ESTTA Tracking number: **ESTTA763884**
Filing date: **08/11/2016**

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

Proceeding	91220327
Party	Defendant Day's Beverages, Inc.
Correspondence Address	ALEX R SLUZAS PAUL AND PAUL 1717 ARCH ST, STE 3740 PHILADELPHIA, PA 19103 UNITED STATES info@paulandpaul.com, asluzas@paulandpau
Submission	Defendant's Notice of Reliance
Filer's Name	Alex R Sluzas
Filer's e-mail	asluzas@paulandpaul.com, info@paulandpaul.com
Signature	/Alex R. Sluzas/
Date	08/11/2016
Attachments	RNofR1_redacted.pdf(498665 bytes)

TRADEMARK

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

In the matter of Serial No.: 86/337,103

Filed:	July 15, 2014
For:	**CITY CLUB**
Published:	December 23, 2014
Applicant:	Day's Beverages, Inc.
Atty. Doc. Nos.:	072-14; 3097

3rd Generation Enterprises Co. Corp.	:	
Opposer	:	
v.	:	Opposition No.: 91220327
	:	
Day's Beverages, Inc.	:	
Respondent	:	
	:	

RESPONDENT'S FIRST NOTICE OF RELIANCE,

Please take notice that Respondent Day's Beverages, Inc., hereinafter "Day's Beverages," by and through its undersigned attorney and pursuant to 37 C.F.R. 2.120(j) and TBMP § 704.10, hereby notices its reliance on the following interrogatory response of Opposer:

Exhibit A consists of relevant excerpts from OPPOSER 3rd GENERATION ENTERPRISES CO. CORP.'S RESPONSE TO DAY'S BEVERAGES, INC.'S REVISED FIRST SET OF INTERROGATORIES. Respondent is hereby noticing its reliance on Opposer's responses to Interrogatories 2(a), 2(b), 2(c), 2(d), 2(e), 2(f), 4(a), 4(b), 4(c), 4(d), 7(a), 5(a), 5(b) 7(b), 8(a), and 8(b).

Exhibit B consists of relevant excerpts from OPPOSER 3rd GENERATION ENTERPRISES CO. CORP.'S SECOND SUPPLEMENTAL RESPONSE TO DAY'S BEVERAGES, INC.'S REVISED FIRST SET OF INTERROGATORIES. Respondent is hereby noticing its reliance on Opposer's responses to Interrogatories 2(a), 2(b), 2(c), 2(d), 2(e), 2(f), 4(a), 4(b), 4(c), 4(d), 5(a), 5(b) 7(a), 7(b), 8(a), and 8(b).

Respectfully submitted,

August 10, 2016

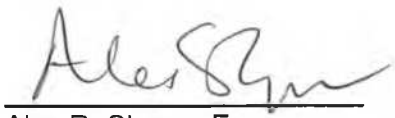
Alex R. Sluzas, Esq.

Paul & Paul
Suite 3740
1717 Arch Street
Philadelphia, PA 19103
(215) 568-4900
Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Respondent's First Notice of Reliance is being served today by first class mail on the attorneys of record for Petitioner, Marc P. Misthal, Esq., and Jonathan Purow, Gottlieb, Rackman & Reisman, P.C., 270 Madison Ave, New York, NY 10016.

August 10, 2016



Alex R. Sluzas, Esq.

Paul & Paul
Suite 3740
1717 Arch Street
Philadelphia, PA 19103
(215) 568-4900
Attorneys for Applicant

EXHIBIT A

REDACTED

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

In the Matter of Application Serial No. 86/337,103
Filed: July 15, 2014
Mark: CITY CLUB
Applicant: Day's Beverages Inc.
Published: December 23, 2014

RECEIVED
PAUL & PAUL
OCT 22 2015
FILE No. 3092

3RD GENERATION ENTERPRISES CO. CORP., Opposer,	Opposition No. 91220327
v.	
DAY'S BEVERAGES, INC., Applicant.	

