

Rush Beverage Co., Inc.

P. O. Box 207
Blue Island IL. 60406



04-30-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

Peter Cataldo, Interlocutory Attorney
UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Cancellation No. 92040434

Mailed: April 27, 2004

RUSH BEVERAGE COMPANY, INC.

v.

XTREME TECHNOLOGIES, L. L. C.

RESPONSE TO ORDER TO SHOW CAUSE

Dear Mr. Cataldo.

On March 25, 2004 I received from you an Order to Show Cause in the Above entitled action. This letter is in response to that Order.

A burglary occurred at our offices on February 2002 (see Exhibit A). Relevant documents pertaining to Cancellation No. 92040434 and all other actions were stolen. It became, thereby, virtually impossible to manage all of the litigation underway at that time at the U.S.P.T.O. in the midst of multiple litigations also underway here in Chicago.

I had understood from our attorney that he was requesting from the P.T.O. that either some action be suspended or that their Trial Dates be rescheduled. I was not sure what specific request was being made this action. Early in June 2003 our attorney, James L. Kurtz, Esq., suddenly passed away. Since Mr. Kurtz passing (see Exhibit B) it has been difficult obtaining the necessary records pertinent to this case. I am still not sure what if anything was filed in this action regarding a suspension or reset of dates. From your recent communications it sounds as though, possibly, neither was filed, though I surely know it was intended.

The combination of all of these events, the search for a new trademark attorney, as well as the prosecution or defense of numerous actions at your P.T.O., in addition to two civil and one Federal case underway here, has caused unexpected problems. On June 26, 2003 I sent the following letter to the U. S.P.T.O. (see Exhibit C) that notified of the sudden death of our attorney, and included a change of address for all communications on the referenced matters. In September 2003, Ladas & Parry, Mr. Kurtz law firm notified the P.T.O. that it was no longer representing Rush Beverage Company as well.

We had expected the Trial Dates for this action to be reset as the have been by the P.T.O. in other actions (see Exhibits D and E).

Would you please, then, reset the Trial Dates in this action so that we may have a fair opportunity to submit testimony now that we properly have the reins in our hands on this matter. A matter in which we confidently expect to prevail for reasons set forth in the original Cancellation filing and for additional grounds yet to be presented.

I will be waiting for your notification that the proceeding has resumed when the TTAB has reset the trial dates.

A copy of this document has been forwarded, along with our March 5, 2004 letter to you, and the Applicants.

Yours Very Truly,



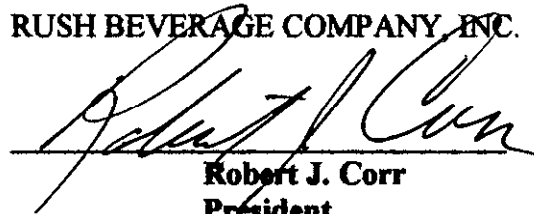
Robert J. Corr,
President

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **RESPONSE TO ORDER TO SHOW CAUSE** is being served this 27th of April 2004, upon the Applicant by deposit of the same in the United States Mail, first class postage prepaid, in an envelope addressed to:

Jeffery J. Crandall
President and Chief Executive Officer
Xtreme Technologies, L.L.C.
1620 B Northwest Boulevard
Coeur D'Alene, ID 83814
Tel: 208-667-3100
Applicant

RUSH BEVERAGE COMPANY, INC.



Robert J. Corr
President

RJC:ac
Enclosure

7
Exhibit A

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: March 25, 2004

Cancellation No. 92040434

RUSH BEVERAGE COMPANY, INC.

v.

XTREME TECHNOLOGIES, L.L.C.

Peter Cataldo, Interlocutory Attorney

Order to Show Cause

On February 26, 2004, the Board issued an order allowing petitioner thirty days in which to indicate whether it intended to retain new counsel or represent itself in this proceeding.

On March 9, 2004, petitioner filed a notice indicating that it will represent itself in this proceeding.¹ In its response, petitioner requests that trial dates be reset herein.

It is noted, however, that petitioner's testimony period, as set in the Board's April 2, 2002 institution order, closed on January 27, 2003. It is further noted that

¹ Petitioner's March 9, 2004 filing does not indicate proof of service of a copy of same on respondent as required by Trademark Rule 2.119. In order to expedite this matter, a copy of said filing is forwarded herewith to respondent.

petitioner has neither submitted testimony nor introduced any evidence during its assigned testimony period.

Accordingly, petitioner is allowed until **thirty days** from the mailing date of this order in which to show cause why judgment should not be entered against it under Trademark Rule 2.132) for failure to introduce evidence or take testimony herein.

