

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MPL BRANDS NV, INC.

Petitioner,

v.

BUZZBALLZ, LLC

Patent Owner.

PTAB Case No. IPR-2024-01098

U.S. Patent No. 11,738,904 B2

**PETITIONER'S OBJECTIONS TO PATENT OWNER'S
EVIDENCE UNDER 37 C.F.R. § 42(64)(b)(1)**

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner MPL Brands NV, Inc. (“Petitioner”) objects to evidence submitted by Patent Owner BuzzBallz, LLC (“BuzzBallz” or “Patent Owner”) with its Patent Owner’s Preliminary Response (Paper 28 (“POPR”)) filed October 30, 2024. The objections are based on 37 C.F.R. Part 42 and the relevant portions of the Federal Rules of Evidence (“FRE”) that are applicable to *inter partes* review proceedings under 37 C.F.R. § 42.62. These objections have been timely filed and served within ten (10) business days of the institution of the trial in this proceeding.

I. Exhibit 2001

Petitioner objects to Exhibit 2001 for several reasons.

First, BuzzBallz has failed to produce any evidence authenticating or identifying Exhibit 2001 as required by FRE 901. Exhibit 2001 does not even bear a date, let alone any evidence required to show authentication.

Second, Petitioner objects to Exhibit 2001 because BuzzBallz has failed to establish the date of public availability. Again, Exhibit 2001 lacks any indication of the date it was published, or made available to the public.

Third, Exhibit 2001 is inadmissible hearsay under FRE 802. BuzzBallz relies on the written statements in Exhibit 2001 for the truth of the following statement: “The single-use plastic carryout bag has become an ever-present item in modern society” [which causes] “detrimental environmental effects that result from the

creation and disposal of such items.” (POPR at 33 (citing Ex. 2001 at 646).) BuzzBallz’s use of Exhibit 2001 does not fall within any hearsay exception.

Fourth, Petitioner objects to Exhibit 2001 because its probative value is substantially outweighed at least by its tendency to confuse the issues, waste time, and needlessly present cumulative evidence in contravention of FRE 403. BuzzBallz cites Exhibit 2001 in support of the assertion that “[p]articularly when plastic containers are used, as described by Ackermann, a POSITA concerned with ecological and safety benefits would have been aware of the ecological harm of single-use plastics as of the April 19, 2010 priority date.” (POPR at 32-33.) But BuzzBallz fails to explain how Exhibit 2001 bears any relevance to its assertion. And the Declaration of Folkers Eduino Rojas in Support of Patent Owner’s Preliminary Response does not even mention Exhibit 2001.

II. Exhibit 2002

Petitioner objects to Exhibit 2002 for several reasons.

First, BuzzBallz has failed to produce evidence authenticating or identifying Exhibit 2002 as required by FRE 901. Exhibit 2002 does not contain any evidence required to show authentication.

Second, Petitioner objects to Exhibit 2002 because BuzzBallz has failed to establish the date of public availability. Exhibit 2002 lacks any indication of when

and whether it was made publicly available beyond a vague footnote referencing a “Symposium of Biological Waste Treatment” and the date “February 15, 2007.”

Third, Exhibit 2002 is inadmissible hearsay under FRE 802. BuzzBallz relies on the written statements in Exhibit 2002 for the truth of the following statement: “Of particular concern are plastics used in single-use disposable packaging and consumer goods.” (POPR at 33 (citing Ex. 2002 at 25)). BuzzBallz’s use of Exhibit 2002 does not fall within any hearsay exception.

Fourth, Petitioner objects to Exhibit 2002 because its probative value is substantially outweighed at least by its tendency to confuse the issues, waste time, and needlessly present cumulative evidence in contravention of FRE 403. BuzzBallz cites Exhibit 2002 in support of the assertion that “[p]articularly when plastic containers are used, as described by Ackermann, a POSITA concerned with ecological and safety benefits would have been aware of the ecological harm of single-use plastics as of the April 19, 2010 priority date.” POPR at 32-33. But BuzzBallz fails to explain how Exhibit 2002 bears any relevance to its assertion. And the Declaration of Folkers Edurdo Rojas in Support of Patent Owner’s Preliminary Response does not even mention Exhibit 2002.

III. Exhibit 2003

Petitioner objects to Exhibit 2003 for several reasons.

First, BuzzBallz has failed to produce any evidence authenticating or identifying Exhibit 2003 as required by FRE 901.

Second, Petitioner objects to Exhibit 2003 because BuzzBallz has failed to establish the date of public availability. Exhibit 2003 lacks any indication of when and whether it was made publicly available beyond a vague footnote that reads “Marine Turtle Newsletter No. 129, 2010.”

Third, Exhibit 2003 is inadmissible hearsay under FRE 802. BuzzBallz relies on the written statements in Exhibit 2002 for the truth of the following statement: “The oceans have become one giant refuse bin for all manner of plastics.” (POPR at 33 (citing Ex. 2003 at 1)). BuzzBallz’s use of Exhibit 2003 does not fall within any hearsay exception.

Fourth, Petitioner objects to Exhibit 2003 because its probative value is substantially outweighed at least by its tendency to confuse the issues, waste time, and needlessly present cumulative evidence in contravention of FRE 403. BuzzBallz cites Exhibit 2003 in support of the assertion that “[p]articularly when plastic containers are used, as described by Ackermann, a POSITA concerned with ecological and safety benefits would have been aware of the ecological harm of single-use plastics as of the April 19, 2010 priority date.” POPR at 32-33. But BuzzBallz fails to explain how Exhibit 2003 bears any relevance to its assertion.

And the Declaration of Folkers Eduino Rojas in Support of Patent Owner's Preliminary Response does not even mention Exhibit 2003.

IV. Conclusion

For at least these reasons, Petitioner objects to Exhibits 2001-2003. These objections have been timely filed and served within ten (10) business days of the institution of the trial in this proceeding.

Dated: February 10, 2025

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing **PETITIONER'S OBJECTIONS TO PATENT OWNER'S EVIDENCE** was served by electronic mail on February 10, 2025, on the Patent Owner via its attorneys of record:

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Dated: February 10, 2025

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