

ESTTA Tracking number: **ESTTA305594**

Filing date: **09/10/2009**

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

Proceeding	91178927
Party	Defendant The Coca-Cola Company
Correspondence Address	Bruce W. Baber King & Spaulding, LLP 1180 Peachtree Street Atlanta, GA 30305 UNITED STATES BBaber@KSLAW.com
Submission	Opposition/Response to Motion
Filer's Name	Emily Bienko Brown
Filer's e-mail	ebrown@kslaw.com, bbaber@kslaw.com
Signature	/Emily Bienko Brown/
Date	09/10/2009
Attachments	TCCC's Brief in Opposition to RC's Motion to Compel.PDF ( 21 pages )(921964 bytes )

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

ROYAL CROWN COMPANY, INC.,	)	
	)	<u>Consolidated Proceedings:</u>
	)	
Opposer,	)	OPPOSITION NO. 91178927
	)	OPPOSITION NO. 91180771
v.	)	OPPOSITION NO. 91180772
	)	OPPOSITION NO. 91183482
	)	OPPOSITION NO. 91185755
THE COCA-COLA COMPANY,	)	OPPOSITION NO. 91186579
	)	OPPOSITION NO. 91189847
	)	OPPOSITION NO. 91190658
Applicant.	)	

– and –

THE COCA-COLA COMPANY,	)	
	)	
Opposer,	)	
	)	
v.	)	OPPOSITION NO. 91184434
	)	
ROYAL CROWN COMPANY, INC.,	)	
	)	
Applicant.	)	

THE COCA-COLA COMPANY'S BRIEF IN OPPOSITION  
TO ROYAL CROWN'S MOTION TO COMPEL  
AND MOTION TO EXTEND TIME

---

NOW COMES THE COCA-COLA COMPANY ("TCCC"), the Applicant and/or Opposer in the above-captioned matter, and, in accordance with Rule 2.127 of the Trademark Rules of Practice and by and through its undersigned counsel, files this brief in opposition to "Royal Crown's Motion To Compel And Motion To Extend Time" ("Royal

Crown's Motion"), served by Royal Crown Company, Inc. ("Royal Crown") on August 21, 2009.

### INTRODUCTION

Royal Crown's Motion is both unnecessary and unsupported. Royal Crown's Motion consists primarily of allegations of discovery delinquencies on the part of TCCC and failure by TCCC to live up to commitments Royal Crown claims TCCC's counsel made to Royal Crown's counsel. Royal Crown's Motion appears to rest on a number of miscommunications between counsel for Royal Crown and counsel for TCCC, stemming primarily from a July 8, 2009 conference call. Royal Crown alleges that TCCC agreed to produce certain documents, supplement certain written discovery responses and produce a privilege log, all on or before specific dates certain. Royal Crown also alleges that TCCC is withholding responsive documents and has waived any claims of privilege as a result of TCCC's failure to serve its privilege log.

In fact, however, counsel for TCCC did not promise to provide Royal Crown's counsel with the materials at issue on specific dates. TCCC is not withholding responsive documents and TCCC has agreed to prepare – and is currently preparing for transmittal to Royal Crown – a privilege log. Counsel for TCCC has also repeatedly advised Royal Crown's counsel that it would provide any additional requested materials as they are identified by TCCC.

Royal Crown's Motion cites virtually no legal authorities for any of the issues presented, and appears to have been filed based wholly on Royal Crown's unsupported and incorrect assumptions that TCCC has not proceeded in a manner agreed to by counsel for the parties. In addition, Royal Crown's Motion omits numerous relevant

facts discussed and/or agreed to by counsel for the parties. Those facts show that TCCC has proceeded in good faith and in accordance with the applicable rules and/or agreements between the parties in responding to Royal Crown's extensive discovery requests.

