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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91178927
Party	Plaintiff Royal Crown Company, Inc.
Correspondence Address	Barbara A. Solomon Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations Plaza New York, NY 10017 UNITED STATES lpopp-rosenberg@fzlz.com,bsolomon@fzlz.com
Submission	Other Motions/Papers
Filer's Name	Laura Popp-Rosenberg
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Signature	/Laura Popp-Rosenberg/
Date	12/22/2008
Attachments	Declaration in Support of Motion to Suspend for AmBev (F0394148).PDF (20 pages)(6168191 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

-----X
ROYAL CROWN COMPANY, INC., :
 :
 Opposer, : Opposition No. 91178927
 : Opposition No. 91180771
 : Opposition No. 91180772
 - against - : Opposition No. 91183482
 : Opposition No. 91185755
 THE COCA-COLA COMPANY, : Opposition No. 91186579
 :
 Applicant. :
-----X

—and—

-----X
THE COCA-COLA COMPANY, :
 :
 Opposer, :
 :
 - against - : Opposition No. 91184434
 :
 ROYAL CROWN COMPANY, INC., :
 :
 Applicant. :
-----X

**DECLARATION OF LAURA POPP-ROSENBERG IN SUPPORT OF
OPPOSER’S MOTION TO SUSPEND PROCEEDINGS**

I, Laura Popp-Rosenberg, hereby declare under penalty of perjury:

1. I am an attorney with Fross Zelnick Lehrman & Zissu, P.C., attorneys for Royal Crown Company, Inc. (“Royal Crown”) in the above-captioned consolidated proceedings. I submit this declaration in support of Opposer’s Motion to Suspend Proceedings. I make this declaration based on personal knowledge of the facts and circumstances set forth herein.

2. Attached hereto as Exhibit A is a true and correct copy of Opposer’s First Set of Requests for the Production of Documents and Things to Applicant.

3. The Coca-Cola Company (“TCCC”) has not produced to Royal Crown a copy of any expert report or any underlying survey materials in these consolidated proceedings.

4. Royal Crown learned that TCCC had produced an expert report in other opposition proceedings involving certain of the same marks at issue in these consolidated proceedings. On October 2, 2008, I sent a letter to TCCC requesting production of any expert report. A true and correct copy of my October 2, 2008 letter is attached hereto as Exhibit B.

5. TCCC did not timely respond to my October 2 letter. Accordingly, on October 11, 2008, I sent an email requesting a response to that letter. A true and correct copy of my October 11, 2008 email is attached hereto as Exhibit C.

6. On October 21, 2008, I held a telephone conference with counsel for TCCC during which we discussed, among other outstanding discovery issues, TCCC’s failure to produce its expert report and underlying survey materials. During that teleconference, TCCC’s attorney blithely stated that he expected Royal Crown would get a copy of TCCC’s expert report from Companhia de Bebidas das Americas – AMBEV (“AmBev”), which has also opposed TCCC’s marks involved in these consolidated proceedings. TCCC’s counsel also stated that he would provide Royal Crown with requested materials underlying the expert report at the same time TCCC produced those materials to AmBev.

7. To this date, Royal Crown has yet to receive any expert report or survey materials from TCCC. Given the length of time that has elapsed since Royal Crown’s discovery request last April, and the length of time that has elapsed since the parties conferred on the issue in October, Royal Crown does not anticipate receiving such materials absent a Board order. If necessary, Royal Crown is prepared to file a motion to compel production of such materials.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 22nd day of December, 2008



Laura Popp-Rosenberg

EXHIBIT A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

-----X		
ROYAL CROWN COMPANY, INC.,	:	
	:	<u>Consolidated Proceedings:</u>
Opposer,	:	Opposition No. 91178927
	:	Opposition No. 91180771
- against -	:	Opposition No. 91180772
	:	
THE COCA-COLA COMPANY,	:	
	:	
Applicant.	:	
-----X		

**OPPOSER’S FIRST SET OF REQUESTS FOR THE
PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT**

Pursuant to 37 C.F.R. § 2.120 and Rules 26 and 34 of the Federal Rules of Civil Procedure, Opposer Royal Crown Company, Inc. hereby requests that Applicant The Coca-Cola Company respond to the following requests for the production of documents and things by providing written responses thereto within the time specified by the Trademark Rules of Practice and the Federal Rules of Civil Procedure and by producing the documents and things specified herein for inspection and copying at the offices of Royal Crown Company Inc.’s attorneys, Fross Zelnick Lehrman & Zissu P.C., at 866 United Nations Plaza, New York, New York 10017, Attn.: Laura Popp-Rosenberg, simultaneously with the written responses or at another mutually agreed upon time and place.

