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

Proceeding	91221666
Party	Plaintiff PepsiCo, Inc.
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Submission	Motion to Compel Discovery
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Signature	/Lauren Beth Emerson/
Date	06/10/2016
Attachments	6.10.16 Pepsi's Motion to Compel & Decl.pdf(1580496 bytes)

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

In the matter of U.S. Application Serial No. 86384378
Trademark: AQUAFIX
Filed: September 3, 2014

PEPSICO, INC. Opposer, vs. MVS INTERNATIONAL INC. Applicant.	Opposition No. 91221666

OPPOSER'S MOTION TO COMPEL APPLICANT'S DISCOVERY RESPONSES

Pursuant to Rule 2.120(e) of the Rules of Practice in Trademark Cases, 37 C.F.R. § 2.120(e), Rule 37 of the Federal Rules of Civil Procedure, and Section 523 of the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), Opposer, PepsiCo, Inc. ("Opposer" or "PepsiCo") moves the Honorable Trademark Trial and Appeal Board ("Board") for an order compelling Applicant, MVS International, Inc., ("Applicant" or "MVS") to: (i) respond fully and without objection to *Opposer's Second Set of Interrogatories to Applicant*, which it has wholly ignored; (ii) to respond in full to Interrogatory No. 9, Document Requests 15-18, and Request for Admission No. 11, for which its responses remain deficient; and (iii) to serve Opposer with a signed copy of *Applicant's First Request for Admissions*, which were served unsigned on October 21, 2015.

STATEMENT OF FACTS

On April 24, 2015, PepsiCo filed a Notice of Opposition against Application Serial No. 86384378 for the mark AQUAFIX covering goods in Class 32. PepsiCo, having priority and proper standing, opposed the application at issue on the grounds of likelihood of confusion and dilution under Sections 1052(d) and 43(c) of the United States Trademark ("Lanham") Act. (Bd. Docket No. 1).

On July 3, 2015, following the parties' initial discovery conference, PepsiCo served Applicant with *Opposer's Initial Disclosure Statement Pursuant to Rule 26(A)(1) of the Federal Rules of Civil Procedure* along with *Opposer's First Set of Interrogatories to Applicant* and *Opposer's First Request for the Production of Documents and Things*. (Emerson Decl. ¶¶2–4, Exs. A, B)

On August 3, 2015, Applicant served its initial disclosures, provided written responses to Opposer's discovery requests and served a single responsive document: the 16 page file history of the Application at issue. (Emerson Decl. ¶5, Ex. C) Applicant's written responses were deficient in many respects. Opposer notified Applicant of these deficiencies by letter dated September 16, 2015. (Emerson Decl. ¶6, Ex. D) On that same date, PepsiCo served its first request for admissions. (Emerson Decl. ¶7, Ex. E)

In an effort to avoid burdening the Board with motion practice, PepsiCo followed up with counsel for Applicant regarding the deficiencies in Applicant's discovery responses by email dated October 6, 2015 (Emerson Decl. ¶8, Ex. F). Two days later, counsel for Applicant responded indicating that MVS would respond substantively the following week. (Emerson Decl. ¶9, Ex. G) When PepsiCo did not hear anything further, it followed up again by email dated October 19, 2015. (Emerson Decl. ¶10, Ex. H)

On October 21, 2015, Applicant served *Applicant's Responses & Objections to Opposer's Request for Admissions*. (Emerson Decl. ¶11, Ex. I) Although these were accompanied by a signed certificate of service, the responses themselves were not signed. (*Id.* at Ex. I)

On October 30, 2015, Applicant served *Applicant's Supplemental Answers & Objections to Opposer's Interrogatories*, as well a letter indicating that supplemental responses to *Opposer's Request for the Production of Documents and Things* would be forthcoming the following week. (Emerson Decl. ¶12, Exs. J, K)

On November 4, 2015, Opposer notified Applicant by letter that *Applicant's Responses & Objections to Opposer's Request for Admissions* were also deficient. (Emerson Decl. ¶13, Ex. L) The letter specifically notes that *Applicant's Responses & Objections to Opposer's Request for Admissions* were not signed, and that Applicant did not admit or deny the allegations in Request Nos. 11, 20, 21, 22, 24, 25, 26, 32, 33, 36, 37, 38, 39, 46, 47, 48, 49 and 51. (*Id.* at Ex. L) Most of these requests pertained to Applicant's experience in selling the products that it purportedly intends to market under the mark at issue, and the steps taken to bring those products to market—all relevant and proper lines of inquiry. (*Id.*)

On November 13, 2015, Applicant served Opposer with a letter and enclosures including supplemental materials in response to Opposer's discovery requests. (Emerson Decl. ¶¶14–17, Exs. M, N, O, P) Specifically, Applicant enclosed a second document in response to Opposer's document requests—a purported presentation that is three pages in length, including a cover sheet wherein the company name is misspelled (Emerson Decl. ¶15, Ex. N), *Supplemental Responses & Objections to Opposer's Requests for Admissions* (Emerson Decl. ¶16, Ex. O) and *Supplemental Responses & Objections to Opposer's Requests for Production*. (Emerson Decl.

¶17, Ex. P). While Applicant's *Supplemental Responses & Objections to Opposer's Requests for Admissions* is signed, this document only contains the new responses that Applicant had previously omitted. (Emerson Decl. ¶16, Ex. O)

Opposer responded by letter dated December 4, 2015, stating that certain deficiencies remained notwithstanding Applicant's supplemental responses. (Emerson Decl. ¶18, Ex. Q) Specifically, Opposer objected that Applicant's refusals to respond to Interrogatory No. 9, Document Request Nos. 15-18 and Request for Admission No. 11 were unmerited. (*Id.* at Ex. Q)

Also on December 4, 2015, PepsiCo served *Opposer's Second Set of Interrogatories to Applicant*. Applicant's deadline to respond came and went with no response. (Emerson Decl. ¶19, Ex. R) PepsiCo followed up on the various outstanding issues by email dated March 18, 2016. (Emerson Decl. ¶20, Ex. S) PepsiCo further indicated that it would move forward with the instant motion to compel if it did not receive a prompt response. (*Id.* at Ex. S).

To date, PepsiCo has received no response to its letter of December 4, 2015, its email of March 18, 2016, or *Opposer's Second Set of Interrogatories to Applicant*. (Emerson Decl. ¶21) The noted deficiencies remain with respect to Interrogatory No. 9, Document Requests Nos. 15-18 and Request for Admission No. 11 as well as with respect to *Applicant's Responses & Objections to Opposer's Request for Admissions*.

Notwithstanding its considerable good faith efforts, PepsiCo has yet to have any meaningful discovery in this matter and does not wish to be foreclosed from pursuing discovery. PepsiCo has attempted to resolve these issues without Board involvement, but Applicant has been less than cooperative and failed to comply with its discovery obligations. Accordingly, PepsiCo has no alternative but to now file a motion to compel and seek an extension of discovery.

ARGUMENT

I. PEPSICO COMPLIED WITH TRADEMARK RULE 2.120(e)

As set forth in the accompanying Declaration of Lauren Beth Emerson and reflected in this motion, Applicant has exhibited a pattern of evading its duty to respond to discovery sought by PepsiCo. The detailed statement of facts set forth in Ms. Emerson's declaration illustrates how Applicant has avoided its obligations under the Board's rules and the Federal Rules of Civil Procedure to respond to appropriate, lawful discovery sought by Opposer. Nonetheless, a good faith effort has been made by PepsiCo to resolve the discovery disputes presented herein as required by 37 C.F.R. §2.120(e), but Applicant still has not fulfilled its discovery obligations. Now, it seeks an order from the Board compelling Applicant to fully and completely respond to PepsiCo's interrogatories, document requests and requests for admissions as discussed in this motion so as to bring Applicant to comply with its duties and obligations under the rules of discovery.

II. MOTION TO COMPEL DISCOVERY

Specifically, PepsiCo moves to compel Applicant to serve Opposer's counsel with: (a) full and complete written responses to Opposer's Second Set of Interrogatories without objection; (b) full written responses as well as documents responsive to Interrogatory No. 9, Document Requests 15-18 and Request for Admission No. 11; and (c) a signed copy of *Applicant's Responses & Objections to Opposer's Request for Admissions.*

Opposer's Second Set of Interrogatories to Applicant

As noted hereinabove, Applicant has failed to respond to *Opposer's Second Set of Interrogatories to Applicant*, which was timely served on December 4, 2015. (Emerson Decl. ¶19, Ex. R) A party served with interrogatories is required to serve a copy of its written

responses within thirty-five (35) days after service of the discovery requests by first-class mail. Fed. R. Civ. P. 34(b); and 37 CFR §§ 2.120 and 2.119(c). Failure to comply with these rules is actionable and compliance may be ordered by the Board. Fed. R. Civ. P. 37(a); 37 C.F.R. § 2.120(e). Over six (6) months have passed since PepsiCo served these interrogatories on Applicant, notwithstanding Opposer's efforts to follow up.

By failing to respond to this lawful discovery, Applicant has prevented this proceeding from moving forward to a determination on the merits. PepsiCo will be prejudiced by such noncompliance in its efforts to prepare for trial unless Applicant is compelled by the Board to serve Opposer with full and complete responses to PepsiCo's interrogatories by a date certain.

When a party fails to respond to discovery requests during the allotted time and is unable to show that its failure was the result of excusable neglect, it is appropriate for the Board to find that the recalcitrant party has forfeited its right to object to the discovery requests. *See* TBMP § 403.03 (2014); *Envirotech Corp. v. Compagnie Des Lampes*, 219 U.S.P.Q. 448 (TTAB 1979); *Crane Co. v. Shimano Industrial Co., Ltd.*, 184 U.S.P.Q. 691 (TTAB 1975); *Polokoff v. Int'l Pantyhose, Inc.*, No. 96 Civ. 6100, 1997 U.S. Dist LEXIS 4582 (S.D.N.Y. April 11, 1997) (pursuant to the local rules of Southern District of New York, "Plaintiff's failure to respond in a timely manner to defendants' document request has resulted in a waiver of all objections plaintiff may have otherwise had."). Opposer submits that this principle is applicable here. This Board, like any trial judge, has broad discretion to grant such orders as may be deemed appropriate to ensure full discovery. *See, e.g., National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 642-43 (1976) (per curiam); *Sturgis v. Am. Ass'n of Retired Persons*, Civ. No 93-5013, 1993 WL 518447 (D.C. Cir. Nov. 19, 1993) ("The district court has broad discretion in choosing a sanction under Rule 37."); *see also* TBMP § 527.03 (2014).

Opposer should not be prejudiced by Applicant's failure to participate in discovery. PepsiCo therefore respectfully requests that the Board compel Applicant to serve PepsiCo with full and complete written responses to *Opposer's Second Set of Interrogatories to Applicant*

within thirty (30) days of the Board's order and to bar Applicant from objecting to such interrogatories in view of Applicant's dilatory actions.

Applicant's Deficient Responses

Interrogatories: Interrogatory No. 9 calls for Applicant to "Identify all opinions received by Applicant concerning, referring or relating to the availability of the Applicant's Mark in respect to any goods. If such opinion was not obtained prior to filing the instant application or adopting said mark, explain why." (Emerson Decl. ¶3, Ex. A at No. 9). Applicant refuses to provide any substantive response claiming that this identification is protected by the attorney-client privilege. The identification of discovery documents, however, is not privileged. *See* TBMP 414. In its correspondence on this subject, Applicant cites four cases. Three of these are inapposite and either speak to requests to disclose the substance of a legal opinion, or merely distinguish between search reports, which must be produced, and opinions, which need not be.[1] The fourth case cited by Applicant supports Opposer's position. In *Goodyear Tire & Rubber Company v. Tyrco Industries*, the Board addressed an interrogatory seeking "the identity of all documents in applicant's possession, custody or control which related to the evolution, selection, trademark searching, clearance and/or evaluation of [the mark at issue]" and an interrogatory asking "whether applicant has ever received any opinions concerning trademark validity of possible conflicts arising out of applicant's adoption, use and application to register [the mark at

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[1] In *Axiohm S.A. and Axiohm, IPB v. Axiom Technology, Inc.*, 2007 WL 1720151 (TTAB 2000), the Board merely notes that "[a]lthough the comments or opinions of attorneys relating to search reports are privileged and not discoverable . . . search reports themselves are discoverable." The Board makes the same distinction in *Fisons Ltd. v. Capability Brown Ltd.*, 209 U.S.P.Q. 167 (TTAB 1980) and in *Miles Laboratories, Inc. v. Instrumentation Laboratory, Inc.*, 185 U.S.P.Q. 432 (TTAB 1975).

issue]." 186 U.S.P.Q. 207 (1975). The Board held that "the fact that an attorney may have given an opinion to a client is not in and of itself privileged information; only the substance of the communication is considered privileged." *See id.* Opposer was therefore entitled to the information sought, which included the date the opinion was rendered, the identity of the recipients and the identity of relevant documents, etc. *See id.* at 208 This is precisely what is at issue here. Opposer's request is for the identification of a document, not for its production or the disclosure of its substance. Such identification would include the date of the document or communication, the name of the person who rendered the opinion, the name of the person to whom the opinion was rendered or provided and the subject matter of the opinion. PepsiCo is therefore entitled to the requested identification. *See id*; see also TBMP 414.