Royal Crown's counsel has repeatedly requested that TCCC produce additional documents and provide additional information that TCCC either simply does not have in its possession, custody or control or has not been able to identify despite diligent searching. TCCC's counsel has consistently maintained that, to the extent TCCC identifies additional information or documents, it will provide such information and documents to Royal Crown in a timely manner.<sup>1</sup>

TCCC has produced thousands of pages of documents in response to Royal Crown's discovery requests.<sup>2</sup> Thus, as of the date of this brief, TCCC: (1) has served full and fair written responses, in a timely manner and in accordance with the Federal Rules of Civil Procedure, to all of Royal Crown's discovery requests; (2) has provided to Royal Crown additional information to supplement its initial written responses, in

---

<sup>1</sup> TCCC acknowledges that it has taken an extended period of time for TCCC to prepare its privilege log and to make certain limited supplemental productions of documents. As a result of the recent conversations between counsel for TCCC and counsel for Royal Crown, TCCC has only recently identified a number of additional privileged documents. TCCC intends to serve its privilege log on Royal Crown as soon as preparation of the log is complete. Given the scope of the issues in these proceedings, it has proven to be a time-consuming task to identify responsive documents and knowledgeable people within TCCC with respect to certain issues. TCCC confirms that it has and continues to make good faith efforts to respond to Royal Crown's discovery requests in a timely manner.

<sup>2</sup> TCCC's search for, review and collection of supplemental responsive documents and preparation of the documents for production to Royal Crown's counsel is continuing. TCCC's counsel will produce to Royal Crown any additional responsive documents that are identified as a result of such supplemental efforts.

response to Royal Crown's requests for additional information; (3) has produced to Royal Crown responsive documents requested by Royal Crown; and (4) as noted above, is in the process of preparing its privilege log. TCCC's initial objections and responses to Royal Crown's discovery requests were proper and timely served, TCCC continues to produce additional documents and supplement its written discovery requests, TCCC has reemphasized the need for TCCC to attempt to locate all responsive documents.

Most importantly, however, Royal Crown has not identified any responsive and non-privileged documents that are in TCCC's possession but that TCCC is refusing to produce. Royal Crown has not demonstrated that it has suffered prejudice or is entitled to any relief. Royal Crown's Motion should therefore be denied in all respects.

#### ARGUMENT AND CITATION OF AUTHORITIES

On July 8, 2009, counsel for Royal Crown and counsel for TCCC had a telephone conference to discuss certain of TCCC's discovery responses. During the July 8 call, counsel for the parties discussed at length each of Royal Crown's concerns regarding TCCC's responses to Royal Crown's discovery requests. TCCC maintained that its original responses to Royal Crown's discovery requests and its ongoing document production were sufficient, but nonetheless agreed to review again certain of TCCC's responses, provide supplemental responses where necessary, and produce additional documents to the extent they are in TCCC's possession and can be located. Contrary to the allegations in Royal Crown's Motion, counsel for TCCC did not formally agree on the July 8 call to supplement TCCC's discovery requests or provide additional documents or a privilege log on specific dates. Rather, counsel for TCCC agreed to

reconsider certain of TCCC's responses, confer with TCCC on the issues discussed on the July 8 call, ask TCCC to confirm that it cannot identify additional responsive documents or information, and supplement TCCC's discovery responses and document production upon receipt of any additional documents and information.

Counsel for TCCC could not and did not formally agree to supplement its discovery responses, produce additional documents or provide a privilege log by specific dates (as repeatedly requested by Royal Crown) because any such actions depended wholly upon the receipt of the necessary information and documents from TCCC. Counsel for TCCC was not in a position on the July 8 call to agree to provide the requested materials on specific dates. Counsel for TCCC did agree, however, to provide any supplemental responses, additional documents and a privilege log as soon as it received the requested materials from TCCC. Counsel for TCCC cannot provide documents and information that it has not yet received from TCCC or that TCCC does not have in its possession, custody or control. Despite TCCC's counsel's good faith efforts, counsel for Royal Crown continues to make unsupported accusations that TCCC is withholding or "hiding" materials and refusing to provide materials on allegedly agreed-upon dates.

