

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

SUPPLEMENTAL BRIEF OF PETITIONER

KRIS KASZUBA
PETITIONER PRO SE
HOLLYWOOD BEER ®
2683 VIA DE LA VALLE, #G246
DEL MAR, CA 92014
(858) 353-6279
KRIS@HOLLYWOODBEER.ORG
KRIS@HOLLYWOODBEER.NET

SEPTEMBER 22, 2021

SUPREME COURT PRESS

◆ (888) 958-5705 ◆

BOSTON, MASSACHUSETTS

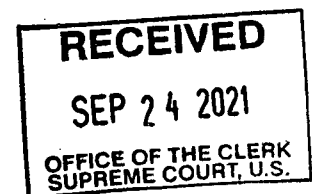


TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

**SUPPLEMENTAL BRIEF AND
NEW EVIDENCE**..... 1

Points of Law and Evidence: 1

CONCLUSION..... 4

TABLE OF AUTHORITIES

Page

CASES

United States v. Arthrex,
141 S. Ct. 1970, 594 U.S. __ (2021)..... 4

STATUTES

35 U.S.C. § 143..... 1, 2, 4



SUPPLEMENTAL BRIEF AND NEW EVIDENCE

Points of Law and Evidence:

Question 2 in the Main Brief of Petitioner asked “Has the Federal Circuit erred in allowing Intervention by the USPTO Director under 35 U.S.C. § 143 . . .” Petitioner has new evidence that the USPTO erred by intervening in two more recent TTAB Appeals at the Court of Appeals for the Federal Circuit, “CAFC”.

1. *Heather Sanders v. Iancu*, Intervenor, Case 2018-2271 CAFC

The USPTO Director intervened and appeared in the Sanders Trademark Appeal in 2019 under the unlawful authority of 35 U.S.C. § 143 which is solely for Patent Appeals only. See attached Exhibit A.

2. *Piano Factory Group, Inc., Sweet 16 Musical Properties, Inc.*, Appellant. Case No. 2020-1196 CAFC *v. Schiedmayer Celesta GMBH*, Appellee and *Andrew Hirshfeld, USPTO*, Intervenor

The CAFC Record shows that on May 8, 2020 the USPTO submitted two Notices of Intervention one by Robert McBride and the other by Christine Hieber under the unlawful authority of 35 U.S.C. § 143 which is applicable only to Patents.

The USPTO did not have the constitutional Standing to be an Intervenor.¹

¹ Footnote: The USPTO in the Piano Appeal even requested to defend the decision of the TTAB under no basis of law or rule or

See attached Exhibit B.

The Petitioner now has proven that there are three Trademark Appeal Cases at the CAFC where the USPTO appeared as Intervenor where the USPTO had no constitutional standing or right to appear under 35 U.S.C. § 143.

The bigger question is how many other cases are there where the USPTO has intervened unlawfully in Trademark appeals over the past ten or twenty years. Shouldn't this be looked into and reported by the CAFC.

Furthermore, the CAFC Court and/or The Clerk had no legal authority to ask the USPTO Director if he would intervene in any of the three Trademark Appeals.

Addressing Question 5 in the Petitioner's Reply Brief which states

“Should Hollywood Vodka LLC now by its sole owner, Keith Fox, be the true Respondent before the Supreme Court and not the USPTO . . .”.

Petitioner previously produced evidence of the massive dispute and break up in Hollywood Vodka LLC between the owners, Keith Fox and German Clavijo. New evidence has been found as follows:

1. Hollywood Vodka's Company has been forfeited by the State of California and the

constitutional standing, Docket 27 on May 5 2020. This is an extreme request by the USPTO and one of significant national legal concern for the United States. See Exhibit C. Petitioner believes that the USPTO has full knowledge of the laws and tries to circumvent or squeak in by any means that they can. This shows that the USPTO does not act fairly nor in a just manner.

company is legally not functional. *See attached Exhibit D.*

2. Hollywood Vodka's liquor license has expired as of August 31, 2021. *See attached Exhibit E.*

The Hollywood Vodka Application for a trademark is now basically null and void and invalid. And thus there is no standing for the cancellation against Petitioner's registered trademark of 13 years.