Document Requests: Document Requests Nos. 15-18 each address an allegation made in Applicant's *Answer to the Notice of Opposition.* Specifically, Request No. 15 calls for "All documents referring or relating to or otherwise supporting or substantiating Applicant's purported affirmative defense that Opposer is 'merely anti-competitive in nature.'" (Emerson Decl. ¶ 4, Ex. B at No. 15) Request No. 16 calls for "All documents referring or relating to or otherwise supporting or substantiating Applicant's purported affirmative defense that 'there is no likelihood of confusion between Applicant and Opposer's marks because, among other things, the marks are different in appearance, meaning and overall commercial impression. Applicant's mark is phonetically and visually different. Furthermore, the meaning and overall commercial impression between Applicant's mark and the marks basis (sic) of the Opposer's opposition are very different as well.'" (Emerson Decl. ¶ 4, Ex. B at No. 16) Request No. 17 calls for "All documents referring or relating to or otherwise supporting or substantiating Applicant's purported affirmative defense that 'Opposer is improperly dissecting Applicant's mark and claiming exclusive ownership to the term AQUA.'" (Emerson Decl. ¶ 4, Ex. B at No. 17) Finally, Request No. 18 calls for "All documents referring or relating to or otherwise supporting or substantiating Applicant's purported affirmative defense that 'No damage or injury has resulted, will result, or is likely to result to Opposer from the registration of Applicant's

trademarks due to, among other factors, the difference between the marks and the different commercial channels where the goods are to be offered.'" (Emerson Decl. ¶ 4, Ex. B at No. 18)

Applicant has refused to produce any such documents claiming work product immunity. Applicant bases its position on inapposite cases where one party asks another to identify a subset of previously produced documents. (Emerson Decl. ¶¶5, 14 Exs. C, M) In *Sporck v. Peil*, 759 F.2d 312 (3d. Cir. 1985), plaintiff demanded identification and production of documents that defendant's counsel had shown to defendant prior to his deposition. The Court of Appeals for the Third Circuit found such requests to call for attorney work product because the very selection of those documents might reveal the lawyer's strategy. *See id*. Likewise, in *American National Red Cross v. Travelers Indemnity Company of Rhode Island et. al*, 896 F. Supp. 8 (D.D.C. 1995), plaintiff moved for summary judgment on certain affirmative defenses after defendant's 30(b)(6) witness refused to identify facts and documents supporting those defenses at his deposition based on the work product doctrine and attorney-client privilege. *See id.* In denying the motion, however, the District Court for the District of Columbia notes that there's no claim that defendant "withheld relevant, discoverable documents or data." *See id.* at 14. In fact, the Court noted that over 200,000 pages had been exchanged. *See id.* at 13. Unlike in the cases relied upon by Applicant, MVS may well be withholding information. Applicant's paltry production to date consists of two documents, neither of which addresses the allegations at issue. PepsiCo seeks the documents and facts supporting Applicant's alleged affirmative defenses. Such documents are non-privileged evidentiary material—regardless of whether MVS's counsel has or has not reviewed or considered them.

Indeed, the issue presented to the Board here is more analogous to *Mead Corporation v. Riverwood Natural Resources Corp.*, a case out of the District Court for the District of Minnesota where the Court considered, inter alia, document requests calling for all documents on which defendant relied in asserting various defenses and a counterclaim in defendant's answer to plaintiff's amended complaint. *See* 145 F.R.D. 512, 519 (1992). The Court found that "[a]ny insight into counsel's understanding of the case is outweighed by contribution to the efficacious

operation of the judicial system which expedited disclosure provides." *Id.* at 521. Here, any insight into counsel's understanding of this case that might be gleaned from the production of the requested documents is outweighed by PepsiCo's right to understand the factual basis of the allegations in the Answer. *See id.* As such, PepsiCo requests that the Board compel Applicant to provide complete written responses along with any and all responsive documents.

Request for Admissions: Request to Admit No. 11 calls for an admission or denial of the following statement: "Sparkling water" is related to "table water." Applicant complains that the term "table water" is vague and broad, and that Applicant does not know and has no way to determine what "table water" is. (Emerson Decl. ¶7, Ex. E) Applicant has given no indication, however, that it has made the reasonable inquiry required under the circumstances. *See* Fed. R. Civ. P. 36(a)(4) ("The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.") Moreover, the Trademark Office deems "table water" to be a sufficiently definite identification of goods; indeed, it is expressly approved in the identification manual. *See* Acceptable Identifications of Goods and Services Manual (ID Manual) Next Generation at 032-140. As such, Applicant's position is unreasonable.

Finally, pursuant to Fed. R. Civ. P. 36(a)(3), "A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney." The responses in *Applicant's Responses & Objections to Opposer's Request for Admissions* that Applicant served in October of 2015 were not signed, and the supplemental responses that it served in November, which were signed, were not cumulative of the original responses. Opposer asks that Applicant be compelled to provide a signed copy of its initial responses, or order that the Requests be deemed admitted.

Opposer respectfully submits that it is entitled to the information and documents sought, and requests that the Board compel production of written responses and responsive documents,

as well as complete, signed responses to *Opposer's First Request for Admissions*, so that the parties can move forward and complete discovery.

III. SUSPENSION

Pursuant to the Trademark Rule 2.120(e)(2), 37 C.F.R. § 2.120(e)(2), PepsiCo respectfully moves the Board to suspend proceedings until the Board issues a decision on this motion and to reset the discovery and testimony periods as discussed below.

IV. EXTENSION OF DISCOVERY AND TRIAL DATES

PepsiCo submits that it will require additional time to complete discovery and respectfully moves the Board to extend the terms for discovery and trial by 90 days following the Board's determination of this motion. The standard for allowing an extension of a prescribed period prior to the expiration of that period is that good cause be shown. Fed. R. Civ. P. 6(b)(1).

The discovery period in this opposition proceeding closes on June 27, 2016. PepsiCo has received little information from Applicant on material issues in this matter and cannot adequately prepare for trial due to the non-responsiveness of Applicant and the likely need for follow up discovery and scheduling of depositions. It is therefore requested that the discovery and trial testimony periods be reset and extended by 90 days following the Board's decision on this motion pursuant to 37 C.F.R. §2.121(a) and TBMP §502.02 (2014). This motion to extend discovery and trial dates is not made for purposes of delay, but for good cause shown herein.

Alternatively, in the event that suspension is not entered or the motion is denied or a decision on this motion is not issued prior to the June 27, 2016 closing date for discovery, PepsiCo respectfully moves the Board to extend the periods for discovery and trial for a period of ninety (90) days, so PepsiCo can pursue full and complete discovery from MVS International for the good cause shown herein.

CONCLUSION

In view of the foregoing, PepsiCo respectfully requests that the Board grant its motion, and that the Board issue an order:

1. Compelling Applicant, within thirty (30) days of the mailing date of its Order on this Motion, or such shorter period of time as the Board deems reasonable, to produce, without objection, full and complete written, signed responses to *Opposer's Second Set of Interrogatories to Applicant* served on December 4, 2015;

2. Compelling Applicant, within thirty (30) days of the mailing date of its Order on this Motion, or such shorter period of time as the Board deems reasonable, to produce, written responses and any and all documents and things responsive to Interrogatory No. 9 and Document Requests 15-18 and Request for Admission No. 11;

3. Compelling Applicant, within thirty (30) days of the mailing date of its Order on this Motion, or such shorter period of time as the Board deems reasonable, to produce a signed copy of its October 21, 2015 *Applicant's Responses & Objections to Opposer's Request for Admissions*, or deem that PepsiCo's requests for admission are admitted to by Applicant.

4. Directing that judgment will be entered against Applicant and registration of Application Ser. No. 86384378 will be refused should Applicant fail to comply fully with the Board's Order herein;

5. Suspending the proceedings, including the discovery, testimony and trial periods, pursuant to 37 C.F.R. §2.117(c) pending the resolution of this motion;

6. Extending the discovery, testimony and trial dates by a period of ninety (90) days following the Board's issuance of its Order on this motion;

7. Alternatively, in the event that this motion is not granted or not decided by the by the closing date of discovery, i.e., June 27, 2016, extending the discovery, testimony and trial dates by a period of ninety (90) days; and

8. Providing any further relief to Opposer as the Board deems just.

Respectfully submitted this the 10th day of June, 2016

By: _____

Paul J. Reilly
Lauren Beth Emerson
BAKER BOTTS L.L.P.
30 Rockefeller Plaza
New York, NY 10112
(212) 408-2500
Attorneys for Opposer, PEPSICO, INC.

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, a true and accurate copy of the foregoing **OPPOSER'S MOTION TO COMPEL APPLICANT'S DISCOVERY RESPONSES** was served on Applicant, MVS International, Inc., by email and express courier, at the following address of record:

HUMBERTO RUBIO
LAW FIRM OF RUBIO & ASSOCIATES PA
8950 SW 74TH CT STE 1804
MIAMI, FL 33156-3177
UNITED STATES
hrubio@rubiolegal.com

Dated: June 10, 2016 By: _____
Lauren Beth Emerson

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

In the matter of U.S. Application Serial No. 86384378
Trademark: AQUAFIX
Filed: September 3, 2014

PEPSICO, INC.	:	
Opposer,	:	
vs.	:	Opposition No. 91221666
MVS INTERNATIONAL INC.	:	
Applicant.	:	

DECLARATION OF LAUREN BETH EMERSON IN SUPPORT OF
OPPOSER'S MOTION TO COMPEL APPLICANT'S DISCOVERY RESPONSES

I, Lauren Beth Emerson, do hereby declare and state as follows:

1. I am an attorney associated with the law firm of Baker Botts L.L.P., representing Opposer, PepsiCo, Inc. ("Opposer" or PepsiCo") in the above-captioned proceeding. I am licensed to practice law in the states of New York and New Jersey, and I have been admitted to practice before the United States District Courts for the Southern District of New York and the District of New Jersey. I am over the age of twenty-one, have never been convicted of a crime, and am competent to make this declaration. This declaration is based on my personal knowledge and my review of documents and other material. I submit this declaration in support of *Opposer's Motion to Compel Applicant's Discovery Responses*.

2. Following the parties' initial discovery conference on July 2, 2015, Opposer served *Opposer's Initial Disclosure Statement Pursuant to Rule 26(A)(1) of the Federal Rules of Civil Procedure* on July 3, 2015.

3. Attached hereto as Exhibit A is a true and correct copy of *Opposer's First Set of Interrogatories to Applicant,* which was served on July 3, 2015.

4. Attached hereto as Exhibit B is a true and correct copy of *Opposer's First Request for the Production of Documents and Things*, which was served on July 3, 2015.

5. Attached hereto as Exhibit C is a true and correct copy of Applicant's e-mail correspondence as received by Opposer on August 3, 2015, including attachments.

6. Attached hereto as Exhibit D is a true and correct copy of Opposer's letter to Applicant as was sent on September 16, 2015.

7. Attached hereto as Exhibit E is a true and correct copy of Opposer's first request for admissions, inadvertently captioned *Applicant's First Request for Admissions*, which were served on September 16, 2015.

8. Attached hereto as Exhibit F is a true and correct copy of Opposer's email to Applicant as was sent on October 6, 2015.

9. Attached hereto as Exhibit G is a true and correct copy of Applicant's email to Opposer as received by Opposer on October 8, 2015.

10. As of October 19, 2015, Opposer had not received any further response from Applicant. Attached hereto as Exhibit H is a true and correct copy of Opposer's email as was sent to Applicant on October 19, 2015.

11. Attached hereto as Exhibit I is a true and correct copy of *Applicant's Responses & Objections to Opposer's Request for Admissions*, dated October 21, 2015.

12. Attached hereto as Exhibit J is a true and correct copy of *Applicant's Supplemental Answers & Objections to Opposer's Interrogatories*, dated October 30, 2015. Attached hereto as Exhibit K is a true and correct copy of Applicant's letter dated October 30, 2015 which was received by Opposer on the same date.

13. Attached hereto as Exhibit L is a true and correct copy of Opposer's letter to Applicant as was sent on November 4, 2015.

14. Attached hereto as Exhibit M is a true and correct copy of Applicant's letter to Opposer as received by Opposer on November 13, 2015.

15. Attached hereto as Exhibit N is a true and correct copy of Applicant's supplemental production as received by Opposer on November 13, 2015.