DEFINITIONS

A. “Applicant” means The Coca-Cola Company and any company controlled by or affiliated with it; any division, parent, subsidiary, licensee, franchisee, successor, predecessor-in-interest, assign or other related business entity; and every officer, employee, agent, attorney or

other person acting or purporting to act on its behalf or through whom it acts or has acted, and the predecessors or successors of any of them.

B. “Applicant’s Marks” means the marks COCA-COLA ZERO, COKE ZERO and SPRITE ZERO, the marks herein opposed.

C. A request “Concerning” any subject calls for all Documents or Things that reflect, relate to, comprise, evidence, constitute, describe, explicitly or implicitly refer to, were reviewed in conjunction with, or were generated as a result of the subject matter of the request, including but not limited to all Documents that reflect, record, memorialize, discuss, evaluate, consider, review or report on the subject matter of the request.

D. “Document” is used in the broadest sense possible consistent with the Federal Rules of Civil Procedure as adopted by the Trademark Rules of Practice and includes, without limitation, non-identical copies (whether different from the original because of underlining, editing marks, notes made on or attached to such copy, or otherwise), and drafts, whether printed or recorded (through a sound, video or other electronic, magnetic or digital recording system) or reproduced by hand, including but not limited to writings, recordings, photographs, letters, correspondence, purchase orders, invoices, facsimiles, telegrams, telexes, memoranda, records, summaries, minutes, records or notes of personal conversations, interviews, meetings and/or conferences, note pads, notebooks, postcards, “Post-It” notes, stenographic or other notes, opinions or reports of consultants, opinions or reports of experts, projections, financial or statistical statements or compilations, checks (front and back), contracts, agreements, appraisals, analyses, confirmations, publications, articles, books, pamphlets, circulars, microfilms, microfiche, reports, studies, logs, surveys, diaries, calendars, appointment books, maps, charts, graphs, bulletins, tape recordings, videotapes, disks, diskettes, compact discs (CDs), data tapes or

readable computer-produced interpretations or transcriptions thereof, electronically-transmitted messages (email), voicemail messages, inter-office communications, advertising, packaging and promotional materials, and any other writings, papers and tangible things of whatever description whatsoever, including but not limited to all information contained in any computer or electronic data processing system, or on any tape, whether or not already printed out or transcribed.

Without limiting the foregoing, “Documents” include electronically stored information, including any and all subsisting metadata associated therewith.

E. When not capitalized, “mark,” “trademark” and “trade name” each incorporate trademarks, service marks, trade names and service names.

F. “Market Research” includes all surveys, polls, focus groups, trademark and/or any other search reports, market research studies and other investigations, whether or not such investigations were completed, discontinued or fully carried out.

G. “Opposer ” means Royal Crown Company, Inc.

H. “Person” means any natural person or any business, legal or governmental entity or association.

I. “Request for Admission No. ___” refers to a specific request for admission in Opposer’s First Set of Requests for Admission, served February 25, 2008.

J. “Thing” means any tangible object.

K. The use of the singular form of any word includes the plural and vice versa.

INSTRUCTIONS

1. Applicant is required to produce any and all responsive Documents in its possession, custody or control that are known or available to it, regardless of whether those Documents are possessed by it or by any agent, representative, attorney or other third party.

Applicant must make a diligent search of its records (including but not limited to paper records, computerized records, electronic mail records and voicemail records) and of other papers and materials in its possession, custody or control, including but not limited to those Documents available to it or its agents, representatives, attorneys or other third parties.

2. All Documents produced for inspection must be organized and labeled to correspond with the categories in the request or as the Documents are kept in the ordinary course. Fed. R. Civ. P. 34(b).

3. In the event Applicant produces copies of the responsive Documents, it is requested to retain the originals of all such Documents for inspection. Staples, clips, notes, tape and other items attached in any way to Documents or attaching Documents to each other should not be removed.

