

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

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Mailed: June 10, 2013

Opposition No. 91207116

The Coca-Cola Company

v.

Bovis Foods, LLC

Yong Oh (Richard) Kim, Interlocutory Attorney:

This matter comes up on applicant's motion (filed December 20, 2012) for a more definite statement under Fed. R. Civ. P. 12(e). The motion is fully briefed.

By way of background, opposer filed its notice of opposition on September 24, 2012. The parties stipulated to two extensions of time to explore settlement with the last stipulation resetting applicant's time to answer to January 2, 2013. Applicant filed its motion for a more definite statement on December 20, 2012.

As originally filed, applicant took issue with ¶¶ 2, 3, 6, 7, 8, 10 and 11 of the notice of opposition. After opposer's response clarifying that it was only asserting a claim of descriptiveness under Section 2(e) of the Trademark Act as the sole ground for opposition, applicant, in its reply brief, withdrew the motion as to ¶¶ 2, 3 and 10, but

maintained the motion as to ¶¶ 6, 7, 8 and 11. Thus, no further consideration will be given to ¶¶ 2, 3 and 10.

Under the simplified notice pleading regime of the Federal Rules of Civil Procedure, a plaintiff need only set forth "a short and plain statement" of its claims so as to give the defendant fair notice of their basis and is therefore allowed reasonable latitude in its statement of its claims. See *Harsco Corp. v. Electrical Sciences Inc.*, 9 USPQ2d 1570, 1571 (TTAB 1988). Indeed, "the theoretical overall scheme of the federal rules calls for relatively skeletal pleadings and places the burden of unearthing the underlying factual details on the discovery process." Wright, Miller, Kane and Marcus, *Federal Practice and Procedure*, Civil 3d § 1376 (2012). As such, motions for a more definite statement under Fed. R. Civ. P. 12(e) are generally disfavored unless the pleading is so unintelligible that the responding party cannot reasonably prepare a response thereto. The purpose of Rule 12(e) is to strike unintelligible pleadings as opposed to pleadings that merely lack detail.

In reviewing ¶¶ 6, 7, 8 and 11 of the notice of opposition, the Board does not find them so vague or ambiguous so as to preclude applicant from framing a responsive pleading in the form of a denial or admission. A motion for a more definite statement is a vehicle for

striking an unintelligible pleading rather than forcing the pleading party to "connect-the-dots" between an otherwise definite allegation and the complaint's larger overarching claim. That applicant is unable or unwilling to see the relevance of a particular allegation to opposer's claim of mere descriptiveness is of no event.

In view thereof, applicant's motion for a more definite statement is hereby **DENIED**. Dates are **RESET** as follows:

Time to Answer	7/17/2013
Deadline for Discovery Conference	8/16/2013
Discovery Opens	8/16/2013
Initial Disclosures Due	9/15/2013
Expert Disclosures Due	1/13/2014
Discovery Closes	2/12/2014
Plaintiff's Pretrial Disclosures Due	3/29/2014
Plaintiff's 30-day Trial Period Ends	5/13/2014
Defendant's Pretrial Disclosures Due	5/28/2014
Defendant's 30-day Trial Period Ends	7/12/2014
Plaintiff's Rebuttal Disclosures Due	7/27/2014
Plaintiff's 15-day Rebuttal Period Ends	8/26/2014

IN EACH INSTANCE, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within **THIRTY DAYS** after completion of taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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