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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	Other Motions/Papers
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Signature	/Emily Bienko Brown/
Date	09/10/2009
Attachments	Declaration of Emily B. Brown.PDF (8 pages)(288143 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.)	

DECLARATION OF EMILY B. BROWN

I, Emily B. Brown, declare:

1. I am an attorney in the law firm of King & Spalding LLP and am one of the attorneys representing The Coca-Cola Company (“TCCC”) in the above-referenced proceedings. I submit this declaration in support of TCCC’s brief in opposition to Royal Crown’s Motion to Compel and Motion to Extend Time. I

know the following facts of my own personal knowledge, and if called upon, would and could competently testify thereto.

2. I joined Bruce W. Baber, counsel for TCCC, on the July 8, 2009 conference call with Ms. Laura Popp-Rosenberg, counsel for Royal Crown Company, Inc. ("Royal Crown"), in which counsel for TCCC and counsel for Royal Crown discussed certain of TCCC's responses to Royal Crown's discovery requests served in connection with the above-referenced proceedings.

3. Mr. Baber and Ms. Popp-Rosenberg discussed in detail on the July 8 call each of TCCC's discovery responses of concern to Royal Crown that were raised in a June 25, 2009 letter from Ms. Popp-Rosenberg's to Mr. Baber.

4. The following paragraphs recount my knowledge and recollection of the conversation between Mr. Baber and Ms. Popp-Rosenberg on the July 8 call.

5. Mr. Baber maintained on the July 8 call that TCCC continues to believe that its original responses to Royal Crown's first and second sets of discovery requests are sufficient. Despite this, Mr. Baber agreed that counsel for TCCC would review TCCC's responses to certain of Royal Crown's discovery requests and provide supplemental responses to several of them if appropriate.

6. Mr. Baber agreed that TCCC would consider supplementing its written responses to Royal Crown's interrogatories numbers 6, 8, 9, 10, 11 and 14. Mr. Baber advised that TCCC would supplement its responses to these requests if it appeared to be appropriate to do so based upon further review of TCCC's responses.

7. Mr. Baber explained to Ms. Popp-Rosenberg that advertising, marketing and promotional campaigns that included more than one of TCCC's ZERO Marks (regarding which Interrogatory No. 8 requests information) were not conducted by TCCC on a national level but rather on a local or regional level and, therefore, TCCC is unlikely to have in its files information of the type requested in Interrogatory No. 8. Mr. Baber agreed to provide Ms. Popp-Rosenberg with any additional information responsive to Interrogatory No. 8 by July 17, 2009 if Mr. Baber received any such information by that date.

8. On the July 8 call, Mr. Baber agreed to ask TCCC to conduct a further review of its files to determine whether additional documents exist that are responsive to Royal Crown's document requests numbers 24, 26 (as to the mark FULL THROTTLE ZERO), 29 and 31. Mr. Baber informed Ms. Popp-Rosenberg that counsel for TCCC would advise Ms. Popp-Rosenberg of the results of that further review. Mr. Baber also agreed to produce additional documents in response to document requests number 30 and 32. To the best of my knowledge and recollection, Mr. Baber did not provide or agree to a date certain for the production of any such documents.

9. Ms. Popp-Rosenberg expressed Royal Crown's concern that TCCC had not produced documents in response to Document Request No. 24 for the majority of TCCC's ZERO Marks. Mr. Baber explained that TCCC had produced all of the responsive documents it received from TCCC's brand teams. Mr. Baber advised that TCCC checked with each brand team for responsive documents, emphasized the need for the teams to produce all responsive

documents and produced everything provided by the brand teams. Mr. Baber advised that some of TCCC's brand teams informed TCCC that they do not have any responsive documents. Mr. Baber agreed to double check with each brand team to confirm that there are no additional documents responsive to Document Request No. 24. To the best of my knowledge and recollection, Mr. Baber did not agree to a date certain to produce additional responsive documents, to the extent they may be identified.

10. Mr. Baber and Ms. Popp-Rosenberg discussed the meaning of the word "development" as used in Document Request No. 24 and TCCC's reason for only stating in TCCC's responsive to the request to produce responsive documents relating to the "selection and adoption" of TCCC's ZERO Marks. Mr. Baber explained that Royal Crown's use of the word "development" was unclear. After discussing Royal Crown's meaning of the word "development," Mr. Baber confirmed that the documents TCCC produced do in fact relate to the "development" of TCCC's ZERO Marks as the word is used by Royal Crown.

