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Scott S. Harris, Clerk
Supreme Court of the United States
One First Street, N.E.
Washington, D.C. 20543

Re: *Phazzer Electronics, Inc. v. TASER International, Inc.*
Petition for Certiorari No. 19-1378
Informal Response

Dear Mr. Harris:

Respondent Axon Enterprise, Inc., formerly known as TASER International, Inc., (“Axon”) submits this informal response to the untimely Petition for Certiorari filed by Phazzer Electronics, Inc. (“Phazzer”) on June 8, 2020, and provides the following important omitted procedural history.

On March 2, 2016, Axon filed suit against Phazzer in the United States District Court for the Middle District of Florida, **Case No. 6:16-CV-00366-PGB**, for trademark and patent infringement and false advertising. On July 21, 2017, the district court struck Phazzer’s motion to dismiss; entered default judgment against it as a sanction for conduct the court described as “bad faith”, “contemptuous”, “egregious”, “flagrant” and “intentional obstructionist behavior” resulting in the willful “abuse [of] the judicial process,” issued a permanent injunction,¹ and awarded Axon treble damages and attorneys’ fees. (Dkt. 183). This judgment and injunction was a final order resolving all issues in the case except for the accounting of damages.

¹ Phazzer also flagrantly violated the district court’s injunction, resulting in a civil contempt order in May 2018 (Dkt. 271) and the initiation of criminal contempt proceedings, *USA v. Phazzer Electronics, Inc.*, **Case No. 6:20-cr-00057-PGB** in March 2020.



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On October 26, 2018, the United States Court of Appeals for the Federal Circuit in **Appeal No. 17-2637** found that the “record fully support[ed]” the district court’s judgment and injunction and affirmed it “in its entirety.” *Taser Int’l, Inc. v. Phazzer Elec’s, Inc.*, 754 Fed. Appx. 955, 961, 965 (Fed. Cir. 2018). Phazzer’s petition for en banc rehearing was denied on January 3, 2019, and Phazzer did not file a petition for writ of certiorari.

On April 4, 2018, the district court issued its damages accounting order that is the subject of Phazzer’s present Petition. (Corrected Appendix 3a-12a). Phazzer separately appealed that order to the Federal Circuit, **Appeal No. 18-1914**, but only raised the same attacks on the underlying judgment then-pending in its first appeal, and did not challenge the accounting itself. On July 23, 2019, the Federal Circuit summarily affirmed the district court’s damages accounting order under Fed. Cir. R. 36. Phazzer’s petition for panel rehearing was denied on August 23, 2019. (*Id.* at 13a-14a).

Pursuant to Rule 13.3 of this Court, Phazzer’s 90-day timeframe to file a certiorari petition began running on August 23, 2019 and expired on November 21, 2019. Phazzer failed to meet this deadline and never sought or obtained an extension of time to file, as required by 28 U.S.C. § 2101(c) and S. Ct. R. 13.1.

Phazzer contends its June 8, 2020 Petition is timely based on two voluntary Chapter 7 bankruptcy petitions, both of which were dismissed *with prejudice* as having been filed in bad faith.

On October 25, 2019, Phazzer filed its first Chapter 7 bankruptcy, **Case No. 19-122281-MFW**, in the District of Delaware, which was dismissed on January 2, 2020. (Dkt. 20, granting motion to dismiss with prejudice and finding “this Chapter 7 corporate case involves a two-party dispute with minimal, if any, assets that was filed in bad faith”).

On January 23, 2020, Phazzer filed its second Chapter 7 bankruptcy, **Case No. 6:20-bk-00398-KJ**, in the Middle District of Florida, which was



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dismissed on June 2, 2020. (Dkt. 40, “Dismissing this corporate Chapter 7 case, with prejudice, as having been filed in bad” and “Enjoining Debtor from further bankruptcy filings for a period of one year from the date of this Order.”).

Finally, still pending in the Florida district court is Phazzer’s October 17, 2019 Motion to Reconsider Damages Order—the same damages accounting order on the same alleged changed-circumstances grounds that is the subject of this Petition. (Dkt. 374). The motion is fully briefed but was stayed during the pendency of Phazzer’s bad faith back-to-back bankruptcy filings. It is due to be denied. (Dkt. 395 at 10, stating Phazzer “is barred from collaterally attacking the Court’s final judgment by well-established principles of res judicata.”).

The Petition should be denied.

Dated: July 15, 2020

Respectfully submitted,

/s/ Pam Petersen

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