OPPOSER 3RD GENERATION ENTERPRISES CO. CORP.'S RESPONSE TO DAY'S BEVERAGES, INC.'S REVISED FIRST SET OF INTERROGATORIES

Opposer 3rd Generation Enterprises Co. Corp. ("Opposer" or "3GE"), pursuant to Federal Rule of Civil Procedure 34 and Patent and Trademark Office Rule 2.120, hereby responds to Day's Beverages, Inc.'s ("Applicant" or "Day's") Revised First Set of Interrogatories as follows:

PRELIMINARY STATEMENT

3GE has not yet completed investigation of the facts relating to this case, has not completed discovery in this action, and has not completed preparation for this trial, and the following answers are given without prejudice to 3GE's right to augment or modify these responses with subsequently discovered information.

Nothing in this response should be construed as an admission by 3GE with respect to the admissibility or relevance of any fact or document, or of the truth or accuracy of any characterization or statement of any kind contained in any of the discovery requests or interrogatories served by Day's. 3GE has not completed its investigation of the facts relating to this case, its discovery or its preparation for this trial. All responses and objections contained

grounds that those limitations are beyond the temporal scope of the claims and defenses asserted in this action.

19. 3GE objects to producing original documents at the offices of Applicant's counsel. Unless otherwise agreed, 3GE will make any corresponding documents called for by the discovery, if any, available for inspection or copying at the offices of Gottlieb, Rackman & Reisman, P.C., 270 Madison Avenue, New York, New York 10016, on a mutually agreeable date and time, or will produce scans of documents on CD-ROM or via email, or will send a hard copy via mail or other delivery means.

20. 3GE objects to each request to the extent that it seeks expert information, the production of which is governed by the Trademark Trial and Appeal Board Manual of Procedure. 3GE will provide or identify such expert documents as required by the Federal Rules of Civil Procedure at the times at which the Trademark Trial and Appeal Board has directed or may direct.

21. 3GE objects to each discovery request to the extent that it is premature for 3GE to respond at the present time, prior to the completion of fact and expert discovery.

22. 3GE incorporates each of the foregoing objections in each response, as if set forth in full.

Without waiver of the foregoing, 3GE further responds as follows:

1. Interrogatory #1 has been omitted in the Revised First Set of Interrogatories, and therefore does not require a response.

2. With respect to the allegations made in numbered paragraph 2 of Opposer's Notice of Opposition, that Opposer is engaged in the manufacturing, distribution and sale of soft drinks:

(a) Has Opposer manufactured CITY CLUB soda?

RESPONSE TO INTERROGATORY #2 (a):

[redacted]

(b) If Opposer has manufactured CITY CLUB soda, identify each physical site upon which such manufacture occurred, and describe the steps Opposer carried out to manufacture CITY CLUB soda.

RESPONSE TO INTERROGATORY #2 (b):

[redacted]

(c) If Opposer has manufactured CITY CLUB soda, identify each class of reflecting the manufacturing process, including without limitation, recipes for the manufacture of CITY CLUB soda, records indicative of the quantity of CITY CLUB soda manufacture in each batch, quality control standards established for CITY CLUB soda, and records reflecting the testing of CITY CLUB soda for quality standards.

RESPONSE TO INTERROGATORY #2 (c)

Opposer herein incorporates its General Objections. Opposer further objects to the extent that this interrogatory: (i) seeks information that is not relevant to the claims or defenses in this action; (ii) is unduly burdensome and oppressive, and not reasonably calculated to lead to the discovery of admissible evidence; (iii) is duplicative or redundant of any other interrogatory; and (iv) is harassing and in violation of Fed. R. Civ. P. 26 (b)(2)(C)(i).

[redacted]

(d) If Opposer has manufactured CITY CLUB soda, identify

(i) each ingredient used in the manufacture of CITY CLUB soda,

(ii) the source(s) from which Opposer obtained each ingredient used in the manufacture of CITY CLUB soda,

(iii) all records reflecting the purchase of each ingredient used in the manufacture of CITY CLUB soda.