I. TCCC Agreed To Supplement Its Response To Interrogatory No. 8 Upon Receipt Of The Information.

TCCC served a timely response to Interrogatory No. 8 on March 25, 2009. In addition to stating its objections to the interrogatory, TCCC stated that it would produce documents sufficient to show the information requested in Interrogatory No. 8. Counsel for Royal Crown informed counsel for TCCC that it believes TCCC's response to

Interrogatory No. 8 is deficient. TCCC agreed during its July 8 call to supplement its prior response to a number of Royal Crown's interrogatories, including Interrogatory No. 8. See Declaration of Emily B. Brown at ¶ 6. As agreed, TCCC provided its supplemental responses to the agreed upon interrogatories, with the exception of Interrogatory No. 8, on July 29, 2009.

Contrary to the allegations in Royal Crown's Motion, counsel for TCCC did not commit to providing its supplemental responses to Royal Crown's interrogatories by July 17, 2009. On the July 8 call, Royal Crown's counsel tried to push counsel for TCCC to commit to providing its supplemental responses on July 17. Counsel for TCCC advised Royal Crown's counsel that many of the activities about which Royal Crown seeks information in Interrogatory No. 8 were not carried out by TCCC and that TCCC therefore may not have the requested information, and reminded Royal Crown's counsel that one or more of TCCC's witnesses have so testified in deposition testimony given in this matter. Counsel for TCCC further advised that it would revisit with TCCC the information requested in Interrogatory No. 8 and then provide a further response and/or supplemental answer to Royal Crown. See Declaration of Emily B. Brown at ¶ 7. Moreover, counsel for TCCC stated in two separate emails to counsel for Royal Crown, sent July 24, 2009 and July 29, 2009, that it was still awaiting additional information from TCCC with respect to Interrogatory No. 8 and would supplement TCCC's response once it received the requested information. Counsel for TCCC further advised Royal Crown's counsel in its July 29, 2009 email that it would provide a "date certain" for supplementing its response to Interrogatory No. 8 as soon as counsel receives the information from TCCC.

Regardless of the number of requests from Royal Crown for TCCC to provide a date certain by which it will provide the supplemental response to Interrogatory No. 8, TCCC's counsel simply cannot provide a date certain until it obtains the requested information and/or documents (if any) from TCCC. If Royal Crown wants a date certain, TCCC can provide one, but TCCC has not done so to date because it is not able at this time to realistically and in good conscience provide a date certain. TCCC is neither withholding the requested information or causing an intentional delay. Further, TCCC is not in violation of the applicable rules if it simply does not have the information or documents to provide. TCCC is conducting a thorough search for the requested information and, as agreed and as repeatedly stated by counsel for TCCC, TCCC will supplement its written response to Interrogatory No. 8 and, if appropriate, produce responsive documents sufficient to show the information requested in Interrogatory No. 8 when and if additional information responsive to Interrogatory 8 is received.

II. TCCC Has Made And Continues To Make A Good Faith Effort To Provide Responsive Documents To Royal Crown In A Timely Manner.

Royal Crown's position with respect to TCCC's document production is incorrect. Royal Crown states in Royal Crown's Motion that TCCC has not produced responsive documents in the more than six months since Royal Crown's second set of document requests were served. In fact, TCCC produced additional documents to Royal Crown on June 12, 2009 and July 1, 2009,<sup>3</sup> and the June 12 production included documents

---

<sup>3</sup> Proceedings herein were suspended on March 30, 2009 as a result of the filing by Royal Crown of a motion for leave to amend its pleadings. Proceedings did not resume until June 2, 2009, and TCCC produced additional documents to Royal Crown shortly after the proceedings resumed.

responsive to several of the document requests that are the subject of Royal Crown's Motion.

