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Filing date: **09/01/2009**

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

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
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Signature	/Laura Popp-Rosenberg/
Date	09/01/2009
Attachments	Ortiz Rebuttal Declaration (F0507816).PDF (32 pages)(2037455 bytes)

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

-----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		

REBUTTAL TRIAL DECLARATION OF MARIO ORTIZ

MARIO ORTIZ declares under penalty of perjury as follows:

1. I am a paralegal with the firm Fross Zelnick Lehrman & Zissu, P.C., 866 United Nations Plaza, New York, New York 10017, attorneys for Dr Pepper/Seven Up, Inc. (“Opposer”), opposer in Opposition No. 91180472 and petitioner in Cancellation No. 92048446. This declaration is based on my own personal knowledge and is submitted as testimony in connection with the above-referenced matter as a witness for Opposer.

2. In the Trial Declaration of James Learmond (the “Learmond Trial Declaration”), the witness annexed as Exhibit 6 copies of printouts from a series of websites which appear to include recipes for drinks that include the word term “crush” in the name. I personally visited each of those websites, and set forth below is what I encountered.

3. I visited the website <http://www.cocktail.uk.com>, referred to in Exhibit 6 of the Learmond Trial Declaration. Attached hereto as **Opposer’s Exhibit PX215** is a true and correct copy of a printout from the website (url: <http://www.cocktail.uk.com/services/aboutus/>) from August 31, 2009, stating that the website is a “UK specific cocktail based web site.” Moreover,

the website promotes itself as “the U.K.’s premier online bar equipment supplier.” *See* Opposer’s Exhibit PX217 (discussed in Paragraph 5, below).

4. The *cocktail.uk.com* website permits anyone who registers to upload a cocktail recipe and cocktail name of the user’s choosing to the website. Attached hereto as **Opposer’s Exhibit PX216** is a true and correct copy of a printout from the website <http://www.cocktail.uk.com> (url: <http://www.cocktail.uk.com/db/member/submitCocktail.asp>) from July 29, 2009, evidencing that users can upload cocktail recipes and cocktail names to the site.

5. Attached hereto as **Opposer’s Exhibit PX217** is a true and correct copy of a printout from the website <http://www.cocktail.uk.com> (url: <http://www.cocktail.uk.com/Cocktail-Recipe/Sex.htm>) from August 31, 2009, evidencing that a cocktail named “Sex” had been viewed 750,940 times. In comparison, the drink named “Grape Crush” appearing on the *cocktail.uk.com* website has been voted on 13,764 times according to the printout from the *cocktail.uk.com* website included as part of Exhibit 6 to the Learmond Trial Declaration.

6. I visited the website <http://www.drinkswap.com>, referred to in Exhibit 6 of the Learmond Trial Declaration. The website permits anyone to upload a cocktail recipe and cocktail name of the user’s choosing to the website. Attached hereto as **Opposer’s Exhibit PX218** is a true and correct copy of a printout from the website <http://www.drinkswap.com> (url: <http://drinkswap.com/areas/addadrink.asp>) from July 29, 2009, evidencing that users can upload cocktail recipes and cocktail names to the site.

7. I visited the website <http://www.drinknation.com>, referred to in Exhibit 6 of the Learmond Trial Declaration. The website permits anyone to upload a cocktail recipe and cocktail name of the user’s choosing to the website. Attached hereto as **Opposer’s Exhibit**

PX219 is a true and correct copy of a printout from the website <http://www.drinknation.com> (url: <http://www.drinknation.com/submitdrink.php>) from July 29, 2009, evidencing that users can upload cocktail recipes and cocktail names to the site. According to the printout from the *drinknation.com* website included as part of Exhibit 6 to the Learmond Trial Declaration, the drink named “Blueberry Crush” appearing on that site had, in fact, been contributed by a user named “Goodebuzz.”

8. Attached hereto as **Opposer’s Exhibit PX220** is a true and correct copy of a printout from the website <http://www.drinknation.com> (url: <http://www.drinknation.com/drink/sex-on-the-beach>) from August 31, 2009, evidencing that a cocktail named “Sex On The Beach” had been voted on 2,824 times. In comparison, the drink named “Blueberry Crush” appearing on the *drinknation.com* website has been voted on only two times according to the printout from the *drinknation.com* website included as part of Exhibit 6 to the Learmond Trial Declaration.