11. Ms. Popp-Rosenberg acknowledged, after some discussion with Mr. Baber, that TCCC had produced documents responsive to Document Request No. 26 for all of TCCC's ZERO Marks in use, with the exception of FULL THROTTLE ZERO. Mr. Baber agreed to confirm whether FULL THROTTLE ZERO is in use and, if so, if any responsive documents exist. To the best of my knowledge and recollection, Mr. Baber did not agree to a date certain for the production of any documents related to FULL THROTTLE ZERO.

12. Ms. Popp-Rosenberg informed Mr. Baber that TCCC could ignore the second half of Document Request No. 29 relating to TCCC's awareness of Royal Crown's Marks. Mr. Baber advised that he was not sure if TCCC has any documents relating to Royal Crown's use of Royal Crown's Marks, but he agreed to ask TCCC again for any responsive documents. To the best of my knowledge and recollection, Mr. Baber did not agree to a date certain for the production of any documents responsive to Document Request No. 29.

13. Mr. Baber acknowledged that TCCC has documents responsive to Document Request No. 30. Mr. Baber stated that TCCC may have some letters responsive to the request. When asked when Royal Crown can expect to receive the responsive documents, Mr. Baber suggested the week following the July 8 call. To the best of my knowledge and recollection, Mr. Baber did not agree to a date certain for the production of the documents.

14. When discussing Document Request No. 31, Ms. Popp-Rosenberg asked Mr. Baber if there are any documents relating to beverage products that include the word ZERO to which TCCC has not objected. Mr. Baber advised that he is not aware of any such documents that are not subject to the attorney-client privilege and/or work product doctrine. Ms. Popp-Rosenberg asked Mr. Baber to check again with TCCC and include any privileged documents on TCCC's privilege log. In response to Ms. Popp-Rosenberg's request, Mr. Baber stated that he would ask TCCC to check again for any responsive documents. To the best of my knowledge and recollection, Mr. Baber did not agree to a date certain

for the production of any documents or production of a privilege log identifying any privileged documents responsive to Document Request No. 31.

15. Mr. Baber stated that, in response to Document Request No. 32, TCCC would generate a list of lawsuits, oppositions, cancellation proceedings or other formal or informal legal proceedings brought by TCCC against a third party based on TCCC's rights in and to TCCC's ZERO Marks in response to Document Request No. 32. To the best of my knowledge and recollection, Mr. Baber did not agree to a date certain for the production of the list.

16. Ms. Popp-Rosenberg asked Mr. Baber if TCCC was withholding documents based on confidentiality or privilege. Mr. Baber advised that TCCC is not withholding documents based on confidentiality. Ms. Popp-Rosenberg inquired as to TCCC's privilege log for the documents TCCC is withholding based on privilege. Mr. Baber advised that TCCC would prepare a privilege log after TCCC had identified all responsive but privileged documents. Mr. Baber advised Ms. Popp-Rosenberg that TCCC could prepare a partial privilege log. When pressed for a time frame for the partial privilege log, Mr. Baber stated that TCCC could produce a partial log in two weeks. Ms. Popp-Rosenberg suggested July 22, 2009 as the date certain for production of the partial privilege log. To the best of my knowledge and recollection, Mr. Baber did not agree to Ms. Popp-Rosenberg's proposed date certain and instead advised that he first needed to check with TCCC regarding its privileged documents.

17. During the July 8 call, Mr. Baber and Ms. Popp-Rosenberg did discuss certain dates by which TCCC would undertake to complete its

assessment of whether supplemental interrogatory responses were appropriate, and to thereafter provide Royal Crown with supplemental responses to certain of Royal Crown's interrogatories, including Interrogatory Nos. 6, 9, 10, 11 and 14. TCCC's counsel completed that assessment and served on Royal Crown supplemental responses to those interrogatories on July 29, 2009.

18. During the July 8 call, I was in Mr. Baber's office at King & Spalding's New York office. Mr. Baber was on a speakerphone and I was therefore able to hear the conversation between Mr. Baber and Ms. Popp-Rosenberg. During the telephone conversation, I made handwritten notes of the conversation between Mr. Baber and Ms. Popp-Rosenberg described above, which notes are still in my possession.

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

Executed this 10th day of September, 2009.



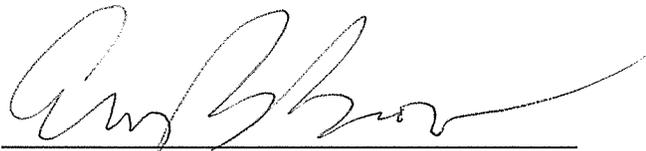
Emily B. Brown

CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing Declaration of Emily B. Brown 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.

A handwritten signature in black ink, appearing to read "Emily B. Brown", written over a horizontal line.

Emily B. Brown