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

Proceeding	91252817
Party	Plaintiff House of Kuipers, LLC and Zox, LLC
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE TRADEMARK  
TRIAL AND APPEAL BOARD**

House of Kuipers, LLC <i>et al.</i> ,  Opposer,  v.  John Zox  Applicant.	Trademark: ZOX (Standard Character Word Mark)  Application Serial No.: 88/228,839  Opposition No.: 91252817
John Zox,  Opposer,  v.  Zox LLC.  Applicant.	Trademark: ZOXLIST (Standard Character Word Mark)  Application No.: 88/582,432  Opposition No.: 91265309
John Zox,  Opposer,  v.  Zox LLC.  Applicant.	Trademark:   Application No.: 88/829,957  Opposition No.: 91265525

**MOTION TO SUSPEND PROCEEDINGS PENDING OUTCOME OF  
CIVIL LITIGATION**

House of Kuipers LLC and Zox LLC (the “Zox Company”) hereby move to suspend to the above-referenced opposition proceedings pursuant to Trademark Rule 2.117(a), 37 C.F.R § 2.117(a). On February 22, 2021, Zox LLC, filed a Complaint with the United States District Court, in the Central District of California (Case No. 2:21-cv-01609-PA-SK) against John Zox, Daniel Zox and Andrew Zox,

asserting claims of trademark infringement and unfair competition among other claims (the “Action”). Some of the relief sought in the complaint is cancellation of Registration No. 5,268,843 (subject of Cancellation Proceeding No. 92074323), and express abandonment of Application Serial No. 88/228,839. Please note, that counsel in Cancellation Proceeding No. 92074323 has already consented to suspension. A copy of the federal court complaint is attached without the exhibits due to size limitations.

The Board's general practice is to suspend *inter partes* proceedings under Trademark Rule 2.117(a) whenever the Board is made aware that any party to a pending Board Proceeding is involved in a civil action which may have a bearing on the Board case. To the extent that a civil action in a Federal district court involves issues in common with those in a Board proceeding, the district court's findings are binding on the Board, whereas the Board's findings are merely advisory to the district court. See *id.*; TBMP Section 510.02(a) (2014); see also *General Motors Corp. v. Club Fashions Inc.*, 22 USPQ2d 1933, 1937 (TTAB 1992); see also *New Orleans Louisiana Saints LLC v. Who Dat? Inc.*, 99 U.S.P.Q.2D (BNA) 1550, 1552 (TTAB 2011) (noting “the civil action does not have to be dispositive of the Board proceeding to warrant suspension, it need only have a bearing on the issues before the Board”); *The Other Telephone Co. v. Connecticut Nat’l Telephone Co.*, 181 U.S.P.Q. 125 (TTAB 1974) (noting that once a civil action between the parties is filed in federal court, “[t]he only question for determination . . . is whether the outcome of the civil action will have a bearing on the issues involved in the opposition proceeding.”). In this case, the Action references all of the TTAB proceedings involves the same set of facts and the exact same parties involved in the TTAB proceedings and will therefore have a direct bearing on this proceeding.

The central issue of the complaint is the determination of rights among the parties and the priority of rights. In the Cancellation Proceeding and all of the above-referenced opposition proceedings the same issues are being addressed. John Zox has asserted the 5,268,843 Registration and the same alleged common law rights in an attempt to oppose or cancel *all* of the Zox Company’s registrations and applications. Regardless of whether John Zox is appearing individually or with his brothers, the same trademark rights being asserted against the Zox Company. What remains to be decided is, does the Zox

band have any trademark rights in and to the mark ZOX? If so, in connection with what goods and services? Do the Zox Brothers have trademark rights to the word ZOX, and if so for what? What are the Zox Company's rights in the ZOX mark? Thus, the issues of priority and likelihood of confusion will ultimately be resolved in the Action, and that court's decision will likely be binding upon the Board. See TBMP § 510.02(a); *Whopper Burger, Inc. v. Burger King Corp.*, 171 U.S.P.Q. (BNA) 805 (TTAB 1971) (granting a motion to suspend when movant had filed an action in federal district court that would "have a direct bearing on the question of the rights of the parties herein and may in fact completely resolve all the issues," noting that "a decision by the United States District Court would be binding on the Patent Office."). Accordingly, allowing the Federal District Court to decide the issues first is efficient and permits the Board to avoid wasted time in deciding issues that will ultimately be decided by the court.

