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

Proceeding	91167259
Party	Defendant Boost Juice Holdings Pty Ltd; ACN 102 379 591 Boost Juice Holdings Pty Ltd; ACN 102 379 591 Suite 2 261-267 High Street AUX ASHBURTON VIC 3147,
Correspondence Address	JOSEPH D. LEWIS BARNES & THORNBURG LLP 750 17TH STREET, N.W. SUITE 900 WASHINGTON, DC 20006
Submission	Reply in Support of Motion
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Signature	/jdl/
Date	08/03/2006
Attachments	259l.pdf ( 3 pages )(118469 bytes )

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

Booster Juice Limited Partnership,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91167259
	)	
Boost Juice Holdings Pty Ltd,	)	
	)	
Applicant.	)	
_____	)	

**APPLICANT’S REPLY ON MOTION TO SUSPEND**

Applicant, Boost Juice Holdings Pty., hereby files this reply in support of its motion to suspend. Although Opposer has indicated consent to the request to suspend, this reply is necessitated by false and misleading statements in Opposer’s response to the motion.

The current counsel for the Opposer asserts that “the undersigned did not even have the discovery requests in hand until nearly the end of the response period.” This claim is utterly false. Apparently, Opposer is relying on its own delay in formally filing to substitute counsel, which did not occur until June 15, 2006. While Opposer’s counsel delayed in formally substituting himself as counsel, he actually had filed pleadings in another case between the same parties (opposition no. 91166584) some three months earlier.

The fact that the pleading was filed by new counsel was noted by Applicant. Consequently, as a voluntary courtesy, even though Opposer neglected to timely file his Notice of Appearance, Applicant’s counsel served both old and new counsel with the discovery requests. Thus, the current counsel for Opposer received these requests promptly and not “until nearly the end of the response period”, as asserted in Opposer’s brief. Indeed, the additional service was noted in a letter faxed to the current counsel on June 2, 2006 -- some three weeks

prior to the due date for discovery responses (See Exhibit A). Therefore, the “objection” asserted by Opposer is not well taken.

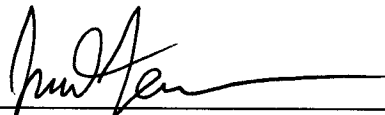
Opposer further attempts to fault Applicant for failing to propose a protective order at the time it served discovery responses. This objection is belied for at least two reasons: first, Opposer did not produce a single non-confidential document. Thus, Opposer’s assertion that delay in producing documents was caused by the absence of a protective order is not credible. Second, immediately upon receipt of the objections, the undersigned counsel called Opposer to discuss a protective order. That call was not returned. The undersigned counsel followed up to this phone call by letter faxed on July 7, 2006. In this document, Applicant’s counsel stated that Applicant would abide by the Board’s standard protective order. Despite this offer, Opposer has yet to execute the standard protective order, or propose any alternative.

Therefore, with the record corrected by the above, the Motion to Suspend should be granted.

Respectfully submitted,

BOOST JUICE HOLDINGS PTY LTD

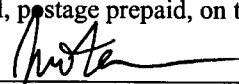
By: \_\_\_\_\_



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(202) 289-1313  
Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing APPLICANT’S REPLY ON MOTION TO SUSPEND was served on Steven M. Weinberg, Esq., at his address of record, Greenberg Traurig, LLP, The Water Garden, 2450 Colorado Avenue, Suite 400E, Santa Monica, CA 90404, by first class mail, postage prepaid, on this 3<sup>rd</sup> day of August, 2006.



Joseph D. Lewis

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Joseph D. Lewis

June 2, 2006

VIA FAX [(310) 586-7800] AND REGULAR MAIL

Steven M. Weinberg, Esq.  
Greenberg Traurig, LLP  
2450 Colorado Avenue  
Suite 400E  
Santa Monica, CA 90404

Re: Booster Juice / Boost Juice TTAB Proceedings  
Oppositions 91166584 (BOOST) and 91167259 (JOOST)  
Our Refs.: 40837-44561 and 40837-44562

Dear Steve:

This is in response to your fax of May 30, 2006. As of today, we would be able to participate in testimony during the entirety of the presently-scheduled testimony periods. We note the possibility that you or your client might be on vacation during this period. If so, we certainly will work with you so that testimony can be taken at a mutually-convenient time, even if this necessitates an extension of the time for taking testimony.

We note that your office is in the Los Angeles area, and that your client's U.S. headquarters is in Oregon. Please let us know the location where you expect that testimony will be taken in these proceedings.

Lastly, as I mentioned to you during the INTA conference, we ask that you file a change of attorney/address in these proceedings. We never received any such notification from you, and Mr. Knaupp still remains as counsel of record. Although we did send to you a courtesy copy of the applicant's discovery requests in these two proceedings, our service copy was sent to Mr. Knaupp.

Once you have determined where and when you plan to take testimony, I would appreciate it if you could give us a couple of candidates for the specific date.

Very truly yours,

BARNES & THORNBURG LLP



Joseph D. Lewis

JDL/chb

**EXHIBIT A**