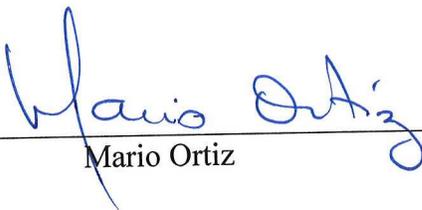
9. I visited the website <http://www.idrink.com>, referred to in Exhibit 6 of the Learmond Trial Declaration. The website permits anyone to upload a cocktail recipe and cocktail name of the user’s choosing to the website. Attached hereto as **Opposer’s Exhibit PX221** is a true and correct copy of a printout from the website <http://www.idrink.com> (url: <http://idrink.com/addrecipe.html>) from July 29, 2009, evidencing that users can upload cocktail recipes and cocktail names to the site.

10. Attached hereto as **Opposer’s Exhibit PX222** is a true and correct copy of a printout from the website <http://www.idrink.com> (url: <http://www.idrink.com/v.html?id=211>) from August 31, 2009, evidencing that a cocktail named “Sex On The Beach” had been voted on 12,769 times. In comparison, the drink named “Grape Crush” appearing on the *idrink.com*

website has been voted on only 240 times according to the printout from the *idrink.com* website included as part of Exhibit 6 to the Learmond Trial Declaration.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, declares that all statements made of his own knowledge are true, and all statements made on information and belief are believed to be true.

Declared under penalty of perjury this 1st day of September, 2009, at New York, New York.



Mario Ortiz

DR PEPPER/SEVEN UP, INC. v. KRUSH GLOBAL LIMITED

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OPPOSER'S EXHIBIT
PX215



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 0 Items £0.00

DRINKS 

- Cocktail recipes
- Shooters
- Naughty XXX drinks
- Non-alcoholic cocktails
- Drink of the day
- Cocktail & flair courses
- Latest drinks
- Random drink
- Submit a drink
- Top ten
- Drink generator

MEMBERS 

- Log in
- Register (free)

COMMUNITY 

- Mobile bar service
- Drinking games
- Forums
- Desktop backgrounds

Cocktail : UK > Services > About Us

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ba.com
conditions apply

About Cocktail : UK

Started in 2000, Cocktail : UK's brief was to design a UK specific cocktail based web site to inform and educate the public about cocktail recipes and provide a huge, user contributable database of recipes.

Since then it has grown significantly, now attracting over 1 million unique visitors a month. We now have hundreds of cocktail based products, a thriving forum and an excellent user base around the UK.

Special thanks

Special thanks go to Lee Taylor for his efforts on the forum and other equally excellent work.

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OPPOSER'S EXHIBIT
PX216



Search

My Basket
0 Items £0.00

- DRINKS**
- Cocktail recipes
 - Shooters
 - Naughty XXX drinks
 - Non-alcoholic cocktails
 - Drink of the day
 - Cocktail & flair courses
 - Latest drinks
 - Random drink
 - Submit a drink
 - Top ten
 - Drink generator

- MEMBERS**
- Log in
 - Register (free)

- COMMUNITY**
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Cocktail : UK > Members Area > Submit drink > Submit A Recipe

POST OFFICE **SINGLE TRIP TRAVEL INSURANCE FROM JUST £5.50** 3 DAY UK BREAK [BUY ONLINE NOW](#)

Submit a recipe

Thank you for wanting to contribute to Cocktail : UK

In order for us to continue with the on-line submission of recipes, please either:

1. [Login](#), so we can identify and recognise you as the contributor of the recipe
2. [Create a new account](#)

<p>Alcohol drink recipes Check out our drink recipes. # 1 choice for recipes online. V V</p>	<p>Myers' Cocktail Intravenous vitamin preparation In your home or my office</p>
--	---

- THE SHOP**
- New arrivals ←
 - Bar ←
 - Cocktail ←
 - Wine ←
 - Glassware ←
 - Gifts ←
 - Gadgets ←
 - Home & garden ←
 - Festival essentials ←
 - Party ←
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OPPOSER'S EXHIBIT
PX217

DRINKS



- Cocktail recipes
- Shooters
- Naughty XXX drinks
- Non-alcoholic cocktails
- Drink of the day
- Cocktail & flair courses
- Latest drinks
- Random drink
- Submit a drink
- Top ten
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THE SHOP