Moreover, TCCC has not "misled" Royal Crown about the timing of its additional document production. During the July 8 call, counsel for TCCC agreed to ask TCCC to conduct a further review of its files to determine whether there are additional documents responsive to a relatively small number of Royal Crown's document requests, namely, request numbers 24, 26 (as to FULL THROTTLE ZERO), 29 and 31. See Declaration of Emily B. Brown at ¶ 8. Counsel for TCCC advised counsel for Royal Crown that it would let Royal Crown know whether and when it could provide any additional documents as soon as TCCC completed its further review. Id.

A. Document Request No. 24

Counsel for TCCC advised Royal Crown's counsel on the July 8 call that TCCC had requested each of its relevant brand teams to search its records for documents regarding the selection and adoption of TCCC's ZERO Marks. Not only did the brand teams provide their responsive documents, but TCCC also reconfirmed with the brand teams the need for each team to identify all of their responsive documents. As counsel for TCCC informed Royal Crown's counsel on the July 8 call, a number of the brand teams have advised that they have not been able to locate any responsive documents. See Declaration of Emily B. Brown at ¶ 9. In addition, counsel for TCCC has explained to counsel for Royal Crown the reasons why some brand teams may not have any responsive documents. The development, selection and/or adoption process for some of the brands at issue occurred many years ago, and there are no archives of any responsive documents that may have existed. In addition, the process of developing,

selecting and/or adopting the name for a number of the brands, especially the most recent ones, occurred through verbal discussion only because the framework was already in place after TCCC decided to use the marks COCA-COLA ZERO, COKE ZERO and SPRITE ZERO.

Royal Crown's Motion alleges that TCCC is improperly withholding documents concerning the "development" of TCCC's ZERO Marks because TCCC stated in its initial response to Document Request No. 24 that TCCC would produce documents concerning the "selection and adoption" of TCCC's ZERO Marks. However, Royal Crown's counsel omits that counsel for TCCC explained on the July 8 call that, to TCCC's counsel's knowledge, TCCC is not withholding any documents responsive to Document Request No. 24 aside from privileged documents. Specifically, counsel for TCCC explained to Royal Crown's counsel that it is not withholding documents relating to the "development" of TCCC's ZERO Marks as the term "development" is understood by TCCC, but rather it includes "development" in the meaning of selection and adoption. See Declaration of Emily B. Brown at ¶ 10. After a brief discussion as to what Royal Crown means by "development," counsel for TCCC advised Royal Crown's counsel that it had in fact produced documents relating to "development" as defined by Royal Crown. Id. As mentioned above, to the extent TCCC identifies any additional documents responsive to Document Request No. 24, TCCC will timely produce them to Royal Crown.

B. Document Request No. 26

Again, Royal Crown's Motion is incorrect. TCCC has produced to Royal Crown a large number of representative advertising, promotional and other marketing materials

used by TCCC that are sufficient to show how TCCC has used TCCC's ZERO Marks. Royal Crown fails to mention that several of TCCC's ZERO Marks are not yet in use on products and therefore no samples exist for those marks – and that TCCC has so advised Royal Crown. Royal Crown's Motion also fails to mention that the parties discussed Document Request No. 26 during the July 8 call, and counsel for TCCC explained that TCCC has produced representative samples for those marks that TCCC has used. In addition, counsel for TCCC agreed to check again with TCCC with respect to any materials relating to the mark FULL THROTTLE ZERO, which is the only mark in use for which TCCC did not provide samples. Royal Crown's counsel acknowledged after the discussion of Document Request No. 26 on the July 8 call that, with the exception of FULL THROTTLE ZERO, Royal Crown has received representative samples of all of TCCC's ZERO Marks that are in use. See Declaration of Emily B. Brown at ¶ 11.

