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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 & SPALDING LLP 1180 PEACHTREE STREET ATLANTA, GA 30309 UNITED STATES bbaber@kslaw.com, ebrown@kslaw.com
Submission	Motion to Quash
Filer's Name	Bruce W. Baber
Filer's e-mail	bbaber@kslaw.com
Signature	/Bruce W. Baber/
Date	07/15/2013
Attachments	2013.07.15 TCCC Motion to Strike and to Quash.pdf(1887723 bytes)

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

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

– and –

THE COCA-COLA COMPANY,)	
)	
Opposer,)	
)	
v.	)	OPPOSITION NO. 91184434
)	
ROYAL CROWN COMPANY, INC.)	
and DR. PEPPER/SEVEN UP, INC.,)	
)	
Applicants.)	

MOTION TO STRIKE PRETRIAL DISCLOSURES
AND TO QUASH NOTICES OF TAKING TESTIMONY

The Coca-Cola Company (“TCCC”), by and through its undersigned counsel and in accordance with the Trademark Rules of Practice and the Trademark Trial and Appeal Board Manual of Procedure (“TBMP”), moves the Board to strike paragraph 5 of the Pretrial Disclosures served by Royal Crown Company, Inc. and Dr. Pepper/Seven Up, Inc. (collectively, “RC”) on June 14, 2013 and to quash the three notices of taking testimony served by RC on July 8, 2013.

FACTUAL BACKGROUND

In support of this motion, TCCC respectfully shows as follows:

1. On June 14, 2013, RC served the “Pretrial Disclosures Of Opposers Royal Crown And Dr Pepper/Seven Up” (“Disclosures”) in these consolidated proceedings. A true and correct copy of the Disclosures is attached as Exhibit A.

2. In paragraph 5 of the Disclosures, RC identified as potential witnesses a broad category of persons that RC described as “**[o]fficers or employees of third-party beverage companies, including but not necessarily limited to:**” and then listed forty-three different “witnesses” of different types – some of which are beverage companies, some of which are individuals, and some of which are retailers such as Costco, Walmart, Walgreen and Winn-Dixie Stores. (Disclosures ¶ 5 (emphases added)). For the forty business entities that RC included in its list of forty-three witnesses, RC did not provide the names of any individuals. RC also did not provide any telephone numbers for any of the forty-three witnesses.

3. RC stated in the Disclosures that the forty-three potential witnesses may testify as to certain broad and general categories of topics, including “[u]se of the term or numeral zero in connection with beverages, including distribution, sales and advertising of same” and “[c]onsumer recognition, perception and understanding of the term or numeral zero and the meaning thereof when used in connection with beverages.” RC did not identify in the Disclosures any specific beverage products or “uses” of the term “zero” regarding which any of the forty-three witnesses might testify, nor did RC provide any basis on which any of the “witnesses” listed could provide expert

or other competent testimony regarding, e.g., “consumer perception and understanding.”

4. After the close of business on July 8, 2013, RC served on TCCC’s counsel notices of taking testimony from three of the entities named in paragraph 5 of the Disclosures, namely Beverage Marketing USA, Inc. of White Plains, New York (“Beverage Marketing”); Southern Group Enterprises, LLC of Miami, Florida (“Southern Group”); and Reeds, Inc. of Los Angeles, California (“Reeds”). RC noticed the testimony of both Beverage Marketing and Southern Group for July 19 – in New York and Miami, respectively – and the testimony of Reeds for July 23 in Los Angeles, California.¹ True and correct copies of the notices served by RC on July 8 are attached hereto as Exhibits B, C and D.

5. RC served with the notices copies of discovery deposition subpoenas that RC apparently has served or plans to serve on Beverage Marketing, Southern Group and Reeds (collectively, the “Three Companies”). The subpoenas contain the language of Rule 30(b)(6) of the Federal Rules of Civil Procedure applicable to discovery depositions taken under Rule 30(b)(6), and are accompanied by schedules that include both document requests and testimony topics as to which RC instructs each of the Three Companies, in accordance with Rule 30(b)(6), that it “must designate one or more officers, directors or managing agents, or designate other persons who consent to testify on its behalf” about the matters specified. See, e.g., Exhibit B, Schedule A at 4; see Fed.R.Civ.P. 30(b)(6).

¹ On July 9, 2013, RC served an “amended” notice for Beverage Marketing USA, Inc. that contained an address correction but was otherwise identical to the original notice.

6. As the Board recently concluded in its Order dated March 15, the discovery period in these proceedings closed in April of 2010. TTAB Order dated March 15, 2013 at 7. RC did not take discovery from any of the Three Companies during the discovery period.

7. RC did not consult with TCCC regarding the notices or the scheduling of the testimony depositions prior to serving the notices, nor did RC seek or obtain TCCC's consent to the taking of discovery depositions from the Three Companies during RC's testimony period.

8. Counsel for TCCC discussed the issues raised in this motion by telephone with counsel for RC on Monday, July 15, and the parties were unable to agree to a resolution thereof.

ARGUMENT AND CITATION OF AUTHORITIES

I. RC's Disclosures With Respect To The Three Companies Are Inadequate And Insufficient.

Trademark Rule 2.121(e) governs pretrial disclosures. That rule provides, in pertinent part, that a party must provide in its disclosures:

the ***name*** and, if not previously provided, the ***telephone number and address*** of each witness from whom it intends to take testimony, or may take testimony if the need arises.

37 C.F.R. § 2.121(e) (emphases added). The Rule also requires that a party provide the following information with respect to each third-party witness named in its disclosures:

general identifying information about the witness, such as . . . ***occupation and job title, a general summary or list of subjects on which the witness is expected to testify***, and a general

summary of the types of documents and things which may be introduced as exhibits during the testimony of the witness.

37 C.F.R. § 2.121(e) (emphases added).

RC did not provide in its Disclosures as to any of the Three Companies – or any of the nearly forty other companies listed in paragraph 5 of its Disclosures – the information required by Rule 2.121, including the name, telephone number, occupation or job title of any individual witness.² RC’s description of the subject matter of the testimony was so broad and general as to be meaningless, and did not identify any products or other specific subjects about which any of the forty-three “witnesses” listed might testify.

