

ESTTA Tracking number: **ESTTA570589**

Filing date: **11/13/2013**

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	11/13/2013
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 bbaber@kslaw.com, kmccarthy@kslaw.com, ebrown@kslaw.com, nytrademarks@kslaw.com

**Applicant Information**

Application No	77662597	Publication date	07/16/2013
Opposition Filing Date	11/13/2013	Opposition Period Ends	11/13/2013
International Registration No.	NONE	International Registration Date	NONE
Applicant	Corporación Industrial Alimenticia, S.A. de C.V. Av. de la Industria S/N Colonia Tepotzotlan, MXX CP54614 MXX		

**Goods/Services Affected by Opposition**

Class 032. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Beverages, namely, soft drinks and fruit drinks; preparations for making soft drinks and fruit drinks, namely, powdered soft drinks and fruit drink mixes, soft drinks and fruit drink concentrates
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**Grounds for Opposition**

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

**Mark Cited by Opposer as Basis for Opposition**

U.S. Application/	NONE	Application Date	NONE
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Registration No.			
Registration Date	NONE		
Word Mark	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		
Goods/Services	soft drinks, energy drinks, sports drinks and related goods		

Attachments	Opposition to KCLASS ZERO and Design.pdf(34441 bytes )
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### **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	/Emily B. Brown/
Name	Emily B. Brown
Date	11/13/2013

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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THE COCA-COLA COMPANY,	)	
	)	
Opposer,	)	
	)	OPPOSITION NO.
v.	)	
	)	
CORPORACIÓN INDUSTRIAL	)	_____
ALIMENTICIA, S.A. DE C.V.,	)	
	)	
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 KLASS ZERO and Design shown below:



(“Applicant’s Alleged Mark”) for “beverages, namely, soft drinks and fruit drinks; preparations for making soft drinks and fruit drinks, namely, powdered soft drinks and fruit drink mixes, soft drinks and fruit drink concentrates” in International Class 32 (“Applicant’s Goods”), which mark is the subject of application Serial Number 77-662,597 (the “Application”), filed on February 3, 2009 by Corporación

Industrial Alimenticia, S.A. de C.V. (“Applicant”), and published for opposition in the Official Gazette of July 16, 2013. By and through its undersigned attorneys and in accordance with Rules 2.101 through 2.104 of the Trademark Rules of Practice, Opposer 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. The Application is based on Mexican Registration Number 1086118, which, upon information and belief, has an effective date of February 4, 2009.

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; 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. Opposer’s ZERO Marks are famous in the United States and in many other countries throughout the world.

4. Upon information and belief, Applicant is unable to establish, with respect to Opposer’s use of Opposer’s ZERO Marks, priority of use or priority of rights in the United States in connection with Applicant’s Alleged Mark.

5. 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.

6. Upon information and belief, Applicant's Alleged Mark, when used in connection with Applicant's Goods, so resembles Opposer's ZERO Marks as to be likely to cause confusion, or to cause mistake, or to deceive with respect to the source or origin of Applicant's Goods, with respect to Opposer's sponsorship thereof or connection or affiliation therewith, and/or in other ways.

7. Upon information and belief, Applicant's Alleged Mark so closely resembles Opposer's ZERO Marks that potential purchasers of the goods intended to be offered under Applicant's Alleged Mark would be likely to believe that Opposer is the source of such goods, or that Opposer has authorized, sponsored, approved of, or in some other manner associated itself with Applicant's Goods, thereby creating a likelihood of confusion, deception or mistake, all to the damage of Opposer.

8. 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 prior, established and superior rights in and to Opposer's ZERO Marks.

9. Applicant's Alleged Mark falsely suggests a connection or affiliation with Opposer and Applicant is therefore not entitled to registration of Applicant's Alleged Mark.

10. Opposer's ZERO Marks are famous marks within the meaning of Section 43(c) of the Lanham Trademark Act, and the use by Applicant of

Applicant's Alleged Mark for Applicant's Goods would be likely to cause dilution of the distinctive quality of Opposer's ZERO Marks under Section 43(c).

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 Corporación Industrial Alimenticia, S.A. de C.V., Serial Number 77-662,597, filed February 3, 2009 for registration of the mark KLASS ZERO and Design for "beverages, namely, soft drinks and fruit drinks; preparations for making soft drinks and fruit drinks, namely, powdered soft drinks and fruit drink mixes, soft drinks and fruit drink concentrates" 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 13th day of November, 2013.

KING & SPALDING LLP

/Bruce W. Baber/

Bruce W. Baber

Kathleen E. McCarthy

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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:

Jeffrey A. Smith  
Millen, White, Zelano & Branigan, P.C.  
2200 Clarendon Boulevard, Suite 1400  
Arlington, Virginia 22201

This 13th day of November, 2013.

/Emily B. Brown/  
Emily B. Brown