4. Where any copy of any Document is not identical to any other copy thereof by reason of any alteration, marginal notes, comments or other material contained there or attached thereto, or otherwise, Applicant should produce all such non-identical copies separately.

5. If there are no Documents responsive to any particular request or part thereof, Applicant should so state in writing.

6. If Applicant objects to furnishing Documents in response to any request, or any part or portion thereof, Applicant should state specifically the basis of such objection, identify the Documents to which each objection applies, and furnish all requested Documents to which the objection does not apply. Applicant is reminded that objections based on confidentiality are not proper. *See* 35 C.F.R. § 2.116(g).

7. In the event any Document is withheld on a claim of attorney/client privilege or work product immunity, Applicant should offer a statement signed by an attorney representing it identifying as to each such Document:

- (a) the name of the author of the Document;
- (b) the name of the sender of the Document;
- (c) the names of all Persons to whom copies were sent or to whom the information contained therein was disclosed;
- (d) the job title of every Person named in (1), (2), and (3) above;
- (e) the date of the Document;
- (f) the date on which the Document was received;
- (g) a brief description of the nature and subject matter of the Document; and
- (h) the statute, rule, or decision which is claimed to give rise to the privilege.

8. If, in responding to any document request, Applicant perceives any ambiguity in construing either the request or the instruction or definition relevant to the request, Applicant should identify the matter deemed ambiguous and set forth the construction chosen or used in answering the request.

9. Unless otherwise stated, these requests are limited to the United States.

10. These requests are continuing in character so as to require prompt supplemental production if Applicant obtains or discovers further responsive Documents after preparing and serving its initial responses pursuant to these requests. Applicant should serve each supplemental response no later than 30 days after discovery of further responsive Documents. In no event should Applicant serve any supplemental response later than the day before the trial period opens.

REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS

Request No. 1

All Documents supporting Applicant's denial of Request for Admission No. 4.

Request No. 2

All Documents Concerning Applicant's claim that the ZERO portion of the mark COCA-COLA ZERO is inherently distinctive.

Request No. 3

All Documents supporting Applicant's denial of Request for Admission No. 5.

Request No. 4

All Documents Concerning Applicant's claim that the ZERO portion of the mark COKE ZERO is inherently distinctive.

Request No. 5

All Documents supporting Applicant's denial of Request for Admission No. 6.

Request No. 6

All Documents Concerning Applicant's claim that the ZERO portion of the mark SPRITE ZERO is inherently distinctive.

Request No. 7

Documents or Things sufficient to show any nutritional facts appearing on packaging for products bearing Applicant's Marks.

Request No. 8

All Documents Concerning consumer understanding or perception of the term ZERO when used in connection with beverages.

Request No. 9

All Documents Concerning consumer recognition of the term ZERO as a source-identifying term

Request No. 10

All Documents supporting Applicant's denial of Request for Admission No. 34.

Request No. 11

For each advertising media used (e.g., print, television, radio, internet, outdoor, point-of-sale), representative samples of publicly-disseminated advertisements for products bearing each of Applicant's Marks.

Request No. 12

Documents sufficient to show each tagline or advertising slogan considered or used in connection with products bearing any of Applicant's Marks.

Request No. 13

All press releases issued by or on behalf of Applicant Concerning products offered under or bearing any of Applicant's Marks.

Request No. 14

All Market Research Concerning any of Applicant's Marks.

Request No. 15

All Market Research Concerning consumer perception or recognition of any of Applicant's Marks.

Request No. 16

All Market Research Concerning the term ZERO used in connection with beverages.

Request No. 17

All Market Research Concerning consumer perception of the term ZERO used in connection with beverages.

Request No. 18

All Market Research Concerning consumer recognition of the term ZERO as a source-identifying term.

Request No. 19

All Market Research Concerning consumer perception of any advertising for products bearing any of Applicant's Marks.

Request No. 20

All trademark searches conducted by or on behalf of Applicant for any of Applicant's Marks.

Request No. 21

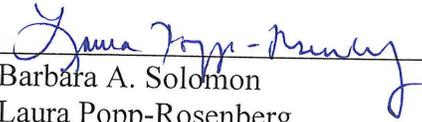
All trademark searches conducted by or on behalf of Applicant for the term ZERO.

Request No. 22

All Documents and things Concerning third party use of the term ZERO in connection with the sale, marketing, advertising or marketing of any beverage.