Because RC did not provide adequate pretrial disclosures as to any of the named “witnesses,” RC’s disclosures as to the entities and persons named in paragraph 5 of RC’s Disclosures should be stricken and its notices to take testimony from unnamed individuals associated with the Three Companies should be quashed in accordance with section 521 of the TBMP. TBMP § 521 (“A motion to quash may be filed on a variety of grounds. For example, a party may move to quash a notice of deposition on the ground that: . . . (10) that the deposing party’s pretrial disclosures are insufficient.”); *see also*, *e.g.*, *Spier Wines (PTY) Ltd. v. Shepherd*, 105 U.S.P.Q.2d 1239 (T.T.A.B. 2012) (striking pretrial disclosure and granting motion to quash notice of testimony); *Steiger Tractor, Inc. v. Steiner Corp.*, 221 U.S.P.Q. 165 (T.T.A.B. 1984) (disregarding testimony

² For the three individuals named in paragraph 5, i.e., Peggy V. Anderson of Valdosta, Georgia, Robert Corr of Chicago and Sam Radfar of Las Vegas, RC did not provide the telephone number, occupation or job title for any of the individuals listed; for two of the entities listed – “Companhia de Bebidas das Americas – AMBEV” and “Bluesprings Water Co.” – RC provided only the entity name, with no address or other information.

because notice did not specify individual witness by name); *O.M. Scott & Sons Co. v. Ferry-Morse Seed Co.*, 190 U.S.P.Q. 352 (T.T.A.B. 1976) (same).

II. RC's Notices Seek Discovery Depositions, Are Therefore Improper, And Do Not Comply With The Trademark Rules.

RC's notices and subpoenas to the Three Companies appear to be carefully drafted to be ambiguous as to whether trial testimony depositions or discovery depositions are sought from the Three Companies. In both form and substance, however, the notices are plainly notices that seek discovery under Rule 30(b)(6) of the Federal Rules of Civil Procedure, are therefore untimely, and do not comply with the requirements for trial subpoenas.

As noted above, all three of the subpoenas served by RC on TCCC are in the form of deposition subpoenas (Form AO 88A) and not trial subpoenas (Form AO 88). As a result, all three of the subpoenas contain the language of Rule 30(b)(6) of the Federal Rules, stating that the subpoenaed party "must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment." See, e.g., Exhibit B at 3. And to the extent that there is any ambiguity regarding RC's intent, the attachments to the subpoenas drafted by RC's counsel repeat the same language from Rule 30(b)(6) under the heading "Topics of Deposition." See, e.g., Exhibit B, Schedule A at 4 ("Beverage Marketing must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf").

Both the Federal Rules and Board precedent make clear that the procedures of Rule 30(b)(6) – one of the discovery rules contained in the Federal Rules – are

discovery procedures that cannot be utilized for trial testimony. In its August 13, 2008 Order in *Virgin Enterprises Limited v. Rosenquist – Gestao E Servicos Sociedad Unipessoal LDA*, Opposition No. 91161535 at 7 n.5 (T.T.A.B. 2008), the Board expressly noted and reiterated that “a 30(b)(6) deposition is a discovery deposition” and that a “30(b)(6)” deposition “is not available for trial depositions.” As the Board succinctly stated in *D.K. Jain d/b/a/ Luxor Pen Co. v. Ramparts, Inc.*, 49 U.S.P.Q.2d 1429 (T.T.A.B. 1998) (emphasis added):

The discovery devices and remedies applicant seeks to utilize, i.e., a notice of discovery deposition under Fed.R.Civ.P. 30(b)(6) . . . are inapplicable and unavailable in the context of testimony depositions. ***The rules applicable to the Board’s proceedings provide no basis for the noticing of a testimony deposition under Rule 30(b)(6)*** . . . Applicant inexcusably failed to avail itself of those discovery devices and remedies during the previously-scheduled and now-closed discovery period, and may not use them during the trial phase of this case.

Compare also, e.g., TBMP § 404.05 (regarding notices of discovery depositions; references procedures of Rule 30(b)(6)) *with* TBMP § 703.01(e) (regarding notices of testimony depositions; no reference to procedures of Rule 30(b)(6)).

Consistent with these settled principles, the Trademark Rules require that a notice of trial testimony include “the name and address of each witness.” 37 C.F.R. 2.123(c). Rule 2.123(c) provides that “if the name of the witness is not known,” the notice must include “a general description sufficient to identify the witness or the particular class or group to which the witness belongs, together with a satisfactory explanation [for not providing the name of the unknown witness].” *Id.*

RC’s notices for the Three Companies do not comply with Rule 2.123. They do not provide the name of any witness or, in accordance with the Rule, “a general

description or the class or group to which the witness belongs” or any “explanation” of any kind as to why the name is not provided.³ RC’s notices are therefore improper, are insufficient and should be quashed. See *Steiger Tractor, supra*; *O.M. Scott & Sons Co., supra*.

III. Even If RC’s Notices Are Not All Quashed, At Least Two Of The Notices Must Be Quashed In Accordance With Rule 2.123(c).

RC’s notices state that RC intends to take testimony from two different parties – located in New York and Miami, Florida – on the same day. RC has noticed the testimony of Beverage Marketing for 9:00 a.m. on Friday, July 19, in New York, and the testimony of Southern Group for 2:00 p.m. that same day, in Miami, Florida.

The last sentence of Rule 2.123(c) provides:

No party shall take depositions in more than one place at the same time, nor so nearly at the same time that reasonable opportunity for travel from one place of examination to the other is not available.