Therefore, the Zox Company respectfully requests suspension of these Proceedings pending determination of the civil action pursuant to Trademark Rule 2.117(a), 37 C.F.R. § 2.117(a) pending the outcome of the Action.

Respectfully submitted,  
CISLO & THOMAS LLP

Dated: March 17, 2021

\_\_\_\_\_  
/Katherine M. Bond/

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing: **MOTION TO SUSPEND PENDING CIVIL LITIGATION** has been served on John Zox' counsel via email:

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Dated: March 17, 2021

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11 Attorneys for Plaintiff  
12 ZOX LLC

13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 ZOX LLC, a California limited liability  
16 company,

17 Plaintiff,

18 v.

19 JOHN ZOX, an individual, DANIEL  
20 ZOX, an individual, and ANDREW  
21 ZOX, an individual, and DOES 1-10,  
22 inclusive,

23 Defendants.

Case No. 2:21-cv-01609

**COMPLAINT**

- 1. TRADEMARK INFRINGEMENT;
- 2. FALSE DESIGNATION OF ORIGIN;
- 3. COMMON LAW TRADEMARK INFRINGEMENT;
- 4. STATUTORY UNFAIR COMPETITION; AND
- 5. COMMON LAW UNFAIR COMPETITION.

**REQUEST FOR JURY TRIAL**

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27 Plaintiff ZOX LLC, by its attorneys, Cislo & Thomas LLP, alleges as  
28 follows:

1 **INTRODUCTION**

2 1. At least as early as, September of 2011, Zox LLC, its predecessors-in-  
3 interest, and its related entities (the “Zox Company” or “Plaintiff”), began using  
4 the mark “ZOX” on its popular fashion accessory line of bracelets or straps. The  
5 ZOX mark is the subject several U.S. Registrations including, but not limited to,  
6 Registration No. 4,465,691, for use in connection with wristbands and shirts as  
7 well as bracelets (the “691 Registration”). The ‘691 registration issued on January  
8 14, 2014. Since its launch over ten years ago, the company has become very  
9 successful offering a wide variety of retail goods in the United States and  
10 internationally.

11 2. The Defendants last name is “Zox”. John Zox was in a band called  
12 “Zox” in the early 2000’s while Daniel and Andrew Zox appear to be involved in  
13 photography and film production. Collectively John, Daniel and Andrew Zox are  
14 referred to as “Defendants” or the “Zox Brothers”. Plaintiff had never had any  
15 interaction with the Defendants prior to 2016.

16 3. On information and belief, at some point in time, the Zox Brothers  
17 learned of the Zox Company and its success and began a campaign of deceit to  
18 interfere with the Zox Company’s trademarks and business. Starting in 2016, the  
19 Zox Brothers filed trademark applications alleging Defendants were selling goods  
20 that were closely related, or identical to Plaintiff’s products.

21 4. Upon further investigation, Defendants had not previously and were  
22 not presently selling the applied-for goods as alleged in the trademark applications.  
23 The Defendants are providing false information to make it appear as though they  
24 have been selling these goods all along when in fact they were not and are not-  
25 committing multiple acts of fraud on the Trademark Office and manipulating  
26 electronic information in an attempt to improve their legal position at the  
27 Trademark Trial and Appeal Board (“TTAB”).  
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1 non-federal claims under 28 U.S.C. § 1367 in that those claims are so related to  
2 Plaintiff’s federal claims that they form part of the same case or controversy.

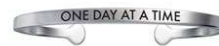
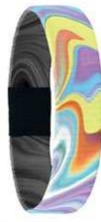
3 17. Venue in this district is proper under 28 U.S.C. § 1391(b) in that a  
4 substantial part of the events giving rise to the within claims occurred in this  
5 judicial district, some of the Defendants reside in this district, and Defendants’  
6 conduct business including the sale of infirming products in this district.

7 **GENERAL ALLEGATIONS**

8 **The Zox Company and its “ZOX” Trademarks.**

9 18. The Zox Company is a family-owned business founded in in 2011, by  
10 three brothers, with the help of their mom and a sewing machine. The company  
11 presently headquartered in the Los Angeles area, started manufacturing and selling  
12 bracelets or straps to wear as a fashion accessory. Through dedication and  
13 countless hours of hard work, the business prospered over the last decade creating  
14 an extremely successful company that is engaged in, among other things, the  
15 production, sale and international distribution of consumer goods or retail  
16 products.