Royal Crown's Motion also alleges that TCCC is "hiding" evidence of TCCC's advertisements, supposedly because they refer to "the zero calorie characteristic of TCCC's beverages and thus to the genericness of the 'zero' term in each of TCCC's Marks." See Royal Crown's Motion at pg. 9. Not only is the allegation that TCCC is hiding evidence unfounded and wrong, but Royal Crown's statements are wholly incorrect. Whereas certain advertisements for products bearing TCCC's ZERO Marks reference specific characteristics of TCCC's beverages, others do not. More importantly, none of the advertisements for products bearing TCCC's ZERO Marks show a generic use of the word ZERO in TCCC's ZERO Marks. TCCC has not hid and will not hide evidence, and any allegation by Royal Crown that TCCC's has hidden or is

hiding evidence is baseless and false.<sup>4</sup> TCCC has not shown any reluctance to produce documents in response to Document Request No. 26 and, as stated above, TCCC has already produced numerous documents for all of TCCC's Marks in use, with the exception of FULL THROTTLE ZERO, for which TCCC's counsel is awaiting receipt of additional requested documents.

C. Document Request No. 29

Royal Crown's Motion misstates TCCC's response to Document Request No. 29 and again omits key facts that are central to the issues surrounding the document request. Royal Crown correctly states that TCCC has not produced any documents that are responsive to Document Request No. 29. However, Royal Crown fails to mention two important points: that Royal Crown's counsel advised counsel for TCCC on their July 8 call that TCCC could ignore that second half of Document Request No. 29 regarding "TCCC's awareness of RC's use of RC's Marks," and that counsel for TCCC advised Royal Crown's counsel that TCCC was not aware of any documents responsive to Document Request No. 29. See Declaration of Emily B. Brown at ¶ 12.

Contrary to Royal Crown's allegation that TCCC "committed" to producing responsive documents, TCCC's original response to Document Request No. 29 stated that TCCC will produce non-privileged responsive documents "if any exist." Prior to the filing of Royal Crown's Motion, counsel for TCCC had already advised Royal Crown's counsel that, to TCCC's knowledge, no such non-privileged documents had been

---

<sup>4</sup> Royal Crown's claim of "hiding evidence" is especially hollow in the case of this document request, for two reasons. First, the document request asks only for a representative sample – which TCCC has clearly produced. Second, the request relates to advertising and marketing materials, many of which have been publicly distributed and can therefore hardly be "hidden" from Royal Crown or anyone else.

located. Nevertheless, counsel for TCCC agreed to confirm with TCCC that it conducted a thorough search and that no documents can be identified. Id. Through Royal Crown's Motion, Royal Crown again is attempting to make TCCC produce documents TCCC simply does not have.

It is also not true, contrary to Royal Crown's claims, that TCCC's objections to Document Request No. 29 are "baseless." TCCC stated its objections to preserve its rights, as the rules require, and then responded fairly to the non-objectionable substance of the request notwithstanding its valid objections. The objections were based on valid grounds, were properly tailored to the objectionable material in the request, and were proper. As agreed during the July 8 call, counsel for TCCC will include any privileged documents responsive to Document Request No. 29 on TCCC's privilege log.

D. Document Request No. 30

TCCC stated in its original response to Document Request No. 30 that TCCC would produce non-objectionable, non-privileged documents in response to the request. During the July 8 call, counsel for TCCC stated that TCCC would produce responsive documents once such documents were located. TCCC's search for such documents is ongoing and TCCC will produce any responsive documents identified in the search. It is also not true, contrary to Royal Crown's claims, that TCCC's objections to Document Request No. 30 are "baseless." TCCC simply stated its objections to preserve its rights, as the rules require, and then responded fairly to the non-objectionable substance of the request notwithstanding its valid objections. The objections were based on valid

grounds, were properly tailored to the objectionable material in the request, and were proper.

