

ESTTA Tracking number: **ESTTA495983**

Filing date: **09/24/2012**

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

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	The Coca-Cola Company
Granted to Date of previous extension	09/23/2012
Address	One Coca-Cola Plaza Atlanta, GA 30313 UNITED STATES
Attorney information	Bruce W. Baber King & Spalding LLP 1180 Peachtree Street Atlanta, GA 30309 UNITED STATES nytrademarks@kslaw.com, bbaber@kslaw.com, kmccarthy@kslaw.com, ebrown@kslaw.com Phone:404-572-4826

**Applicant Information**

Application No	85384208	Publication date	03/27/2012
Opposition Filing Date	09/24/2012	Opposition Period Ends	09/23/2012
Applicant	Bovis Foods, LLC 414 Clark Drive San Mateo, CA 94402 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 032. First Use: 2001/00/00 First Use In Commerce: 2001/00/00 All goods and services in the class are opposed, namely: non-alcoholic cocktail mixes
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**Grounds for Opposition**

The mark is merely descriptive	Trademark Act section 2(e)(1)
Related Proceedings	None involving the same parties.
Attachments	MARGARITA ZERO opposition.pdf ( 6 pages )(19242 bytes )

**Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Bruce W. Baber/
Name	Bruce W. Baber
Date	09/24/2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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THE COCA-COLA COMPANY,	)	
	)	
Opposer,	)	
	)	OPPOSITION NO.
v.	)	
	)	
BOVIS FOODS, LLC,	)	
	)	
Applicant.	)	_____

OPPOSITION

THE COCA-COLA COMPANY, a Delaware corporation having its principal place of business at One Coca-Cola Plaza, Atlanta, Georgia 30313 (“Opposer”), believes it would be damaged by registration of the mark MARGARITA ZERO (“Applicant’s Alleged Mark”) for “non-alcoholic cocktail mixes” in International Class 32 (“Applicant’s Goods”), which mark is the subject of application Serial Number 85-384,208 (the “Application”), filed on July 29, 2011 by Bovis Foods, LLC (“Applicant”) and published for opposition in the Official Gazette of March 27, 2012, and, by and through its undersigned attorneys and in accordance with Rules 2.101 through 2.104 of the Trademark Rules of Practice, hereby opposes the same.

The grounds for this Opposition are as follows:

1. By the Application, Applicant seeks to register Applicant's Alleged Mark as a mark for Applicant's Goods.

2. Opposer has used for many years in interstate commerce and is and has been at all times pertinent hereto (including since prior to the filing date of the Application), the owner of all right, title, and interest in and to the marks for beverages that include the word ZERO, including the marks COCA-COLA ZERO, COKE ZERO, SPRITE ZERO, FANTA ZERO, PIBB ZERO, VAULT ZERO, POWERADE ZERO, FULL THROTTLE ZERO and VITAMINWATER ZERO. Opposer is also the owner of and applicant in a number of pending applications for registration of marks that include the word ZERO, including the marks COCA-COLA ZERO, COKE ZERO, SPRITE ZERO, FANTA ZERO, PIBB ZERO, VAULT ZERO, POWERADE ZERO, CHERRY COKE ZERO, VANILLA COKE ZERO, COKE ZERO ENERGY, COKE ZERO BOLD and other marks that include the word ZERO (collectively, "Opposer's ZERO Marks") for and in connection with beverage products in International Class 32, including but not limited to soft drinks, energy drinks and sports drinks ("Opposer's Goods"). Opposer and its related companies have used Opposer's ZERO Marks for and in connection with Opposer's Goods in interstate commerce in and throughout the United States continuously and extensively since at least as early as September 2004.

3. As a result of the widespread and extensive use, advertising and promotion by Opposer and its related companies of Opposer's ZERO Marks on and in connection with a wide variety of beverage products, Opposer's ZERO

Marks individually and collectively serve to identify Opposer's goods and distinguish Opposer's goods from the goods, services, and businesses of others; have become distinctive of Opposer's goods; symbolize the goodwill of Opposer's business; are well-known; and are of great value to Opposer in connection with the offering of Opposer's goods.

4. The Application is based on use in commerce, and states dates of first use of 2001.

5. Upon information and belief, the goods on which Applicant intends to use Applicant's Alleged Mark are mixes for the preparation of margarita cocktails.

6. Upon information and belief, Applicant's use of Applicant's Alleged Mark as a mark for Applicant's Goods, if any, has been limited in scope.

7. Upon information and belief, Applicant's use of Applicant's Alleged Mark as a mark for Applicant's Goods, if any, had not been substantially exclusive and continuous for at least five years as of February 1, 2012.

8. Upon information and belief, Applicant's Alleged Mark has not become distinctive of Applicant's Goods as a result of Applicant's use of Applicant's Alleged Mark.

9. Upon information and belief, Applicant's Alleged Mark, when used on or in connection with Applicant's Goods, is merely descriptive of such goods and is not eligible for registration under section 2(e)(1) of the Lanham Act, 15 U.S.C. § 1052(e)(1).

10. Upon information and belief, Applicant's Goods and Opposer's Goods are of similar types; are offered or may be offered through the same, substantially the same, and/or related channels of trade, to the same, substantially the same, and/or related classes of purchasers; and are or may be advertised, marketed and promoted through the same media channels.

11. Opposer would be damaged by registration of Applicant's Alleged Mark because such registration would constitute prima facie evidence of Applicant's exclusive right to use Applicant's Alleged Mark for and in connection with Applicant's Goods, which would be inconsistent with and detrimental to Opposer's established rights in and to Opposer's ZERO Marks.

The Patent and Trademark Office is authorized to deduct the filing fees of three hundred dollars (\$300.00), and any other fees necessary in connection with the filing of this Opposition from the deposit account of King & Spalding LLP, Opposer's undersigned counsel, account number 11-0980.

WHEREFORE, Opposer The Coca-Cola Company respectfully prays that the application of Bovis Foods, LLC, Serial Number 85-384,208, filed July 29, 2011 for registration of the mark MARGARITA ZERO for "non-alcoholic cocktail mixes" in International Class 32, be refused, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Respectfully submitted, this 24th day of September, 2012.

KING & SPALDING LLP

/Bruce W. Baber/

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Attorneys for Opposer  
THE COCA-COLA COMPANY

CERTIFICATE OF SERVICE

This is to certify, in accordance with Rule 2.101(b) of the Trademark Rules of Practice, that I have this day served the foregoing Opposition on the Applicant, by causing a true and correct copy thereof to be deposited in the United States Mail, postage prepaid, addressed to the attorney of record for the Applicant as follows:

Erik M. Pelton  
Erik M. Pelton & Associates, PLLC  
P.O. Box 100637  
Arlington, Virginia 22210-3637

This 24th day of September, 2012.

/Bruce W. Baber/

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Bruce W. Baber