16. Attached hereto as Exhibit O is a true and correct copy of Applicant's *Supplemental Responses & Objections to Opposer's Requests for Admissions*, dated November 13, 2015.

17. Attached hereto as Exhibit P is a true and correct copy of Applicant's *Supplemental Responses & Objections to Opposer's Requests for Production*, dated November 13, 2015.

18. Attached hereto as Exhibit Q is a true and correct copy of Opposer's letter to Applicant as was sent on December 4, 2015.

19. Attached hereto as Exhibit R is a true and correct copy of *Opposer's Second Set of Interrogatories to Applicant*.

20. Attached hereto as Exhibit S is a true and correct copy of the Opposer's email to Applicant sent on March 18, 2016.

21. To date, PepsiCo has not received a response to its letter of December 4, 2015 or its email of March 18, 2016, and has received no response to *Opposer's Second Set of Interrogatories to Applicant.*

Pursuant to 28 U.S.C. § 1746, I, Lauren Beth Emerson, further declare under penalty of perjury that all statements made herein based on my own personal knowledge are true and that all statements made on information and belief are believed to be true.

Date: June 10, 2016

Lauren Beth Emerson

EXHIBIT A

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

IN THE MATTER OF APPLICATION

Mark	:	AQUAFIX
Applicant	:	MVS International Inc.
Serial No.	:	86/384,378
Filed	:	September 3, 2014
Published in the Official Gazette	:	December 30, 2014

PEPSICO, INC.,	:	
Opposer,	:	Opposition No. 91221666
v.	:	
MVS INTERNATIONAL INC.	:	
Applicant.	:	

OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT

Opposer, PepsiCo, Inc., by its attorneys, hereby submits to Applicant, MVS International Inc., the following Interrogatories and requests that separate, full and complete written answers thereto, under oath, be made within thirty (30) days from service hereof, at the offices of Baker Botts L.L.P., 30 Rockefeller Plaza, New York, New York 10112-4498, in accordance with Trademark Rule 2.120, 37 C.F.R. § 2.120, and Rule 33 of the Federal Rules of Civil Procedure.

These Interrogatories shall be answered in accordance with the Instructions as set forth below. The full text of the Instructions and Definitions herein shall be deemed incorporated into each Interrogatory below.

INSTRUCTIONS

These Interrogatories shall be deemed to seek answers as of the date hereof, but shall be deemed to be continuing so that any additional information relating in any way to these Interrogatories which Applicant acquires or which becomes known to Applicant up to and including the time of trial shall be furnished to Opposer promptly after such information is acquired or becomes known.

Should an Interrogatory not specifically request a particular fact or facts, but where such fact or facts are necessary to make the response to the Interrogatory comprehensible or not misleading, Applicant is requested to include such fact or facts as part of its response.

Unless otherwise specifically indicated herein below, the time period for which information is requested shall be from the date of Applicant's first consideration of the mark which is the subject of U.S. Application Serial No. 86/384,378 or any variants thereof, to the present date.

DEFINITIONS

1. "Applicant" means not only the named Applicant, MVS International, Inc, in Opposition No. 91221666, but also its agent(s), employee(s), representative(s), and attorney(s), as well as each entity or person through which Applicant claims purported trademark rights in and to the alleged mark AQUAFIX which is the subject of U.S. Application Serial No. 86/384,378.

2. "Opposer" shall mean PepsiCo, Inc. and its predecessors, successors in interest, subsidiaries, and/or any related entities.

3. The term "person" shall mean natural person(s), individual(s), officer(s) or employee(s) of Applicant, firm(s), partnership(s), joint venture(s), government entity(ies), social or political organization(s), association(s), corporation(s), company(ies), division(s), business(es)

or any other entity in any other department or other unit thereof, whether de facto or de jure, incorporated or unincorporated.

4. As used herein, the term "document" is used in its customary broad sense and includes, without being limited thereto, the following items, whether printed, or recorded, or filmed, or reproduced by any other mechanical process, or written or produced by hand and whether or not claimed to be privileged against discovery on any ground, and including, but not limited to, all originals, masters and copies, namely, agreements; contracts and/or memoranda of understanding; assignments; licenses; correspondence and/or communications, including intracompany correspondence and/or communications; facsimiles, emails, instant messages, text messages, MMS, cablegrams, telex messages, radiograms and telegrams; reports, notes and memoranda; summaries, minutes and conferences, including lists of persons attending meetings or conferences; summaries and recordings of personal conversations and interviews; computer files or electronic files, CDs, DVDs, presentations, books, manuals, publications and diaries; data sheets and notebooks; charts; plans; sketches and drawings; photographs, motion pictures; audio and video tapes and disks; models and mock-ups; reports and/or summaries of investigations; opinions and reports of experts and consultants; patents, registrations of marks, copyrights and applications for any of them; domain name registrations, opinions of counsel; sales records, including purchase orders, order acknowledgments and invoices; books of account; statements, bills, checks and vouchers; reports and summaries of negotiations; brochures; pamphlets; catalogs and catalog sheets; sales literature and sales promotion materials; advertisements; displays, circulars; trade letters, notices and announcements; press, publicity, trade and product releases; drafts of originals of or preliminary notes on, and marginal comments appearing on, any

document; other reports and records; and any other information comprising paper, writing, computer records or files, or physical thing.

5. Words of gender shall be construed as including all genders, without limitations.

6. The connectives "and/or", "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses, information or documents that might otherwise be construed to be outside of its scope.

7. The terms "all" and "each" shall be construed as all and each.

8. The use of the singular form of any word includes the plural and vice versa.

9. "United States" shall include the United States of America, its possessions, and territories.

10. The term "produce" means to provide a copy or make available for inspection and copying at the time and place specified above.

11. "Applicant's Mark" shall mean and refer to the alleged mark AQUAFIX which is the subject of U.S. Trademark Application Serial No. 86/384,378, any component thereof and/or any variants of that mark.

12. As used herein, "Opposer's Marks" shall mean and refer to the "AQUAFINA Marks" as defined in the Notice of Opposition in Opposition No. 91221666, including those marks identified individually and/or collectively in paragraphs 2-9 of the Notice of Opposition.

13. The term "use", "used" or "used in commerce," as used herein, shall have the same meaning as "use in commerce" set out in 15 U.S.C. § 1127.

14. The term “third parties” or “third party” refers to individuals or entities that are not a party to this action.

15. The term “promotion”, “promotional” or “promote” shall mean any press release, trade show exhibits, trade show booths, direct mail, brochures, pamphlets, flyers, interviews, letters, solicitations, presentations, web sites or web pages, industry conferences or any other means of making the media, trade, investors, customers or public more aware of the Applicant or its respective goods or use of Applicant’s Mark, as defined herein.

16. As used herein, “identify”, or give “identity” of means:

(a) In the case of a person, to state:

(i) full name;

(ii) present residence address and telephone number;

(iii) present business address and telephone number;

(iv) present position, business affiliation, and job description;

(v) if any of the information set forth in (i) - (iv) is unknown, so state and set forth the corresponding last known such information;

(b) In the case of a corporation, to state:

(i) full name;

(ii) place and date of incorporation or foundation;

(iii) address and principal place of business;

(iv) identity of officers or other persons having knowledge of the matters with respect to which such corporation is named;

(c) In the case of any other person other than a natural person or corporation, to state:

(i) full name;

(ii) address and principal place of business;

(iii) identity of officers or other persons having knowledge of the matter with respect to which such person is named.

(d) In the case of an event or occurrence, state the date(s) and geographic locations(s), describe the transactions and events, and identify the person(s), corporation(s) or other entities involved in accordance with the instructions set forth in this paragraph.

17. With respect to each document or communication which is withheld, whether under claim of privilege or otherwise, please provide the following information:

(i) the date, identity and general subject matter of each such document;

(ii) the grounds asserted in support of the failure to produce the document;

(iii) the "identity" of each person (other than stenographic or clerical assistants) participating in the preparation of the "document";

(iv) the "identity" of each person to whom the contents of the "document" were communicated by copy, distribution, reading or substantial summarization;

(v) a description of any document or other material transmitted with or attached to the "document";

(vi) the number of pages in the "document";

(vii) whether any business or non-legal matter is contained or discussed in the "document".

INTERROGATORIES

INTERROGATORY NO. 1:

Describe Applicant's business with respect to its use of or plans to use Applicant's Mark.

INTERROGATORY NO. 2:

A. Identify all products offered or intended to be offered by Applicant under or in connection with Applicant's Mark.

B. For every product identified in response to Paragraph A hereof, state the date the product was first distributed, offered or sold to customers or consumers, or if not yet distributed, offered or sold, the date on which Applicant intends to distribute, offer or sell it to customers or consumers.

C. For each product identified in response to Paragraph A hereof, state the volume of sales in dollars and units since first use.

INTERROGATORY NO. 3:

A. State the facts and circumstances concerning, referring or relating to Applicant's decision to adopt the Applicant's Mark, including the commercial impression intended through the use of Applicant's Mark.

B. Identify each person responsible for the creation and selection of Applicant's Mark.

INTERROGATORY NO. 4:

For each product identified in response to Interrogatory No. 2, identify (a) the class of purchasers intended as the ultimate consumers, (b) the geographical areas in which such product has been or is intended to be offered, and (c) the means by which customers are provided or are intended to be provided with information concerning, referring or relating to such product.

INTERROGATORY NO. 5:

A. Identify and describe the channels of trade through which Applicant intends to market, advertise, promote and/or sell products bearing or in connection with Applicant's Mark.

B. Identify the first customer to whom Applicant has distributed or sold products bearing or in connection with Applicant's Mark.

C. Identify each class of customer to whom Applicant has distributed or sold products bearing or in connection with Applicant's Mark.

INTERROGATORY NO. 6:

Identify the persons who have been or will be principally responsible for the advertising, promotion and/or sale of each product identified in response to Interrogatory No. 2.

INTERROGATORY NO. 7:

Identify each expert witness contacted in connection with the instant proceeding and the substance of his or her expected testimony herein.

INTERROGATORY NO. 8:

Identify all trademark searches and/or investigations conducted to determine the availability of the Applicant's Mark or any component thereof. If a trademark search was not conducted for the Applicant's Mark prior to filing the instant application or adopting said mark, explain why.

INTERROGATORY NO. 9:

Identify all opinions received by Applicant concerning, referring or relating to the availability of the Applicant's Mark in respect to any goods. If such opinion was not obtained prior to filing the instant application or adopting said mark, explain why.

INTERROGATORY NO. 10:

Describe the date and circumstances surrounding Applicant's first knowledge of Opposer's Mark.

INTERROGATORY NO. 11:

Identify and describe all known instances in which persons mistakenly believed that Applicant or its business or products were associated or affiliated with Opposer.

INTERROGATORY NO. 12:

Describe in detail all efforts or intended efforts to promote, advertise, market or otherwise bring Applicant's products identified by Applicant's Mark to the attention of potential customers or consumers.

INTERROGATORY NO. 13:

Describe in detail all test marketing conducted for each product identified or intended to be identified by Applicant's Mark, including dates, locations, and products tested.

Respectfully submitted,

BAKER BOTTS L.L.P.

Dated: July 3, 2015

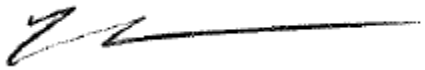
Paul J. Reilly
Lauren Beth Emerson
30 Rockefeller Plaza
New York, New York 10112-4498
(212) 408-2500
Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, a true and accurate copy of the foregoing OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT was served on Applicant, MVS International, Inc., by express courier and email, at the following address of record:

HUMBERTO RUBIO
LAW FIRM OF RUBIO & ASSOCIATES PA
8950 SW 74TH CT STE 1804
MIAMI, FL 33156-3177
UNITED STATES
hrubio@rubiolegal.com

Dated: July 3, 2015



Lauren Beth Emerson

EXHIBIT B

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

IN THE MATTER OF APPLICATION

Mark	:	AQUAFIX
Applicant	:	MVS International Inc.
Serial No.	:	86/384,378
Filed	:	September 3, 2014
Published in the Official Gazette	:	December 30, 2014

PEPSICO, INC.,	:	
Opposer,	:	Opposition No. 91221666
v.	:	
MVS INTERNATIONAL INC.	:	
Applicant.	:	

OPPOSER'S FIRST REQUEST FOR THE
PRODUCTION OF DOCUMENTS AND THINGS

Opposer, PepsiCo, Inc. ("Opposer"), by its attorneys, hereby requests pursuant to Trademark Rule 2.120(d), 37 C.F.R. §2.120(d), and Rule 34 of the Federal Rules of Civil Procedure, that within 30 days of service hereof Applicant, MVS International Inc. ("Applicant"), produce for inspection and copying at the offices of Baker Botts L.L.P., 44th Floor, 30 Rockefeller Plaza, New York, NY 10112-4498, all the documents and things identified in and/or responsive to the following document requests.