Petitioner has requested further legal evidence from the USPTO and TTAB via the Freedom of Information Act and will advise shortly. *See Exhibit F.*

Another legal Point is a total contradiction of intent by Hollywood Vodka. Hollywood Vodka made an offer to purchase Hollywood Beer on December 7, 2017.

"for the purchase of all rights to the trademark HOLLYWOOD BEER including the registration at issue . . .". *See Exhibit G.*

This offer to buy shows prejudice and bias by Hollywood Vodka. On the one hand they are trying to cancel my Trademark and then they do a 360 and offer to purchase my Registered Trademark. The lowball offer was declined.

Mentioned in the Opening Brief, the Cancellation Petition at the TTAB was submitted by Hollywood Vodka but their trademark application was in the names of two individuals, Fox and Clavijo. This contradiction was brought to light by Kaszuba, so the two individuals submitted a transfer of ownership on Nov. 3, 2015 backdated to July 6, 2015 being four months. That document did not identify Hollywood

Vodka LLC's state of incorporation.² The Assignment is not legal. The Document transferred ownership for \$1 one dollar so the question is how was Hollywood Vodka harmed to have standing for a Cancellation Proceeding for simply a Trademark Application. It was not close to being registered. Exhibit H.



CONCLUSION

The USPTO Director does not have the legal right to intervene nor does he have Standing under the law and US Constitution in a Trademark Appeal at the Court of Appeals for the Federal Circuit under 35 U.S.C. § 143. Three cases, *Kaszuba*, *Sanders* and *Piano Factory* prove this error repeated over several past years.

Secondly, Keith Fox and Hollywood Vodka LLC do not have Standing to have appeared before the Trademark Trial and Appeal Board nor Standing before the Court of Appeals for the Federal Circuit.

These are major errors in law by the TTAB and the CAFC which are of utmost importance and need addressing to stop the unlawful Intervention by the USPTO for all Trademark Appeals now and in the future. The importance of this Petition for Certiorari may be akin to the recent precedential *Arthrex* case.

² Research shows the company has two LLCs, one in Wyoming and one in California but the owners failed to indicate which state was the operative one for the transfer of application.

Respectfully and humbly may Certiorari be granted.

/kk/ electronically signed

KRIS KASZUBA

PETITIONER PRO SE

HOLLYWOOD BEER®

2683 VIA DE LA VALLE, #G246

DEL MAR, CA 92014

(858) 353-6279

KRIS@HOLLYWOODBEER.ORG

KRIS@HOLLYWOODBEER.NET

SEPTEMBER 22, 2021

APPENDIX TABLE OF CONTENTS

EXHIBIT A

Sanders v. Iancu # 2018-2271,
35 U.S.C. § 143 (December 3, 2018) 1a

EXHIBIT B

*Piano, Sweet 16 v. Celesta and
Hirshfeld* # 20-1196, 35 U.S.C. § 143
(May 8, 2020) 4a

EXHIBIT C

*Piano, Sweet 16 v. Celesta and
Hirshfeld* # 20-1196, Intervention
(May 8, 2020) 6a

EXHIBIT D

Hollywood Vodka LLC Corporation
FORFEITED (September 15, 2021)..... 8a

EXHIBIT E

Hollywood Vodka LLC Liquor
License EXPIRED Alcohol Beverage Control
(September 16 2021)..... 9a

EXHIBIT F

Kaszuba FOIA Letter to the USPTO
(September 9, 2021)..... 11a

EXHIBIT G

Hollywood Vodka Offer to Purchase
Hollywood Beer (December 7, 2017)..... 13a

EXHIBIT H

Assignment of Application,
Fox & Clavijo to Hollywood Vodka
(November 3, 2015) 15a

App.1a

EXHIBIT A
SANDERS v. IANCU
2018-2271, 35 U.S.C. § 143
(DECEMBER 3, 2018)

HEATHER SANDERS,

Appellant

v.