E. Document Request No. 31

TCCC stated in its original response to Document Request No. 31 that TCCC would produce non-objectionable, non-privileged documents. However, after TCCC conducted a search of relevant documents, TCCC did not identify any non-privileged responsive documents in its possession, custody or control. Counsel for TCCC agreed on the July 8 call to ask TCCC to search again for responsive documents. See Declaration of Emily B. Brown at ¶ 14. To date, TCCC has not identified any non-privileged responsive documents. Counsel for TCCC informed Royal Crown's counsel on the July 8 call that TCCC would include any responsive privileged documents on TCCC's privilege log, which TCCC will do.

It is also not true, contrary to Royal Crown's claims, that TCCC's objections to Document Request No. 31 are "baseless." TCCC stated its objections to preserve its rights, as the rules require, and then responded fairly to the non-objectionable substance of the request notwithstanding its valid objections. The objections were based on valid grounds, were properly tailored to the objectionable material in the request, and were proper.

F. Document Request No. 32

On the July 8 call, counsel for TCCC agreed to generate a list of the information requested in Document Request No. 32. See Declaration of Emily B. Brown at ¶ 15. TCCC is in the process of generating the list as agreed and expects to forward the list to Royal Crown in the near future.

It is also not true, contrary to Royal Crown's claims, that TCCC's objections to Document Request No. 32 are "baseless." TCCC stated its objections to preserve its rights, as the rules require, and then responded fairly to the non-objectionable substance of the request notwithstanding its valid objections. The objections were based on valid grounds, were properly tailored to the objectionable material in the request, and were proper.

### III. TCCC Has Not Waived Its Claims Of Privilege

The only legal authorities cited by Royal Crown on the issue of waiver of privilege are all federal court cases. Royal Crown did not cite any Board cases on the issue, or provide any precedent for the Board following the line of cases cited by Royal Crown. TCCC's privilege log will describe, as required by the Board, the nature of the withheld documents in a manner that will enable Royal Crown to assess the applicability of the privilege without revealing the privileged information. See Maui Visitors Bureau v. Richard L. Lowe & Cherie Lee Moreland, 2003 WL 23002737, Opposition No. 91123641 at \* 5 (T.T.A.B. Dec. 18, 2003). TCCC has not waived its claims of privilege and there is no basis for the extreme relief Royal Crown seeks.

Throughout the course of these proceedings, TCCC has never indicated that it would not produce a privilege log or refused to do so. On the July 8 call, counsel for TCCC identified to counsel for Royal Crown certain specific categories of documents that TCCC would include on the privilege log. As with its production of documents, TCCC has always maintained that it would provide the privilege log upon conclusion of TCCC's search for documents and information. In fact, TCCC's counsel's followed up the July 8 call with an e-mail message confirming that TCCC would provide a privilege

log of any documents that would otherwise be responsive to Royal Crown's requests but that are withheld on the basis of privilege. TCCC did not, however, agree to serve the privilege log on a specific date. TCCC would have provided the privilege log to Royal Crown sooner, but counsel for TCCC agreed on the July 8 call to check back with TCCC and have TCCC search again for responsive documents and information. See Declaration of Emily B. Brown at ¶ 16. TCCC has done so and, as noted above, TCCC's counsel is now incorporating descriptions of the additional documents in the privilege log.

Royal Crown has also made no showing of prejudice from any alleged delay in receiving the privilege log. These proceedings are still in the discovery period, and TCCC has agreed to numerous extensions of the discovery period requested by Royal Crown. In light of the invaluable purpose and importance of the attorney-client privilege, Royal Crown should be required to show prejudice before any finding of waiver of privilege is made. Counsel for TCCC has been working with TCCC to identify all responsive but privileged documents, and a thorough search for such documents is ongoing.<sup>5</sup> Counsel for TCCC first stated its privilege objections in its initial responses to Royal Crown's discovery requests and has consistently advised Royal Crown that a privilege log was forthcoming upon TCCC's identification of its privileged documents. Royal Crown has always been aware of TCCC's express claims of privilege. Royal Crown has not suffered any harm.

