

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Baxley

Mailed: April 22, 2015

Cancellation No. 92060348

BuzzBallz, L.L.C.

v.

BuzzBox Beverages, Inc.

Andrew P. Baxley, Interlocutory Attorney:

The certificate of service of the motion for relief from judgment under Fed. R. Civ. P. 60(b) in Cancellation No. 92060348 that Respondent filed on April 13, 2015 indicates that it was “filed electronically on this 13th day of April, 2015, and is available for viewing and downloading to the ECF registered counsel of record;” and that it was served electronically on Petitioner’s attorneys.

The fact that Board proceeding records are available online through the TTABVUE database does not transform filing a document electronically through the Board’s ESTTA filing system into a valid a form of service. *See* TBMP § 110.09(d) (2014). Further, the certificate of service does not indicate that Petitioner has agreed to electronic service under Trademark Rule 2.119(b)(6). However, in

view of the the parties' stipulation (filed April 15, 2015) to extend Petitioner's time to respond to Respondent's motion, the Board will consider that motion.¹

The stipulation to extend time to respond to Respondent's Rule 60(b) motion is approved. Petitioner is allowed until May 8, 2015 to file its brief in reponse to that motion. Respondent's reply brief is due in accordance with Trademark Rules 2.119(c) and 2.127(a).

¹ The certificates of service of the petition to cancel indicates that Petitioner served those petitions upon Respondent's attorneys and not directly upon Respondent or its domestic representative. To commence a cancellation proceeding, a petitioner must serve the petition to cancel directly upon the respondent or its domestic representative, if one has been appointed. *See* Trademark Rules 2.111(a) and (b). That is, a cancellation proceeding differs crucially from an opposition proceeding in that a cancellation cannot be commenced based on service of the complaint, in this case the petition to cancel, on an attorney who prosecuted the application for the subject registration during examination. *Compare* Trademark Rules 2.101(a) and 2.111(a) and (b). *See also Jacques Moret Inc. v. Speedo Holdings B.V.*, 102 USPQ2d 1212 (TTAB 2012); TBMP § 309.02(c)(2). Representation by an attorney during prosecution of an application is treated as having expired upon issuance and receipt of a registration. *See* Trademark Rule 2.17(g)(1); TBMP § 310.01.