37 C.F.R. § 2.123(c).

It is plainly impossible for TCCC’s counsel to attend a testimony deposition of Beverage Marketing in New York City on the morning of July 19 and a testimony deposition of Southern Group in Miami that same afternoon. For the reasons stated above, all three of RC’s notices should be quashed for failure to comply with the Board’s

³ RC’s failure to provide the names of any witnesses for the Three Companies confirms that either (1) RC has been in communication with one or more of the Three Companies and has consciously decided not to provide the witnesses’ names, thereby intentionally violating Rules 2.121(e) as to its Disclosures and Rule 2.123(c) as to its notices, or (2) RC has not been in communication with the Three Companies and is seeking information that should have been sought during discovery regarding the identity of any potential witnesses for the Three Companies.

rules; at a minimum, however, the two notices for July 19 must be quashed in view of the clear language of Rule 2.123(c).

CONCLUSION

For the foregoing reasons, TCCC respectfully prays that TCCC's Motion to Strike and to Quash be granted; that paragraph 5 of RC's Disclosures be stricken; that RC's notices of depositions for Beverage Marketing USA, Inc., Southern Group Enterprises, LLC and Reeds, Inc. be quashed; and that RC be precluded from taking testimony from any of the persons named in paragraph 5 of RC's Disclosures, whether in accordance with the notices served by RC on July 8 or otherwise.

In accordance with section 521 of the TBMP, TCCC requests a telephone conference call with the Board attorney assigned to these matters to address the issues raised herein. See TBMP § 521 ("the preferred practice is to file a motion to quash" and to "ask that the motion be resolved by conference call").

Respectfully submitted, this 15th day of July, 2013.

KING & SPALDING LLP

/Bruce W. Baber/
Bruce W. Baber

1180 Peachtree Street
Atlanta, Georgia 30309
Telephone: 404-572-4600
Facsimile: 404-572-5134

Attorneys for Applicant and Opposer
THE COCA-COLA COMPANY

EXHIBIT A

1. Mr. Andrew Springate, Senior Vice-President, Marketing Services and Long-Range Planning, Dr Pepper Snapple Group, 5301 Legacy Drive, Plano, TX 75024.

List of subjects on which the witness is expected to testify. Mr. Springate is expected to testify or may testify as to:

- The general business of Opposers;
- Opposers' adoption of the marks DIET RITE PURE ZERO and PURE ZERO (together, "Opposers' Marks");
- Opposers' applications to register Opposers' Marks;
- Opposers' use of Opposers' Marks;
- The nature of the goods offered under Opposers' Marks;
- Sales of goods under Opposers' Marks and the channels of trade therefor;
- Advertising, promotion and marketing of goods under Opposers' Marks;
- The meaning of Opposers' Marks; and
- Use and meaning of the term or numeral zero in the beverage industry, including in connection with third-party beverage products; and

List of the types of documents and things which may be introduced as exhibits during the testimony of the witness. All of the documents and things that have been produced in response to discovery requests by either party may be introduced as exhibits during Mr. Springate's trial testimony and are not separately referenced herein. To the extent the following documents were not produced, they may also be introduced as exhibits during Mr. Springate's trial testimony:

- Documents evidencing Opposers' use of Opposers' Marks;
- Documents evidencing the scope of sales under Opposers' Marks;
- Documents evidencing advertising and marketing of Opposers' Marks;

- Documents evidencing use of the term or numeral zero in the beverage industry, including in connection with third-party beverage products; and
- Documents produced by Opposer during discovery in this proceeding.

2. Ms. Regan Ebert, Senior Vice-President, Marketing, Core 5/Non-Carbonated Beverages, Dr Pepper Snapple Group, 5301 Legacy Drive, Plano, TX 75024.

List of subjects on which the witness is expected to testify. Ms. Ebert is expected to testify or may testify as to:

- The general business of Opposers;
- Opposers' adoption of the marks DIET RITE PURE ZERO and PURE ZERO (together, "Opposers' Marks");
- Opposers' applications to register Opposers' Marks;
- Opposers' use of Opposers' Marks;
- The nature of the goods offered under Opposers' Marks;
- Sales of goods under Opposers' Marks and the channels of trade therefor;
- Advertising, promotion and marketing of goods under Opposers' Marks;
- The meaning of Opposers' Marks; and
- Use and meaning of the term or numeral zero in the beverage industry, including in connection with third-party beverage products;

List of the types of documents and things which may be introduced as exhibits during the testimony of the witness. All of the documents and things that have been produced in response to discovery requests by either party may be introduced as exhibits during Ms. Ebert's trial testimony and are not separately referenced herein. To the extent the following documents were not produced, they may also be introduced as exhibits during Ms. Ebert's trial testimony:

- Documents evidencing Opposers' use of Opposers' Marks;

- Documents evidencing the scope of sales under Opposers' Marks;
- Documents evidencing advertising and marketing of Opposers' Marks;
- Documents evidencing use of the term or numeral zero in the beverage industry, including in connection with third-party beverage products; and
- Documents produced by Opposer during discovery in this proceeding.

3. Mr. Chris Barnes, Manager, Corporate Affairs, Dr Pepper Snapple Group, 5301 Legacy Drive, Plano, TX 75024.

List of subjects on which the witness is expected to testify. Mr. Barnes is expected to testify or may testify as to:

- Certain advertising of the American Beverage Association (“ABA”) including depictions of three bottle silhouettes with the words “H2O,” “Zero,” and “Lite” (the “ABA Campaign”);
- Approval of the ABA Campaign by members of the ABA;
- Identity of members of the ABA.

List of the types of documents and things which may be introduced as exhibits during the testimony of the witness. Documents concerning the ABA Campaign.

4. Mr. Mario Ortiz, Paralegal, Fross Zelnick Lehrman & Zissu, P.C., 866 United Nations Plaza, New York, NY 10017.

List of subjects on which the witness is expected to testify. Mr. Ortiz is expected to testify or may testify as to Third-party use of the term or numeral zero in connection with beverages.

List of the types of documents and things which may be introduced as exhibits during the testimony of the witness. Documents and things evidencing third-party beverage products utilizing the term or numeral zero.

