

ESTTA Tracking number: **ESTTA291749**

Filing date: **06/25/2009**

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

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|------------------------|--|
| Proceeding | 91180742 |
| Party | Plaintiff Dr Pepper/Seven Up, Inc. |
| Correspondence Address | Laura Popp-Rosenberg Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations Drive New York, NY 10017 UNITED STATES lpopp-rosenberg@fzlz.com,bsolomon@fzlz.com |
| Submission | Other Motions/Papers |
| Filer's Name | Laura Popp-Rosenberg |
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| Signature | /Laura Popp-Rosenberg/ |
| Date | 06/25/2009 |
| Attachments | DPSU's objections to Krush Global's proposed evidence (F0476989).PDF (5 pages)(131363 bytes) |

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

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| -----X | | |
| DR PEPPER/SEVEN UP, INC., | : | |
| | : | |
| Opposer/Petitioner, | : | <u>Consolidated Proceedings</u> |
| | : | Opposition No. 91180742 |
| - against - | : | Cancellation No. 92048446 |
| | : | |
| KRUSH GLOBAL LIMITED, | : | |
| | : | |
| Applicant/Registrant. | : | |
| -----X | | |

**OPPOSER/PETITIONERS'S OBJECTIONS TO APPLICANT/REGISTRANT'S
PRETRIAL DISCLOSURES PURSUANT TO FED. R. CIV. P. 26(a)(3)(B)**

Pursuant to Federal Rule of Civil Procedure 26(a)(3)(B), as adopted by the Trademark Rules of Practice, and without waiver of any of its rights to object to any evidence on any basis later in this proceeding, Opposer/Petitioner Dr Pepper/Seven Up, Inc. ("Opposer") hereby submits the following objections to the Pretrial Disclosures of Krush Global Limited ("Applicant"):

1. In its pretrial disclosures, Applicant stated that any exhibit appended to the declarations it submitted in opposition to Opposer's motion for summary judgment may be introduced during its testimony period. Opposer's evidentiary objections to those exhibits are set forth below:¹

¹ Opposer reserves its right to object further to any exhibit under Federal Rule of Evidence 901 should such exhibit not be properly authenticated through testimony.

| <u>EXHIBIT</u> | <u>OBJECTION</u> |
|--|---|
| Declaration of James Learmond in support of Applicant's Response to Opposer's Motion for Summary Judgment, dated December 10, 2008 ("Learmond Decl."), Exh. 1 | <ul style="list-style-type: none"> • Federal Rule Evidence ("FRE") 402 (irrelevant) • FRE 802 (hearsay not falling within any exception) |
| Learmond Decl., Exh. 2 | <ul style="list-style-type: none"> • FRE 402 (irrelevant) |
| Learmond Decl., Exh. 4 | <ul style="list-style-type: none"> • FRE 402 (irrelevant) |
| Learmond Decl., Exh. 5 | <ul style="list-style-type: none"> • FRE 402 (irrelevant) • FRE 802 (hearsay not falling within any exception) |
| Learmond Decl., Exh. 6 | <ul style="list-style-type: none"> • FRE 402 (irrelevant) • FRE 802 (hearsay not falling within any exception) |
| Learmond Decl., Exh. 7 | <ul style="list-style-type: none"> • FRE 402 (irrelevant) • FRE 802 (hearsay not falling within any exception) |
| Learmond Decl., Exh. 8 | <ul style="list-style-type: none"> • FRE 402 (irrelevant) • FRE 802 (hearsay not falling within any exception) |
| Declaration of William C. Wright in support of Applicant's Response to Opposer's Motion for Summary Judgment, dated December 12, 2008 ("Wright Decl."), Exh. 2 | <ul style="list-style-type: none"> • FRE 402 (irrelevant) • FRE 802 (hearsay not falling within any exception) |
| Wright Decl., Exh. 3 | <ul style="list-style-type: none"> • FRE 402 (irrelevant) • FRE 802 (hearsay not falling within any exception) |
| Wright Decl., Exh. 4 | <ul style="list-style-type: none"> • FRE 402 (irrelevant); <i>see also Hornby v. TJJ Companies, Inc.</i>, 87 U.S.P.Q.2d 1411, 1416 (T.T.A.B. 2008) (likelihood of confusion assessed based on factual situation at time of trial). |

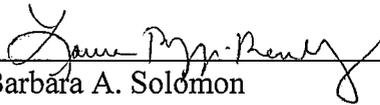
| <u>EXHIBIT</u> | <u>OBJECTION</u> |
|-----------------------|--|
| Wright Decl., Exh. 5 | <ul style="list-style-type: none"> • FRE 402 (irrelevant) |
| Wright Decl., Exh. 6 | <ul style="list-style-type: none"> • FRE 402 (irrelevant) |
| Wright Decl., Exh. 7 | <ul style="list-style-type: none"> • FRE 402 (irrelevant); <i>see also Hornby</i>, 87 U.S.P.Q.2d at 1416. |
| Wright Decl., Exh. 8 | <ul style="list-style-type: none"> • FRE 402 (irrelevant); <i>see also Hornby</i>, 87 U.S.P.Q.2d at 1416. |
| Wright Decl., Exh. 11 | <ul style="list-style-type: none"> • FRE 402 (irrelevant) |
| Wright Decl., Exh. 12 | <ul style="list-style-type: none"> • FRE 402 (irrelevant) • FRE 802 (hearsay not falling within any exception) |
| Wright Decl., Exh. 13 | <ul style="list-style-type: none"> • FRE 402 (irrelevant) |

2. In addition to the objections set forth in the foregoing paragraph, Opposer further objects to the introduction during Applicant's trial period of any witness testimony or any documents or other evidence (i) that is or are responsive to any of Applicant's discovery requests, or that Opposer otherwise previously was obligated to disclose or produce, and (ii) that was not properly and fully disclosed or produced as required by Federal Rule of Civil Procedure 26, 33, 34 and/or 36, and/or Trademark Rule of Practice 2.120, 37 C.F.R. § 2.120.

Respectfully submitted,

Dated: New York, New York
June 25, 2009

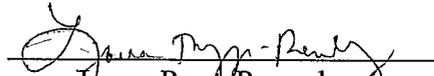
FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: 
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*Attorneys for Opposer/Petitioner Dr Pepper/
Seven Up, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Opposer/Petitioner's Objections to Applicant/Registrant's Pretrial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(3)(B) to be served by prepaid, First Class mail on Applicant/Registrant's attorney, Jason M. Drangel, Esq., Epstein Drangel Bazerman & James LLP, 60 East 42nd Street, Suite 820, New York, New York 10165, this 25th day of June, 2009.



Laura Popp-Rosenberg