RESPONSE TO INTERROGATORY #2 (d)

Opposer herein incorporates its General Objections. Opposer further objects to the extent that this interrogatory: (i) seeks information that is not relevant to the claims or defenses in this action; (ii) is unduly burdensome and oppressive, and not reasonably calculated to lead to the discovery of admissible evidence; (iii) is duplicative or redundant of any other interrogatory and (iv) is harassing and in violation of Fed. R. Civ. P. 26 (b)(2)(C)(i).

[redacted]

(e) Has Opposer contracted with any third party for the manufacture of CITY CLUB soda?

RESPONSE TO INTERROGATORY #2 (e)

Opposer herein incorporates its General Objections.

[redacted]

(f) If Opposer has contracted with any third party for the manufacture of CITY CLUB soda, identify:

(i) all third parties with which Opposer has contracted for the manufacture of CITY CLUB soda,

(ii) all contracts for the manufacture of CITY CLUB soda,

RESPONSE TO INTERROGATORY #2 (f)

Opposer herein incorporates its General Objections.

[redacted]

3. Interrogatory 3 has been omitted in the Revised First Set of Interrogatories, and therefore does not require a response.

4. With respect to the allegations made in numbered paragraph 5 of Opposer's Notice of Opposition, that Opposer has acquired valuable good will in the CITY CLUB mark through use in commerce in the United States since at least as early as 2009, identify:

(a) all purchase orders received by Opposer from customers purchasing CITY CLUB soda,

RESPONSE TO INTERROGATORY #4 (a)

Opposer herein incorporates its General Objections.

[redacted]

(b) all invoices sent by Opposer to customers purchasing CITY CLUB soda

RESPONSE TO INTERROGATORY #4 (b)

Opposer herein incorporates its General Objections.

[redacted]

(c) all shipping documents for the shipment of CITY CLUB soda to customers, and

RESPONSE TO INTERROGATORY #4 (c)

Opposer herein incorporates its General Objections.

[redacted]

(d) all documents reflecting the payment of invoices sent by Opposer to customers purchasing CITY CLUB soda.

RESPONSE TO INTERROGATORY #4 (d)

Opposer herein incorporates its General Objections.

[redacted]

5. With respect to the allegations made in numbered paragraph 7 of the Notice of Opposition, identify:

(a) State the information redacted in the "Bill To" and "P.O. Number" fields of each of the invoices reproduced in Exhibit D to the Notice of Opposition.

RESPONSE TO INTERROGATORY #5 (a)

Opposer herein incorporates its General Objections.

[redacted]

(b) Identify all documents relating to the sales transactions reflected by the invoices reproduced in Exhibit D to the Notice of Opposition.

RESPONSE TO INTERROGATORY #5 (b)

Opposer herein incorporates its General Objections. Opposer further objects to the extent that this interrogatory: (i) is duplicative or redundant of any other interrogatory; and (ii) seeks information that is in the possession of third parties.

[redacted]

6. Interrogatory 6 has been omitted in the Revised First Set of Interrogatories, and therefore does not require a response.

7. With respect to the allegations made in numbered paragraph 5 of Opposer's Notice of Opposition,

(a) Has Opposer advertised CITY CLUB soda?

RESPONSE TO INTERROGATORY #7 (a)

Opposer herein incorporates its General Objections.

[redacted]

(b) If Opposer has advertised CITY CLUB soda:

(1) State the amounts expended on advertising CITY CLUB soda by calendar quarter.

(2) Identify all documents relating to advertising CITY CLUB soda.

RESPONSE TO INTERROGATORY #7 (b)

Opposer herein incorporates its General Objections.

[redacted]

8. With respect to Opposer's allegation in numbered paragraph 9 of Opposer's Notice of Opposition, that Opposer reconstructed its business, and recommenced sales of TOP POP soda brand, and recently resumed manufacture of CITY CLUB,

(a) State yearly sales of TOP POP soda by net dollar amount and physical quantity, from June 2008 to present.

RESPONSE TO INTERROGATORY #8 (a)

Opposer herein incorporates its General Objections. Opposer further objects to the extent that this interrogatory is not relevant to the claims or defenses in this action.