5. Officers or employees of third-party beverage companies, including but not necessarily limited to: (a) Adina For Life, Inc., 660 York Street, San Francisco, CA 94110; (b) All Sport, Inc., 720 Jewell Drive, Waco Texas 76712; (c) Beverage Marketing USA, Inc., 222 Bloomingdale Road Suite 400, White Plains, NY 10605; (d) Big Red, Inc., 6500 River Place Boulevard, Building 1, Suite 450, Austin, TX 78730; (e) Black Horse Inc., 6975 Union Park Center, Suite 340, Midvale, UT 84047; (f) Bluesprings Water Co.; (g) BooKoo Beverages, Inc., 4951 Airport Pkwy, Suite 640, Addison, TX 75001; (h) Bovis Foods, 333 Geary Street, San Francisco, CA 94010; (i) Companhia de Bebidas das Américas – AMBEV; (j) Costco Wholesale Corporation, 999 Lake Drive, Issaquah, WA 98027; (k) Double-Cola Co., 537 Market Street, Chattanooga, TN 37402; (l) Hansen Beverage Co., 550 Monica Circle, Suite 201, Corona, CA 92880; (m) The Healthy Beverage Company, 329B S. Main Street, Doylestown, PA 18901; (n) Heartland Food Products Group, 14300 Clay Terrace Blvd., Suite 249, Carmel, IN 46032; (o) Herbal Water, Inc., 647 Montgomery School Lane, Wynnewood, PA 19096; (p) JONES Soda Co. (USA) Inc., 1000 1st Avenue South, Suite 100, Seattle, WA 98134; (q) LOUD Beverage Corp., 431 Cedar Drive West, Briarcliff Manor, NY 10510; (r) Monster Beverage Company, 550 Monica Circle Suite 201, Corona, CA 92880; (s) Peggy V. Anderson, 3338-L Country Club Rd., Unit #183, Valdosta, GA 31605; (t) PepsiCo., Inc., 700 Anderson Hill Road, Purchase, NY 10577; (u) Power Trip Beverages, Inc., 9705 N.W. 108th Ave, Suite 19, Miami, FL 33178; (v) PRE Beverage Company, 4633 E. La Palma Ave., Anaheim, CA 92807; (w) Red Bull North America, 1740 Stewart Street, Santa Monica, CA 90404; (x) REEDS, Inc., 13000 South Spring Street, Los Angeles, CA 90061; (y) Roaring Lion, 800 Wheatland Ave., Unit J, Sun Valley, CA 91352; (z) Robert J. Corr d/b/a Naturally ZERO, 4300 Di Paolo Center, Glenview IL 60025; (aa) Rob’s Really Good LLC, P.O. Box 35, Sea Cliff, NY 11579; (bb) Rockstar, Inc., 101 Convention Center Dr., Suite 777, Las Vegas, NV 89126; (cc) Rox America, Charlotte, NC 28212; (dd) Sam Radfar d/b/a Global Water Co., 10670 Southern Highlands Parkway, #104, Las Vegas NV 89141; (ee) Saratoga Spring Water Co., 11 Geyser Rd., Saratoga Springs, NY 12866; (ff) Sav-A-Lot Food Stores Ltd., 100 Corporate Office Drive, Earth City, MO; (gg) Skinny Nutritional Corporation, 3 Bala Plaza, Suite 117, East Bala Cynwyd, PA 19004; (hh) SodaStream USA, Inc., One Mall Drive, Suite 905, Cherry Hill, NJ 08002-2105; (ii) Southern Group Enterprises, LLC, 2190 N.W. 89th Place, Miami, FL 33172; (jj) South Beach Beverage Company, Inc., 40 Richards Avenue, Norwalk CT 06854; (kk) The Sqwincher Corporation, 1409 Highway 45, South Columbus, MS 39701; (ll) Talking Rain Beverage Co., Inc., 30520 Southeast 84th Street, Preston, WA 98050; (mm) Victory Energy, LLC, P.O. Box 7248, Missoula, MT 59807; (nn) Walgreen Co., 104 Wilmot Road, Deerfield, IL 60015; (oo) Walmart, 702 SW 8th Street, Bentonville, AR 72716-8611; (pp) Winn-Dixie Stores, Inc., 5050 Edgewood Court, Jacksonville, FL 32254-3699; and (qq) Zevia LLC, 10200 Culver Blvd., Culver City, CA 90232;

List of subjects on which the witness is expected to testify. The identified third-party

witnesses are expected to testify or may testify as to:

- Use of the term or numeral zero in connection with beverages, including distribution, sales and advertising of same;
- Consumer recognition, perception and understanding of the term or numeral zero and the meaning thereof when used in connection with beverages;

- Communications, or lack thereof, between the third-party company and TCCC concerning the party's use of the term or numeral zero in connection with beverages.

List of the types of documents and things which may be introduced as exhibits during the testimony of the witness. The following types of documents may be introduced as

exhibits during the testimony of the identified third-party witnesses:

- Documents evidencing the use of the term or numeral zero in connection with beverages, including distribution, sales and advertising of same;
- Documents evidencing consumer recognition, perception and understanding of the term or numeral zero and the meaning thereof when used in connection with beverages;
- Communications between the third-party company and TCCC concerning the party's use of the term or numeral zero in connection with beverages.

6. Officers or employees of TCCC.

List of subjects on which the witness is expected to testify.

- Authentication and identification of documents produced by TCCC in the consolidated proceedings.

List of the types of documents and things which may be introduced as exhibits during the testimony of the witness. Documents produced by TCCC.

Dated: New York, New York
June 14, 2013

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By:  _____

Barbara A. Solomon

Laura Popp-Rosenberg

Emily Weiss

866 United Nations Plaza

New York, New York 10017

Tel: (212) 813-5900

Email: bsolomon@frosszelnick.com

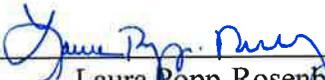
lpopp-rosenberg@frosszelnick.com

eweiss@frosszelnick.com

*Attorneys for Royal Crown Company, Inc. and
Dr Pepper/Seven Up, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of **PRETRIAL DISCLOSURES OF ROYAL CROWN AND DR PEPPER/SEVEN UP** to be deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to counsel for The Coca-Cola Company, Bruce W. Baber, Esq., King & Spalding LLP, 1185 Avenue of the Americas, New York, New York 10036-4003, this 14th day of June, 2013.