Action in this proceeding is otherwise suspended.

Service of Papers

In addition, petitioner should note that Trademark Rule 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers which petitioner may subsequently file in this proceeding must be accompanied by a signed statement indicating the date and manner in which such service was made, failing which, the papers may be given no consideration. The statement, whether attached to or appearing on the paper when filed, will be accepted as prima facie proof of service.

Shown below is a suggested format for a certificate of service.

I hereby certify that a true and complete copy of the foregoing (insert title of submission) has

been served on (insert name of opposing counsel or party) by mailing said copy on (insert date of mailing), via First Class Mail, postage prepaid (or insert other appropriate method of delivery) to: (set out name and address of opposing counsel or party).

* * * * *

Exhibit B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RUSH BEVERAGE COMPANY, INC.,

Plaintiff,

v.

SOUTH BEACH BEVERAGE COMPANY
INC., and PEPSI AMERICAS, INC.

Defendants.

Civil Action No. 01 C 5684

Hon. Judge Darrah

SOUTH BEACH BEVERAGE COMPANY
INC.,

Counterclaim Plaintiff,

v.

RUSH BEVERAGE COMPANY, INC., and
R.J. COOR NATURALS, INC.

Counterclaim Defendants.

**MOTION FOR RELIEF BASED ON THE DEATH OF THE ATTORNEY
FOR PLAINTIFF AND COUNTERCLAIM DEFENDANTS**

Now Comes James P. Hanrath, an Attorney and a Registered Patent Attorney, duly appointed Receiver for deceased attorney James L. Kurtz under Illinois Supreme Court Rule 776, and hereby moves this Court for relief under Illinois Supreme Court Rule 776(c), Fed.R.Civ.P. Rule 6(b), and/or the Court's inherent powers, and in support thereof states as follows:

1. As noted in the Certificate of Death attached hereto as Exhibit A, the attorney for Plaintiff and the Counterclaim Defendants herein, James L. Kurtz, died June 8, 2003.

2. At the time of his death Mr. Kurtz was a sole practitioner having recently separated his law practice from his former law firm of Ladas & Parry with no partner, associate, executor, or other responsible party capable of conducting the lawyer's affairs.

3. On June 19, 2003, the Hon. Judge Emilio Santi of the Circuit Court of the 19th Judicial Circuit, Lake County, Illinois appointed James P. Hanrath to be a Receiver under Illinois Supreme Court Rule 776. A copy of Rule 776 and the Order and Notice of Receiver appointment is attached hereto as Group Exhibit B.

4. In the course of expeditiously taking custody of and making an inventory of the deceased lawyer's files, the above referenced pending action has come to the attention of the undersigned Receiver and it appears that there are due terms for Plaintiff and Counterclaim Defendants to take action herein, including a briefing schedule outstanding upon the Plaintiff and Counterclaim Defendants to file a Memorandum in support of a Motion For Final Judgment and to file a response to Defendants' Motion For Summary Judgment.

5. In view of the foregoing, the undersigned Receiver, pursuant to Illinois Supreme Court Rule 776(c), Fed.R.Civ.P. Rule 6(b), and/or the Court's inherent powers, requests that this Court grant the Plaintiff and Counterclaim Defendants relief which (1) stays any applicable statute of limitation or limitation on time for appeal for a period of sixty (60) days, (2) vacates any judgment, order, or briefing schedule affected by the death of attorney James L. Kurtz, and (3) provides the Plaintiff and Counterclaim Defendants herein with sufficient opportunity to retain new legal counsel herein.

6. The undersigned Receiver has informed Plaintiff and Counterclaim Defendants via Mr. Robert J. Corr of the death of Mr. Kurtz with a recommendation for prompt substitution of attorneys. Mr. Corr has advised the undersigned Receiver that he will need time sufficient to seek a new attorney herein or otherwise determine a course of action.

WHEREFOR, the undersigned Receiver prays that this Court grant the Plaintiff and Counterclaim Defendants relief due to the death of their attorney of record with sufficient opportunity to obtain new counsel herein or otherwise enter such Order as is just.

Respectfully submitted,

Dated: June 26, 2003

By: 

James P. Hanrath
Illinois Supreme Court Rule 776 Receiver

BOUNDAS, SKARZYNSKI, WALSH &
BLACK LLC
200 East Randolph Drive
Suite 7200
Chicago, Illinois 60601
Tel: (312) 946-4200
Fax: (312) 946-4272

I HEREBY CERTIFY THAT the foregoing is a true and correct copy of the record for the person named and that this record was established and filed in my office in accordance with the provisions of the Illinois Statutes relating to the registration of births, stillbirths, and deaths.