---

<sup>5</sup> The identification of potentially responsive but privileged documents has been especially time-consuming, as certain of the issues in this proceeding relate to activities that occurred more than five years ago and were taken by individuals no longer employed by TCCC.

In view of the foregoing, TCCC requests that the Board find that there has been no waiver of privilege. Royal Crown's request that the Board order TCCC to produce its privilege log within one (1) of the Board's decision on Royal Crown's Motion will, moreover, be moot by the time the Board rules on Royal Crown's Motion.

IV. TCCC Has Supplemented And Will Continue To Supplement Its Responses To Royal Crown's Discovery Requests.

Royal Crown would like the Board to believe that, after TCCC responded to Royal Crown's first set of discovery requests in May 2008, TCCC did not produce any additional documents or supplement its responses to any of Royal Crown's discovery requests and has failed to fulfill TCCC's discovery obligations under the Federal Rules of Civil Procedure. In fact, in the more than fifteen months since TCCC responded to Royal Crown's first set of discovery requests, TCCC has produced thousands of pages of responsive documents and TCCC has supplemented its responses to a number of Royal Crown's interrogatories. TCCC is well aware of the increase in the number of TCCC's ZERO Marks now covered by these proceedings and has continued to produce documents and information relating to the additional marks in a timely manner in accordance with the applicable rules. Further, contrary to Royal Crown's allegations, TCCC has done so on certain occasions without a formal request from Royal Crown.

Royal Crown's counsel acknowledged on the July 8 call that TCCC had produced documents concerning all but one of TCCC's ZERO Marks that are in use. See Declaration of Emily B. Brown at ¶ 11. TCCC has met its ongoing obligation to supplement its discovery responses and document production in a timely manner and continues to do so.

Royal Crown's Motion is devoid of any evidence to support its allegations that TCCC is withholding documents and information in response to Royal Crown's discovery requests and it misstates the facts by alleging that TCCC has not provided Royal Crown with an explanation for TCCC's alleged "failure" to provide additional documents and information. Despite TCCC's responses to Royal Crown's discovery requests, TCCC's counsel's statement during the July 8 call, and various emails between counsel for TCCC and Royal Crown that TCCC has provided information and produced responsive documents in its possession, custody or control, Royal Crown continues to assume that TCCC is withholding documents and information. To the extent that TCCC has responsive documents and information, however, TCCC has produced such documents and provided such information to Royal Crown.

Further, counsel for TCCC has advised Royal Crown's counsel that it has asked TCCC to produce its responsive documents, emphasized to TCCC that it needs all responsive documents, and confirmed with TCCC that TCCC does not have any additional documents. Counsel for TCCC has explained to Royal Crown's counsel that any alleged delay in providing Royal Crown with additional responsive documents is due to the lengthy process it takes for TCCC to check and then double check with each of its brand teams for documents and information. TCCC can only produce documents that are in its possession, custody or control. Royal Crown has provided no evidence that TCCC has not and is not proceeding in accordance with the rules or that TCCC is withholding materials. No such evidence exists.

Royal Crown requests that the Board order TCCC to supplement its written responses and document production to "**all** discovery requests" (emphasis added).

Royal Crown makes this extreme request even though Royal Crown's Motion does not take issue with TCCC's document production and its written responses to "all" of Royal Crown's discovery requests and even though TCCC's initial objections and responses are plainly proper. No basis exists for Royal Crown to require TCCC to supplement all of its written discovery responses. To date, TCCC has supplemented all but one of the interrogatory responses Royal Crown deemed deficient. In view of the foregoing, TCCC requests that the Board find insufficient grounds to order TCCC to supplement its written responses and document production to all of Royal Crown's discovery requests.