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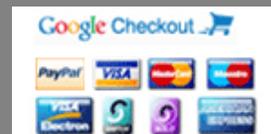
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OPPOSER'S EXHIBIT
PX218

ADD A DRINK

Drink Name

My drink is a variation of

It is not a variation

Ingredient	Whole	Fraction	Measured In	Preparation
Choose an Ingredient <input type="button" value="v"/>	0 <input type="button" value="v"/>	0 <input type="button" value="v"/>	oz <input type="button" value="v"/>	Choose a Preparation <input type="button" value="v"/>
Choose an Ingredient <input type="button" value="v"/>	0 <input type="button" value="v"/>	0 <input type="button" value="v"/>	oz <input type="button" value="v"/>	Choose a Preparation <input type="button" value="v"/>
Choose an Ingredient <input type="button" value="v"/>	0 <input type="button" value="v"/>	0 <input type="button" value="v"/>	oz <input type="button" value="v"/>	Choose a Preparation <input type="button" value="v"/>
Choose an Ingredient <input type="button" value="v"/>	0 <input type="button" value="v"/>	0 <input type="button" value="v"/>	oz <input type="button" value="v"/>	Choose a Preparation <input type="button" value="v"/>
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Choose an Ingredient <input type="button" value="v"/>	0 <input type="button" value="v"/>	0 <input type="button" value="v"/>	oz <input type="button" value="v"/>	Choose a Preparation <input type="button" value="v"/>

Instructions

Serve in a

Choose a Glass

No images selected.

Your name/ nickname

Your email address

Password

ADD DRINK

DR PEPPER/SEVEN UP, INC. v. KRUSH GLOBAL LIMITED

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OPPOSER'S EXHIBIT
PX219

SEARCH DRINKS[Advanced search](#)**BROWSE DRINKS**

By:

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Submit your drink recipes!

So, you think your drink is good enough to put in the Drinknation database? Well, does it contain alcohol? Alright then!

Just let us know what your drink is called, what ingredients it has (and how much of each ingredient!), and how to make it. We'll take a look and stick it in our database (we'll even credit it to you if you want, just give us your name and email address). Heck, if it looks drinkable, we'll probably stop work for the day and invite all our friends over to try it out. If it's the best drink we've tasted since the boss accidentally blew up our basement still, we might even put it in our [Drink of the Week](#) newsletter.

Hit us with it!

We have to spout a bunch of guidelines and legal mumbo jumbo here, just so the more scrofulous of you can't take advantage of us after a hard day of, uh, "recipe verification" (you know who you are, Richard Simmons, and don't be trying to submit your "Gin 'Sweating to the Oldies' Martini" again, or you'll hear from our Editor's mom).

- Double check to make sure the recipe you're submitting isn't on our site already. **Duplicates will be ignored.**
- **DON'T TYPE IN ALL CAPS.** That's considered yelling... yelling makes us sad.
- Don't replace words with cute little shortcuts. If you replace "you" with "u" and "are" with "r", we will replace your drink submission with "deleted".
- Please write in English. We don't know any other languages, and unfortunately can't understand your superb Tequila recipe straight from the ancient oral history of Grutas de Balankanche. It sounds good though.
- Please submit a complete recipe. Drinks without mixing instructions, ingredients, ingredient amounts or any other pertinent information cannot be added to our database.
- The drink "Beer", with ingredients "Beer: One can", will not be accepted. If you submit that, we will hunt you down and our dad will beat up your dad.
- We get a lot of drink submissions, and we review each and every one. Because of this, it can sometimes take up to several weeks to get to your submission. We try to get to them as fast as we can, but not doing work is so much more relaxing, and sometimes we do that instead.
- We reserve the right to modify submission for content, because let's face it, some of you just can't spell (you know who you are). All submissions become the immediate property of Eternal Wombat Studios (that's our company), and we reserve the right to publish submitted recipes on the Drinknation.com website and elsewhere.
- By submitting a recipe to Drinknation.com, you agree to assign all rights to the material/content you are submitting, and furthermore are submitting only original content that has not been stolen, copied or reproduced from existing copyrighted works.

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- In a nutshell... you won't sue us for publishing what you submit.

Phew!

One final note: If you have an account, you should [log in](#) before submitting your recipe. If you don't have one, you should [consider registering](#) before you submit. It's free, and it allows you to easily track and find your recipe submissions.