DATE: JUN 09 2003

SIGNED: Robert C. Beckous

AT: BERWYN, ILLINOIS

OFFICIAL TITLE: REGISTRAR

The original record is permanently filed with the ILLINOIS DEPARTMENT OF PUBLIC HEALTH at Springfield. Local registrars are authorized to make certifications from copies of the original record. The Illinois statutes provide that the certification of this record by the Department of Public Health or the local registrar shall be prima facie evidence in all courts and places of the facts therein.

PRINTED BY THE AUTHORITY OF THE STATE OF ILLINOIS

Exhibit A

PERMANENT CERTIFICATE
TEMPORARY CERTIFICATE

REGISTRATION DISTRICT NO. 16.21
REGISTERED NUMBER 411

STATE OF ILLINOIS
MEDICAL EXAMINER'S - CORONER'S CERTIFICATE OF DEATH
140 JUNE 03

DATE OF DEATH: JUNE 8, 2003

Type of Death: See Chapter of Federal Director's Instructions

DECEASED

PARENTS

CAUSE

LINK

CERTIFIER

DISPOSITION

REGISTRATION DISTRICT NO. 16.21
REGISTERED NUMBER 411
FIRST NAME: James L. KURTZ
LAST NAME: Mrs. JUNE 8, 2003
AGE: 69
SEX: F
DATE OF BIRTH: DECEMBER 18, 1933

CITY: BERWYN
COUNTY: COOK
RESIDENCE STREET AND NUMBER: 1052 BUENA
CITY, TOWN, TYPE, OR ROAD DISTRICT NO.: LAKE FOREST

SOCIAL SECURITY NUMBER: 321-26-2693
OCCUPATION: ATTORNEY
INDUSTRY: LAW
CITY: LAKE FOREST

STATE: ILLINOIS
FARMER-VAZ: LOTIS
MIDDLE: KURTZ
RELATIONSHIP: DAUGHTER

17a. HENRY TUCKER
17b. PAULINA
17c. 14800 NW CORNWELL PORTLAND, OR 97229

CONDITIONS, IF ANY, WHICH GAVE RISE TO IMMEDIATE CAUSE (A) STATING THE UNDERLYING CAUSE LAST.
(a) Acute Myocardial Infarction

MATERIAL ACCIDENT, HOMICIDE, SUICIDE, UNDERLYING CAUSE, PLACE OF INJURY, LOCATION, DATE OF DEATH, HOUR, M, MIN, COUNTY, STATE

21a. AND DUE TO THE CAUSE(S) STATED, AND THAT
EDMUND E. DAVENPORT M.D.
DATE SIGNED: JUN 9, 2003

22a. I CERTIFY THAT IN MY OPINION BASED UPON MY INVESTIGATION AND/OR THE INFORMATION THIS DEATH OCCURRED ON THE DATE, AT THE PLACE, AND DUE TO THE CAUSE(S) STATED, AND THAT
EDMUND E. DAVENPORT M.D.
DATE SIGNED: JUN 9, 2003

23a. FUNERAL HOME: IYVINS FUNERAL HOME 80 E. BURLINGTON STREET RIVERSIDE, ILLINOIS 60546
23b. FUNERAL DIRECTOR'S SIGNATURE: DWYER LOUIS WODAWOZ

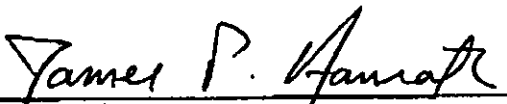
CERTIFICATE OF SERVICE

I, James P. Hanrath, an attorney, certify that I served the foregoing MOTION FOR RELIEF BASED ON THE DEATH OF THE ATTORNEY FOR PLAINTIFF AND COUNTERCLAIM DEFENDANTS upon the parties herein by both facsimile transmittal and by U.S. first class postage pre-paid mail addressed to the following:

Pattishall, McAuliffe, Newbury, Hillard & Geraldson
Attn: Mr. David C. Hillard
Mr. John M. Murphy
311 South Wacker Drive, Suite 5000
Chicago, Illinois 60606
Fax No. 312 554 8015
for Defendants/Counterclaim Plaintiff

Mr. Robert J. Corr
12201 South Western Avenue
P.O. Box 207
Blue Island, Illinois 60406
Fax No. 708 389 6504
for Plaintiff/Counterclaim Defendants

on June 26, 2003.


James P. Hanrath
Illinois Supreme Court Rule 776 Receiver

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

RUSH BEVERAGE COMPANY, INC.,

Plaintiff,

v.

SOUTH BEACH BEVERAGE COMPANY
INC., and PEPSI AMERICAS, INC.