17 19. The company offers a variety of bracelets today which are generally  
18 accompanied by a “feel good” or inspirational message which created a faithful  
19 following of fans where people collect and trade “Zox” bracelets worldwide. For  
20 every bracelet that is sold, the Zox company makes a donation to the Thirst  
21 Project, a foundation which provides clean water to those in need. In addition to  
22 the bracelets, the Zox Company offers goods such as, keychains, clothing, and  
23 bags. Examples of some of Zox’ bracelets are shown below.



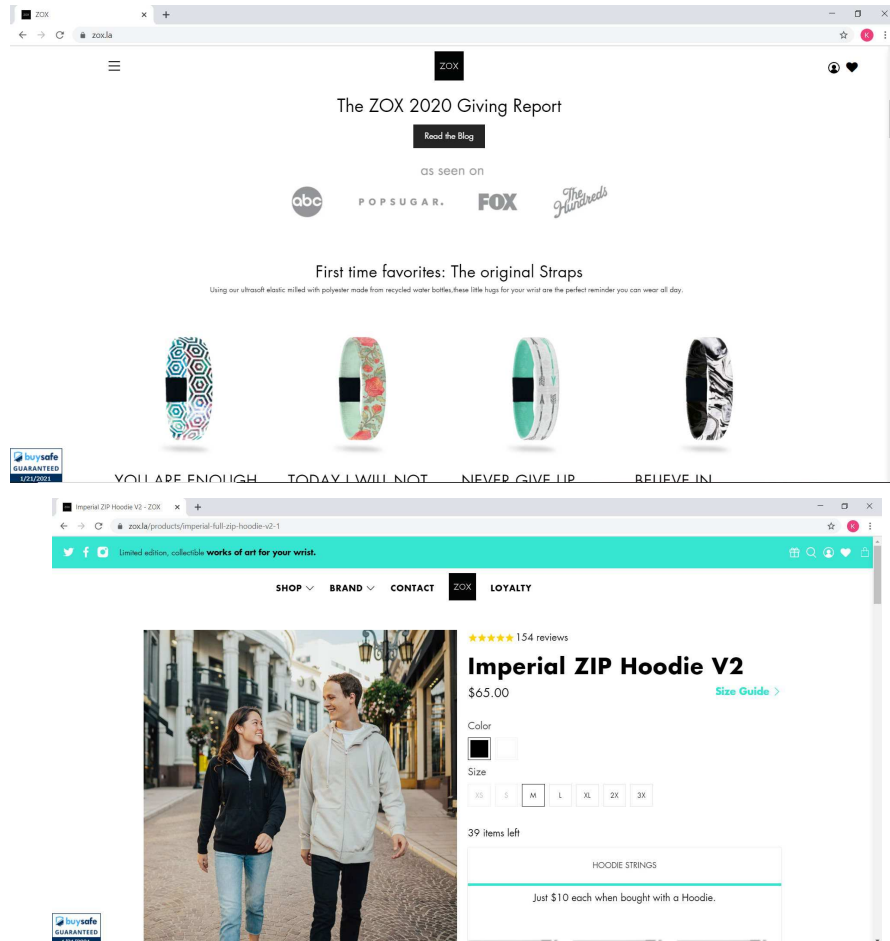
1           20. The Zox Company is the owner of several well-known trademarks  
2 including U.S. Trademark Registration No. 4,412,948 for the mark ZOX STRAPS  
3 for use in connection with elastic fabric wristbands in the nature of a bracelet  
4 which issued on October 8, 2013 with a first use in commerce date at least as early  
5 as September 15, 2011.

6           21. In the U.S., Plaintiff also owns the “ZOX” registrations listed in the  
7 table below. A true and correct copy of the Zox Company trademark registrations  
8 is attached hereto as Exhibit “1”.

Mark	Registration No.	Goods/ Services	First Use in Commerce Date
ZOX	4465691	Class 14: Wristbands in the nature of a bracelet. Class 25: Wristbands; shirts	Class 14: 09/15/2011 Class 25: 09/15/2011
ZOXBOX	4759961	Class 25: Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Wristbands.	May 30, 2012
ZOX	5233845	Class 18: Backpacks. Class 35: On-line retail and wholesale store services featuring clothing apparel, wristbands, bags and accesso	Class 18: 10/31/2016 Class 35: 08/00 2011

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21           22. The Zox Company’s trademarks comprising “ZOX” are hereinafter  
22 referred to as the “Zox Company Mark” or the “ZOX Mark”. In addition to its  
23 U.S. applications and registrations, Plaintiff owns numerous international  
24 registrations in order to protect its brand.

