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

Proceeding no.	92068983
Party	Plaintiff Buzz Media, Inc.
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Submission	Other Motions/Submissions
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Date	03/31/2022
Attachments	Motion for Entry of Judgement Under 37 CFR Section 2-134 b.pdf(104415 bytes) Exhibit J - Declaration of Khalid Mian.pdf(47620 bytes) Exhibit J-1.pdf(1654476 bytes) Exhibit J-2.pdf(715388 bytes) Exhibit J-3.pdf(1089060 bytes) Exhibit J-4.PDF(327865 bytes) Exhibit J-5.pdf(455091 bytes) Exhibit J-6.PDF(162799 bytes) Exhibit J-7.pdf(475624 bytes) Exhibit J-8.PDF(152268 bytes) Exhibit J-9.pdf(473926 bytes)

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

In Re: Trademark Registrations No. 4814904 & 4814905

Buzz Media, Inc.)	
)	
)	Petitioner
)	Consolidated Cancellations No.:
)	
V)	92068983 (<i>Parent</i>)
)	92068985
Beats Electronics, LLC)	
)	
)	Respondent

MOTION FOR ENTRY OF JUDGEMENT UNDER 37 C.F.R. § 2.134(b)

37 C.F.R. § 2.134(a) & § 2.134(b) AND TBMP § 535 & 602.02

1. Petitioner Buzz Media, Inc. hereby invokes the provisions contained in 37 C.F.R. § 2.134(a), 37 C.F.R. § 2.134(b), TBMP § 535 and TBMP §602.02 AND moves for entry of judgement against the defendant on all counts in the Petition for Cancellation, i.e. **Count 1: FRAUD; Count 3: FRAUD; Count 4: LACK OF OWNERSHIP OF THE MARK; Count 5: MARK NOT IN USE IN COMMERCE AS OF THE STATEMENT OF USE** and **Count 6: ABANDONMENT.**
2. The status of Trademark Registrations No. 4814904 & 4814905 in the TSDR shows that both registrations were cancelled on March 25, 2022 for failure to file an acceptable declaration under §8 of the Trademark Act 1946.

3. 37 C.F.R. § 2.134(b) provides that in case a respondent in a cancellation proceeding lets its trademark registration to be cancelled for non-filing of §8 affidavit/deceleration, the Board may order the respondent to show cause why such cancellation should not be deemed to be the equivalent of a cancellation by request of respondent without the consent of the adverse party and should not result in entry of judgment against respondent as provided by 37 C.F.R. § 2.134(a). In case the respondent fails to show *good and sufficient cause*, the Board may enter judgment against the respondent under 37 C.F.R. § 2.134(a).
4. In the application of 37 C.F.R. § 2.134(b), the Board has held that the term “*good and sufficient cause*” refers to cases where the failure to file §8 deceleration is the result of inadvertence or mistake.

Jill E Peterson v. Awshucks SC, LLC (When it comes to the attention of the Board that a registration that is the subject of a cancellation proceeding lapses during the proceeding, the Board will usually, pursuant to Trademark Rule 2.134(b), 37 C.F.R. § 2.134(b), issue an order allowing the respondent time to show cause why the cancellation of such registration should not be deemed the equivalent of a cancellation by request of the respondent without the consent of the petitioner and should not result in entry of judgment against the respondent. *See Marshall Field & Co. v. Mrs. Fields Cookies, 11 USPQ2d 1154, 1155 (TTAB 1989); C.H. Guenther & Son Inc. v. Whitewing Ranch Co., 8 USPQ2d 1450*

(TTAB 1988); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 602.02(b) (2020).)

(The purpose of an order to show cause in that situation is to prevent a respondent from intentionally mooting a cancellation (thereby avoiding judgment), and *to give the respondent an opportunity to submit a showing that the cancellation of that registration was the result of inadvertence or mistake, in which case judgment would not be entered against it.*) See, e.g., *Marshall Field*, 11 USPQ2d at 1156 (where registrant stated that failure to file a Section 8 affidavit was result of deliberate business decision made prior to commencement of proceeding and not to avoid judgment, judgment was not entered as to that ground); *C.H. Guenther & Son*, 8 USPQ2d at 1452 (failure to renew was unintentional and not due to abandonment); *Abraham's Seed v. John One Ten*, 1 USPQ2d 1230, 1232 (TTAB 1986) (respondent's belief that it was improper to file a Section 8 affidavit since "the cancellation action had priority," while erroneous, was treated as sufficient showing of cause to avoid entry of judgment.) *Id*

5. In the instant case, however, respondent's act of non-filing of §8 Deceleration was neither a mistake nor an inadvertent lapse. It's rather a deliberate and planned abstention aimed at avoiding Board's judgment on Petitioner's allegations and the grounds/counts for cancellation.

6. As the Board considers any explanation proffered by the respondent, the petitioner draws Board's attention to the following facts which rule out the possibility of any inadvertence or mistake on the part of the respondent:

- i. From September 15, 2020 to March 15, 2022, the respondent had 18 months to file §8 declarations In Re: Trademark Registrations No. 4814904 & 4814905. During this period of time, the respondent filed Declarations under §8 and §9/§15 in at least three of its Trademark Registrations, i.e. 3881677, 4937568 and 5028678 on 11/16/2020, 5/17/2021 and 8/23/2021 respectively [Exhibit J-1, Exhibit J-2 and Exhibit J-3 respectively]. In the normal course of things, filing of each of these declarations serves as a check point and a reminder regarding every other trademark registration which may be due for maintenance declaration. In this situation, **forgetting** not one but **both** the registrations which are subject of Cancellation Proceedings, i.e. Registrations No. 4814904 & 4814905 takes some serious deliberation and planning and not a mistake or inadvertence.
- ii. USPTO record of Trademark Registrations No. 4814904 & 4814905 shows that the respondent has *Ms. Kimberly Eckhart Esq*, a licensed attorney, taking care of both the subject registrations as Attorney of Record. On the other hand, the TTAB record shows that the respondent is being represented in the instant cancellation proceedings by at least four senior licensed attorneys, i.e. *Mr. Michael G. Kelber Esq*, *Ms. Andrea S. Fuelleman Esq*, *Ms. Katherine Dennis Nye Esq* and *Mr. Andrew S. Fraker Esq*; all of the reputed law firm,

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