Defendants.

Civil Action No. 01 C 5684

Hon. Judge Darrah

SOUTH BEACH BEVERAGE COMPANY
INC.,

Counterclaim Plaintiff,

v.

RUSH BEVERAGE COMPANY, INC., and
R.J. COOR NATURALS, INC.

Counterclaim Defendants.

NOTICE OF MOTION

TO: Pattishall, McAuliffe, Newbury, Hillard & Geraldson
Attn: Mr. David C. Hillard
Mr. John M. Murphy
311 South Wacker Drive, Suite 5000
Chicago, Illinois 60606
Fax No. 312 554 8015
for Defendants/Counterclaim Plaintiff

Mr. Robert J. Corr
12201 South Western Avenue
P.O. Box 207
Blue Island, Illinois 60406
Fax No. 708 389 6504
for Plaintiff/Counterclaim Defendants

PLEASE TAKE NOTICE that the undersigned Receiver under Illinois Supreme Court Rule 776 will appear before the Honorable Judge Magistrate Judge John W. Darrah, in the United States District Court for the Northern District, Eastern Division, 219 South Dearborn, 12th Floor, Courtroom 1203, Chicago, Illinois at 9:00 a.m. on Wednesday, July 2, 2003 to present the accompanying MOTION FOR RELIEF BASED ON THE DEATH OF THE ATTORNEY FOR PLAINTIFF AND COUNTERCLAIM DEFENDANTS.

By: James P. Hanrath
James P. Hanrath
Illinois Supreme Court Rule 776 Receiver

BOUNDAS, SKARZYNSKI, WALSH & BLACK LLC
200 East Randolph Drive
Suite 7200
Chicago, Illinois 60601
Tel: (312) 946-4200
Fax: (312) 946-4272

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that the foregoing Notice Of Motion was served on the foregoing counsel and parties listed above by first class postage pre-paid U.S. Mail and facsimile transmittal on June 26, 2003.

James P. Hanrath
James P. Hanrath
Illinois Supreme Court Rule 776 Receiver

RUSH BEVERAGE COMPANY, INC.
PO BOX 207
BLUE ISLAND, IL 60406
TEL: 708-389-6625 FAX: 708-389-6504
E-mail: rushbrands@netzero.net



Exhibit C

June 26, 2003

To: USPTO and USPTO TTB
Arlington, VA 22202

From: Robert J. Corr / RUSH Beverage Co.

Re: All Correspondence to now go to address below,
due to the death of our trademark attorney, James L. Kurtz. (see encl.)

Correspondence regarding the following marks:
Serial No. 76 / 412,118
Serial No. 78 / 052,247
Serial No. 78 / 073, 734
Registration No. 1,151,183
Registration No. 2,177,950

SERIAL NO. 78-184,173

Correspondence regarding the following proceedings:
Opposition No. 91,151,658
Opposition v. Serial No.75/788815 – Reg. No. 2,560,955
Opposition No. 91,155,290
Opposition No. 91,153,693
Opposition No. 125,167
Petition to Cancel Registration No. 2,269,399

should be sent to correspondent's mail address:

And Correspondent's new email address:

Robert J. Corr
RUSH Beverage Co.
PO Box 207
Blue Island, IL 60406

rushbrands@hotmail.com

Correspondence regarding any of the above sent to James L. Kurtz since June 2, 2003
should be resent to correspondent's address above.

Thank you.

Robert J. Corr

Exhibit Q

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Robert J. Corr
Rush Beverage Company, Inc.
P.O. Box 207
Blue Island, IL 60406

Mailed: March 17, 2004
Serial No.: 78178405

Tamika Whitsey, Legal Assistant:

The request to extend time to oppose is granted until 6/9/04 on behalf of potential opposer **Rush Beverage Company, Inc.**

Please do not hesitate to contact the Trademark Trial and Appeal Board for any questions relating to this extension.

New Developments at the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.

Parties should also be aware of changes in the rules affecting trademark matters, including rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003) Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes are available at www.uspto.gov.

EXHIBIT E

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: March 19, 2004

Applicant: KYNDAL SPIRITS LIMITED
Serial No.: 76507612
Filed: 04/17/2003
Mark: L'USH

ROBERT J. CORR
RUSH BEVERAGE COMPANY, INC
P.O. BOX 207
BLUE ISLAND, IL 60406

HAROLD ROSS, LEGAL ASSISTANT:

The request for 3 month extension of time to oppose filed March 15, 2004, on behalf of Rush Beverage Company, Inc., is noted. The requested extension of time is not in accordance with the Trademark Rules as amended.