These document requests shall be responded to in accordance with the Instructions, as set forth below. The full text of the Instructions and Definitions shall be deemed incorporated into each document request.

INSTRUCTIONS

These document requests are continuing in nature and any documents or things obtained, discovered or formulated by Applicant subsequent to its production pursuant to these requests, which should have been responsive to these requests, shall be produced promptly for inspection and copying by Opposer.

The documents requested herein are intended to include all documents in the possession, custody or control of Applicant (as defined herein).

Unless otherwise specifically indicated herein below, the time period for which information is requested shall be from the date of Applicant's first consideration of the mark which is the subject of U.S. Application Serial No. 86/384,378, or any variants thereof, to the present date.

DEFINITIONS

The Definitions set forth in "Opposer's First Set of Interrogatories To Applicant" shall be and are incorporated herein by reference, and such Definitions shall apply to each document request set forth below.

DOCUMENT REQUESTS

REQUEST NO. 1:

All documents concerning, referring or relating to Applicant's creation, selection and adoption of Applicant's Mark.

REQUEST NO. 2:

All documents demonstrating and/or concerning, referring or relating to Applicant's bona fide intention to use Applicant's Mark.

REQUEST NO. 3:

All documents demonstrating and/or concerning, referring or relating to efforts or actions undertaken by Applicant to make first use of Applicant's Mark in the United States.

REQUEST NO. 4:

Specimens of or documents sufficient to identify (i) each product marketed, advertised, promoted or sold bearing Applicant's Mark, or (ii) each product identified in U.S. Application Serial No. 86/384,378 intended to be marketed, advertised, promoted or sold bearing Applicant's Mark.

REQUEST NO. 5:

Representative examples of advertisements or promotional materials or proposed advertisements or promotional materials for products bearing or intended to bear Applicant's Mark.

REQUEST NO. 6:

All documents referring or relating to advertisements and/or promotional material or intended advertisements and/or promotional material for products bearing Applicant's Mark produced in response to Request No. 5.

REQUEST NO. 7:

All documents that refer or relate to the first use or intended first use of Applicant's Mark.

REQUEST NO. 8:

All documents that refer or relate to the first sale or intended first sale of products bearing or offered in connection with Applicant's Mark.

REQUEST NO. 9:

All business or marketing plans that refer or relate to Applicant's Mark.

REQUEST NO. 10:

A representative example or specimen of all labels, cartons, containers and/or other packaging components that are used or intended to be used in connection with products bearing Applicant's Mark.

REQUEST NO. 11:

Representative documents that refer or relate to the trade channels through which products bearing Applicant's Mark are sold, moved or are intended to be sold or moved.

REQUEST NO. 12:

All documents including, without limitation, communications, investigations, searches, trademark search reports, studies, focus groups, surveys, inquiries or meetings concerning, referring or relating to Applicant's decision to select, adopt, register and/or use Applicant's Mark.

REQUEST NO. 13:

All documents or communications, including drafts, created by any person whom Applicant has contacted concerning opinions, advice, reports, studies, facts, information, surveys or expert testimony which refer or relate to Applicant's Mark or Opposer's Mark.

REQUEST NO. 14:

All documents referring or relating to or otherwise supporting or substantiating Applicant's denial of the allegations in the Notice of Opposition in this matter, including, but not limited to, Paragraphs 12-13, 15-17 and 19.

REQUEST NO. 15:

All documents referring or relating to or otherwise supporting or substantiating Applicant's purported affirmative defense that Opposer is "merely anti-competitive in nature."

REQUEST NO. 16:

All documents referring or relating to or otherwise supporting or substantiating Applicant's purported affirmative defense that "there is no likelihood of confusion between Applicant and Opposer's marks because, among other things, the marks are different in appearance, meaning and overall commercial impression. Applicant's mark is phonetically and visually different. Furthermore, the meaning and

overall commercial impression between Applicant's mark and the marks basis of the Opposer's opposition are very different as well."

REQUEST NO. 17:

All documents referring or relating to or otherwise supporting or substantiating Applicant's purported affirmative defense that "Opposer is improperly dissecting Applicant's mark and claiming exclusive ownership to the term AQUA."

REQUEST NO. 18:

All documents referring or relating to or otherwise supporting or substantiating Applicant's purported affirmative defense that "No damage or injury has resulted, will result, or is likely to result to Opposer from the registration of Applicant's trademarks due to, among other factors, the difference between the marks and the different commercial channels where the goods are to be offered."

REQUEST NO. 19:

Representative documents that refer or relate to the class or type of consumer or prospective consumer of Applicant's products offered or intended to be offered for sale in connection with Applicant's Mark.

REQUEST NO. 20:

All documents that refer or relate to the derivation, commercial impression, connotation, meaning and/or message intended by Applicant through Applicant's use or intended use of Applicant's Mark or perceived by consumers observing, otherwise learning of or becoming aware of Applicant's Mark, including, but not limited to, surveys, studies, research, reports or investigations.

REQUEST NO. 21:

All documents concerning, referring or relating to Opposer and/or Opposer's Mark.

REQUEST NO. 22:

All documents used, considered or relied upon by Applicant in preparing responses and/or objections to Opposer's First Set of Interrogatories and/or the Answer to the Notice of Opposition in the above captioned matter.

REQUEST NO. 23:

All documents concerning, referring, or relating to instances of confusion between Applicant's Mark or goods identified by Applicant's Mark on the one hand, and Opposer's Marks or goods identified by Opposer's Marks on the other.

REQUEST NO. 24:

All documents concerning, referring, or relating to U.S. Application Serial No. 86/384,378.

REQUEST NO. 25:

All documents concerning, referring or relating to applications to register marks with the United States Patent and Trademark Office that include the term AQUAFIX.

Respectfully submitted,

BAKER BOTTS L.L.P.,

Dated: July 3, 2015 By: _____

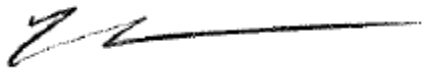
Paul J. Reilly
Lauren Beth Emerson
30 Rockefeller Plaza, 44th Fl.
New York, New York 10112-4498
(212) 408-2500
Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, a true and accurate copy of the foregoing OPPOSER'S FIRST REQUEST FOR THE PRODUCTION OF DOCUMENTS AND THINGS was served on Applicant, MVS International, Inc., by email and express courrier, at the following address of record:

HUMBERTO RUBIO
LAW FIRM OF RUBIO & ASSOCIATES PA
8950 SW 74TH CT STE 1804
MIAMI, FL 33156-3177
UNITED STATES
hrubio@rubiolegal.com

Dated: July 3, 2015



Lauren Beth Emerson

EXHIBIT C

Albert, Julie Beth

From: Humberto Rubio <hrubio@rubiolegal.com>
Sent: Monday, August 03, 2015 5:46 PM
To: Emerson, Lauren
Cc: Reilly, Paul J.; Felipe Rubio
Subject: PepsiCo, Inc. v. MVS International, Inc. - Discovery
Attachments: MVS Initial Dislcosures.pdf; Responsive Docs MVS.pdf; Response RFProduction MVS.pdf; Response Interrogatories MVS.pdf

Ms. Emerson:

Enclosed please find Applicants:

1. Initial Disclosures
2. Response to Opposer's Request for Production
3. Response to Opposer's Interrogatories

Regards,

Humberto Rubio, Jr., Esq.
Law Firm of Rubio & Associates, P.A.
Town Center One
8950 SW 74 Ct., Suite 1804
Miami, Fl 33156
Tel: (786) 220-2061
Fax: (786) 220-2062
hrubio@rubiolegal.com

CONFIDENTIALITY NOTICE: This e-mail and any attachments are intended for the recipient only. If you have received this e-mail in error, you are advised that any distribution, dissemination, saving or copying of this e-mail and its attachments is strictly prohibited. If received in error, please send this e-mail back to us along with any attachments and delete or destroy any original or copy you may have. If you have any questions or comments regarding this request, please contact us at (786) 220-2061 so that we may assist you. IRS CIRCULAR 230 NOTICE: Unless expressly stated otherwise, any written advice contained in, forwarded with, or attached to this e mail is not intended or written to be used, and cannot be used, by any other person for the purpose of avoiding any penalties that may be imposed under the Internal Revenue Code.

From: Lauren.Emerson@bakerbotts.com [mailto:Lauren.Emerson@bakerbotts.com]
Sent: Friday, July 03, 2015 5:18 PM
To: Humberto Rubio
Cc: Paul.Reilly@bakerbotts.com
Subject: PepsiCo, Inc. v. MVS International, Inc.

Mr. Rubio

Please see the attached documents: Opposer's Initial Disclosure Statement Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, Opposer's First Request for the Production of Documents and Things, and Opposer's First Set of Interrogatories to Applicant.

Regards,
Lauren Emerson

Lauren Emerson
Baker Botts LLP

30 Rockefeller Plaza
New York, NY 10112
Direct: (212) 408-2533
Fax: (212) 259-2533
mailto:lauren.emerson@bakerbotts.com

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

IN THE MATTER OF APPLICATION SERIAL NO. 86/384,378:

Mark	: AQUAFIX
Applicant	: MVS International Inc.
Filed	: September 3, 2014
Published in the Official Gazette	: December 30, 2014

PEPSICO, INC.,

Opposer, Opposition No. 91221666

v.

MVS INTERNATIONAL INC.,

Applicant.

APPLICANT'S INITIAL DISCLOSURE STATEMENT PURSUANT
TO RULE 26(A)(1) OF THE FEDERAL RULES OF CIVIL PROCEDURE

Pursuant to the April 24, 2015 Order of this Honorable Trademark Trial and Appeal Board ("Board") and Fed. R. Civ. P. 26(a)(1), Application MVS International, Inc. ("Applicant"), provides the following Initial Disclosures to Pepsico, Inc. ("Opposer"). These disclosures are made expressly subject to and without waiving any applicable privileges or exemptions from discovery, including, but not limited to, the attorney-client privilege and the attorney work-product immunity doctrine. Applicant reserves the right to supplement these disclosures pursuant to Rule 26(e) of the Fed. R. Civ. P., if it becomes aware of any additional information or documents to be disclosed.

A. Identification Of Individuals Likely To Have Relevant Information Which Applicant May Use To Support Its Defenses Or Rebut Any Claims Raised By Opposer

1. Juan Iliopulos
Vice-President
MVS International, Inc.
c/o Law Firm of Rubio & Associates, PA
8950 SW 74 Ct., # 1804
Miami, FL 33156

Juan Iliopulos likely has information relevant to the following matters: Ownership of the Applicant's mark, design, inspiration and creation for Applicant's mark; Applicant's business activities and operations; Applicant's goods and services; Applicant's trademark application; facts and defenses alleged in the Answer to the Notice of Opposition.

B. Description By Category And Location Of Documents & Things In The Possession, Custody Or Control Of Applicant Which Applicant May Use To Support Its Defenses Or Rebut Any Claims Raised By Opposer

The following documents and things are located at the offices of Applicant:

1. Documents associated with Applicant's federal trademark application, its creation and its proposed goods.

Applicant reserves the right to amend this list upon identification of other documents and things through discovery or through development of the issues.

Respectfully submitted,

Dated: August 03, 2015

/Humberto Rubio/

Humberto Rubio
Law Firm of Rubio & Associates
8950 SW 74th Court, Suite 1804
Miami, Florida 33156
Phone: 305 670 0323
Fax: 305 670 0322

Attorney for Applicant,
MVS International Inc.

CERTIFICATE OF SERVICE

As counsel for Applicant, I hereby certify that I caused a true and correct copy of the attached APPLICANT'S INITIAL DISCLOSURES was served on this date via electronic to mailto:lauren.emerson@bakerbotts.com and Paul.Reilly@bakerbotts.com mail and U.S. first class mail, postage prepaid, upon the correspondence address of record as follows:

Applicant's Correspondence Address

PepsiCo, Inc.
Paul Lee, Esq.
700 Anderson Hill Road
Purchase, NY 10577
UNITED STATES

BAKER BOTTS, LLC
Paul J. Reilly, Esq.
Lauren Emerson, Esq.
30 Rockefeller Plaza, 44th FL.
New York, New York 10112-4498

Dated: August 03, 2015

/Humberto Rubio/
Humberto Rubio
Law Firm of Rubio & Associates
8950 SW 74th Court, Suite 1804
Miami, Florida 33156
Phone: 305 670 0323
Fax: 305 670 0322

Attorney for Applicant,
MVS International Inc.

PTO Form 1478 (Rev 9/2006)
OMB No. 0651-0009 (Exp 12/31/2014)

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 86384378
Filing Date: 09/03/2014

NOTE: Data fields with the * are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.

The table below presents the data as entered.

