

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
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Mailed: May 11, 2015

Cancellation No. 92060348

Cancellation No. 92061050

BuzzBallz, L.L.C.

v.

BuzzBox Beverages, Inc.

(as consolidated)

**By the Trademark Trial and Appeal Board:**

On April 13, 2015, Respondent filed a motion under Fed. R. Civ. P. 60(b) for relief from the default judgment that the Board entered in in Cancellation No. 92060348 on February 17, 2015. In response thereto, Petitioner withdrew its opposition to the motion “in the interest of judicial economy, mutual cooperation, and avoiding increased costs and expense to the parties.” The Board further notes that the certificate of service of the petition to cancel indicates that the petition to cancel in Cancellation No. 92060348 was not served directly upon Respondent in compliance with Trademark Rules 2.111(a) and (b)<sup>1</sup> and was instead served upon attorneys for Respondent. *See Jacques Moret Inc. v. Speedo Holdings B.V.*, 102 USPQ2d 1212 (TTAB 2012); TBMP § 309.02(c)(2) (2014). *See also* April 22, 2015 order at 2, fn. 1. Accordingly, the motion for relief from judgment in Cancellation

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<sup>1</sup> Respondent did not appoint a domestic representative during *ex parte* prosecution of the applications for its involved registrations in the above-captioned proceedings.

**Cancellation Nos. 92060348 and 92061050**

No. 92060348 is hereby granted. Involved Registration No. 4646160 will be restored to pendency.

Because the above-captioned proceedings involve the same parties and common questions of law or fact, the Board hereby orders their consolidation. *See* Fed. R. Civ. P. 42(a); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991); *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991); TBMP § 511 (2014). The consolidated cases may be presented on the same record and briefs. *See Helene Curtis Ind. Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989); *Hilson Research Inc. v. Society for Human Resource Mgt.*, 26 USPQ2d 1423 (TTAB 1993).

The Board file will be maintained in Cancellation No. 92060348 as the "parent" case. As a general rule, from this point onward, only a single copy of any submission should be filed herein. That copy, however, should include both of the consolidated proceeding numbers in the caption thereof. However, the parties should not commence filing single copies of submissions until Respondent files an answer in Cancellation No. 92060348, after proceedings herein are resumed following final determination of the civil action between the parties. *See infra.*

Despite being consolidated, each proceeding retains its separate character. The decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleading; a copy of the decision shall be placed in each proceeding file.

As an exhibit to the motion for relief from judgment, Respondent included a copy of the first amended complaint in a civil action styled *BuzzBalls, L.L.C. v. BuzzBox*

**Cancellation Nos. 92060348 and 92061050**

*Beverages, Inc.*, Case No. 5:14-cv-01725, filed in the United States District Court for the Central District of California. A review of that amended complaint indicates that, in the civil action, Petitioner seeks, among other things, to enjoin Respondent from using the marks in the involved applications. Accordingly, the Board, in exercising its inherent authority to control the scheduling of proceedings on its docket, finds that the civil action may have a bearing upon the above-captioned newly consolidated proceedings and that suspension of these proceedings under Trademark Rule 2.117(a) is therefore warranted. *See* TBMP § 510.02(a).

Proceedings herein are **suspended** pending final determination, including any appeals or remands, of Case No. 5:14-cv-01725. The Board will make annual inquiry as to the status of Case No. 5:14-cv-01725. Within twenty days of final determination of Case No. 5:14-cv-01725, Respondent should notify the Board in writing so that appropriate action can be taken in these consolidated proceedings. While these proceedings are suspended, the parties should keep their correspondence addresses current.