V. The Board Should Not Extend Royal Crown's Discovery Period.

Royal Crown's motion to extend only Royal Crown's discovery period is unwarranted. Royal Crown served its second set of discovery requests in February 2009, and TCCC timely served its responses. TCCC has produced thousands of pages of documents in response to Royal Crown's discovery requests, and, until proceedings herein were suspended on August 28, discovery was not set to close until October 4, 2009. Therefore, at the time Royal Crown filed its motion, Royal Crown had previously had over six months to conduct any additional discovery and still had over a month remaining before discovery closes. Royal Crown had more than enough time to conduct any follow up discovery. Royal Crown's allegations that "TCCC has robbed and is continuing to rob Royal Crown of time to take follow-up discovery" are unfounded.

Contrary to Royal Crown's allegations, TCCC has fulfilled all of its basic discovery obligations. TCCC has timely served all of its responses and objections to Royal Crown's discovery requests, supplemented its responses to certain of Royal

Crown's interrogatories, produced thousands of pages of responsive documents, made numerous good faith efforts to resolve all discovery disputes without the Board's involvement and will soon produce its privilege log to Royal Crown. TCCC is not sure what "discovery delinquencies" or "basic discovery obligations" Royal Crown references in Royal Crown's Motion. Further, in view of TCCC's above-referenced actions, TCCC is unaware of how Royal Crown can justify contending that TCCC has failed to comply with the applicable rules or how any of TCCC's actions have caused Royal Crown to suffer prejudice.

Royal Crown has failed to provide any legal authority in support of its request for the Board to reset only Royal Crown's discovery period. Moreover, Royal Crown has failed to identify what further discovery it plans to initiate or take if the discovery period is extended that it has not been able to take since the date TCCC timely served its full responses to Royal Crown's second set of discovery requests.

Moreover, as Royal Crown is aware, TCCC has not yet served on Royal Crown written discovery requests, and has planned to do shortly before the close of the discovery period. It is TCCC's preference to obtain full and complete responses from Royal Crown that are current as of the close of discovery, rather than complete discovery in a piecemeal fashion. The discovery period in these proceedings has not in the past ever come to a close, and TCCC is well within its rights to wait to serve its discovery requests on Royal Crown. The relief sought by Royal Crown would unfairly and improperly deprive TCCC of its ability and right under the rules to obtain appropriate discovery from Royal Crown.

In view of the above, TCCC requests that the Board deny Royal Crown's motion to extend the discovery period only for Royal Crown.

CONCLUSION

For the reasons stated above, TCCC respectfully requests that the Board enter an Order denying Royal Crown's Motion to Compel and Motion to Extend Time in all respects.

Respectfully submitted, this 10th day of September, 2009.

KING & SPALDING LLP

A handwritten signature in black ink, appearing to read "Bruce W. Baber", written over a horizontal line.

Bruce W. Baber  
Emily B. Brown

1180 Peachtree Street  
Atlanta, Georgia 30305  
Telephone: (404) 572-4600  
Facsimile: (404) 572-5134

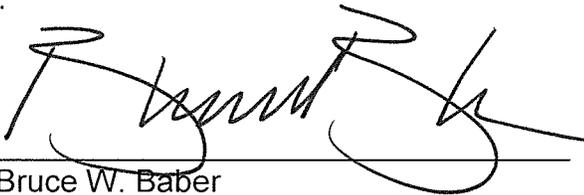
Attorneys for Applicant and Opposer  
THE COCA-COLA COMPANY

CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing The Coca-Cola Company's Brief In Opposition To Royal Crown's Motion To Compel And Motion To Extend Time upon Royal Crown, by causing a true and correct copy thereof to be deposited in the United States mail, postage prepaid, addressed to Royal Crown's counsel of record as follows:

Ms. Barbara A. Solomon  
Ms. Laura Popp-Rosenberg  
Fross Zelnick Lehrman & Zissu, P.C.  
866 United Nations Plaza  
New York, NY 10017

This 10th day of September, 2009.

  
\_\_\_\_\_  
Bruce W. Baber