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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
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Attachments	TCCC response to RC motion to substitute.pdf ( 4 pages )(17489 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.	)	

RESPONSE OF THE COCA-COLA COMPANY  
TO ROYAL CROWN'S MOTION TO SUBSTITUTE

The Coca-Cola Company (“TCCC”), by and through its undersigned counsel and in accordance with Rule 2.127 of the Trademark Rules of Practice, files this response to the “Motion To Substitute” filed by Royal Crown Company, Inc. (“RC”) on November 15, 2012.

## ARGUMENT AND CITATION OF AUTHORITIES

Based on RC's representation that Dr Pepper/Seven Up, Inc. ("DPSU") is the current owner of the RC applications at issue in these proceedings and the documentation thereof filed by RC with its motion, TCCC does not object to the **joinder** of DPSU as a party to these proceedings, as an opposer in the eight opposition proceedings initially filed by RC – namely, Oppositions Nos. 91178927, 91180771, 91180772, 91183482, 91185755, 91186579, 91189847 and 91190658 – and as an applicant in Opposition No. 91184434. In accordance with section 512.01 of the TTAB Manual of Procedure ("TBMP"), however, TCCC does object to the **substitution** of DPSU in place of RC as a party to these proceedings.

Section 512.01 of the TBMP provides that a substitution of parties is generally appropriate only when the assignment occurs prior to the commencement of the proceeding, the assignor is no longer in existence, the opposing party does not object to the substitution, or the discovery and testimony periods have closed; "otherwise, the assignee will be joined, rather than substituted, to facilitate discovery" and the taking of evidence. See TBMP § 512.01 and authorities cited therein at nn. 222 and 223.

The testimony periods have not opened in these proceedings, and RC suggests in its motion that RC still exists – see, e.g., Motion at ¶ 1, stating that "Royal Crown and DPSU are both wholly-owned subsidiaries of Dr Pepper Snapple Group, Inc." TCCC therefore believes that the proper course of action in accordance with the Manual is to join DPSU as a party and not substitute DPSU for RC.

CONCLUSION

For the foregoing reasons, TCCC respectfully prays that RC's Motion to Substitute be denied, that Dr Pepper/Seven Up, Inc. not be substituted for Royal Crown Company, Inc. as a party to these proceedings, and that Dr Pepper/Seven Up, Inc. be joined as a party rather than be substituted in place of Royal Crown Company, Inc.

Respectfully submitted, this 5th day of December, 2012.

KING & SPALDING LLP

/Bruce W. Baber/

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THE COCA-COLA COMPANY

CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing Response Of The Coca-Cola Company To Royal Crown's Motion To Substitute in the above-captioned matter upon Royal Crown Company, Inc., by causing a true and correct copy thereof to be deposited in the United States Mail, postage prepaid, addressed to counsel of record for Royal Crown Company, Inc. as follows:

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

This 5th day of December, 2012.

/Bruce W. Baber/  
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Bruce W. Baber