[redacted]

RESPONSE TO INTERROGATORY #8 (b)

Opposer herein incorporates its General Objections.

[redacted]

9. Identify all organizational documents of Opposer.

RESPONSE TO INTERROGATORY #9

Opposer herein incorporates its General Objections. Opposer further objects to the extent that this interrogatory: (i) seeks information that is not relevant to the claims and defenses in this action; (ii) is unduly burdensome and oppressive, and not reasonably calculated to lead to the

Respectfully submitted,

GOTTLIEB, RACKMAN & REISMAN, P.C.

By: /s/ Jonathan M. Purow

Marc P. Misthal (mmisthal@grr.com)
Jonathan M. Purow (jpurow@grr.com)
270 Madison Avenue, 8th Floor
New York, New York 10016
(212) 684-3900 Tel.
(212) 684-3999 Fax
Attorneys for Opposer

Dated: October 19, 2015
New York, New York

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below a true copy of the foregoing Supplemental Response to Day's Beverage's Inc.'s Revised First Set of Interrogatories and the document bearing Bates No. 3GE0417 was served by first class mail on Applicant, by its attorney, as follows:

Alex R. Sluzas
Paul & Paul
1717 Arch Street, Suite 3740
Philadelphia, PA 19103

/s/ Jonathan M. Purow
Jonathan M. Purow

Dated: October 19, 2015

[redacted]

[redacted]

EXHIBIT B

REDACTED

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

In the Matter of Application Serial No. 86/337,103
Filed: July 15, 2014
Mark: CITY CLUB
Applicant: Day's Beverages Inc.
Published: December 23, 2014

3RD GENERATION ENTERPRISES CO. CORP., Opposer, v. DAY'S BEVERAGES, INC., Applicant.	Opposition No. 91220327

OPPOSER 3RD GENERATION ENTERPRISES CO. CORP.'S SECOND SUPPLEMENTAL RESPONSE TO DAY'S BEVERAGES, INC.'S REVISED FIRST SET OF INTERROGATORIES

Opposer 3rd Generation Enterprises Co. Corp. ("Opposer" or "3GE"), pursuant to Federal Rule of Civil Procedure 34 and Patent and Trademark Office Rule 2.120, hereby responds to Day's Beverages, Inc.'s ("Applicant" or "Day's") Revised First Set of Interrogatories as follows:

PRELIMINARY STATEMENT

3GE has not yet completed investigation of the facts relating to this case, has not completed discovery in this action, and has not completed preparation for this trial, and the following answers are given without prejudice to 3GE's right to augment or modify these responses with subsequently discovered information.

Nothing in this response should be construed as an admission by 3GE with respect to the admissibility or relevance of any fact or document, or of the truth or accuracy of any characterization or statement of any kind contained in any of the discovery requests or interrogatories served by Day's. 3GE has not completed its investigation of the facts relating to

18. 3GE objects to the discovery requests to the extent that they have no temporal limitations and are thus overly broad and not relevant to the claims or defenses asserted in this case. 3GE further objects to those discovery requests which have temporal limitations on the grounds that those limitations are beyond the temporal scope of the claims and defenses asserted in this action.

19. 3GE objects to producing original documents at the offices of Applicant's counsel. Unless otherwise agreed, 3GE will make any corresponding documents called for by the discovery, if any, available for inspection or copying at the offices of Gottlieb, Rackman & Reisman, P.C., 270 Madison Avenue, New York, New York 10016, on a mutually agreeable date and time, or will produce scans of documents on CD-ROM or via email, or will send a hard copy via mail or other delivery means.

20. 3GE objects to each request to the extent that it seeks expert information, the production of which is governed by the Trademark Trial and Appeal Board Manual of Procedure. 3GE will provide or identify such expert documents as required by the Federal Rules of Civil Procedure at the times at which the Trademark Trial and Appeal Board has directed or may direct.

21. 3GE objects to each discovery request to the extent that it is premature for 3GE to respond at the present time, prior to the completion of fact and expert discovery.

22. 3GE incorporates each of the foregoing objections in each response, as if set forth in full.

