

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: January 26, 2007

Opposition No. 91171567

Dr. Pepper/Seven Up, Inc.

v.

Ezaki Glico Kabushiki Kaisha

Linda Skoro, Interlocutory Attorney

This case now comes up on applicant's motion to dismiss, filed July 24, 2006. Opposer has responded.

In its motion, applicant contends that opposer is not the proper party because it is not the party which filed the extension of time to oppose, nor is it the owner of the pleaded registrations. Opposer responds and provides copies of the Office assignment records proving that between the time the extension of time was granted and the notice of opposition was filed, that all right, title and interest in the pleaded registrations were assigned from Cadbury to Dr. Pepper/Seven Up, Inc., (Dr. Pepper) thereby establishing that the new owner, Dr. Pepper, is in privity with the prior owner, Cadbury, and current owner of the pleaded registrations.

While applicant does not agree that an assignment by the previous owner to a new owner makes the new owner a

privity, in the field of trademarks, the concept of privity generally includes, *inter alia*, the relationship of successive ownership of a mark (e.g., assignor, assignee) and the relationship of "related companies" within the meaning of Sections 5 and 45 of the Act, 15 U.S.C. § 1055 and 1127. See *International Nutrition Co. v. Horphag Research Ltd.*, 220 F/3d 1325. 55 USPQ2d 1492, 1495 (Fed. Cir. 2000) and TBMP § 206.02.

Thus, the notice of opposition was properly filed, and accepted by the Board, in the name of Dr. Pepper. Trademark Rule 2.102(b) provides, in pertinent part: "...An opposition may be accepted if ...the opposition is filed in the name of a person in privity with the person who requested and was granted the extension of time."

Accordingly, applicant's motion to dismiss is DENIED. Applicant's answer is of record. Proceedings are resumed and the discovery and trial dates are reset as indicated below:

DISCOVERY PERIOD TO CLOSE:	7/1/2007
30-day testimony period for party in position of plaintiff to close:	9/29/2007
30-day testimony period for party in position of defendant to close:	11/28/2007
15-day rebuttal testimony period to close:	1/12/2008

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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