Input Field	Entered
TEAS Plus	**YES**
MARK INFORMATION	
***MARK**	AQUAFIX
***STANDARD CHARACTERS**	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	AQUAFIX
***MARK STATEMENT**	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
***OWNER OF MARK**	MVS International Inc.
***STREET**	2993 SW 141st Terrace
***CITY**	Davie
***STATE** **(Required for U.S. applicants)**	Florida
***COUNTRY**	United States
***ZIP/POSTAL CODE** **(Required for U.S. applicants only)**	33330
LEGAL ENTITY INFORMATION	
***TYPE**	CORPORATION

* STATE/COUNTRY OF INCORPORATION	Florida
GOODS AND/OR SERVICES AND BASIS INFORMATION	
*INTERNATIONAL CLASS	032
*IDENTIFICATION	Concentrates and powders used in the preparation of energy drinks and fruit-flavored beverages; Concentrates for making fruit drinks; Concentrates, syrups or powders for making soft drinks or tea-flavored beverages; Concentrates, syrups or powders used in the preparation of soft drinks; Concentrates, syrups or powders used in the preparation of sports and energy drinks; Drinking water with vitamins; Energy drinks; Essences for use in making soft drinks; Non-alcoholic drinks, namely, energy shots; Non-alcoholic sparkling fruit juice beverages; Powders for making soft drinks; Powders used in the preparation of isotonic sports drinks and sports beverages; Sparkling water; Sports drinks, namely, energy drinks; Syrups for making fruit-flavored drinks; Syrups for making soft drinks
*FILING BASIS	SECTION 1(b)
ADDITIONAL STATEMENTS INFORMATION	
*TRANSLATION (if applicable)	
*TRANSLITERATION (if applicable)	
*CLAIMED PRIOR REGISTRATION (if applicable)	
*CONSENT (NAME/LIKENESS) (if applicable)	
*CONCURRENT USE CLAIM (if applicable)	
ATTORNEY INFORMATION	
NAME	Humberto Rubio
FIRM NAME	Law Firm of Rubio & Associates, P.A.
INTERNAL ADDRESS	8950 SW 74th Ct
STREET	Suite 1804
CITY	Miami
STATE	Florida

COUNTRY	United States
ZIP/POSTAL CODE	33156
PHONE	3056700323
EMAIL ADDRESS	hrubio@rubiolegal.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
DOMESTIC REPRESENTATIVE INFORMATION	
NAME	Humberto Rubio
FIRM NAME	Law Firm of Rubio & Associates, P.A.
INTERNAL ADDRESS	8950 SW 74th Ct
STREET	Suite 1804
CITY	Miami
STATE	Florida
COUNTRY	United States
ZIP CODE	33156
PHONE	3056700323
EMAIL ADDRESS	hrubio@rubiolegal.com
CORRESPONDENCE INFORMATION	
***NAME**	Humberto Rubio
FIRM NAME	Law Firm of Rubio & Associates, P.A.
INTERNAL ADDRESS	8950 SW 74th Ct
***STREET**	Suite 1804
***CITY**	Miami
***STATE** **(Required for U.S. applicants)**	Florida
***COUNTRY**	United States
***ZIP/POSTAL CODE**	33156
PHONE	3056700323
***EMAIL ADDRESS**	hrubio@rubiolegal.com;frubio@rubiolawyers.com; mail@rubiolaw.com
***AUTHORIZED TO COMMUNICATE VIA EMAIL**	Yes
FEE INFORMATION	

NUMBER OF CLASSES	1
FEE PER CLASS	275
***TOTAL FEE PAID**	275
SIGNATURE INFORMATION	
***** **SIGNATURE**	/humberto rubio/
***** **SIGNATORY'S NAME**	Humberto Rubio
***** **SIGNATORY'S POSITION**	Attorney of Record, Florida Bar Member
SIGNATORY'S PHONE NUMBER	3056700323
***** **DATE SIGNED**	09/03/2014

PTO Form 1478 (Rev 9/2006)
OMB No. 0651-0009 (Exp 12/31/2014)

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 86384378
Filing Date: 09/03/2014

To the Commissioner for Trademarks:

MARK: AQUAFIX (Standard Characters, see mark)
The literal element of the mark consists of AQUAFIX.
The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, MVS International Inc., a corporation of Florida, having an address of
2993 SW 141st Terrace
Davie, Florida 33330
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

For specific filing basis information for each item, you must view the display within the Input Table.
International Class 032: Concentrates and powders used in the preparation of energy drinks and fruit-flavored beverages; Concentrates for making fruit drinks; Concentrates, syrups or powders for making soft drinks or tea-flavored beverages; Concentrates, syrups or powders used in the preparation of soft drinks; Concentrates, syrups or powders used in the preparation of sports and energy drinks; Drinking water with vitamins; Energy drinks; Essences for use in making soft drinks; Non-alcoholic drinks, namely, energy shots; Non-alcoholic sparkling fruit juice beverages; Powders for making soft drinks; Powders used in the preparation of isotonic sports drinks and sports beverages; Sparkling water; Sports drinks, namely, energy drinks; Syrups for making fruit-flavored drinks; Syrups for making soft drinks
Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

The applicant's current Attorney Information:
Humberto Rubio of Law Firm of Rubio & Associates, P.A.
8950 SW 74th Ct
Suite 1804
Miami, Florida 33156
United States

The applicant hereby appoints Humberto Rubio of Law Firm of Rubio & Associates, P.A.
Suite 1804
8950 SW 74th Ct
Miami Florida 33156
United States
as applicant's representative upon whom notice or process in the proceedings affecting the mark may be served.

The applicant's current Correspondence Information:

Humberto Rubio
Law Firm of Rubio & Associates, P.A.
8950 SW 74th Ct
Suite 1804
Miami, Florida 33156
3056700323(phone)
hrubio@rubiolegal.com;frubio@rubiolawyers.com; mail@rubiolaw.com (authorized)

A fee payment in the amount of $275 has been submitted with the application, representing payment for 1 class(es).

Declaration

The signatory believes that: if the applicant is filing the application under 15 U.S.C. Section 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant or the applicant's related company or licensee is using the mark in commerce on or in connection with the goods/services in the application, and such use by the applicant's related company or licensee inures to the benefit of the applicant; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. Section 1051(b), Section 1126(d), and/or Section 1126(e), the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Signature: /humberto rubio/ Date Signed: 09/03/2014
Signatory's Name: Humberto Rubio
Signatory's Position: Attorney of Record, Florida Bar Member

RAM Sale Number: 86384378
RAM Accounting Date: 09/04/2014

Serial Number: 86384378
Internet Transmission Date: Wed Sep 03 16:58:51 EDT 2014
TEAS Stamp: USPTO/FTK-76.110.3.202-20140903165851217
846-86384378-50086f168da32183f658c0f73bb
061b3963bf0c572c1fe53e99ebbbe638ca63b-CC
-3509-20140903165355446556

AQUAFIX

AQUAFIX

From: TMOfficialNotices@USPTO.GOV
Sent: Wednesday, December 10, 2014 03:37 AM
To: hrubio@rubiolegal.com
Cc: frubio@rubiolawyers.com ; mail@rubiolaw.com
Subject: Official USPTO Notification of Notice of Publication: U.S. Trademark SN 86384378: AQUAFIX

NOTIFICATION OF "NOTICE OF PUBLICATION"

Your trademark application (Serial No. 86384378) is scheduled to publish in the *Official Gazette* on Dec 30, 2014. To preview the Notice of Publication, go to http://tdr.uspto.gov/search.action?sn=86384378. If you have difficulty accessing the Notice of Publication, contact TDR@uspto.gov.

PLEASE NOTE:

1. The Notice of Publication may not be immediately available but will be viewable within 24 hours of this e-mail notification.
2. You will receive a second e-mail on the actual "Publication Date," which will include a link to the issue of the *Official Gazette* in which the mark has published.

Do NOT hit "Reply" to this e-mail notification. If you have any questions about the content of the Notice of Publication, contact TMPostPubQuery@uspto.gov.

Trademark Snap Shot Publication Stylesheet

(Table presents the data on Publication Approval)

OVERVIEW

SERIAL NUMBER	86384378	FILING DATE	09/03/2014
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	FLETCHER, TRACY L	L.O. ASSIGNED	115

PUB INFORMATION

RUN DATE	11/21/2014
PUB DATE	N/A
STATUS	680-APPROVED FOR PUBLICATON
STATUS DATE	11/20/2014
LITERAL MARK ELEMENT	AQUAFIX

DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPUB 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

FILING BASIS

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	NO	1 (a)	NO	1 (a)	NO
1 (b)	YES	1 (b)	YES	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

MARK DATA

STANDARD CHARACTER MARK	YES
LITERAL MARK ELEMENT	AQUAFIX

MARK DRAWING CODE	4-STANDARD CHARACTER MARK
COLOR DRAWING FLAG	NO

CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	MVS International Inc.
ADDRESS	2993 SW 141st Terrace Davie, FL 33330
ENTITY	03-CORPORATION
CITIZENSHIP	Florida

GOODS AND SERVICES

INTERNATIONAL CLASS	032
DESCRIPTION TEXT	Concentrates and powders used in the preparation of energy drinks and fruit-flavored beverages; Concentrates for making fruit drinks; Concentrates, syrups or powders for making soft drinks or tea-flavored beverages; Concentrates, syrups or powders used in the preparation of soft drinks; Concentrates, syrups or powders used in the preparation of sports and energy drinks; Drinking water with vitamins; Energy drinks; Essences for use in making soft drinks; Non-alcoholic drinks, namely, energy shots; Non-alcoholic sparkling fruit juice beverages; Powders for making soft drinks; Powders used in the preparation of isotonic sports drinks and sports beverages; Sparkling water; Sports drinks, namely, energy drinks; Syrups for making fruit-flavored drinks; Syrups for making soft drinks

GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	032	FIRST USE DATE	NONE	FIRST USE IN COMMERCE DATE	NONE	CLASS STATUS	6-ACTIVE

MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION	NO
PSEUDO MARK	AQUA FIX

PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
11/20/2014	CNSA	P	APPROVED FOR PUB - PRINCIPAL REGISTER	005
11/20/2014	DOCK	D	ASSIGNED TO EXAMINER	004
09/16/2014	MPMK	E	NOTICE OF PSEUDO MARK E-MAILED	003

09/13/2014	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	002
09/06/2014	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	Humberto Rubio
CORRESPONDENCE ADDRESS	HUMBERTO RUBIO LAW FIRM OF RUBIO & ASSOCIATES, P.A. 8950 SW 74TH CT STE 1804 MIAMI, FL 33156-3177
DOMESTIC REPRESENTATIVE	Humberto Rubio

AQUAFIX

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

Dec 10, 2014

NOTICE OF PUBLICATION

1. Serial No.:
   86-384,378

2. Mark:
   AQUAFIX
   (STANDARD CHARACTER MARK)

3. International Class(es):
   32

4. Publication Date:
   Dec 30, 2014

5. Applicant:
   MVS International Inc.

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the *Official Gazette* on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a notice of allowance pursuant to section 13(b) of the Statute.

Copies of the trademark portion of the *Official Gazette* containing the publication of the mark may be obtained from:

The Superintendent of Documents
U.S. Government Printing Office
PO Box 371954
Pittsburgh, PA 15250-7954
Phone: 202-512-1800

By direction of the Commissioner.

Email Address(es):

hrubio@rubiolegal.com
frubio@rubiolawyers.com
mail@rubiolaw.com

From: TMOfficialNotices@USPTO.GOV
Sent: Tuesday, December 30, 2014 00:37 AM
To: hrubio@rubiolegal.com
Cc: frubio@rubiolawyers.com ; mail@rubiolaw.com
Subject: Official USPTO Notice of Publication Confirmation: U.S. Trademark SN 86384378: AQUAFIX

TRADEMARK OFFICIAL GAZETTE PUBLICATION CONFIRMATION

U.S. Serial Number: 86384378
Mark: AQUAFIX
International Class(es): 032
Owner: MVS International Inc.
Docket/Reference Number:

The mark identified above has been published in the Trademark Official Gazette (TMOG) on Dec 30, 2014.

To Review the Mark in the TMOG:

Click on the following link or paste the URL into an internet browser: https://tmog.uspto.gov/#issueDate=2014-12-30&serialNumber=86384378

On the publication date or shortly thereafter, the applicant should carefully review the information that appears in the TMOG for accuracy. If any information is incorrect due to USPTO error, the applicant should immediately email the requested correction to TMPostPubQuery@uspto.gov. For applicant corrections or amendments after publication, please file a post publication amendment using the form available at http://teasroa.uspto.gov/ppa/. For general information about this notice, please contact the Trademark Assistance Center at 1-800-786-9199.

Significance of Publication for Opposition:

* Any party who believes it will be damaged by the registration of the mark may file a notice of opposition (or extension of time therefor) with the Trademark Trial and Appeal Board. If no party files an opposition or extension request within thirty (30) days after the publication date, then eleven (11) weeks after the publication date a notice of allowance (NOA) should issue. (Note: The applicant must file a complete Statement of Use or Extension Request with the required fees within six (6) months after the NOA issues to avoid abandonment of the application.)