25           23. “ZOX” is a strong mark. For over ten years, the Zox Company has  
26 extensively used ZOX in various advertising and marketing campaigns, spending  
27 million dollars annually promoting the brand. Below are screenshots of the  
28 company’s website located at the domain <https://zox.la/>.



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18        24. In April of 2013, Plaintiff acquired via assignment U.S. Registration  
19 No. 2992108 and all of the rights and goodwill associated with a design mark for  
20 ZOX for use in connection with clothing which issued on September 6, 2005 with  
21 a first use in commerce date of October 1, 1992.

22        25. Plaintiff's registrations are valid, subsisting and in full force and  
23 effect evidencing the validity of the Zox Company Mark and Plaintiff's exclusive  
24 right to use the mark in connection with the goods and services identified in the  
25 registrations.

26        26. The presence of the Zox Company Mark on Plaintiff's goods indicates  
27 to the public that goods and services provided under the Zox Company Mark  
28 originate with, or are provided by, the Zox Company. Plaintiff adheres to strict

1 quality standards in the manufacture of its products. Thus, the consuming public  
2 has come to associate the Zox Company Mark with bracelets, clothing and other  
3 goods and services of high quality.

4 27. As a consequence of all of the foregoing, the Zox Company Mark has  
5 attained considerable value and the goodwill associated with it represents a  
6 valuable business asset.

7 28. As a result of Plaintiff's long-term and widespread use of the highly-  
8 distinctive Zox Company Mark in the United States via Internet, product  
9 packaging, print advertising, and continuous and unsolicited media coverage, the  
10 Zox Company Mark enjoys a high degree of consumer recognition.

### 11 **Defendants' Infringing Activities**

12 29. Defendant John Zox was part of a music band called the "Zox" Band  
13 in the late 1990's to early 2000's. When the band was together and performing it  
14 allegedly sold band merchandise in the form of t-shirts and stickers that comprised  
15 of ornamental uses of "Zox". Ornamental use is not trademark use and not entitled  
16 to trademark registration.

17 30. According to several Internet articles the band broke up in 2009, got  
18 back together briefly in 2011 and played a reunion show in 2014 for \$15 a person  
19 at a quaint small venue (less than 2K person capacity) called Lupo's in Rhode  
20 Island, where the band was formed. Attached as Exhibit "2" are articles about the  
21 music band.

22 31. According to their websites, John Zox' brothers Defendant Andrew  
23 Zox and Defendant Daniel Zox produce short films. See <https://andrewzox.com/>  
24 and <https://www.danielzox.com/>.

25 32. At some time, Defendants became aware of Plaintiff the Zox  
26 Company and its success.

27 33. The Trademark Office records indicate that on March 28, 2016, the  
28 Zox Brothers filed U.S. Application Serial No. 86954997 (the '997 Application)

1 for the standard character word mark “ZOX” for use in connection with goods in  
2 classes 9, 25 and 41. Of particular importance is the class 25 goods and the  
3 specimens filed for this class which claimed a first use in commerce date of  
4 February 6, 2009, the specimens consisting of images of products that could be  
5 purchased through Zazzle®. Attached as Exhibit “3” is a true and correct copy of  
6 the ’997 Application.

7 34. Zazzle, headquartered in Redwood City, California is an online print  
8 store where custom products can be made and offered to consumers. On  
9 information and belief, the Class 25 goods were not being sold in commerce but  
10 were included in the ’997 Application to make it appear as though the Zox  
11 Brothers and the music band Zox were presently selling and had previously been  
12 selling merchandise in the form of clothing and other retail items under the  
13 trademark “ZOX”. Class 25 was refused registration in light of a registration  
14 owned by the Zox Company.

15 35. On or about September 2, 2016, Mr. John Zox contacted Jason  
16 Kuipers, a principal of the Zox Company demanding a consent to register. Mr.  
17 Kuipers declined. The ’997 Application eventually matured into Registration No.  
18 5,268,843 (the ’843 Registration) without the Class 25 goods.

19 36. On December 13, 2018, Mr. John Zox filed a new application, serial  
20 no. 88228839 (the ’839 Application) for the standard character word mark “ZOX”  
21 for use in connection with numerous goods and services that are similar to or  
22 closely related to the Zox Company’s Marks including clothing, bracelets and  
23 accessories. Of note again, is the first use in commerce date for each class of  
24 goods which ranges between 2004 to 2007 and the specimens Mr. Zox submitted  
25 to the Trademark Office, specifically images of goods that could be purchased  
26 through the online custom print store Zazzle. Attached as Exhibit “4” is a true and  
27 correct copy of the ’839 Application.