Without waiver of the foregoing, 3GE further responds as follows:

1. Interrogatory #1 has been omitted in the Revised First Set of Interrogatories, and therefore does not require a response.

2. With respect to the allegations made in numbered paragraph 2 of Opposer's Notice of Opposition, that Opposer is engaged in the manufacturing, distribution and sale of soft drinks:

(a) Has Opposer manufactured CITY CLUB soda?

RESPONSE TO INTERROGATORY #2 (a):

Opposer herein incorporates its General Objections.

[redacted]

(b) If Opposer has manufactured CITY CLUB soda, identify each physical site upon which such manufacture occurred, and describe the steps Opposer carried out to manufacture CITY CLUB soda.

RESPONSE TO INTERROGATORY #2 (b):

Opposer herein incorporates its General Objections.

[redacted]

(c) If Opposer has manufactured CITY CLUB soda, identify each class of reflecting the manufacturing process, including without limitation, recipes for the manufacture of CITY CLUB soda, records indicative of the quantity of CITY CLUB soda manufacture in each batch, quality control standards established for CITY CLUB soda, and records reflecting the testing of CITY CLUB soda for quality standards.

RESPONSE TO INTERROGATORY #2 (c)

Opposer herein incorporates its General Objections. Opposer further objects to the extent that this interrogatory: (i) seeks information that is not relevant to the claims or defenses in this action; (ii) is unduly burdensome and oppressive, and not reasonably calculated to lead to the discovery of admissible evidence; (iii) is duplicative or redundant of any other interrogatory; and (iv) is harassing and in violation of Fed. R. Civ. P. 26 (b)(2)(C)(i).

[redacted]

(d) If Opposer has manufactured CITY CLUB soda, identify

(i) each ingredient used in the manufacture of CITY CLUB soda,

(ii) the source(s) from which Opposer obtained each ingredient used in the manufacture of CITY CLUB soda.

(iii) all records reflecting the purchase of each ingredient used in the manufacture of CITY CLUB soda.

RESPONSE TO INTERROGATORY #2 (d)

Opposer herein incorporates its General Objections. Opposer further objects to the extent that this interrogatory: (i) seeks information that is not relevant to the claims or defenses in this action; (ii) is unduly burdensome and oppressive, and not reasonably calculated to lead to the discovery of admissible evidence; (iii) is duplicative or redundant of any other interrogatory and (iv) is harassing and in violation of Fed. R. Civ. P. 26 (b)(2)(C)(i).

[redacted]

(e) Has Opposer contracted with any third party for the manufacture of CITY CLUB soda?

RESPONSE TO INTERROGATORY #2 (e)

Opposer herein incorporates its General Objections.

[redacted]

(f) If Opposer has contracted with any third party for the manufacture of CITY CLUB soda, identify:

(i) all third parties with which Opposer has contracted for the manufacture of CITY CLUB soda,

(ii) all contracts for the manufacture of CITY CLUB soda,

RESPONSE TO INTERROGATORY #2 (f)

Opposer herein incorporates its General Objections.

[redacted]

3. Interrogatory 3 has been omitted in the Revised First Set of Interrogatories, and therefore does not require a response.

4. With respect to the allegations made in numbered paragraph 5 of Opposer's Notice of Opposition, that Opposer has acquired valuable good will in the CITY CLUB mark through use in commerce in the United States since at least as early as 2009, identify:

(a) all purchase orders received by Opposer from customers purchasing CITY CLUB soda,

RESPONSE TO INTERROGATORY #4 (a)

Opposer herein incorporates its General Objections.

(b) all invoices sent by Opposer to customers purchasing CITY CLUB soda

RESPONSE TO INTERROGATORY #4 (b)

Opposer herein incorporates its General Objections.

(c) all shipping documents for the shipment of CITY CLUB soda to customers, and

RESPONSE TO INTERROGATORY #4 (c)

Opposer herein incorporates its General Objections.

(d) all documents reflecting the payment of invoices sent by Opposer to customers purchasing CITY CLUB soda.