To check the status of the application, go to http://tsdr.uspto.gov/#caseNumber=86384378&caseType=SERIAL_NO&searchType=statusSearch or contact the Trademark Assistance Center at 1-800-786-9199. Please check the status of the application at least every three (3) months after the application filing date.

To view this notice and other documents for this application on-line, go to http://tsdr.uspto.gov/#caseNumber=86384378&caseType=SERIAL_NO&searchType=documentSearch. NOTE: This notice will only become available on-line the next business day after receipt of this e-mail.

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

IN THE MATTER OF APPLICATION SERIAL NO. 86/384,378:

Mark	: AQUAFIX
Applicant	: MVS International Inc.
Filed	: September 3, 2014
Published in the Official Gazette	: December 30, 2014

PEPSICO, INC.,

Opposer, Opposition No. 91221666

v.

MVS INTERNATIONAL INC.,

Applicant.

NOTICE OF SUBMITTING APPLICANT'S
RESPONSES & OBJECTIONS TO OPPOSER'S REQUEST FOR PRODUCTION

NOTICE IS HEREBY GIVEN that MVS International, Inc., by and through their undersigned attorneys, hereby files its responses and objection to Opposer's Request for Production propounded by Opposer.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served via electronic mail and US Mail this 3rd day of August, 2015to PepsiCo, Inc., Paul Lee, Esq., 700 Anderson Hill Road ,Purchase, NY 10577, and BAKER BOTTS, LLC, Paul J. Reilly, Esq., Lauren Emerson, Esq., 30 Rockefeller Plaza, 44th FL., New York, New York 10112-4498.

Dated: August 3, 2015.

Respectfully submitted,

Law Firm of Rubio & Associates
8950 SW 74th Court, Suite 1804
Miami, Florida 33156
Phone: 305 670 0323
Fax: 305 670 0322
Email: hrubio@rubiolegal.com

/s/Humberto Rubio
Humberto Rubio, Jr.
Attorney for Applicant,
DESTILERIA 501, S.A. DE C.V.

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

IN THE MATTER OF APPLICATION SERIAL NO. 86/384,378:

Mark	: AQUAFIX
Applicant	: MVS International Inc.
Filed	: September 3, 2014
Published in the Official Gazette	: December 30, 2014

PEPSICO, INC.,	:	
Opposer,	:	Opposition No. 91221666
v.	:	
MVS INTERNATIONAL INC.,	:	
Applicant.	:	

APPLICANT'S RESPONSES & OBJECTIONS
TO OPPOSER'S REQUEST FOR PRODUCTION

Applicant MVS International, Inc., by and through their undersigned attorneys, hereby respond to Opposer's Request for Production propounded by Opposer. The following responses are based upon information presently available to Applicant; which it believe are correct. The following responses are made without prejudice to Applicant' right to utilize subsequently discovered facts. Applicants reserve the right to supplement their responses to these requests as allowed by the applicable rules. No incidental or implied admissions of fact by Applicant are made by the responses below. The fact that Applicant has answered any request herein may not properly be taken as an admission that Applicant accepts the existence of any facts set forth or assumed by such request or that such response constitutes admissible evidence. The fact that Applicant has answered part or all of any request is not intended, and shall not be construed, to be a waiver of all or part of any objection to any request made by Applicant.

Applicant responds to Opposer's Requests as follows:

General Objections

Applicant adopt and incorporate by reference each of the following General Objections into each of its specific responses to the Opposer's Requests:

1. Applicant object to the Opposer's Requests to the extent the same calls for information protected by the attorney-client privilege, accountant-client privilege, work-product doctrine, or any other privilege or immunity. Any information or documents inadvertently produced which includes such privileged information shall not be deemed a waiver by Applicant of such privilege or doctrine. Applicant construe each request not to reach or include legal memoranda, drafts of pleadings, attorneys' notes, communications between Applicant and their counsel, or other documents and communications that have come into existence in anticipation of or after the commencement of this action. Consequently, Applicant' privilege log will not include such documents, but Applicant still assert the attorney-client privilege and work-product doctrine for all such documents.

2. Applicant objects to the Opposer's Requests to the extent that the same seek information or documents which are unreasonably cumulative or duplicative, or which are obtainable from some other source or in some other manner that is more convenient, less burdensome, and less expensive.

4. Applicant objects to the "instructions" and "definitions" to the extent that they attempt to impose obligations or requirements do not conform to or conflict with applicable law.

5. Applicant objects to Opposer's Production Requests to the extent they seek information or materials containing financial, bank, and net worth information and records of Applicant.

Specific Objections and Responses

Subject to and without waiving the above General Objections, Applicant further responds to the Opposer's Requests as follows:

Request No. 1.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it is attempting to determine whether documents responsive to the discovery request exist and will supplement as appropriate.

Request No 2.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it is attempting to determine whether documents responsive to the discovery request exist and will supplement as appropriate.

Request No 3.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it is attempting to determine whether documents responsive to the discovery request exist and will supplement as appropriate.

Request No 4.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it is attempting to determine whether documents responsive to the discovery request exist and will supplement as appropriate.

Request No. 5.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it is attempting to determine whether documents responsive to the discovery request exist and will supplement as appropriate.

Request No. 6.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it is attempting to determine whether documents responsive to the discovery request exist and will supplement as appropriate.

Request No. 7.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it is attempting to determine whether documents responsive to the discovery request exist and will supplement as appropriate.

Request No. 8.

Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to

relevant evidence. Applicant responds that it is attempting to determine whether documents responsive to the discovery request exist and will supplement as appropriate.

Request No. 9.
Response: A Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it is attempting to determine whether documents responsive to the discovery request exist and will supplement as appropriate.

Request No. 10.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it is attempting to determine whether documents responsive to the discovery request exist and will supplement as appropriate.

Request No. 11.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it is attempting to determine whether documents responsive to the discovery request exist and will supplement as appropriate.

Request No 12.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it is attempting to determine whether documents responsive to the discovery request exist and will supplement as appropriate.

Request No 13.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it is attempting to determine whether documents responsive to the discovery request exist and will supplement as appropriate.

Request No 14.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it is attempting to determine whether documents responsive to the discovery request exist and will supplement as appropriate.

Request No. 15.
Response: Applicant objects to this Request on the grounds that Jarabes has requested for PAM to select documents that prove or tend to prove certain the existence or denial of certain facts or allegations or claim – the thought process an attorney engages as proofs are selected to support or contradict certain allegations in the case. Defendants object on the grounds of attorney work product as to the compilation and organization of documents in support of certain claims. "Counsel's ordering of 'facts', referring to respective proofs, organizing, aligning and marshaling data with a view to combative employment is the mark of the adversary enterprise." Information sought by defendants regarding the existence of documents selected by opposing parties counsel as important to her legal theories concerning the case is protected as work product; Spork v. Peil, 759 F.2d 312, 316 (3D Cir. 1985. Selection and compilation of documents by counsel falls within the highly protective category of opinion work product; cert. denied, 474 U.S. 903 (1985); American National Red Cross v. Travelers Indemnity Co., 896 F. Supp. 8, 13-14 (D.D.C. 1995)

(requests for description of facts and documents which opposing party contends support each affirmative defense is an intrusion upon protected work product).

Request No. 16.
Response: Applicant objects to this Request on the grounds that Jarabes has requested for PAM to select documents that prove or tend to prove certain the existence or denial of certain facts or allegations or claim – the thought process an attorney engages as proofs are selected to support or contradict certain allegations in the case. Defendants object on the grounds of attorney work product as to the compilation and organization of documents in support of certain claims. "Counsel's ordering of 'facts', referring to respective proofs, organizing, aligning and marshaling data with a view to combative employment is the mark of the adversary enterprise." Information sought by defendants regarding the existence of documents selected by opposing parties counsel as important to her legal theories concerning the case is protected as work product; Spork v. Peil, 759 F.2d 312, 316 (3D Cir. 1985. Selection and compilation of documents by counsel falls within the highly protective category of opinion work product; cert. denied, 474 U.S. 903 (1985); American National Red Cross v. Travelers Indemnity Co., 896 F. Supp. 8, 13-14 (D.D.C. 1995) (requests for description of facts and documents which opposing party contends support each affirmative defense is an intrusion upon protected work product).

Request No. 17.
Response: Applicant objects to this Request on the grounds that Jarabes has requested for PAM to select documents that prove or tend to prove certain the existence or denial of certain facts or allegations or claim – the thought process an attorney engages as proofs are selected to support or contradict certain allegations in the case. Defendants object on the grounds of attorney work product as to the compilation and organization of documents in support of certain claims. "Counsel's ordering of 'facts', referring to respective proofs, organizing, aligning and marshaling data with a view to combative employment is the mark of the adversary enterprise." Information sought by defendants regarding the existence of documents selected by opposing parties counsel as important to her legal theories concerning the case is protected as work product; Spork v. Peil, 759 F.2d 312, 316 (3D Cir. 1985. Selection and compilation of documents by counsel falls within the highly protective category of opinion work product; cert. denied, 474 U.S. 903 (1985); American National Red Cross v. Travelers Indemnity Co., 896 F. Supp. 8, 13-14 (D.D.C. 1995) (requests for description of facts and documents which opposing party contends support each affirmative defense is an intrusion upon protected work product).

Request No. 18.
Response: Applicant objects to this Request on the grounds that Jarabes has requested for PAM to select documents that prove or tend to prove certain the existence or denial of certain facts or allegations or claim – the thought process an attorney engages as proofs are selected to support or contradict certain allegations in the case. Defendants object on the grounds of attorney work product as to the compilation and organization of documents in support of certain claims. "Counsel's ordering of 'facts', referring to respective proofs, organizing, aligning and marshaling data with a view to combative employment is the mark of the adversary enterprise." Information sought by defendants regarding the existence of documents selected by opposing parties counsel as important to her legal theories concerning the case is protected as work product; Spork v. Peil, 759 F.2d 312, 316 (3D Cir. 1985. Selection and compilation of documents by counsel falls within the highly protective category of opinion work product; cert. denied, 474 U.S. 903 (1985); American National Red Cross v. Travelers Indemnity Co., 896 F. Supp. 8, 13-14 (D.D.C. 1995) (requests for description of facts and documents which opposing party contends support each affirmative defense is an intrusion upon protected work product).

Request No. 19.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to

relevant evidence. Applicant responds that it is attempting to determine whether documents responsive to the discovery request exist and will supplement as appropriate.

Request No 20.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it is attempting to determine whether documents responsive to the discovery request exist and will supplement as appropriate.

Request No. 21.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it is attempting to determine whether documents responsive to the discovery request exist and will supplement as appropriate.

Request No 22.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it is attempting to determine whether documents responsive to the discovery request exist and will supplement as appropriate.

Request No 23.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it is attempting to determine whether documents responsive to the discovery request exist and will supplement as appropriate.

Request No 24.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Subject to this objections, Applicant responds:
See attached documents bates stamped 001-016

Request No. 25.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Subject to this objections, Applicant responds:
See attached documents bates stamped 001-016

CERTIFICATE OF SERVICE

As counsel for Applicant, I hereby certify that I caused a true and correct copy of the attached APPLICANT'S RESPONSES TO REQUEST FOR PRODUCTION was served on this date via electronic to mailto:lauren.emerson@bakerbotts.com and Paul.Reilly@bakerbotts.com mail and U.S. first class mail, postage prepaid, upon the correspondence address of record as follows:

Applicant's Correspondence Address

PepsiCo, Inc.
Paul Lee, Esq.
700 Anderson Hill Road
Purchase, NY 10577
UNITED STATES

BAKER BOTTS, LLC
Paul J. Reilly, Esq.
Lauren Emerson, Esq.
30 Rockefeller Plaza, 44th FL.
New York, New York 10112-4498

Dated: August 03, 2015

/Humberto Rubio/
Humberto Rubio
Law Firm of Rubio & Associates
8950 SW 74th Court, Suite 1804
Miami, Florida 33156
Phone: 305 670 0323
Fax: 305 670 0322

Attorney for Applicant,
MVS International Inc.

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

Patron Spirits International AG,	Opposition No. 91213827
Opposer,	Application Serial NO.: 85/644,021
v.	
DESTILERIA 501, S.A. DE C.V.,	
Applicant.	

Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

APPLICANT'S
ANSWERS & OBJECTIONS TO OPPOSER'S INTERROGATORIES

NOTICE IS HEREBY GIVEN that MVS International Inc., by and through the undersigned attorneys, hereby responds to Interrogatories propounded by Opposer. The response is attached hereto.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served via electronic mail and US Mail this 3rd day of August, 2015to PepsiCo, Inc., Paul Lee, Esq., 700 Anderson Hill Road ,Purchase, NY 10577, and BAKER BOTTS, LLC, Paul J. Reilly, Esq., Lauren Emerson, Esq., 30 Rockefeller Plaza, 44th FL., New York, New York 10112-4498.

