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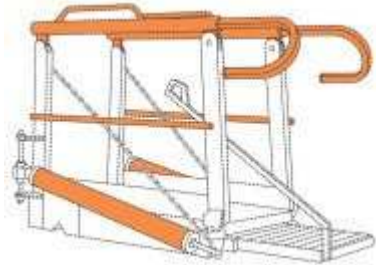
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92068857
Party	Defendant SafeRack, LLC
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Signature	/sara centioni kanos/
Date	04/26/2019
Attachments	Response to Board for filing.pdf(59487 bytes) Ex A Fed Judmt and Order.pdf(2534991 bytes)

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

In the matter of Trademark

Registration No. 5211514
Registration Date: May 30, 2017



Mark:

Bullard Company,

Petitioner,

v.

SafeRack, LLC,

Registrant.

Cancellation No. 92068857

REGISTRANT'S RESPONSE RE: SUSPENSION NOTICE

In the Matter of Cancellation No. 92068857 (the "Cancellation"), SafeRack, LLC ("Registrant") hereby advises the Board that the Civil Action in the United States District Court, District of South Carolina, Charleston Division (Civil action No. 2:17-cv-1613-RMG) has concluded, and all avenues for appeal terminated.

As shown by the attached summary judgment order ("Federal Judgment," **Exhibit A**), the District Court made the following findings and conclusions:

- “[T]he Court concludes that there is no dispute of material fact that SafeRack has ownership of an orange color mark..., that Bullard used the mark in commerce without authorization..., and that this use was likely to cause confusion.” (Order, p. 14).
- “[T]here is no material dispute that SafeRack’s orange color mark is nonfunctional.” (Order, p. 16).
- “[T]here is no material dispute that Bullard’s use of orange did not constitute fair use.” (Order, p. 16).
- “[I]t is undisputed that SafeRack’s mark is not generic.” (Order, p. 17).
- “[I]t is undisputed that SafeRack’s mark is distinct.” (Order, p. 17).
- “[I]t is undisputed that SafeRack did not abandon the orange color mark.” (Order, p. 18).
- “It is ... undisputed that the registration was not obtained fraudulently.” (Order, p. 18).
- “Bullard is not entitled to summary judgment on any of its affirmative defenses, and, ... SafeRack is entitled to summary judgment on its Lanham Act trademark infringement claim.” (Order, p. 18).
- “SafeRack is entitled to a permanent injunction against Bullard using the color orange as applied to railings, gates, and cages of fall protection equipment.” (Order, p. 20).

The District Court confirmed the Federal Judgment in a subsequent order on motion for reconsideration, and all further appeals are now exhausted. See Order on Reconsideration, also part of **Exhibit A**. Accordingly, the Board should end the suspension and grant Registrant's forthcoming Motion for Summary Judgment.

Respectfully submitted,

NEXSEN PRUET, LLC



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Attorneys for Registrant

April 26, 2019
Greenville, SC

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

In the matter of Trademark

Registration No. 5211514
Registration Date: May 30, 2017



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CERTIFICATE OF SERVICE

I, Sara C. Kanos, attorney of Nexsen Pruet, LLC, attorneys for Registrant, hereby certify that a true, correct, and complete copy of the foregoing

RESPONSE TO BOARD

was served on Petitioner's attorney of record at the following address:

Todd M. Hess
Barnwell Whaley Patterson & Helms LLC
288 Meeting St. STE 200
Charleston, SC 29401
thess@barnewell-whaley.com

postage prepaid by first-class mail on April 26, 2019.

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