28

1 37. The specimens submitted appeared to be fake- images of goods that  
 2 could be made via online print stores. They were similar, if not identical, to the  
 3 specimens submitted for the Class 25 goods in the ‘997 Application including, the  
 4 Zazzle specimens.

5 38. Plaintiff did not believe Defendant John Zox or the Zox Brothers had  
 6 ever sold most if not all of the goods displayed in the specimens. Attached as  
 7 Exhibit “5” is an example of how easy it is to create the submitted specimens.

8 39. In order to protect its business, the Zox Company was left with no  
 9 choice but to oppose the ’839 Application. Filing this opposition resulted in  
 10 numerous filings at the TTAB as shown below. In every proceeding the ’843  
 11 Registration has been used against the Zox Company.

MATTER	MARK	Ref. to ‘843 Reg.
Opposition No. 91252817 And Counterclaim	Opposition: ZOX App. No. 88/228,839	See Answer and Counterclaim, Pages 10-11, ¶6 and Exhibit A.  “Applicant—either individually, as co-applicant with his brothers Andrew Zox and Daniel Zox, or in partnership with fellow ZOX band member Eli Miller under the partnership name Zox Music—owns in whole or in part the right, title and interest in and to the ZOX Marks, 10 the applications and registrations for which are indicated below:...”  See Table, page 11.
	Pet. To Cancel: Registration No. 4,465,691: ZOX; Registration No. 4,759,961: ZOXBOX; and Registration No. 5,233,845: ZOX	
Pet. To Cancel No. 92074323	Pet. To Cancel Registration No. 5,268,843	John Zox Daniel Zox Andrew Zox
Opposition No. 91265309	Opposition ZOXLIST Application No. 88/582,432	See Notice of Opposition, Pages 3-4, ¶6 and Exhibit A.  “Opposer—either individually, as co-applicant with his brothers Andrew Zox and Daniel Zox, or in partnership with fellow ZOX band member Eli Miller under the partnership name Zox Music—owns in whole or in part the right, title and interest in and to the ZOX Marks,
	Pet. To Cancel Registration No. 5,268,843	



		<p>the applications and registrations for which are indicated below:...”</p> <p><i>See Table, page 4</i></p>
<p>Opposition No. 91265525</p>	<p>Opposition ZOX (Design) Application No. 88/829,957</p>	<p>See Notice of Opposition, Pages 3-4, ¶5 and Exhibit A</p> <p>“Opposer—either as an individual, as co-applicant, or in partnership with fellow ZOX bandmembers—also owns in whole or in part the right, title and interest in the mark ZOX for a variety of goods and services, the applications and registrations for which are indicated below (collectively, Opposer’s “ZOX Marks”):...”</p> <p><i>See Table, page 4</i></p>

40. On or about, July 21, 2020, the Zox Company served its First Set of Requests for Production and Interrogatories for Opposition No. 91252817.

41. In discovery, Defendant John Zox claims he owns rights in and to the “ZOX marks” either individually, as co-applicant with his brothers Andrew Zox and Daniel Zox and/or with fellow Zox bandmembers Eli Miller (Opposition Nos. 91265525 and 91252817).

42. Defendant John Zox further claimed in Opposition No. 91265309 that he owns the rights in a “partnership” called “Zox Music”. Mr. Zox also contends in his discovery responses that he is a member of the band and operates or is affiliated with several businesses namely, “...ZOX or ZOX MUSIC, [which] is managed by [John Zox’] company ZOXPWERX LLC, is booked by [John Zox’] company ZOX EVENTS, and is distributed by [John Zox’] label ARMO RECORDS.

43. For document production, 192 documents were produced most of which were publicly available documents and none of which demonstrated sales to consumers for the applied-for goods in either the ’997 or the ’839 Applications.



1 Nor were any documents produced demonstrating a single sale of a good through  
2 Zazzle.

3 44. In order to determine whether or not any “ZOX” goods had been sold  
4 through Zazzle as represented to the Trademark Office, on January 5, 2021,  
5 Plaintiff issued a subpoena to Zazzle. In response Zazzle produced the attached  
6 spreadsheet. The spreadsheet shows the sales of goods through Zazzle. A true and  
7 correct copy of the Zazzle subpoena without Exhibit 1 and Zazzle’s response is  
8 attached as Exhibit “6”.