Dated: August 3, 2015

Respectfully submitted,

Law Firm of Rubio & Associates
8950 SW 74th Court, Suite 1804
Miami, Florida 33156
Phone: 305 670 0323
Fax: 305 670 0322
Email: hrubio@rubiolegal.com

/s/Humberto Rubio
Humberto Rubio, Jr.

Attorney for Applicant,
DESTILERIA 501, S.A. DE C.V.

APPLICANT'S
RESPONSE TO OPPOSER'S
FIRST SET OF INTERROGATORIES

The responding Applicant, by and through the undersigned attorneys, hereby files its responses to Interrogatories propounded by Opposer.

The following responses to interrogatories are based upon information presently available to the responding Applicant, which it believes are correct. The following responses are made without prejudice to the responding Applicant' right to utilize subsequently discovered facts. The responding Applicant reserves the right to supplement its responses to these interrogatories as allowed by the applicable law.

No incidental or implied admissions of fact by the responding Applicant are made by the interrogatory responses below. The fact that the responding Applicant has answered any interrogatory herein may not properly be taken as an admission that the responding Applicant accept the existence of any facts set forth or assumed by such interrogatory or that such interrogatory response constitutes admissible evidence. The fact that the responding Applicant has answered part or all of any interrogatory is not intended, and shall not be construed, to be a waiver of all or part of any objection to any interrogatory made by the responding Applicant.

The responding Applicant responds to Opposer's Interrogatories as follows:

General Objections

The responding Applicant adopts and incorporates by reference each of the following General Objections into each of its specific responses to Opposer's Interrogatories:

1. The responding Applicant objects to the Opposer's Interrogatories to the extent the same calls for information protected by the attorney-client privilege, accountant-

client privilege, work-product doctrine, or any other privilege or immunity. The responding Applicant construes each interrogatory not to reach or include documents or communications between the responding Applicant and its counsel, or other documents and communications that have come into existence in anticipation of or after the commencement of this action. Consequently, the responding Applicant' privilege log, if any, will not include such documents, but the responding Applicant still asserts the attorney-client privilege and work-product doctrine for all such documents.

2. The responding Applicant objects to the Opposer's Interrogatories and the instructions and definitions contained therein to the extent the same are vague, overly broad, unduly burdensome and oppressive, and/or seek to impose burdens upon the responding Applicant that are different from or in addition to those authorized by applicable law.

3. The responding Applicant objects to Opposer's Interrogatories to the extent that the same seek information which is unreasonably cumulative or duplicative, or which is obtainable from some other source or in some other manner that is more convenient, less burdensome, and less expensive.

4. The responding Applicant objects to the Opposer's Interrogatories to the extent they seek information or materials containing financial, bank and net worth information and records of Responding Applicant.

Specific Objections and Responses

Subject to and without waiving the above General Objections, the responding Applicant further responds to the Opposer's Interrogatories as follows:

Answer to No. 1.
Applicant objects to this question on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant states that it intends to use Applicant's mark for the sale of concentrates and powders used in the preparation of energy drinks and fruit-flavored beverages.

In addition, pursuant to Fed. R. Civ. P. 33 (d), the answer to this interrogatory may be derived or ascertained from the documents provided with the responses to Opposer's first request for production, in particular documents bates stamped 001-016, as well as other documents provided though discovery that may reasonably apply to this request.

Answer to No. 2.
Applicant objects to this question on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant states that pursuant to Fed. R. Civ. P. 33 (d), the answer to this interrogatory may be derived or ascertained from the documents provided with the responses to Opposer's first request for production, in particular documents stamped 001-016, as well as other documents provided though discovery that may reasonably apply to this request.

Answer to No 3.
Applicant objects to this question on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant states that Applicant's officers were responsible for the selection and creation of Applicant's marks.

Answer to No 4.
Applicant objects to this question on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant states that products associated with Applicant's mark are intended to the consumers at large, including consumers of flavored beverages (including fruit flavored beverages).

Answer to No. 5.
Applicant objects to this question on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant states that it currently intends to promote and sell Applicant's mark in the retail and wholesale beverage industry.

Answer to No. 6.
Applicant objects to this question on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant and its officers intend to advertise and promote Applicant's products.

Answer to No. 7.
Applicant objects to this question on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant states that it has not yet contacted experts for this case.

Answer to No. 8.
Applicant objects to this question to the extent that any such searches were conducted for Applicant on the grounds that it is privileged attorney client privilege and otherwise objects on the grounds of attorney work product.

Answer to No. 9.
Applicant objects to this question to the extent that any such searches were conducted for Applicant on the grounds that it is privileged attorney client privilege and otherwise objects on the grounds of attorney work product.

Answer to No. 10.
Applicant objects to this question on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant states that it is now aware of Opposer's mark.

Answer to No. 11.
Applicant objects to this question on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant is not aware of any instances of mistake.

Answer to No 12.
Applicant objects to this question on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant states the same answer as No. 6.

Answer to No 13.
Applicant objects to this question on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant states not yet known.

/s/ Juan Iliopulos,
Vice President of MVS International, Inc.
c/o Humberto Rubio, Jr.
Law Firm of Rubio & Associates, PA.
8950 SW 74 Ct, # 1804
Miami, FL 33156

EXHIBIT D

BAKER BOTTS L.L.P

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10112-4498

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FAX +1 212.408.2501
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PALO ALTO
RIYADH
WASHINGTON

September 16, 2015

BY E-MAIL & EXPRESS COURIER

Lauren Beth Emerson
TEL +1 212.408.2533
FAX +1 212.259.2533
Lauren.emerson@bakerbotts.com

Humberto Rubio, Jr., Esq.
Law Firm of Rubio & Associates, P.A.
8950 SW 74 Ct., Suite 1804
Miami, FL 33156
Tel: (786) 220-2061
hrubio@rubiolegal.com

Re: PepsiCo, Inc. v. MVS International, Inc. Opposition No. 91221666

Dear Mr. Rubio:

We have reviewed Applicant, MVS International, Inc.'s ("Applicant" or "MVS") responses to Opposer PepsiCo, Inc.'s ("Opposer" or "PepsiCo") First Set of Requests for the Production of Documents and Things and First Set of Interrogatories, as well as the 16 pages that Applicant has produced in response to these requests. This letter is to advise you of certain deficiencies in Applicant's responses and document production, as discussed in greater detail below, and to demand that you fully and completely respond to PepsiCo's document requests and interrogatories.

1. Responses to Opposer's First Set of Interrogatories

a. Response to Interrogatory No. 1: Applicant has failed to fully respond to this Interrogatory as the response provides no description of Applicant's business in connection with the intended goods at issue. Please promptly supplement your response to provide this information.

b. Response to Interrogatory No. 2: In response to this Interrogatory, Applicant points to its file wrapper produced as documents 001-016; this in insufficient. Documents 001 – 016 do not indicate whether any products have been offered for sale, when Applicant intends to offer products, and so forth. Please promptly supplement your response to provide all of the requested information.

c. Response to Interrogatory No. 3: Applicant has not provided any answer to Interrogatory 3.A, which calls for discoverable information. TBMP 414 specifically provides that such information is discoverable. With respect to 3.B, Applicant must provide the full name, address, phone number and position of each of the "officers" as set forth in Definition 16. Please promptly supplement your response.

d. Response to Interrogatory No. 6: This interrogatory calls for Applicant to identify persons; it is insufficient to simply state "Applicant and its officers". Please provide a complete answer as set forth in Definition 16. *Cf.* FRCP 26(a)(1)(A)(i); TBMP 401.02.

e. Response to Interrogatory No. 8: Neither attorney-client privilege nor work product immunity covers a search report itself. *See, e.g*, *Axiohm S.A. and Axiohm IPB v. Axiom Technology, Inc.*, 2000 WL 1720151 (TTAB 2000) ("search reports themselves are discoverable"). Furthermore, the identification of discovery documents is not privileged. *See* TBMP 414. Please supplement your response.

f. Response to Interrogatory No. 9: The identification of discovery documents is not privileged. *See* TBMP 414. Please supplement your response.

f. Response to Interrogatory No. 10: Applicant does not answer the interrogatory, which calls for Applicant to describe the date and circumstances surrounding Applicant's *first knowledge* of Opposer's Mark. This is discoverable information. *See* TBMP 414. Please supplement your response.

g. Response to Interrogatory No. 12: This Interrogatory calls for Applicant to describe in detail all efforts or intended efforts to promote, advertise, market or otherwise bring Applicant's products identified by Applicant's Mark to the attention of potential customers or consumers. It is not sufficient to merely state that Applicant intends to advertise and promote its products without describing the intended efforts. Please provide a complete answer.

2. Responses to Opposer's First Set of Document Requests

a. Responses to Requests 1-14, 20-24: Applicant has provided identical non-specific objections to each of these requests, and states that it "is attempting to determine" whether responsive documents exist. You are reminded that Applicant has a duty to search its records for responsive documents, and to supplement its responses in a timely manner. PepsiCo expects to receive either responsive documents or supplemental responses indicating that no such documents exist.

b. Responses to Request Nos. 15-18: Applicant has objected to these Requests on the basis of work product immunity. In support of this, you cite two cases, both of which are inapposite.

Spork v. Peil pertains to a request to product documents that were selected by counsel to be reviewed by a witness prior to his deposition. All of the documents at issue had previously been produced. In that circumstance, the court found the

grouping of this sub-set of documents might reveal the lawyer's strategy, and was therefore protected work product. Here, PepsiCo is simply seeking factual, non-privileged evidentiary material—which counsel may or may not have reviewed or considered, and no such documents have been previously produced to PepsiCo.

American National Red Cross v. Travelers Indemnity Company of Rhode Island et. al also pertains to a deposition. In that case, plaintiff moved for summary judgment on certain affirmative defenses after defendant's 30(b)(6) witness refused to identify facts and documents supporting those defenses at his deposition. In denying the motion, however, the Court notes that there is no claim that defendant withheld "relevant, discoverable documents or data." In fact, earlier in the decision the Court noted that over 200,000 pages had been exchanged. Here, in contrast, MVS is withholding information.

The requests here neither call for documents created by counsel, nor do they even contemplate that counsel might have reviewed such documents previously. Please withdraw your objection and produce responsive documents accordingly.

The foregoing does not constitute a complete recitation of the deficiencies in Applicant's discovery responses, and Opposer reserves all rights in connection with other deficiencies in Applicant's responses. However, it is Opposer's hope that by highlighting some of the most blatant deficiencies for purposes of the instant proceeding, the parties can work through these issues without need for the Board's intervention.

We look forward to receiving Applicant's supplemental responses within fourteen (14) days from the date of this letter and supplemental production shortly thereafter. If we do not receive full and complete responses and production in a timely manner, we will move to compel. Thank you in advance for your prompt attention to this matter.

Regards,

Lauren Beth Emerson

EXHIBIT E

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

IN THE MATTER OF APPLICATION

Mark	:	AQUAFIX
Applicant	:	MVS International Inc.
Serial No.	:	86/384,378
Filed	:	September 3, 2014
Published in the Official Gazette	:	December 30, 2014

PEPSICO, INC., Opposer,	:	Opposition No. 91221666
v.	:	
MVS INTERNATIONAL INC. Applicant.	:	

APPLICANT'S FIRST REQUEST FOR ADMISSIONS

Opposer, PepsiCo, Inc. ("Opposer" or PepsiCo"), by its attorneys, hereby submits to Applicant, MVS International, Inc. ("Applicant" or "MVS") the following requests for admission, and requests that separate and complete written answers thereto be made within thirty (30) days from service hereof at the offices of Baker Botts L.L.P., 30 Rockefeller Plaza, 44th floor, New York, New York 10112-0228, in accordance with Rule 36 of the Federal Rules of Civil Procedure and Trademark Rule 2.120.

INSTRUCTIONS AND DEFINITIONS

These Requests to Admit shall be subject to the Instructions and Definitions set forth in Applicant's First Set of Interrogatories to Opposer dated July 3, 2015, and the full text of such Instructions and Definitions shall be incorporated into each Request herein.

REQUESTS TO ADMIT

REQUEST TO ADMIT NO. 1:

Applicant was aware of PepsiCo's mark AQUAFINA prior to December 30, 2014.

REQUEST TO ADMIT NO. 2:

As of the date hereof, Applicant has not made use of the mark AQUAFIX in United States commerce as that term is defined in Section 45 of the Trademark Act, 15 U.S.C. §1127.

REQUEST TO ADMIT NO. 3:

PepsiCo's mark AQUAFINA is famous.

REQUEST TO ADMIT NO. 4:

"Concentrates for making fruit drinks" are legally identical to "flavorings for beverages."

REQUEST TO ADMIT NO. 5:

"Syrups for making fruit drinks" are legally identical to "flavorings for beverages."