RESPONSE TO INTERROGATORY #4 (d)

Opposer herein incorporates its General Objections.

5. With respect to the allegations made in numbered paragraph 7 of the Notice of Opposition, identify:

(a) State the information redacted in the "Bill To" and "P.O. Number" fields of each of the invoices reproduced in Exhibit D to the Notice of Opposition.

RESPONSE TO INTERROGATORY #5 (a)

Opposer herein incorporates its General Objections.

(b) Identify all documents relating to the sales transactions reflected by the invoices reproduced in Exhibit D to the Notice of Opposition.

RESPONSE TO INTERROGATORY #5 (b)

Opposer herein incorporates its General Objections. Opposer further objects to the extent that this interrogatory: (i) is duplicative or redundant of any other interrogatory; and (ii) seeks

[redacted]

6. Interrogatory 6 has been omitted in the Revised First Set of Interrogatories, and therefore does not require a response.

7. With respect to the allegations made in numbered paragraph 5 of Opposer's Notice of Opposition.

(a) Has Opposer advertised CITY CLUB soda?

RESPONSE TO INTERROGATORY #7 (a)

Opposer herein incorporates its General Objections.

[redacted]

(b) If Opposer has advertised CITY CLUB soda:

(1) State the amounts expended on advertising CITY CLUB soda by calendar quarter.

(2) Identify all documents relating to advertising CITY CLUB soda.

RESPONSE TO INTERROGATORY #7 (b)

Opposer herein incorporates its General Objections.

[redacted]

8. With respect to Opposer's allegation in numbered paragraph 9 of Opposer's Notice of Opposition, that Opposer reconstructed its business, and recommenced sales of TOP POP soda brand, and recently resumed manufacture of CITY CLUB,

(a) State yearly sales of TOP POP soda by net dollar amount and physical quantity, from June 2008 to present.

RESPONSE TO INTERROGATORY #8 (a)

Opposer herein incorporates its General Objections. Opposer further objects to the extent that this interrogatory is not relevant to the claims or defenses in this action.

[redacted]

(b) State yearly sales of CITY CLUB soda by net dollar amount and physical quantity from June 2008 to present.

RESPONSE TO INTERROGATORY #8 (b)

Opposer herein incorporates its General Objections.

[redacted]

9. Identify all organizational documents of Opposer.

RESPONSE TO INTERROGATORY #9

Opposer herein incorporates its General Objections. Opposer further objects to the extent that this interrogatory: (i) seeks information that is not relevant to the claims and defenses in this action; (ii) is unduly burdensome and oppressive, and not reasonably calculated to lead to the discovery of admissible evidence; and (iii) seeks information and documents which are publicly available and, therefore, equally accessible to Day's.

10. Identify the present supervising employees of Opposer.

RESPONSE TO INTERROGATORY #10

Opposer herein incorporates its General Objections. Opposer further objects to the extent that this interrogatory: (i) seeks information that is not relevant to the claims and defenses in this action; and (ii) is ambiguous due to the undefined term "present supervising employees".

11. Interrogatory 11 has been omitted in the Revised First Set of Interrogatories, and therefore does not require a response.

12. Identify each person who supplied information included in any of the answers to this set of interrogatories and specify the contribution made by each person to the preparation of the answers to these interrogatories.

RESPONSE TO INTERROGATORY #12

Opposer herein incorporates its General Objections. Opposer further objects to the extent that this interrogatory: (i) is unduly burdensome and oppressive, and not reasonably calculated to lead to the discovery of admissible evidence; (ii) is overly broad, vague, ambiguous, and requires subjective judgment and speculation on the part of Opposer.

[redacted]

Respectfully submitted,

GOTTLIEB, RACKMAN & REISMAN, P.C.

By: /s/ Jonathan M. Purow

Marc P. Misthal (mmisthal@grr.com)
Jonathan M. Purow (jpurow@grr.com)
270 Madison Avenue, 8th Floor
New York, New York 10016
(212) 684-3900 Tel.
(212) 684-3999 Fax
Attorneys for Opposer

Dated: January 27, 2016
New York, New York