Laura Popp-Rosenberg

EXHIBIT B

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

-----X	
ROYAL CROWN COMPANY, INC.	:
and DR PEPPER/SEVEN UP, INC.,	:
	:
Opposers,	:
	:
- against -	:
	:
THE COCA-COLA COMPANY,	:
	:
Applicant.	:
-----X	

Consolidated Proceedings
Opposition No. 91178927
Opposition No. 91180771
Opposition No. 91180772
Opposition No. 91183482
Opposition No. 91185755
Opposition No. 91186579
Opposition No. 91189847
Opposition No. 91190658

— and —

-----X	
THE COCA-COLA COMPANY,	:
	:
Opposer,	:
	:
- against -	:
	:
ROYAL CROWN COMPANY, INC.	:
and DR PEPPER/SEVEN UP, INC.,	:
	:
Applicants.	:
-----X	

Opposition No. 91184434

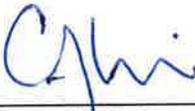
NOTICE OF SUBPOENA TO BEVERAGE MARKETING USA, INC.

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, you are hereby given NOTICE that Royal Crown Company, Inc. and Dr Pepper/Seven Up, Inc. will serve upon Beverage Marketing USA, Inc. a subpoena commanding appearance for a deposition and the production of documents. The subpoena will be in the form attached hereto. The deposition will be taken on July 19, 2013, commencing at 9:00 a.m., at the offices of Fross Zelnick Lehrman & Zissu, 866 United Nations Plaza, New York, New York 10017, before a certified court reporter

or other person authorized by law to transcribe the proceedings. The deposition will be recorded stenographically and/or audio-visually and will continue from day to day until completed. You are invited to attend and cross-examine.

Dated: New York, New York
July 8, 2013

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By:  _____

Barbara A. Solomon

Laura Popp-Rosenberg

Emily Weiss

866 United Nations Plaza

New York, New York 10017

Tel: (212) 813-5900

Email: bsolomon@frosszelnick.com

lpopp-rosenberg@frosszelnick.com

eweiss@frosszelnick.com

*Attorneys for Royal Crown Company, Inc. and
Dr Pepper/Seven Up, Inc.*

UNITED STATES DISTRICT COURT

for the

Southern District of New York

ROYAL CROWN CO., INC., et al.

Plaintiff

v.

THE COCA-COLA COMPANY

Defendant

Civil Action No. Consolidated Opp. No. 91184434

(If the action is pending in another district, state where: Before the TTAB)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

Beverage Marketing USA, Inc., 222 Bloomingdale Road, Suite 400, White Plains, NY

To:

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See Schedule A

Place: Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations Plaza New York, NY 10017

Date and Time:

07/19/2013 9:00 am

The deposition will be recorded by this method: stenographic

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

See Schedule A

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 07/08/2013

CLERK OF COURT

OR

[Handwritten signature]

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party)

ROYAL CROWN CO., INC. and DR PEPPER/SEVEN UP, INC., who issues or requests this subpoena, are:

Barbara A. Solomon, Esq., Laura Popp-Rosenberg, Esq., Emily Weiss, Esq.

Fross Zelnick Lehrman & Zissu, P.C.

866 United Nations, Plaza, New York, NY 10017, (212) 813-5900

Civil Action No. Consolidated Opp. No. 91184434

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information.

These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

SCHEDULE A TO SUBPOENA TO BEVERAGE MARKETING USA, INC.

DEFINITIONS

A. The term “**Opposition**” means the consolidated opposition proceedings Nos. 91178927, 91180771, 91180772, 91183482, 91185755, 91186579, 91189847, 91190658, and 91184434, between, on the one hand, Royal Crown Company, Inc. and Dr Pepper/Seven Up, Inc. and, on the other hand, The TCCC Company, which proceedings are currently pending in the United States Patent and Trademark Office before the Trademark Trial and Appeal Board.

B. “**TCCC**” means The Coca-Cola Company, and any company controlled by or affiliated with it and any persons or entities acting or purporting to act on its behalf, including but not limited to legal counsel.

C. “**And**” and “**or**” shall each be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses and deposition topics that might otherwise be construed to be outside of its scope.

D. The term “**Communication**” means, without limitation, the transmittal of information (in the form of facts, ideas, inquiries or otherwise), including, but not limited to, meetings, discussions, conversations, telephone calls, recordings, photographs, notes, memoranda, letters, facsimiles, email and the transmittal of information in the form of agreements.

E. The term “**Concerning**” means relating to, referring to, describing, evidencing or constituting.

F. The term “**Document**” is used in the broadest sense possible consistent with the definitions set forth in Rule 34(a) of the Federal Rules of Civil Procedure 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 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, "**Document**" includes electronically stored information and any and all subsisting metadata associated therewith.

G. "**Beverage Marketing**" means Beverage Marketing USA, Inc., 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 all persons or entities acting or purporting to act on its behalf.

H. "**Mark**" means the trademark ARNOLD PALMER ZERO.

- I. References to the masculine gender shall apply equally to the feminine gender.
- J. The use of the singular form of any word includes the plural and vice versa.

INSTRUCTIONS FOR PROVIDING DOCUMENTS

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

2. Except unless expressly stated otherwise, the Requests seek Documents and information Concerning the United States only.

DOCUMENT REQUESTS

1. Representative samples (or copies) of packaging for beverages bearing the Mark.
2. Documents sufficient to identify the calorie content of beverages bearing the Mark, as expressed on package labels.
3. Documents sufficient to identify Beverage Marketing's annual (or year-to-date) revenue (in round figures) from sales of beverages bearing the Mark for each year since such beverages were introduced.
4. Documents sufficient to identify the annual (or year-to-date) volume (such as in 288 oz. equivalents) of Beverage Marketing's sales of beverages bearing the Mark for each year since such beverages were introduced.
5. All Communications between Beverage Marketing and TCCC Concerning any objection or complaint by TCCC with regard to Beverage Marketing's use of the Mark or of the term or numeral zero in connection with beverages.