I agree to the above, and I have a tasty beverage to submit!

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OPPOSER'S EXHIBIT
PX220

SEARCH DRINKS



[Advanced search](#)

Sex On The Beach Drink Recipe

BROWSE DRINKS

Rating: 6.3 / 10 ([2824 votes](#))

By:

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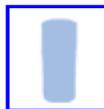


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Ingredients

- 1 1/2 oz. Schnapps, peach
- 1 1/2 oz. Vodka
- 2 oz. Cranberry Juice
- 2 oz. Orange Juice
- 2 oz. Pineapple Juice

Glass to Use



[Highball glass](#)

Mixing Instructions

Combine ingredients in a cocktail shaker with ice. Shake and strain into a highball glass filled with ice.

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Comments on Sex On The Beach:

By **Johnathan Fuller** on August 16th, 2009 at 21:33:05

Yea sex on the beach, i love sex... on the beach... with men.

By on August 10th, 2009 at 15:16:40

I loveeeee this cocktail

By **kim** on August 9th, 2009 at 15:24:29

my first legal drink at the bar, one of my favorites!

STUFF

drink stuff

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RSS Feeds



By **Alex** on July 3rd, 2009 at 17:46:16

Had this drink for the first time at the club Rain in the Palms hotel, Las Vegas. Loved it! recipe, or it ain't sex on the beach.

By **Esi** on June 21st, 2009 at 17:35:51

The pineapple juice is the most important! It tastes so much better. I'd say don't even botl grenadine... but that's personal taste.

By **Dick Tracy** on June 13th, 2009 at 21:59:17

Grenadine, no cranberry, less orange juice.

By **Becca** on June 7th, 2009 at 20:17:00

Add Lime Juice, for a sex on the beach with alligator, gives it a different vibe....Also, a b better :)

By **Vicki** on April 23rd, 2009 at 18:12:51

I think I'll try this one next time I get vodka. :)

By **jtoddhewitt** on April 17th, 2009 at 12:19:51

Try this variation. 1/4oz each of vodka, peach schnapps, triple sec, and amaretto with a splash of OJ and top it off with cranberry juice in a hurricane glass. Looks and tastes lil

By **David** on April 13th, 2009 at 19:26:55

"Sex on the beach, sand in the crack" dip the rim in sugar. Adds a little something specia

By **bob marley** on March 28th, 2009 at 11:23:16

I had a sex on the beach last night... after which I had sex on the beach. what a combo!

By **Tarbender** on March 26th, 2009 at 16:25:01

WHAT? Drop the pineapple and add grenadine. That's a more internationally standard se

By **NV** on March 21st, 2009 at 12:13:52

This is my favorite drink i have to have at least 3 when i go out drinking with a mix of ot

By **james** on March 13th, 2009 at 15:41:11

Drop the cranberry add grenadine. Its great

By **badgirl32** on February 13th, 2009 at 12:00:28

this drink is amazing!!!

By **Kourtney** on January 16th, 2009 at 13:40:21

The way these were made in the club last night was disappointing...I actually made the b because I knew he did it wrong, and it didn't taste right!

By **Frank** on January 14th, 2009 at 14:53:02

Trying my first now.

By **tiktak** on January 7th, 2009 at 03:41:17

The cranberry counters the vodka, pineapple or peach schnapps sweetens it (bartenders c
juice gives it a lighter tropical flavor.

By **Tyler** on January 6th, 2009 at 17:35:28

Yeah sex on the beach...wait there's no beach near me ><

By **Sara chalmia** on December 29th, 2008 at 10:31:14

Sex on the beach was the first alcoholic drink i ever had. Ah drunken memories that cant

By **Larry** on December 24th, 2008 at 08:42:14

Amazing flavor - fruit flavor and vodka mixed perfectly! I loved it! =)

By **Joe** on December 10th, 2008 at 20:56:48

Am I human? select two fuzzy animals from this list.... I vote pants and donald rumsfeld.

By **bob** on December 10th, 2008 at 20:55:37

The original version of this drink had more alcohol and less fruit juice.

By **Mr. Magoo** on December 4th, 2008 at 19:33:31

I think i like beer better, you can't even taste the alcohol in this drink.....