Extensions of time to oppose may be granted only as provided in Trademark Rule 2.102:¹

(c) The time for filing an opposition shall not be extended beyond 180 days from the date of publication. Any request to extend the time for filing an opposition must be filed before thirty days have expired from the date of publication or before the expiration of a previously granted extension of time, as appropriate. Requests to extend the time for filing an opposition must be filed as follows:

(1) A person may file a first request for either a thirty-day extension of time, which will be granted upon request, or a ninety-day extension of time, which will be granted only for good cause shown.

¹ Trademark Rule 2.102 was recently amended. See, Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. Reg. 55,748 (Sept. 26, 2003). The amended rule applies to any potential opposer which filed its first extension of time against a particular application on or after November 2, 2003. Id.

(2) If a person was granted a thirty-day extension of time, that person may file a request for an additional sixty-day extension of time, which will be granted only for good cause shown.

(3) After receiving one or two extensions of time totaling ninety days, a person may file one final request for an extension of time for an additional sixty days. The Board will grant this request only upon written consent or stipulation signed by the applicant or its authorized representative, or a written request by the potential opposer or its authorized representative stating that the applicant or its authorize representative has consented to the request, or a showing of extraordinary circumstances. No further extensions of time to file an opposition will be granted under any circumstances.

Because potential opposer's extension request includes a showing of good cause, the request is granted to the extent that potential opposer is allowed until June 9, 2004 in which to file an opposition herein, or a further request for an extension of time, if appropriate.

Note that the Board will not suspend the time for filing a notice of opposition for any reason. TBMP § 209.01 (2d ed. June 2003).

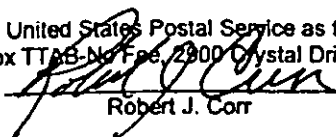
.oOo.

T7713

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Assistant Commissioner for Trademarks, Box TTAB-No Fee, 2300 Crystal Drive, Arlington, VA 22202-3514. Dated: March 10, 2004

Signed


Robert J. Corr

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

In the Matter of Trademark Application of: Kyndal Spirits Limited

Serial No.: 76-507-612

Filed: April 17, 2003

Mark: L'USH

International Class No. 33

Published in the Official Gazette, trademarks, on Feb. 10, 2004

FILED AFTER 03/15/2004 03/15/2004 03/15/2004

03-15-2004

U.S. Patent & TMO/TM Mail Rcpt DL #78

**REQUEST FOR EXTENSION OF TIME TO FILE
NOTICE OF OPPOSITION TO APPLICATION NO. 76-507-612**

On behalf of Rush Beverage Company, Inc. I request an extension of time of Ninety (90) days within which to file a Notice of Opposition to the trademark Application of Kyndal Spirits Limited for the mark shown on Application Serial No. 76-507-612 and published in the Official Gazette on Feb. 10, 2004.

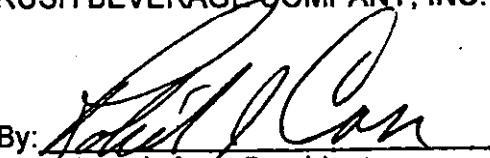
An investigation of the facts has been undertaken with the view to the filing of a Notice of Opposition, but there remains insufficient time to complete the investigation and to prepare and file the Notice of Opposition within the time provided by law.

It is believed that the investigation and the preparation and the filing of a Notice of Opposition can be completed within the extended period.

Dated: March 10, 2004

Respectfully Submitted,

RUSH BEVERAGE COMPANY, INC.

By: 

Robert J. Corr, President

P.O. Box 207

Blue Island, IL 60406

ph: 708-389-6625 fax: 708-389-6504

email: rushbrands@hotmail.com

ttab

Rush Beverage Company Inc.

P. O. Box 207
White Island IL 61406

RECEIVED

03/09/2004

Peter Cataldo, Intelecutory Attorney
UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2500 Crystal Drive
Arlington, Virginia 22202-3513

Cancellation No. 92040434

Mailed: March 5, 2004

RUSH BEVERAGE COMPANY, INC.

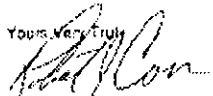
v
XTREME TECHNOLOGIES, L. L. C.

Dear Mr. Cataldo,

On March 3, 2004 I received the notice from you that stated that the
Opposer in the above-entitled action could appoint new counsel or represent
itself until such time as new counsel may be retained.

This letter will confirm that the Opposer Rush Beverage Company Inc. has
Chosen, at this time, to represent itself in the Cancellation No. 92040434.

I will be waiting for your notification that the proceeding has resumed
when the TTAB has reset the trial dates.

Yours Very Truly

Robert J. Con,
President