TOPICS OF DEPOSITION

Pursuant to the Subpoena, to which this Schedule A is attached, Beverage Marketing must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf about the following matters:

- 1) Authentication of Documents produced by Beverage Marketing in response to the Document Requests, and explanation of information contained in such Documents;
- 2) As pertains to the Mark:

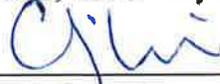
- a) Length of use of the Mark, including approximate date of first use;
- b) Description of types of beverages bearing the Mark, including the labeled calorie content of same;
- c) Distribution of beverages bearing the Mark, including (i) geographic availability of such beverages; (ii) types of trade channels in which such beverages have been distributed; and (iii) market penetration of such beverages (e.g., Nielsen scanned store penetration);
- d) Beverage Marketing's annual (or year-to-date) revenues (in round figures) from sales of beverages bearing the Mark for each year since such beverages were introduced
- e) Approximate annual retail sales revenues from sales of products bearing the Mark (if known);
- f) Advertising, marketing and promotion of goods under the Mark, including methods of marketing and annual marketing expenditures (in round figures); and
- g) Competitors and sales ranking in the relevant beverage category (e.g., Enhanced Water) for products bearing the Mark.

3) Beverage Marketing's use of the term or numeral zero, other than as part of the Mark, in connection with beverages (e.g., on nutritional labels or in connection with call-outs on labels); and

4) Communications between Beverage Marketing and TCCC Concerning Beverage Marketing's use of the Mark or of the term or numeral zero in connection with beverages.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **Notice of Subpoena to Beverage Marketing USA, Inc.** to be sent by email and hand delivery to counsel for The Coca-Cola Company, Bruce W. Baber, Esq., King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036, bbaber@kslaw.com, this 8th day of July, 2013.



Emily Weiss

EXHIBIT C

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

-----X		
ROYAL CROWN COMPANY, INC.	:	
and DR PEPPER/SEVEN UP, INC.,	:	
	:	
Opposers,	:	<u>Consolidated Proceedings</u>
	:	Opposition No. 91178927
	:	Opposition No. 91180771
	:	Opposition No. 91180772
- against -	:	Opposition No. 91183482
	:	Opposition No. 91185755
THE COCA-COLA COMPANY,	:	Opposition No. 91186579
	:	Opposition No. 91189847
Applicant.	:	Opposition No. 91190658
-----X		

— and —

-----X		
THE COCA-COLA COMPANY,	:	
	:	
Opposer,	:	
	:	
- against -	:	Opposition No. 91184434
	:	
ROYAL CROWN COMPANY, INC.	:	
and DR PEPPER/SEVEN UP, INC.,	:	
	:	
Applicants.	:	
-----X		

NOTICE OF SUBPOENA TO SOUTHERN GROUP ENTERPRISES, LLC

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, you are hereby given NOTICE that Royal Crown Company, Inc. and Dr Pepper/Seven Up, Inc. will serve upon Southern Group Enterprises, LLC a subpoena commanding appearance for a deposition and the production of documents. The subpoena will be in the form attached hereto. The deposition will be taken on July 19, 2013, commencing at 2:00 p.m., at the offices of United Reporting, 66 West Flagler Street, 7th Floor, Miami, Florida 33130, before a certified court reporter or other person

authorized by law to transcribe the proceedings. The deposition will be recorded stenographically and/or audio-visually and will continue from day to day until completed. You are invited to attend and cross-examine.

Dated: New York, New York
July 8, 2013

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By:  _____

Barbara A. Solomon

Laura Popp-Rosenberg

Emily Weiss

866 United Nations Plaza

New York, New York 10017

Tel: (212) 813-5900

Email: bsolomon@frosszelnick.com

lpopp-rosenberg@frosszelnick.com

eweiss@frosszelnick.com

*Attorneys for Royal Crown Company, Inc. and
Dr Pepper/Seven Up, Inc.*

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

ROYAL CROWN CO., INC., et al.

Plaintiff

v.

THE COCA-COLA COMPANY

Defendant

Civil Action No. Consolidated Opp. No. 91184434

(If the action is pending in another district, state where: Before the TTAB)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

Southern Group Enterprises, LLC, 2190 N.W. 89th Place, Miami, FL 33172

To:

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See Schedule A

Table with 2 columns: Place (United Reporting, 66 West Flagler Street, 7th Floor, Miami, FL 33130) and Date and Time (07/19/2013 2:00 pm)

The deposition will be recorded by this method: stenographic

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

See Schedule A

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 07/08/2013

CLERK OF COURT

OR

Handwritten signature of attorney

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party)

ROYAL CROWN CO., INC. and DR PEPPER/SEVEN UP, INC., who issues or requests this subpoena, are:

Barbara A. Solomon, Esq., Laura Popp-Rosenberg, Esq., Emily Weiss, Esq.

Fross Zelnick Lehrman & Zissu, P.C.

866 United Nations, Plaza, New York, NY 10017, (212) 813-5900

Civil Action No. Consolidated Opp. No. 91184434

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____; or

I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney’s fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party’s officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party; or

(iii) a person who is neither a party nor a party’s officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information.

These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty’s failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

SCHEDULE A TO SUBPOENA TO SOUTHERN GROUP ENTERPRISES, LLC

DEFINITIONS

A. The term “**Opposition**” means the consolidated opposition proceedings Nos. 91178927, 91180771, 91180772, 91183482, 91185755, 91186579, 91189847, 91190658, and 91184434, between, on the one hand, Royal Crown Company, Inc. and Dr Pepper/Seven Up, Inc. and, on the other hand, The TCCC Company, which proceedings are currently pending in the United States Patent and Trademark Office before the Trademark Trial and Appeal Board.

B. “**TCCC**” means The Coca-Cola Company, and any company controlled by or affiliated with it and any persons or entities acting or purporting to act on its behalf, including but not limited to legal counsel.

