, 2015.

6. I certify under penalty of perjury under 28 U.S.C. §1746 that the foregoing is true and correct. The undersigned being warned that willful and false statement and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his knowledge are true; and all statements made on information and belief are believed to be true.

Dated: August 28, 2016

By: 

Matey Michael Ghomeshi