By **yo mamma** on November 8th, 2008 at 15:31:07

sex on the beach is better than sex on the beach :)

By **mr.sex machine.** on October 21st, 2008 at 17:03:17

sex on the beach blew my mind. then i had sex.

By **Cornstalkwalker** on October 10th, 2008 at 14:00:15

you get sand on all your private parts and... oh wait, you're talking about the drink.

By **izzle** on September 21st, 2008 at 22:13:14

i loved it tried it for my first time like 3mths ago loved it! made my night so much better!

By **Ally** on September 20th, 2008 at 22:10:40

I just had two of these tonight - totally my favorite drink! great if you don't like a strong :

By **Lauren** on September 17th, 2008 at 20:01:59

i honestly think sex on the beach my real life sex on the beach ten times better, =)

By **Alex Brown** on September 14th, 2008 at 10:04:53

Impress someone by telling them you had Sex on the Beach, and everyone was watching I've actually tried this as a non-alcoholic beverage.

By **anil** on September 1st, 2008 at 19:05:27

add some malibu rum and kill the oj for a little island bang

By **erpialla** on August 10th, 2008 at 08:17:15

sex on the beach made me sex on the beach yesterday awesome!!!

By **Alli** on August 7th, 2008 at 08:09:02

I had a sex on the beach last night with blackberry schnapps in it.... WOW!!

By **Solara** on August 2nd, 2008 at 23:35:54

this one made my 10 year hs reunion painless! vodka is my friend :)

By **harsh** on July 30th, 2008 at 22:27:30

rather than using the hi ball you can use tall wine or pilsner glass to give it a pleasure loo

By **bob saggot** on July 27th, 2008 at 11:58:24

is tha shiiiiiiatt

By **becky** on July 26th, 2008 at 07:10:57

sex on the beach is the most original but tastiest cocktail eva

By **Andrea** on July 26th, 2008 at 00:45:47

This was so good. Sex on tha beach made me orgasim like never b4

By on July 23rd, 2008 at 21:23:14

If you need to memorize just a few recipes, make sure you know this one. Nothing is mo vodka and peach schnapps, and the name alone is pure gold.

By **justin** on July 23rd, 2008 at 20:01:41

idk man, i feel like it needs less orange juice, squirt of lime and splash or grenadine.. notl vodka so it's hard to make it dirty

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Qty	Ingredient	Measure	Special
<input type="text"/>	5 Hour Energy <input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	5 Hour Energy <input type="text"/>	<input type="text"/>	<input type="text"/>
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Instructions:

Is it Alcoholic?

Yes No

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Sex On The Beach Drink Recipe

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Recipe Rating: 91 % (of 12769 votes)



- Ingredients to use:
- 0.5 full [Cranberry juice](#)
 - 0.75 oz. [Peach Schnapps](#)
 - 0.5 full [Pineapple Juice](#)
 - 1.0 oz. [OVAL Vodka](#)

Directions: Put in vodka and peach [schnapps](#) and then fill remainder with half each of the [juices](#). Stir in [highball glass](#)

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We hope you found the above information on how to make a Sex On The Beach [cocktail recipe](#) helpful. If the instructions or directions for making this recipe are not correct please contact us.



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By 5min Life Videopedia

What our users have to say about this recipe

Ernesto said on 2007-12-29 06:32:39.537

recipe is off

Sex on the beach has [orange](#) juice cranberry juice and topped with peach snapps. its a madras except topped with peach snapps that makes it a SEX ON TEH BEACH. -Ernesto.. - Professional Bartender.

SOMEBODY YOU DONT KNOW said on 2008-05-06 15:08:36.280

WOW

This drink is soooo good. My husband didnt like it because he said it was a chick drink

elmo said on 2008-06-28 01:23:51.563

sex on the beach

a sex on the beach is made with pure orange juice not pineapple juice and the red colour comes from a drink called grenadine not cranberry

said on 2008-07-14 17:17:49.233

Another Reciepe for Sex on the Beach

1 oz. Malibu Rum Coconut flavor, Orange Juice and Grenedine (for less alcohol) Very GOOD!

Comments are moderated and will show up after being reviewed and approved:

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **Rebuttal Trial Declaration of Mario Ortiz** to be sent by email to counsel for applicant, Jason Drangel, Esq., jdrangel@ipcounselors.com, this 1st day of September, 2009.



Laura Popp-Rosenberg