C. “**And**” and “**or**” shall each be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses and deposition topics that might otherwise be construed to be outside of its scope.

D. The term “**Communication**” means, without limitation, the transmittal of information (in the form of facts, ideas, inquiries or otherwise), including, but not limited to, meetings, discussions, conversations, telephone calls, recordings, photographs, notes, memoranda, letters, facsimiles, email and the transmittal of information in the form of agreements.

E. The term “**Concerning**” means relating to, referring to, describing, evidencing or constituting.

F. The term “**Document**” is used in the broadest sense possible consistent with the definitions set forth in Rule 34(a) of the Federal Rules of Civil Procedure 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 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, "**Document**" includes electronically stored information and any and all subsisting metadata associated therewith.

G. "**Southern Group**" means Southern Group Enterprises, LLC, 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 all persons or entities acting or purporting to act on its behalf.

H. "**Mark**" means the trademark IMPULSE ZERO.

- I. References to the masculine gender shall apply equally to the feminine gender.
- J. The use of the singular form of any word includes the plural and vice versa.

INSTRUCTIONS FOR PROVIDING DOCUMENTS

1. Southern Group is required to produce any and all Documents in its possession, custody or control that are known or available to it, regardless of whether those Documents are possessed by Southern Group or by any agent, representative, attorney or other third party. Southern Group 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 Southern Group or its agents, representatives, attorneys or other third parties.
2. Except unless expressly stated otherwise, the Requests seek Documents and information Concerning the United States only.

DOCUMENT REQUESTS

1. Representative samples (or copies) of packaging for beverages bearing the Mark.
2. Documents sufficient to identify the calorie content of beverages bearing the Mark, as expressed on package labels.
3. Documents sufficient to identify Southern Group's annual (or year-to-date) revenue (in round figures) from sales of beverages bearing the Mark for each year since such beverages were introduced.
4. Documents sufficient to identify the annual (or year-to-date) volume (such as in 288 oz. equivalents) of Southern Group's sales of beverages bearing the Mark for each year since such beverages were introduced.
5. All Communications between Southern Group and TCCC Concerning any objection or complaint by TCCC with regard to Southern Group's use of the Mark or of the term or numeral zero in connection with beverages.

TOPICS OF DEPOSITION

Pursuant to the Subpoena, to which this Schedule A is attached, Southern Group must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf about the following matters:

- 1) Authentication of Documents produced by Southern Group in response to the Document Requests, and explanation of information contained in such Documents;
- 2) As pertains to the Mark:

- a) Length of use of the Mark, including approximate date of first use;
- b) Description of types of beverages bearing the Mark, including the labeled calorie content of same;
- c) Distribution of beverages bearing the Mark, including (i) geographic availability of such beverages; (ii) types of trade channels in which such beverages have been distributed; and (ii) market penetration of such beverages (e.g., Nielsen scanned store penetration);
- d) Southern Group's annual (or year-to-date) revenues (in round figures) from sales of beverages bearing the Mark for each year since such beverages were introduced
- e) Approximate annual retail sales revenues from sales of products bearing the Mark (if known);
- f) Advertising, marketing and promotion of goods under the Mark, including methods of marketing and annual marketing expenditures (in round figures); and
- g) Competitors and sales ranking in the relevant beverage category (e.g., Enhanced Water) for products bearing the Mark.

3) Southern Group's use of the term or numeral zero, other than as part of the Mark, in connection with beverages (e.g., on nutritional labels or in connection with call-outs on labels); and

4) Communications between Southern Group and TCCC Concerning Southern Group's use of the Mark or of the term or numeral zero in connection with beverages.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **Notice of Subpoena to Southern Group Enterprises, LLC** to be sent by email and hand delivery to counsel for The Coca-Cola Company, Bruce W. Baber, Esq., King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036, bbaber@kslaw.com, this 8th day of July, 2013.



Emily Weiss

EXHIBIT D

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

-----X	:	
ROYAL CROWN COMPANY, INC.	:	
and DR PEPPER/SEVEN UP, INC.,	:	<u>Consolidated Proceedings</u>
	:	Opposition No. 91178927
Opposers,	:	Opposition No. 91180771
	:	Opposition No. 91180772
- against -	:	Opposition No. 91183482
	:	Opposition No. 91185755
THE COCA-COLA COMPANY,	:	Opposition No. 91186579
	:	Opposition No. 91189847
Applicant.	:	Opposition No. 91190658
-----X		

— and —

-----X	:	
THE COCA-COLA COMPANY,	:	
	:	
Opposer,	:	
	:	
- against -	:	Opposition No. 91184434
	:	
ROYAL CROWN COMPANY, INC.	:	
and DR PEPPER/SEVEN UP, INC.,	:	
	:	
Applicants.	:	
-----X		

NOTICE OF SUBPOENA TO REEDS, INC.

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, you are hereby given NOTICE that Royal Crown Company, Inc. and Dr Pepper/Seven Up, Inc. will serve upon REEDS, Inc. a subpoena commanding appearance for a deposition and the production of documents. The subpoena will be in the form attached hereto. The deposition will be taken on July 23, 2013, commencing at 3:00 p.m., at the offices of TSG Reporting-ROGUS, 1800 Century Park East, Suite 600, Los Angeles, California 90067, before a certified court reporter or other

person authorized by law to transcribe the proceedings. The deposition will be recorded stenographically and/or audio-visually and will continue from day to day until completed. You are invited to attend and cross-examine.

Dated: New York, New York
July 8, 2013

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: _____



Barbara A. Solomon
Laura Popp-Rosenberg
Emily Weiss

866 United Nations Plaza
New York, New York 10017
Tel: (212) 813-5900

Email: bsolomon@frosszelnick.com
lpopp-rosenberg@frosszelnick.com
eweiss@frosszelnick.com

*Attorneys for Royal Crown Company, Inc. and
Dr Pepper/Seven Up, Inc.*

UNITED STATES DISTRICT COURT

for the

Central District of California

ROYAL CROWN CO., INC., et al.

