

No. 20-1589

IN THE
Supreme Court of the United States

KRIS KASZUBA,
DBA HOLLYWOOD GROUP,
Petitioner,
v.

DREW HIRSHFELD, ACTING UNDER SECRETARY
OF COMMERCE FOR INTELLECTUAL PROPERTY
AND DIRECTOR, UNITED STATES PATENT
AND TRADEMARK OFFICE,
Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Federal Circuit**

PETITION FOR REHEARING

KRIS KASZUBA
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October 28, 2021



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BACKGROUND

On October 4, 2021 Kaszuba's Petition for a Writ of Certiorari was denied.

Supreme Court rules allow 25 days for submitting a Petition for Rehearing.

NEW EVIDENCE and NEW QUESTION

QUESTION 6

Is it constitutionally wrong, unfair and unjust for the TTAB and the USPTO to cancel Petitioner's Trademark by an Interlocutory Attorney and not by the Administrative Trademark Judges as required by TBMP § 102.3 which the record and evidence proves that the three Judges did not meet to consider the Cancellation Petition on December 13, 2018.

New evidence has been received from the USPTO FOIA General Counsel dated October 12, 2021 which proves conclusively that the Trademark Trial and Appeal Board, "TTAB" Administrative Trademark Judges did not make a Decision on December 13, 2018 in the Cancellation proceeding of Appellant's trademark as per the record.

Petitioner filed Freedom of Information Act, 5 U.S.C. § 552 requests in September, 2021 regarding the Trademark Trial and Appeal Board, "TTAB", Hearing on December 13, 2018 the date of Decision by the Board re Proceeding No. 92061976 which cancelled Appellant's registered trademark.

The attached FOIA Letter, Exhibit A, clearly states:

"The United States Patent and Trademark Office identified no records responsive to your request."

The Petitioner's three requests were as follows:

1. The Scheduling Calendar for December 2018 and the specific time which the Board met for the Hearing on December 13, 2018.

2. Any Minutes and Notes which the Administrative Trademark Judges may have written at the Hearing on December 13, 2018.

3. Any emails from Dec 7 to Dec 13, 2018 with respect to the subject Proceeding No. 92061976 for Administrative Trademark Judges Bergsman, Wellington and Hightower.

Firstly, the FOIA evidence proves that the Cancellation Proceeding Hearing was not scheduled or held on December 13, 2018 or at any time in the month of December, 2018.

Secondly, there are no records of minutes or notes for the three Administrative Trademark Judges at the non existent Board Hearing.

Thirdly, there are no emails from Dec 7 to Dec 13, 2018 for the subject Proceeding No. 92061976 for Administrative Trademark Judges Bergsman, Wellington and Hightower.

In conclusion, the evidence proves conclusively that Administrative Trademark Judges Bergsman, Wellington and Hightower did not preside at a Hearing and did not make a Decision on Cancellation Proceeding No. 92061976.

Trademark Trial and Appeal Board Manual of Procedure § 102.3 "TBMP" states and requires that:

"Decisions on the merits of a case, and on complex or contested motions that are potentially dispositive of the case, are rendered

by a panel of at least three Board judges.”
ATJ’s. Note 5. 37 C.F.R. § 2.129(a), 37 C.F.R.
§ 2.142(e)(1)

Such was not the case in Kaszuba’s TTAB Cancellation Proceeding. There is no record of Administrative Trademark Judges Bergsman, Wellington and Hightower of having an email, discussion, meeting or even a Board Hearing.

By virtue of the name on the so-called Decision of December 13, 2018, it was an unauthorized TTAB Attorney Andrew Baxley who authored and made this unconstitutional and unlawful Decision/Order and not the ATJ’s as required by TBMP § 102.3.

It is unlawful and unconstitutional for TTAB Attorney Baxley to untruthfully insert the names of three ATJ’s Judges Bergsman, Wellington and Hightower on a TTAB Decision when the recent FOIA evidence shows “No Record” of a meeting or Board Hearing.