9 45. A review of the spreadsheet shows no goods were sold through Zazzle  
10 as of the ‘997 Application filing date of March 28, 2016. And for the ‘839  
11 Application with a filing date of December 13, 2018, it appears one of each good  
12 was sold through Zazzle on December 31, 2020 - more than two years after the  
13 ‘839 Application was filed and more than 4 years after the ‘997 Application and  
14 long after the TTAB proceedings had been initiated.

15 46. In addition to not having sold any of the Class 25 goods as  
16 represented to the Trademark Office at the time the applications were filed, the  
17 Zox Brothers have not produced any evidence to show sales of numerous class 09  
18 goods from the ‘997 Application including, but not limited to, “...prerecorded  
19 video cassette tapes, audio and video discs in the nature of CDs and DVDs; film  
20 and video equipment, namely still, motion picture film and video cameras,  
21 videocassette recorders, videocassette players, digital video or audio players, and  
22 film and video editing machines; computer software for film and video editing;  
23 eyeglasses.”

24 47. For Class 41, Defendant John Zox has admitted there has not been any  
25 “live” music events since 2014 which is two years before the ‘997 Application was  
26 filed.

27 48. The Trademark Manual of Examining Procedures (TMEP) requires  
28 goods *lawfully* be sold in interstate commerce to qualify for Federal registration

1 [emphasis added]. See TMEP Section 907 and 37 C.F.R. §2.69.

2 49. The ‘997 Application and ‘839 Application are *void ab initio*,  
3 pursuant to 15 U.S.C. § 1051(a).

4 50. The Trademark Modernization Act “TMA” was signed into law on  
5 December 27, 2020. The TMA provides expungement or reexamination options to  
6 remove a registration on the basis that the trademark was never used in commerce  
7 or was not in use in commerce as of the relevant date.

8 51. The ‘843 Registration is a candidate for expungement and/or  
9 reexamination as the goods were never sold in commerce and most, if not all of the  
10 services were not being provided at the time of the application filing date or during  
11 the use in commerce dates provided to the Trademark Office.

12 52. On information and belief, in addition to not lawfully using the mark  
13 in commerce as represented to the Trademark Office and committing fraud,  
14 Defendants have modified and manipulated information online to in an attempt to  
15 improve their legal position at the TTAB with regard to “use” of the mark ZOX.

16 53. For example, Mr. Zox provided the screenshot labeled “Figure A” as  
17 shown in Exhibit “7” in Opposition Proceeding (No. 91265525, Notice of Opp.,  
18 ¶10) titled, “*Fig. 2- The Zox Band website 2008-2020*”. Paragraph 10 of the Notice  
19 states, “ZOX markets, promotes, and sells its merchandise online at its website  
20 [www.zoxband.com](http://www.zoxband.com) and [www.zazzle.com](http://www.zazzle.com), at shows/concerts, and via hundreds of  
21 online streaming music platforms. All feature the ZOX (Stylized) Mark and related  
22 ZOX Marks as shown by example of ZOX Band’s website in Fig. 2.”

23 54. As shown in Figure B of Exhibit 7, a review of the domain  
24 [zoxband.com](http://zoxband.com) via the Wayback Machine the archive page for November 16, 2017  
25 does not display a post dated October 8, 2017 stating, “For news, updates,  
26 community chatter, and more, head to the Official ZOX Facebook Page  
27 <https://www.facebook.com/ZOX-6813512423/>”. This means even on November  
28 16, 2017 there was no Oct. 8<sup>th</sup> 2017 post.

1 55. Further according to the Wayback Machine as shown in Figure C of  
2 Exhibit 7, an archived page for December 18, 2020, does not display a post dated  
3 January 1, 2020 “New year’s resolution: Add ZOX to my fave playlist! This  
4 means in December of 2020 there were no posts from January 2020.

5 56. As demonstrated in the screenshots, the Zox Band website was  
6 modified to make it appear some activity had occurred in the past several years.

7 57. In addition to the band’s website being edited, the Wikipedia page  
8 referring to the music band Zox has also experienced a flurry of edits. In all of  
9 2018 there were only three (3) edits. In 2020, there were over fifty (50) edits. For  
10 example, on October 3, 2020 the statement “Zox *was* a band from Providence  
11 Rhode Island” to “Zox *is* a band from Providence, Rhode Island. Additionally,  
12 there was also an edit in 2020, that changed “years active” from “2002-2009” to  
13 “2002-2009, 2010-Present” Attached as Exhibit “8” is the revision history for the  
14 Wikipedia page.