Plaintiff

v.

THE COCA-COLA COMPANY

Defendant

Civil Action No. Consolidated Opp. No. 91184434

(If the action is pending in another district, state where: Before the TTAB)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

REEDS, Inc.

To: 13000 South Spring Street Los Angeles, CA 90061

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See Schedule A

Place: TSG Reporting-REGUS 1800 Century Park East, Suite 600 Los Angeles, CA 90067

Date and Time: 07/23/2013 3:00 pm

The deposition will be recorded by this method: stenographic

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

See Schedule A

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 07/08/2013

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Handwritten signature

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party)

ROYAL CROWN CO., INC. and DR PEPPER/SEVEN UP, INC., who issues or requests this subpoena, are: Barbara A. Solomon, Esq., Laura Popp-Rosenberg, Esq., Emily Weiss, Esq. Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations, Plaza, New York, NY 10017, (212) 813-5900

Civil Action No. Consolidated Opp. No. 91184434

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____; or

I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) **Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

SCHEDULE A TO SUBPOENA TO REEDS, INC.

DEFINITIONS

A. The term “**Opposition**” means the consolidated opposition proceedings Nos. 91178927, 91180771, 91180772, 91183482, 91185755, 91186579, 91189847, 91190658, and 91184434, between, on the one hand, Royal Crown Company, Inc. and Dr Pepper/Seven Up, Inc. and, on the other hand, The TCCC Company, which proceedings are currently pending in the United States Patent and Trademark Office before the Trademark Trial and Appeal Board.

B. “**TCCC**” means The Coca-Cola Company, and any company controlled by or affiliated with it and any persons or entities acting or purporting to act on its behalf, including but not limited to legal counsel.

C. “**And**” and “**or**” shall each be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses and deposition topics that might otherwise be construed to be outside of its scope.

D. The term “**Communication**” means, without limitation, the transmittal of information (in the form of facts, ideas, inquiries or otherwise), including, but not limited to, meetings, discussions, conversations, telephone calls, recordings, photographs, notes, memoranda, letters, facsimiles, email and the transmittal of information in the form of agreements.

E. The term “**Concerning**” means relating to, referring to, describing, evidencing or constituting.

F. The term “**Document**” is used in the broadest sense possible consistent with the definitions set forth in Rule 34(a) of the Federal Rules of Civil Procedure 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 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, "**Document**" includes electronically stored information and any and all subsisting metadata associated therewith.

G. "**REEDS**" means REEDS, Inc., 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 all persons or entities acting or purporting to act on its behalf.

H. "**Mark**" means the trademark VIRGIL'S ZERO.

I. References to the masculine gender shall apply equally to the feminine gender.

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

INSTRUCTIONS FOR PROVIDING DOCUMENTS

1. REEDS is required to produce any and all Documents in its possession, custody or control that are known or available to it, regardless of whether those Documents are possessed by REEDS or by any agent, representative, attorney or other third party. REEDS 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 REEDS or its agents, representatives, attorneys or other third parties.
2. Except unless expressly stated otherwise, the Requests seek Documents and information Concerning the United States only.

DOCUMENT REQUESTS

1. Representative samples (or copies) of packaging for beverages bearing the Mark.
2. Documents sufficient to identify the calorie content of beverages bearing the Mark, as expressed on package labels.
3. Documents sufficient to identify REEDS' annual (or year-to-date) revenue (in round figures) from sales of beverages bearing the Mark for each year since such beverages were introduced.
4. Documents sufficient to identify the annual (or year-to-date) volume (such as in 288 oz. equivalents) of REEDS' sales of beverages bearing the Mark for each year since such beverages were introduced.
5. All Communications between REEDS and TCCC Concerning any objection or complaint by TCCC with regard to REEDS' use of the Mark or of the term or numeral zero in connection with beverages.

TOPICS OF DEPOSITION

Pursuant to the Subpoena, to which this Schedule A is attached, REEDS must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf about the following matters:

- 1) Authentication of Documents produced by REEDS in response to the Document Requests, and explanation of information contained in such Documents;
- 2) As pertains to the Mark:

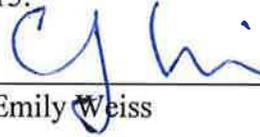
- a) Length of use of the Mark, including approximate date of first use;
- b) Description of types of beverages bearing the Mark, including the labeled calorie content of same;
- c) Distribution of beverages bearing the Mark, including (i) geographic availability of such beverages; (ii) types of trade channels in which such beverages have been distributed; and (iii) market penetration of such beverages (e.g., Nielsen scanned store penetration);
- d) REEDS' annual (or year-to-date) revenues (in round figures) from sales of beverages bearing the Mark for each year since such beverages were introduced
- e) Approximate annual retail sales revenues from sales of products bearing the Mark (if known);
- f) Advertising, marketing and promotion of goods under the Mark, including methods of marketing and annual marketing expenditures (in round figures); and
- g) Competitors and sales ranking in the relevant beverage category (e.g., Enhanced Water) for products bearing the Mark.

3) REEDS' use of the term or numeral zero, other than as part of the Mark, in connection with beverages (e.g., on nutritional labels or in connection with call-outs on labels);
and

4) Communications between REEDS and TCCC Concerning REEDS' use of the Mark or of the term or numeral zero in connection with beverages.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **Notice of Subpoena to REEDS, Inc.** to be sent by email and hand delivery to counsel for The Coca-Cola Company, Bruce W. Baber, Esq., King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036, bbaber@kslaw.com, this 8th day of July, 2013.



Emily Weiss

CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing Motion To Strike Pretrial Disclosures And To Quash Notices Of Taking Testimony upon opposers and applicants Royal Crown Company, Inc. and Dr. Pepper/Seven Up, Inc., by causing a true and correct copy thereof to be forwarded by electronic mail to lpopp-rosenberg@fzlz.com and 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. and Dr. Pepper/Seven Up, Inc. as follows:

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

This 15th day of July, 2013.

/Bruce W. Baber/
Bruce W. Baber