ANDREI IANCU, Under Secretary of Commerce for
Intellectual Property and Director of the United
States Patent and Trademark Office,

Intervenor

12/30/2013

- 1) Appeal docketed. Received: 08/17/2018. [543918]
Fee/IFP due 09/04/2018. Entry of Appearance due
09/04/2018. Certificate of Interest due 09/04/2018.
Docketing Statement due 09/04/2018. Certified
List due 10/01/2018 [MJL] [Entered: 08/20/2018
09:16 AM]

09/04/2018

- 2) Filing fee paid. Fee Amount: \$500.00. Receipt
Number: A13-30941-773. [547100] [18-2271]
[Robert Powers] [Entered: 09/04/2018 04:42 PM]

09/04/2018

- 3) Entry of appearance for Robert Powers as
principal counsel for Appellant Heather Sanders.

App.2a

Service: 09/04/2018 by email. [547104] [18-2271]
[Robert Powers] [Entered: 09/04/2018 04:45 PM]

09/04/2018

- 4) Certificate of Interest for the Appellant Heather Sanders Service: 09/04/2018 by email [547106] [18-2271] [Robert Powers] [Entered: 09/04/2018 04:45 PM]

09/04/2018

- 5) Docketing Statement for the Appellant Heather Sanders. Service: 09/04/2018 by email. [547110] [18-2271] [Robert Powers] [Entered: 09/04/2018 04:48 PM]

09/11/2018

- 6) Notice to counsel for Appellee Nella Chunky, LLC: The record of this case indicates that no Entry of Appearance, Certificate of Interest, or Docketing Statement has been filed. Please file these documents promptly. Service as of this date by the Clerk of Court. [548773] [MJL] [Entered: 09/11/2018 12:18 PM]

09/28/2018

- 7) Second notice to counsel for Appellee Nella Chunky, LLC: The record of this case indicates that no Entry of Appearance, Certificate of Interest, or Docketing Statement has been filed. Please file these documents promptly. Service as of this date by the Clerk of Court. [553161] [MJL] [Entered: 09/28/2018 09:03 AM]

10/01/2018

- 8) Certified list from the United States Patent and Trademark Office Service: 10/01/2018 by email.

App.3a

Appellant's brief is due 11/30/2018. [553941] [MJL]
[Entered: 10/02/2018 08:21 AM]

11/01/2018

- 9) ORDER filed. The official caption and short caption: reflected in this order, are revised in light of Nella Chunky's nonparticipation. Within 30 days from the date of filing of this order, the Director of the United States Patent and Trademark Office is directed to inform this court whether he intends to intervene in this appeal. (see order for further details). Service: 11/01/2018 by clerk. [561943] [LMS] [Entered: 11/01/2018 02:07 PM]

11/30/2018

- 10) MODIFIED ENTRY: BRIEF FILED for Appellant Heather Sanders. Number of Pages: 20. Service: 11/30/2018 by email. Unless ordered otherwise, any responsive deadline runs from the date of service of this brief. See Fed. Cir. R. 31. [558977]—[Edited 12/11/2018 by MJL - compliance review complete] [Robert Powers] [Entered: 11/30/2018 02:28 PM]

12/03/2018

- 11) Notice of Intervention pursuant to the provisions of 35 USC Section 143 from the Director of the United States Patent and Trademark Office. Service: 12/03/2018 by email. [569170] [18-2271] [Thomas Casagrande] [Entered: 12/03/2018 10:47 AM]

EXHIBIT B
PIANO, SWEET 16 v. CELESTA AND
HIRSHFELD # 20-1196, 35 U.S.C. § 143
(MAY 8, 2020)

05/08/2020

- 21) Notice of Intervention pursuant to the provisions of 35 USC Section 143 from the Director of the United States Patent and Trademark Office. Service: 0510812020 by email. [693153] [20-1196] [Robert McBride] [Entered: 05/08/2020 12:12 PM]

05/08/2020

- 22) Entry of appearance for Thomas W. Krause as of counsel for Director - United States Patent and Trademark Office. Service: 05/08/2020 by email. [693156] [20-1196] [Thomas Krause] [Entered: 05/08/2020 12:14 PM]

05/08/2020

- 23) Entry of appearance for Farheena Y. Rasheed as of counsel for Director - United States Patent and Trademark Office. Service: 05/08/2020 by email. [693157] [20-1196] [Farheena Rasheed] [Entered: 05/08/2020 12:17 PM]