15 58. On further information and belief, both Andrew Zox and Daniel Zox,  
16 prior to this dispute used their full names in connection with the creation of their  
17 art. After the dispute uses of terms such as “ZOX PROJECTS” started appearing  
18 to make it seem there is tradename use as opposed to the surnames.

19 59. The Zox Company does not want to have any affiliation or association  
20 with John Zox, the music band Zox, or the Zox Brothers nor does it want  
21 consumers to be confused when they purchase a Zox Company product thinking it  
22 is related to Mr. Zox, the music band Zox or the Zox Brothers.

23 60. The Zox Company does not “need” to trade on the goodwill of John  
24 Zox, the music band Zox or the Zox Brothers, assuming any goodwill exists.

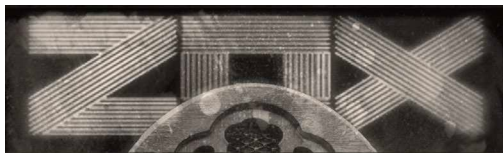
25 61. According to numerous streaming services and social media platforms  
26 the band Zox no longer has a substantial fan following assuming arguendo it ever  
27 did. Attached as Exhibit “9” are images of the parties’ social media pages and  
28 streaming platforms.

1 62. The Instagram account for the music band Zox has approximately  
2 three hundred and four (304) followers as compared to the Zox Company that has  
3 approximately two-hundred and two thousand (202,000) followers. On Facebook  
4 the band Zox has approximately four thousand 4,000 followers and the Zox  
5 Company has over three hundred thousand (300,000) followers.

6 63. The music band Zox has less than ten thousand (10,000) monthly  
7 listeners on Pandora, ten thousand (10,000) listeners on Songkick and about  
8 sixteen thousand (16,000) on Spotify, these numbers represent global numbers.

9 64. On information and belief, in the last month Defendants have  
10 launched “new” clothing products identical to those of Plaintiff with a logo  
11 confusingly similar to the Zox Company logo as shown below.

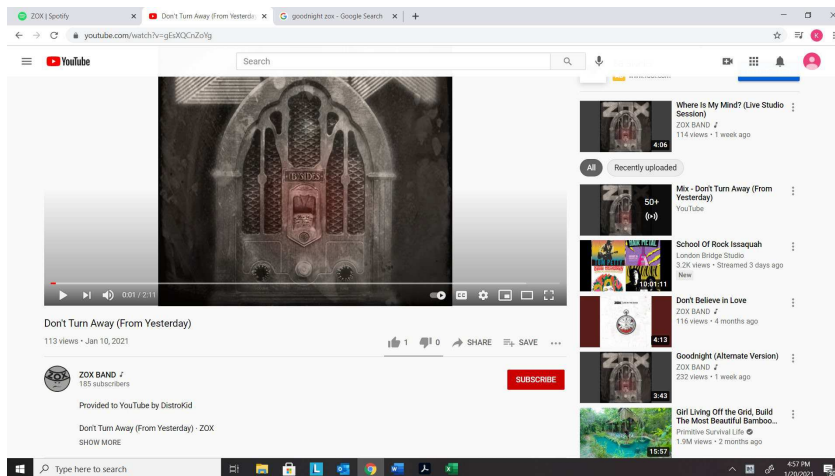
12 **Defendant’s New Logo**



13 **Plaintiff’s Logo**



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16  
17 65. On information and belief, to continue appearances, the Zox band  
18 “released” a new album on January 21, 2021. The new album consists of 9 songs,  
19 all of which are old songs remastered or rerecorded. On further information and  
20 belief the music was released on YouTube with 113 views.











1 with a conscious disregard of Zox Company's rights and with a desire to injure  
2 Zox Company's business and to improve its own.

3 **FOURTH CLAIM FOR RELIEF**

4 (Against All Defendants for Unfair Competition,  
5 Cal. Bus. & Prof. Code § 17200)

6 85. Zox Company repeats and re-alleges paragraphs 1- 68, 70-74, 76-80,  
7 and 82-84, as though fully set forth in this paragraph.

8 86. The above-described acts of Defendants constitute unfair competition  
9 within the meaning of California Business and Professions Code Section 17200.  
10 Such acts have caused and will continue to cause irreparable and immediate injury  
11 to Zox Company for which Zox Company has no adequate remedy at law. Unless  
12 Defendants are restrained by this Court from continuing the acts alleged herein,  
13 these injuries will continue to occur.