Also it is highly unusual and suspicious that an email with the questionable Decision was sent at 6:31 am EST on December 13, 2018 to Kaszuba, which is 2 or 3 hours before the TTAB opens for business.

How can a decision be made and sent before a supposedly TTAB Hearing is held? No copy was mailed as is normal practice.

Furthermore the cancellation case is “not found” in a search of the TTAB Reading Room which is a database of cases heard by the TTAB.

TTAB Attorney Baxley and the TTAB have erroneously and unconstitutionally cancelled Kaszuba’s trademark.

Since the Judges' names are on the Decision(s) and there is no evidence of a Hearing what inference can be reached of TTAB Attorney Baxley who authored it?

In the FOIA evidence Exhibit C there is also a Board Decision dated October 6, 2021, this year! The TTAB is altering records and evidence to this day.

SECOND FOIA LETTER

Furthermore, the Petitioner's second FOIA request was received from the USPTO FOIA General Counsel dated October 19, 2021. Exhibits C.

A totally redacted email was sent from Andrew Baxley to Cheryl Butler, Interlocutory Attorney and to Kenneth Solomon on December 12, 2018 at 7:44 pm EST the evening before the supposed Hearing of December 13, 2018.

The Subject is Sanctions Grant with an attachment called 61976a3.docx.

There is no name and no proceeding number.

CONSTITUTIONALITY OF REDACTED EVIDENCE

Due to the recent FOIA letters from the USPTO General Counsel, there arises a new Question.

Question 7

Is it constitutionally wrong, unfair and unjust for the USPTO and TTAB to withhold and redact key information and evidence from this Supreme Court by an Agency of the U.S. Government which is primarily totally funded by U.S. Citizen Trademark and Patent Owners?

Exemption (b)(5) of the FOIA, 5 U.S.C. 552(b)(5), protects an agency's deliberative process privilege.

This "privilege" is harmful to the pursuit of justice and the truth. Are we not "We The People" under the Constitution? Thomas Jefferson strongly believed that every American should have the right to prevent the government from infringing on the liberties of its citizens. Certain liberties, including those of religion, speech, press, assembly, and **petition**, should be sacred to everyone.

Petitioner will be appealing the (b)(5) Exemption.

CONCLUSION

The Board Attorney(s) at the TTAB had no constitutional right to make a decision on Petitioner's trademark registered for 13 years. Only Administrative Trademark Judges are provided the legal right to decide a Trademark cancellation Hearing under § 102.3 TBMP and the Trademark Act. This major error is similar to the grievous errors in the Arthrex case at the Supreme Court, *United States v. Arthrex*, 141 S. Ct. 1970, 594 U.S. __ (2021). The FOIA letters from the USPTO General Counsel prove that the ATJs took no role or part in a Board Hearing in December, 2018. Thus Petitioner's Trademark should never have been issued a decision to cancel.

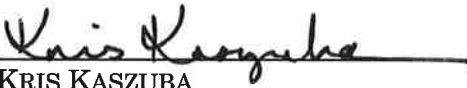
On the one hand the evidence proves that the ATJ's did not participate in the Order at a TTAB Hearing, yet the USPTO appeared at the CAFC Appeal to defend the unlawful and unconstitutional Decision/Order contrary to 35 U.S.C. § 143.

Petitioner has found another Trademark Cancellation Case which does not appear to have been decided

upon by Trademark Administrative Judges. That TTAB case is Corcamore v SFM #92060308.

Respectfully and humbly may this Petition for Rehearing for Certiorari be granted.