05/08/2020

- 24) Entry of appearance for Thomas L. Casagrande, as of counsel for Director - United States Patent and Trademark Office. Service: 05/08/2020 by email. [693161] [20-1196] [Thomas Casagrande] [Entered: 05/08/2020 12:18 PM]

App.5a

05/08/2020

- 25) Entry of appearance for Christina J. Hieber as principal counsel for Director - United States Patent and Trademark Office. Service: 05/08/2020 by email. [693184] [20-1196] [Christina Hieber] [Entered: 05/08/2020 01:11 PM]

05/08/2020

- 26) Notice of Intervention pursuant to the provisions of 35 USC Section 143 from the Director of the United States Patent and Trademark Office. Service: 05/08/2020 by email. [693185] [20-1196] [Christina Hieber] [Entered: 05/08/2020 01:12 PM]

05/08/2020

- 27) MOTION of Director of the United States Patent and Trademark Office for leave to intervene [Consent: unopposed]. Service: 05/08/2020 by email. [653217] [20-1196] [Christina Hieber] [Entered: 05/08/2020 02:01 PM]

EXHIBIT C |
PIANO, SWEET 16 V. CELESTA AND
HIRSHFELD # 20-1196, INTERVENTION
(MAY 8, 2020)

Case: 20-1196 Document: 27 Page: 1 Filed: 05/08/2020

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

PIANO FACTORY GROUP, INC, SWEET 16
MUSICAL PROPERTIES, INC.,

Appellants,

v.

SCHIEDMAYER CELESTA GMBH,

Appellee.

2020-1196

Appeal from the United States Patent and
Trademark Office, Trademark Trial and Appeal
Board in Cancellation No. 92061215

NOTICE OF INTERVENTION AND
UNOPPOSED MOTION TO INTERVENE BY
THE UNITED STATES PATENT AND
TRADEMARK OFFICE

Pursuant to the Court's Order dated April 8, 2020
(ECF No. 18), the Director of the United States Patent

App.7a

and Trademark Office ("Director") hereby notifies the Court that the government intervenes in this appeal pursuant to 28 U.S.C. § 2403(a) to present arguments on the constitutional challenge to the statutory appointment mechanism for the administrative trademark judges who issued the final decision. The Director also respectfully moves this Court to intervene to defend the decision of the Trademark Trial and Appeal Board, which issued as a precedent of the Board. The Board's decision ordered the registration

[...]

**EXHIBIT D
HOLLYWOOD VODKA LLC
CORPORATION FORFEITED
(SEPTEMBER 15, 2021)**

201410410118 HOLLYWOOD VODKA L.L.C.

Registration Date: 04/09/2014
Jurisdiction: Wyoming
Entity type: Foreign
Status: FTB Forfeited
Agent for Service of Process:
909 N Croft Ave 307
Los Angeles CA 90069
Entity Address: 3950 Spring Garden Lane
Esterro FL 33928
Entity Mailing
Address: 3950 Spring Garden Lane
Esterro FL 33928
LLC Management:

Source: California Business Search

App.9a

EXHIBIT E
HOLLYWOOD VODKA LLC
LIQUOR LICENSE EXPIRED
ALCOHOL BEVERAGE CONTROL
(SEPTEMBER 16 2021)

Licensee Information

Licensee: Hollywood Vodka LLC

Company Information

Officer: Clavijo, German (Member)

Officer: Fox, Keith (Member)

Member: Clavijo, German

Member: Fox, Keith

License Types

12-Distilled Spirits Importer

License Type Status: Active

Status Date: 16-Sep-2014

Term: 12 Month(s)

Original Issue Date: 16-Sep-2014

Expiration Date: 31-Aug-2021

Master: N

Duplicate: 1

Fee Code: P40

Transfers:

App.10a

18-Distilled Spirits Wholesaler

License Type Status: Active

Status Date: 17-Sep-2014

Term: 12 Month(s)

Original Issue Date: 16-Sep-2014

Expiration Date: 31-Aug-2021

Master: Y

Duplicate: 0

Fee Code: P40

Transfers:

Operating Restrictions:

*Operating Restrictions exist. For more information,
please see our Guidelines for Access to Records.