14 **FIFTH CLAIM FOR RELIEF**

15 (Against All Defendants for Common Law Unfair Competition)

16 87. Zox Company repeats and re-alleges paragraphs 1- 68, 70-74, 76-80,  
17 82-84 and 86, as though fully set forth in this paragraph.

18 88. By reason of Defendants' acts, as alleged herein, Zox Company has  
19 suffered damage to its business, reputation and goodwill and the loss of profits and  
20 sales it would have made but for Defendants' conduct.

21 89. The above-described acts of Defendants constitute common law unfair  
22 competition in that Defendants are attempting to pass off its goods and services as  
23 those of Zox Company. Such acts have caused and will continue to cause  
24 irreparable and immediate injury to Zox Company for which Zox Company has no  
25 adequate remedy at law. Unless Defendants are restrained by this Court from  
26 continuing the acts alleged herein, these injuries will continue to occur.

27 90. On information and belief, the foregoing acts of Defendants are  
28 oppressive, fraudulent, willful and malicious in that they have been undertaken



1 with a conscious disregard of Zox Company's rights and with a desire to injure  
2 Zox Company's business and to improve its own.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

5 1. For an order permanently enjoining the Defendants, their officers,  
6 agents, employees, and those acting in concert or conspiracy with them from:

7 a. Using any brand or designation that makes use of the  
8 term ZOX or any permutation of that term, whether alone or in combination with  
9 other words, characters or symbols in connection with the sale, offer for sale,  
10 promotion or advertising of any products and/or services that are the same as, or  
11 are related to, Zox Company's goods and services;

12 b. Instructing or directing any third parties to prepare print  
13 advertising, flyers, containers, labels or packaging bearing the term ZOX or any  
14 permutation of that term, whether alone or in combination with other words,  
15 characters or symbols for use in connection with the sale, offer for sale, promotion  
16 or advertising of any products and/or services that are the same as, or are related to,  
17 Zox Company's goods and services;

18 c. Imitating, copying, making unauthorized use of, or  
19 otherwise infringing, Plaintiff's rights in and to the ZOX Mark;

20 2. For an order directing the Defendants to deliver up for destruction all  
21 products, labels, boxes, signs, prints, packages, wrappers, and artwork in their  
22 possession, or under their control, bearing or intended to bear the term ZOX or any  
23 permutation of that term, whether alone or in combination with other words,  
24 characters or symbols;

25 3. For an order pursuant to 15 U.S.C. § 1125(c)(1) permanently  
26 enjoining Defendants and their officers, agents, employees, and all those acting in  
27 concert or conspiracy with them from making use of the ZOX or any other term  
28 that contains the term ZOX or any phonetic equivalent of that mark in connection

1 with the wholesale or retail sale of goods or services related to the Zox Company's  
2 goods and services;

3 4. For an order cancelling U.S. Registration No. 5,268,843 in whole, or  
4 in part;

5 5. For an order abandoning U.S. Application Serial No. 88/228,839;

6 6. For a monetary award against Defendants in favor of Zox Company in  
7 an amount equal to (i) Zox Company's actual damages and (ii) to the extent not  
8 included in actual damages, the Defendants' profits arising from the acts alleged  
9 above, such damages and profits to be trebled under 15 U.S.C. § 1117(a);

10 7. For a finding that this is an exceptional case within the meaning of,  
11 and for an award of attorneys' fees against Defendants pursuant to, 15 U.S.C. §  
12 1117(a);

13 8. For a finding that Defendants' acts of infringement were willful  
14 within the meaning of 15 U.S.C. § 1117(c)(2);

15 9. For an award of pre-judgment interest and post-judgment interest in  
16 the maximum amount permitted by law;

17 10. For a finding that Defendants' acts were undertaken intentionally,  
18 maliciously and/or with a reckless and wanton disregard of Plaintiff's rights and  
19 for an award of exemplary damages pursuant to California Civil Code section 3295  
20 in an amount sufficient to punish, deter, and make an example of Defendants for  
21 the acts complained of herein;

22 11. For an award of costs under 15 U.S.C. § 1117(a), or as otherwise  
23 provided by law against Defendants;

24 12. For exemplary and punitive damages against Defendants; and

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**REQUEST FOR JURY TRIAL**

Plaintiff requests trial by jury on all issues so triable.

CISLO & THOMAS LLP

Dated: February 22, 2021

By: /s/Daniel M. Cislo

Daniel M. Cislo

David B. Sandelands

Katherine M. Bond

Attorneys for Plaintiff ZOX LLC

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