

BEFORE THE TTAB

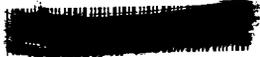
IN THE US TRADEMARK OFFICE

CADBURY BEVERAGES, BV

V

EZAKI GLICO CO, LTD

Sirs:


07-24-2006
U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

OPPOSITION NO. 91/171,567

SN 76/636,421

ANSWER AND MOTION TO DISMISS

Applicant, by its attorney, answering the opposition, alleges as follows:

CONCURRENT MOTION TO DISMISS BECAUSE OPPOSER(S) DO NOT MEET THE REQUIREMENTS OF PARTY OPPOSER(S)

1. There are listed two (2) Opposers (1) Cadbury Beverages BV (called "Cadbury") who has filed a one sheet "Notice of Opposition" but who did not file any "grounds for opposition" that is signed by Cadbury; and (2) Dr. Pepper/Seven Up, Inc (called "Dr. Pepper") which has filed a 7 page "Grounds for Opposition".

AS TO CADBURY

2. Cadbury requested an extension of time to file an opposition. Dr. Pepper does not seem to have filed any request for extension of time to file an opposition.

3. Under TM Rule 2.104, an opposer must file "grounds for opposition". Cadbury has not fulfilled such requirement. It is Dr. Pepper who has filed such grounds of opposition. Accordingly, the opposition must be dismissed as to Opposer Cadbury since it did not meet the requirements of Rule 2.104. Applicant hereby moves for such relief.

AS TO DR. PEPPER

4. Dr. Pepper has not met the requirements of Rule 2.102

since only the party requesting extension of time to file an opposition can file an opposition during the extended time to file the opposition. In this case, the Opposition grounds were filed after the statutory period and within the extended time requested by Cadbury (but not requested by Dr. Pepper).

On the papers filed by both Cadbury and Dr. Pepper to date, there is no evidence or allegation that Dr. Pepper meets the requirements of an exception to Rule 2.102, namely, that Dr. Pepper is "in privity" with Cadbury.

But, even if there were such evidence or allegation, Dr. Pepper's allegation of damage is false since the registrations listed in Paragraph 5 are owned by Cadbury. Thus, even Dr. Pepper's papers are false and unsupported by facts.

5. Accordingly, as to Dr. Pepper, the opposition must be dismissed sine Dr. Pepper does not meet the requirements of the Trade Mark law as to Dr. Pepper being a qualified opposer.

6. The foregoing motion is being made concurrently in order to save the time and efforts of the Board. We reserve the right to any an all remedies available to us as though the motion were not concurrently filed.

ANSWER AS TO OPPOSER DR. PEPPER'S ALLEGATIONS

7. Applicant denies having any information or knowledge sufficient to form a belief as to Opposer Dr. Pepper's allegations in the following paragraphs: 1,2,3,4,6,10,11 and 12.

8. Applicant denies Opposer Dr. Pepper's allegations in the following paragraphs: 5,7,13,14,15,16,17,18,19,20. As to paragraph 5, the registrations are in the name of Cadbury, not Dr. Pepper.

9. Applicant admits the allegations in Opposer Dr. Pepper paragraphs 8 and 9.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

10. Dr. Pepper alleges that the mark CRUSH for beverages was cited during applicant's prosecution. They failed to mention that the PTO allowed the use of CRUSH on "biscuit sticks" The PTO found there was no confusion as to source of origin when Crush was used on biscuit sticks despite the existence of CRUSH as used on beverages.

11. Accordingly, the PTO confirmed that CRUSH as used on biscuit sticks would not be confused by the consumer despite the existence of the registrations owned by Cadbury on CRUSH for beverages.

12. The Board is being asked to revisit the same issue and overturn the Examiner. Applicant believes the Examiner was correct and moves that the Board uphold the Examiner and allow the application 76/636,421 to go to registration. It is believed that the Opposer(s) Cadbury and Dr. Pepper are mistaken in their position.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

13. The Opposer Dr Pepper does not own any of the registrations set forth in Paragraph 5 of the "grounds for opposition". Thus, Dr. Pepper would not be damaged in any manner by the opposition being dismissed, and a registration caused to issue to Applicant for CRUSH in any class of goods, but, clearly for "biscuit sticks"

AS AND FOR A FIRST EQUITABLE DEFENSE

14. Dr. Pepper and Cadbury are inequitably and unfairly attempt-

ing to extend their monopoly to areas in which their monopolies were never intended to be extended by the law. Thus, the Opposer's are guilty of "unclean hands", and equity demands that Opposer(s) be denied any relief by the Board.

In view of the foregoing, applicant respectfully prays that the Board dismiss the opposition and cause to issue to Applicant a registration on CRUSH for "biscuit sticks".

Dated 24 July 06

Respectfully

MOONRAY KOJIMA

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I hereby certify that the correspondence upon which this notice is placed is being deposited with the US Postal Service as first class mail in an envelope addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313, on this date set forth below. MOONRAY KOJIMA, ATTORNEY

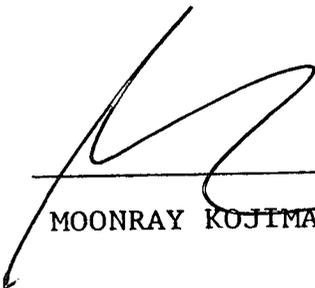
Date 7/24/06

CERTIFICATE OF SERVICE

Below attorney of record, hereby affirms that he placed the attached papers in an envelope addressed to the below attorney and mailed same by first class mail at an authorized postal collection box, on the date set forth below.

ADDRESSED TO: Barbara A. Solomon, Esq
FROSS ZELNICK LEHRMAN & ZISSU PC
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NY, NY 10017

DATE OF MAILING: 24 July 06



MOONRAY KOJIMA, ATTORNEY