Respectfully submitted,



KRIS KASZUBA

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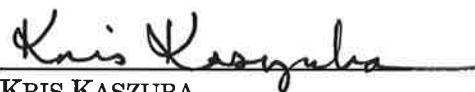
kris@hollywoodbeer.net

October 28, 2021

RULE 44.2 CERTIFICATE

Pursuant to Rule 44.2, the undersigned hereby certifies that the attached petition for rehearing of an order denying writ of certiorari is restricted to the grounds specified in Rule 44.2: it is limited to *intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented*. Petitioner further certifies that the attached petition is presented in good faith and not for delay.

Respectfully submitted,



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October 28, 2021

APPENDIX

1a

APPENDIX A

[SEAL]

October 12, 2021

Mr. Kris Kaszuba
Hollywood Group
2683 Via de la Valle
Del Mar, CA 92014

Re: Freedom of Information Act (FOIA)
Request No. F-21-00208

Dear Mr. Kaszuba:

The United States Patent and Trademark Office (USPTO) FOIA Office has received your e-mail dated Thursday, September 09, 2021 requesting a copy of the following documents pursuant to the provisions of Freedom of Information Act, 5 U.S.C. § 552:

1. I wish to receive the Scheduling Calendar for December 2018 showing that the Proceeding was on the Calendar and the specific time which the Board met for the Hearing on December 13, 2018.

2. I also wish to receive any Minutes and Notes which the Administrative Trademark Judges may have written at that Hearing.

3. Also I would appreciate receiving any emails from Dec. 7 to Dec. 13, 2018 with respect to the subject Proceeding No. 92061976 for Administrative Trademark Judges Bergsman, Wellington and Hightower.

The United States Patent and Trademark Office identified no records responsive to your request.

2a

Sincerely,

Dorothy G. Campbell
Dorothy G. Campbell
USPTO FOIA Officer
Office of General Law

3a

APPENDIX B

[SEAL]

October 19, 2021

VIA E-MAIL

Mr. Kris Kaszuba
Hollywood Group
2683 Via de la Valle #G246
Del Mar, CA 92014
hollywoodbeer@gmail.com

RE: Freedom of Information Act (FOIA)
Request No. F-21-00211

Dear Mr. Kaszuba:

The United States Patent and Trademark Office (USPTO) FOIA Office has received your e-mail dated September 09, 2021 requesting a copy of the following documents pursuant to the provisions of the Freedom of Information Act, 5 U.S.C. § 552:

1. I would appreciate receiving all emails and written correspondence from Nov. 1, 2018 to and including Dec. 13, 2018 of TTAB Attorneys Andrew Baxley and Cheryl Butler with respect to the subject Proceeding No. 92061976.

2. I also wish to receive written confirmation that the TTAB Decision of December 13, 2018 was served by U.S. Mail to Kris Kaszuba and to what address it was mailed.

The USPTO has identified 12 pages of documents that are responsive to Item (1) of your request and are releasable. One page has been redacted pursuant to Exemption (b)(5) of the FOIA.

4a

Regarding Item (2) of your request, all Board correspondence is sent by email to the address on record.

Sincerely,

Dorothy G. Campbell
Dorothy G. Campbell
USPTO FOIA Officer
Office of General Law

5a

APPENDIX C

From: Baxley, Andrew
Sent: 12 Dec 2018 19:44:59 +0000
To: Butler, Cheryl; Solomon, Kenneth
Subject: Sanctions grant
Attachments: 61976a3.docx

(b)(5) Delib Proc Priv

This decision is not a
TTAB precedent.

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500
General Email: TTABInfo@uspto.gov

Baxley

December 12, 2018
Cancellation No. 92061976

Hollywood Vodka LLC

v.

Hollywood Group

Before Bergsman, Wellington and Hightower,
Administrative Trademark Judges

By the Board:

6a

This decision is not a
TTAB precedent.

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500
General Email: TTABInfo@uspto.gov

Baxley

October 6, 2021

Cancellation No. 92061976

Hollywood Vodka LLC

v.

Hollywood Group

Before Bergsman, Wellington and Hightower,
Administrative Trademark Judges

By the Board: