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

Proceeding	91217679
Party	Defendant Battaglia, Jeffrey
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

THE COCA-COLA COMPANY,)	Opposition No. 91217679
)	
Opposer,)	Application No. 85/936,879
)	
v.)	Mark: SPRIZZ-O
)	
JEFFREY BATTAGLIA,)	
)	
Applicant.)	

ANSWER AND AFFIRMATIVE DEFENSES

Applicant Jeffrey Battaglia (“Applicant”), by and through his undersigned counsel, answers the Notice of Opposition (“Opposition”) filed by Opposer, The Coca-Cola Company (“Opposer”), as follows:

With respect to the introductory paragraph preceding paragraph 1 of the Opposition, Applicant admits that he filed Application Serial No. 85/936,879 for SPRIZZ-O on May 20, 2013 for the recited goods and that such application was published for opposition on February 4, 2014. Applicant denies that Opposer will be damaged by the issuance of a trademark registration for SPRIZZ-O. After reasonable investigation, Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in the introductory paragraph and, therefore, denies same.

1. Admitted.
2. After reasonable investigation, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 and, therefore, denies same.

3. After reasonable investigation, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 and, therefore, denies same.

4. Paragraph 4 contains conclusions of law to which no response is required. To the extent a response is required, after reasonable investigation, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 4 and, therefore, denies same.

5. After reasonable investigation, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 and, therefore, denies same.

6. After reasonable investigation, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 6 and, therefore, denies same.

7. Paragraph 7 contains conclusions of law to which no response is required. To the extent a response is required, after reasonable investigation, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 and, therefore, denies same.

8. Paragraph 8 contains conclusions of law to which no response is required. To the extent a response is required, the allegations of paragraph 8 are denied.

9. Paragraph 9 contains conclusions of law to which no response is required. To the extent a response is required, Applicant admits only that its current description includes “soft drinks”. After reasonable investigation, Applicant is without knowledge or information

sufficient to form a belief as to the truth of the remainder of the allegations set forth in paragraph 9 and, therefore, denies same.

10. Paragraph 10 contains conclusions of law to which no response is required. To the extent a response is required, Applicant denies the allegations of paragraph 10 of the Opposition.

11. Paragraph 11 contains conclusions of law to which no response is required. To the extent a response is required, Applicant denies the allegations of paragraph 11 of the Opposition.

12. Paragraph 12 contains conclusions of law to which no response is required. To the extent a response is required, Applicant denies the allegations of paragraph 12 of the Opposition.

13. Paragraph 13 contains conclusions of law to which no response is required. To the extent a response is required, Applicant denies the allegations of paragraph 13 of the Opposition.

In response to Opposer's request for relief, Applicant denies that Opposer is entitled to the relief requested, and requests that the Opposition be dismissed in its entirety.

AFFIRMATIVE DEFENSES

1. The Opposition fails to state a claim upon which relief can be granted.
2. The Opposition may not be sustained because there is no likelihood of confusion, likelihood of dilution, or false suggestion of a connection between the Opposer's SPRITE mark and its related marks and Applicant's SPRIZZ-O mark.
3. Opposer's SPRITE mark and its related marks and Applicant's SPRIZZ-O mark are significantly dissimilar.

4. The goods sold under Opposer's SPRITE mark and its related marks and those identified in the goods description of United States Application Serial No. 85/936,879 are noncompetitive and unrelated, are distributed in different channels of trade and appeal to a different consuming public.

5. Opposer has exhibited unclean hands by attempting to unlawfully expand the scope of its purported trademark rights because Opposer's SPRITE mark and its related marks and Applicant's SPRIZZ-O mark are pointedly different in sight, sound, and meaning when spoken, seen, or read as a whole. *See Swatch AG v. Beehive Wholesale, LLC*, 739 F.3d 150, 159 (4th Cir. 2014) (holding that "[w]e compare whole words, not parts," and denying the opposition at issue even when the goods and services were found to be highly similar and that the senior mark was found to be inherently distinctive and commercially strong)). Opposer has no basis to claim similarity of the marks simply because both marks start with "spri".

6. Applicant reserves the right to rely on any and all further affirmative defenses that become available or appear during discovery in this matter, and reserves the right to amend this Answer for the purpose of asserting any such affirmative defenses.

WHEREFORE, Applicant requests that Opposition No. 91217679 be dismissed in its entirety, and that registration be granted on United States Application Serial No. 85/936,879 for SPRIZZ-O.

Respectfully submitted,

Dated: September 15, 2014

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ANSWER AND AFFIRMATIVE DEFENSES** was served via First Class Mail, postage prepaid, on this 15th day of September, 2014 upon the following:

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