Dated: New York, New York
April 7, 2008

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: 
Barbara A. Solomon
Laura Popp-Rosenberg
866 United Nations Plaza
New York, New York 10017
(212) 813-5900

*Attorneys for Opposer Royal Crown Company,
Inc.*

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of **Opposer's First Set of Requests for the Production of Documents and Things** to be deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to counsel for Applicant, Bruce Baber, Esq., King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036-4003, this 7th day of April, 2008.



Laura Popp-Rosenberg

EXHIBIT B

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

RONALD J. LEHRMAN
STEPHEN BIGGER
ROGER L. ZISSU
RICHARD Z. LEHV
DAVID W. EHRLICH
SUSAN UPTON DOUGLASS
JANET L. HOFFMAN
PETER J. SILVERMAN
LAWRENCE ELI APOLZON
BARBARA A. SOLOMON
MARK D. ENGELMANN
NADINE H. JACOBSON
ANDREW N. FREDBECK
CRAIG S. MENDE
J. ALLISON STRICKLAND
JOHN P. MARGIOTTA
LYDIA T. GOBEHA
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JAMES D. WEINBERGER
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NANCY E. SABARRA

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MARILYN F. KELLY
VANESSA HWANG LUI
DOROTHY C. ALEVIZATOS
BETSY JUDELSON NEWMAN
NICHOLAS H. EISERMAN
SUZANNE WHITE
KAREN LIM
GRACE W. KANG
CASEY M. DAUM
TODD MARTIN

October 2, 2008

BY EMAIL

Bruce W. Baber, Esq.
King & Spalding LLP
1185 Avenue of the Americas
New York, NY 10036-4003
Email: bbaber@kslaw.com

Re: *Royal Crown Company, Inc. v. The Coca-Cola Company*
(Our Ref.: DPSU USA TC-07/05053)

Dear Bruce:

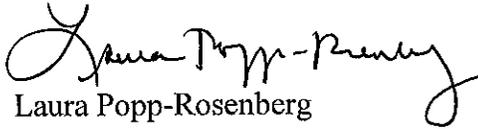
We understand that your client commissioned a survey concerning the distinctiveness and/or secondary meaning of one or more marks at issue in the opposition proceedings between the parties. This survey material is clearly responsive to Royal Crown's document requests propounded April 7, 2008. *See, e.g.*, Document Requests Nos. 8, 9, and 14-19.

We expect you to produce all survey materials, including not only the expert report, but also all the underlying survey materials such as the actual survey questionnaire, responses and tabulations, by no later than **Monday, October 6, 2008**. The TTAB is clear that expert materials must be produced in response to discovery requests regardless of the deadline for expert disclosures. *See, e.g.*, Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, at 42246 ("If any party retains an expert earlier in the Board proceeding than the applicable disclosure deadline, and any adverse party has inquired about experts through

Bruce W. Baber, Esq.
October 2, 2008
Page 2

traditional discovery requests, the party retaining the expert may not rely on the disclosure deadline to delay revealing the expert to such adverse party.”).

Very truly yours,


Laura Popp-Rosenberg

cc: Barbara A. Solomon, Esq.

EXHIBIT C

Laura Popp-Rosenberg

From: Laura Popp-Rosenberg
Sent: Saturday, October 11, 2008 7:57 PM
To: 'Baber, Bruce'
Cc: Barbara Solomon; Bienko Brown, Emily
Subject: Royal Crown v. The Coca-Cola Company

Dear Bruce:

We have not received a response to our letter of October 2, 2008. Please advise immediately whether you intend to produce Coke's expert survey in response to the discovery requests served in April, or whether we will be required to make a motion to compel.

Also, there appears to be a gap in your client's document production. We have documents 1 through 1086, then documents 2000 through 2836. Please let us know whether the gap was intentional, or the date and method by which you sent the documents we seem to be missing.

Regards,
Laura

Laura Popp-Rosenberg | Fross Zelnick Lehrman & Zissu, P.C.
866 United Nations Plaza | New York, New York 10017
Tel: (212) 813-5952 | Fax: (212) 813-5901 | www.frosszelnick.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Declaration of Laura Popp-Rosenberg in Support of Motion to Suspend Proceedings was served by hand on Applicant's attorney, Bruce Baber, Esq., King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036-4003, this 22nd day of December, 2008.



Laura Popp-Rosenberg