

ESTTA Tracking number: **ESTTA168203**

Filing date: **10/11/2007**

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 bsolomon@frosszelnick.com
Submission	Other Motions/Papers
Filer's Name	Laura Popp-Rosenberg
Filer's e-mail	lpopp-rosenberg@fzlz.com,bsolomon@fzlz.com
Signature	/Laura Popp-Rosenberg/
Date	10/11/2007
Attachments	Motion to Suspend (F0116661).PDF ( 4 pages )(139812 bytes )

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

In the Matter of Application Serial No. 78/580598  
Published in the *Official Gazette* on April 17, 2007

-----X  
ROYAL CROWN COMPANY, INC., :  
 :  
 :  
           Opposer, :           Opposition No. 91178927  
 :  
 - against - :  
 :  
 THE COCA-COLA COMPANY, :  
 :  
 :  
           Applicant. :  
-----X

**MOTION TO SUSPEND PROCEEDINGS**

Opposer Royal Crown Company, Inc. ("RCC"), by and through its undersigned counsel, hereby moves the Board under Rule 2.117(a) of the Trademark Rules of Practice, 37 C.F.R. § 2.117(a), for an order to suspend the above referenced opposition proceeding (hereinafter, the "Opposition") until a final determination has been made in an earlier-filed opposition proceeding currently pending against the same applicant and same application.

**STATEMENT OF FACTS**

Three months before the instant opposition proceeding was commenced, on May 17, 2007, Ehrlich, Matt and Fried, Shlomo (the "First Opposers") filed a Notice of Opposition against the same applicant, The Coca-Cola Company ("Applicant"), and the same application involved here, Application Serial No. 78/580598 for the mark COCA-COLA ZERO. The proceeding was instituted as Opposition No. 91177358 (the "First Opposition Proceeding"). According to the scheduling order issued by the Board in connection with the First Opposition Proceeding, the First Opposers and Applicant are well into the six-month discovery period, with discovery set to close in less than two months, on December 3, 2007. At issue in the First Opposition Proceeding is

whether Applicant's registration of the COCA-COLA ZERO mark should be refused under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), due to a likelihood of confusion with the First Opposers' prior-used and registered ZERO CAL & Design mark, Serial No. 78/524771.

RCC, opposer in this proceeding, filed its Notice of Opposition on August 14, 2007. Discovery opened one month ago, on September 3, 2007, and is not set to close until March 1, 2008. Neither party has yet served discovery requests in this proceeding. At issue in this proceeding is whether the COCA-COLA ZERO mark should be denied registration as merely descriptive under Section 2(e) of the Lanham Act, 15 U.S.C. § 1052(e), and/or should be denied registration due to Applicant's fraud in connection with the application.<sup>1</sup>

### ARGUMENT

Rule 2.117(a) of the Trademark Rules of Practice provides:

Whenever it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties to a pending case are engaged in . . . another Board proceeding which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action or the other Board proceeding.

37 C.F.R. § 2.117(a). Here, Applicant is involved in another Board proceeding concerning the very mark at issue in this opposition. Resolution of the First Opposition Proceeding will directly affect and have a bearing on this proceeding. Although the respective opposition proceedings do not involve the same claims, they do seek the same result. If the First Opposers succeed, the COCA-COLA ZERO mark will be refused registration, and this entire proceeding would be moot. In such circumstances, to allow the First Opposition Proceeding and this proceeding to go forward at the same time would be a waste of the parties' and the Board's resources.

---

<sup>1</sup> A third opposition proceeding, Opposition No. 91178953, commenced August 15, 2007, also is pending against the COCA-COLA ZERO application, based on the ground that the mark is descriptive.

Moreover, there can be no claim of prejudice to Applicant's rights if this proceeding is suspended. The opposition proceeding is in a very early stage. Discovery does not close until March 1, 2008. Further, Applicant actually is using its mark. Thus, it cannot claim that suspension of this proceeding will unduly delay an intent-to-use application thereby preventing or somehow hampering Applicant's ability to use the mark shown in the application.

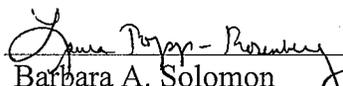
Prior to bringing this motion, Opposer sought Applicant's consent to the requested suspension. Counsel for Applicant declined to consent.

### CONCLUSION

For the foregoing reasons, and in the interest of judicial economy, Opposer respectfully requests the Board to grant its Motion to Suspend Proceedings pending final resolution of Opposition No. 91177358.

Dated: New York, New York  
October 11, 2007

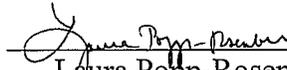
FROSS ZELNICK LEHRMAN & ZISSU, P.C.

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 a copy of the foregoing Motion to Suspend Proceedings was served by hand on Applicant's attorney, Bruce Baber, Esq., King & Spalding LLP, 1180 Peachtree Street, Atlanta, GA 30309, this 11th day of October, 2007.

  
\_\_\_\_\_  
Laura Popp-Rosenberg