App.11a

**EXHIBIT F
KASZUBA FOIA
LETTER TO THE USPTO
(SEPTEMBER 9, 2021)**



UNITED STATES PATENT AND TRADEMARK OFFICE
OFFICE OF THE GENERAL COUNSEL

VIA EMAIL

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

Dear Mr. Kaszuba:

Your Freedom of information Act (FOIA) and/or Privacy Act request was received by the United States Patent and Trademark Office (USPTO) FOIA Office on Thursday, September 09, 2021.

Your request has been docketed as "FOIA Request No. F-21-0 [REDACTED]" Any further inquiries regarding your request should include that number. A copy of your request is attached for reference.

In the event your original request was incorrectly addressed, please address all inquiries regarding your request to:

App.12a

FREEDOM OF INFORMATION ACT
(FOIA) OFFICER
United States Patent and Trademark Office
PO. Box 1450
Alexandria, VA 22313-1450

Or via email to foiarequests@uspto.gov

The Agency expects to send its response to this request no later than Thursday, October 07, 2021. You will be notified if it appears that additional time is required. You may check on the status of your request at the Agency's website: www.uspto.gov, click on "Freedom of Information Act" at the bottom of the page, and then "Check FOIA Request Status." You will need your request number, shown above, to check on the status of your request.

Sincerely,

USPTO FOIA Office

P.O. Box 1450, Alexandria, Virginia 22313-1450
www.USPTO.GOV

EXHIBIT G
HOLLYWOOD VODKA OFFER TO
PURCHASE HOLLYWOOD BEER
(DECEMBER 7, 2017)

From: Doug Lipstone <doug@weinberg-gonser.com>
Date: Thu, Dec 7, 2017 at 7:20 PM
Subject: Today's Phone Call
To: "hollywoodbeer@gmail.com"
<hollywoodbeer@gmail.com>
Cc: Shanen Prout <shanen@weinberg-gonser.com>

Kris:

After the conference call with Mr. Okeke earlier today, and at his recommendation, you and I spoke on the phone. We discussed the following two topics:

1. With regards to your request to suspend the cancellation action while you try to find an attorney, we agree to a suspension until December 28, 2017, which is a total of three (3) weeks from today. As you verbally agreed to that, we will prepare and file a stipulated notice with the TTAB.

2. We discussed settling this matter. In the context of our settlement discussion I extended to you the offer of [REDACTED] for the purchase of all rights to the trademark HOLLYWOOD BEER, including the registration at issue. You declined the offer but said that you would get back to me with a counter. I told you that, given our client's confidence that they will prevail in this matter, that would not even consider a [REDACTED] demand, a [REDACTED] demand or even a [REDACTED] demand. I look forward to your response.

App.14a

This communication is in furtherance of our settlement discussion and is being provided in the spirit of compromise and therefore is not admissible in evidence pursuant to Federal Rule of Evidence 408, or any equivalent state rule.

Douglas Lipstone
Weinberg Gonser LLP
10866 Wilshire Blvd.
Suite 1650
Los Angeles, CA 90024
Direct: (424) 239-2862
Fax: (424) 238-3060
Cell: (818) 384-3339

App.15a

**EXHIBIT H
ASSIGNMENT OF APPLICATION,
FOX & CLAVIJO TO HOLLYWOOD VODKA
(NOVEMBER 3, 2015)**

July 6, 2015

Keith Fox
German Clavijo
Hollywood Vodka LLC
909 N Croft Ave. #204
Los Angeles, CA 90069

To Whom It May Concern:

Keith Fox and German Clavijo do so assign of entire rights and goodwill of the jointly filed HOLLYWOOD VODKA trademark application to Hollywood Vodka LLC. This document represents the valid sale of the HOLLYWOOD VODKA USPTO application, Serial No. 86/069,833 on this date of July 6, 2015 for the amount of \$1.00. Hollywood Vodka LLC now retains all ownership to HOLLYWOOD VODKA USPTO application Serial No. 86/069,833.

Sincerely,

/s/ Keith Fox

/s/ German Clavijo



SUPREME COURT
PRESS