REQUEST TO ADMIT NO. 6:

"Concentrates for making fruit drinks" are related and/or complementary to "flavorings for beverages."

REQUEST TO ADMIT NO. 7:

"Syrups for making fruit drinks" are related and/or complementary to "flavorings for beverages."

REQUEST TO ADMIT NO. 8:

"Concentrates for making fruit drinks" are related and/or complementary to "flavored waters."

REQUEST TO ADMIT NO. 9:

"Syrups for making fruit drinks" are related and/or complementary to "flavored waters."

REQUEST TO ADMIT NO. 10:

"Sparkling water" is related to "drinking water."

REQUEST TO ADMIT NO. 11:

"Sparkling water" is related to "table water."

REQUEST TO ADMIT NO. 12:

PepsiCo manufactures and sells energy drinks.

REQUEST TO ADMIT NO. 13:

PepsiCo manufactures and sells concentrates, syrups or powders used in the preparation of soft drinks.

REQUEST TO ADMIT NO. 14:

PepsiCo manufactures and sells powders used in the preparation of isotonic sports drinks and sports beverages.

REQUEST TO ADMIT NO. 15:

The appliatication-at-issue is the only document in Applicant's possession related to Applicant's intention to use the mark AQUAFIX in commerce.

REQUEST TO ADMIT NO. 16:

To date, Applicant has not marketed or sold any beverage product under any name.

REQUEST TO ADMIT NO. 17:

Applicant does not intend to market or sell ready-to-drink beverages under the mark AQUAFIX.

REQUEST TO ADMIT NO. 18:

Applicant does not currently sell concentrates and powders used in the preparation of energy drinks and fruit-flavored beverages.

REQUEST TO ADMIT NO. 19:

Applicant has never sold concentrates and powders used in the preparation of energy drinks and fruit-flavored beverages.

REQUEST TO ADMIT NO. 20:

Applicant does not currently sell concentrates for making fruit drinks.

REQUEST TO ADMIT NO. 21:

Applicant has never sold concentrates for making fruit drinks.

REQUEST TO ADMIT NO. 22:

Applicant does not currently sell concentrates, syrups or powders for making soft drinks or tea-flavored beverages.

REQUEST TO ADMIT NO. 23:

Applicant has never sold concentrates, syrups or powders for making soft drinks or tea-flavored beverages.

REQUEST TO ADMIT NO. 24:

Applicant does not currently sell concentrates, syrups or powders used in the preparation of soft drinks.

REQUEST TO ADMIT NO. 25:

Applicant has never sold concentrates, syrups or powders used in the preparation of soft drinks.

REQUEST TO ADMIT NO. 26:

Applicant does not currently sell concentrates, syrups or powders used in the preparation of sports and energy drinks.

REQUEST TO ADMIT NO. 27:

Applicant has never sold concentrates, syrups or powders used in the preparation of sports and energy drinks.

REQUEST TO ADMIT NO. 28:

Applicant does not currently sell drinking water with vitamins.

REQUEST TO ADMIT NO. 29:

Applicant has never sold drinking water with vitamins.

REQUEST TO ADMIT NO. 30:

Applicant does not currently sell energy drinks.

REQUEST TO ADMIT NO. 31:

Applicant has never sold energy drinks.

REQUEST TO ADMIT NO. 32:

Applicant does not currently sell essences for use in making soft drinks.

REQUEST TO ADMIT NO. 33:

Applicant has never sold essences for use in making soft drinks.

REQUEST TO ADMIT NO. 34:

Applicant does not currently sell non-alcoholic drinks, namely, energy shots.

REQUEST TO ADMIT NO. 35:

Applicant has never sold non-alcoholic drinks, namely, energy shots.

REQUEST TO ADMIT NO. 36:

Applicant does not currently sell non-alcoholic sparkling fruit juice beverages.

REQUEST TO ADMIT NO. 37:

Applicant has never sold non-alcoholic sparkling fruit juice beverages.

REQUEST TO ADMIT NO. 38:

Applicant does not currently sell powders for making soft drinks.

REQUEST TO ADMIT NO. 39:

Applicant has never sold powders for making soft drinks.

REQUEST TO ADMIT NO. 40:

Applicant does not currently sell powders used in the preparation of isotonic sports drinks and sports beverages.

REQUEST TO ADMIT NO. 41:

Applicant has never sold powders used in the preparation of isotonic sports drinks and sports beverages.

REQUEST TO ADMIT NO. 42:

Applicant does not currently sell sparkling water.

REQUEST TO ADMIT NO. 43:

Applicant has never sold sparkling water.

REQUEST TO ADMIT NO. 44:

Applicant does not currently sell sports drinks, namely, energy drinks.

REQUEST TO ADMIT NO. 45:

Applicant has never sold sports drinks, namely, energy drinks.

REQUEST TO ADMIT NO. 46:

Applicant does not currently sell syrups for making fruit-flavored drinks.

REQUEST TO ADMIT NO. 47:

Applicant has never sold syrups for making fruit-flavored drinks.

REQUEST TO ADMIT NO. 48:

Applicant does not currently sell syrups for making soft drinks.

REQUEST TO ADMIT NO. 49:

Applicant has never sold syrups for making soft drinks.

REQUEST TO ADMIT NO. 50:

Applicant has no experience manufacturing or selling beverages or related products.

REQUEST TO ADMIT NO. 51:

Applicant has not taken any steps to market the goods identified in 86/384,378 in connection with the mark AQUAFIX.

REQUEST TO ADMIT NO. 52:

Applicant has not taken any steps to distribute the goods identified in 86/384,378 in connection with the mark AQUAFIX .

Respectfully submitted,

BAKER BOTTS L.L.P.

Dated: September 16, 2015

Lauren Beth Emerson
30 Rockefeller Plaza
New York, N.Y. 10112-4498
(212) 408-2500

Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing, **APPLICANT'S FIRST REQUEST FOR ADMISSIONS** was served on Applicant, MVS International, Inc., by email and express courier, at the following address of record:

HUMBERTO RUBIO
LAW FIRM OF RUBIO & ASSOCIATES PA
8950 SW 74TH CT STE 1804
MIAMI, FL 33156-3177
UNITED STATES
hrubio@rubiolegal.com

Dated: September 16, 2015

Lauren Beth Emerson

EXHIBIT F

Albert, Julie Beth

From: Lauren.Emerson@BakerBotts.com
Sent: Tuesday, October 06, 2015 6:32 PM
To: hrubio@rubiolegal.com
Cc: john.mitchell@bakerbotts.com; Dorothy.Izak@BakerBotts.com; Paul.Reilly@BakerBotts.com
Subject: FW: PepsiCo, Inc. v. MVS International, Inc., Opposition No. 91221666

Dear Mr. Rubio,

I am writing to follow up on my letter of September 16, 2015 in which we identified certain deficiencies and requested MVS's supplemental discovery responses by September 30, 2015. We have neither received your responses nor heard from you on this matter. Please promptly provide MVS's supplemental responses and supplemental production as soon as possible, but no later than **October 15, 2015** so that we may avoid burdening the Board with unnecessary motion practice.

Regards,
Lauren

Lauren Emerson
Baker Botts LLP
30 Rockefeller Plaza
New York, NY 10112
Direct: (212) 408-2533
Fax: (212) 259-2533
mailto:lauren.emerson@bakerbotts.com

From: Mitchell, John
Sent: Wednesday, September 16, 2015 2:35 PM
To: 'hrubio@rubiolegal.com'
Cc: Emerson, Lauren; Izak, Dorothy E.
Subject: PepsiCo, Inc. v. MVS International, Inc., Opposition No. 91221666

Dear Mr. Rubio:

Please see attached.

Sincerely,

John P. Mitchell

John P. Mitchell
Senior Paralegal
212-408-2560
347-260-1762 (mobile)
212-259-2560 (fax)
john.mitchell@bakerbotts.com

Baker Botts L.L.P.
30 Rockefeller Plaza
New York, NY 10112-4498

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EXHIBIT G

Albert, Julie Beth

From: Humberto Rubio <hrubio@rubiolegal.com>
Sent: Thursday, October 08, 2015 7:55 PM
To: Emerson, Lauren
Cc: Mitchell, John; Izak, Dorothy E.; Reilly, Paul J.
Subject: RE: PepsiCo, Inc. v. MVS International, Inc., Opposition No. 91221666

Dear Ms. Emerson:

Thank you for your email.

We will review you correspondence, talk to client and have a response by next week (probably towards the end of the week).

Regards,

Humberto Rubio, Jr., Esq.
Law Firm of Rubio & Associates, P.A.
Town Center One
8950 SW 74 Ct., Suite 1804
Miami, Fl 33156
Tel: (786) 220-2061
Fax: (786) 220-2062
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From: Lauren.Emerson@bakerbotts.com [mailto:Lauren.Emerson@bakerbotts.com]
Sent: Tuesday, October 6, 2015 6:32 PM
To: Humberto Rubio <hrubio@rubiolegal.com>
Cc: john.mitchell@bakerbotts.com; Dorothy.Izak@bakerbotts.com; Paul.Reilly@bakerbotts.com
Subject: FW: PepsiCo, Inc. v. MVS International, Inc., Opposition No. 91221666

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Regards,
Lauren

Lauren Emerson
Baker Botts LLP
30 Rockefeller Plaza
New York, NY 10112
Direct: (212) 408-2533
Fax: (212) 259-2533
mailto:lauren.emerson@bakerbotts.com

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Cc: Emerson, Lauren; Izak, Dorothy E.
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Dear Mr. Rubio:

Please see attached.

Sincerely,

John P. Mitchell

_____
John P. Mitchell
Senior Paralegal
212-408-2560
347-260-1762 (mobile)
212-259-2560 (fax)
john.mitchell@bakerbotts.com

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EXHIBIT H

Albert, Julie Beth

From: Lauren.Emerson@BakerBotts.com
Sent: Monday, October 19, 2015 10:41 AM
To: hrubio@rubiolegal.com
Cc: john.mitchell@bakerbotts.com; Dorothy.Izak@BakerBotts.com; Paul.Reilly@BakerBotts.com
Subject: RE: PepsiCo, Inc. v. MVS International, Inc., Opposition No. 91221666

Dear Mr. Rubio,

We have yet to receive MVS's responses notwithstanding your email below. If we do not receive MVS's responses by the end of this week, I will recommend to PepsiCo that we move forward with a motion to compel.

Regards,
Lauren

Lauren Emerson
Baker Botts LLP
30 Rockefeller Plaza
New York, NY 10112
Direct: (212) 408-2533
Fax: (212) 259-2533
mailto:lauren.emerson@bakerbotts.com

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Regards,

Humberto Rubio, Jr., Esq.
Law Firm of Rubio & Associates, P.A.
Town Center One
8950 SW 74 Ct., Suite 1804
Miami, Fl 33156
Tel: (786) 220-2061
Fax: (786) 220-2062
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Cc: john.mitchell@bakerbotts.com; Dorothy.Izak@bakerbotts.com; Paul.Reilly@bakerbotts.com
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Regards,
Lauren

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mailto:lauren.emerson@bakerbotts.com

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To: 'hrubio@rubiolegal.com'
Cc: Emerson, Lauren; Izak, Dorothy E.
Subject: PepsiCo, Inc. v. MVS International, Inc., Opposition No. 91221666

Dear Mr. Rubio:

Please see attached.

Sincerely,

John P. Mitchell

_____

John P. Mitchell
Senior Paralegal
212-408-2560
347-260-1762 (mobile)
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john.mitchell@bakerbotts.com

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EXHIBIT I

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

IN THE MATTER OF APPLICATION SERIAL NO. 86/384,378:

Mark	: AQUAFIX
Applicant	: MVS International Inc.
Filed	: September 3, 2014
Published in the Official Gazette	: December 30, 2014

PEPSICO, INC.,

Opposer, Opposition No. 91221666

v.

MVS INTERNATIONAL INC.,

Applicant.

NOTICE OF SUBMITTING APPLICANT'S
RESPONSES & OBJECTIONS TO OPPOSER'S REQUEST FOR ADMISSIONS

NOTICE IS HEREBY GIVEN that MVS International, Inc., by and through their undersigned attorneys, hereby files its responses and objection to Opposer's Request for Admissions propounded by Opposer.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served via electronic mail and US Mail this 21st day of October, 2015 to PepsiCo, Inc., Paul Lee, Esq., 700 Anderson Hill Road ,Purchase, NY 10577, and BAKER BOTTS, LLC, Paul J. Reilly, Esq., Lauren Emerson, Esq., 30 Rockefeller Plaza, 44th FL., New York, New York 10112-4498.

Dated: October 21, 2015

Respectfully submitted,

Law Firm of Rubio & Associates
8950 SW 74th Court, Suite 1804
Miami, Florida 33156
Phone: 305 670 0323
Fax: 305 670 0322
Email: hrubio@rubiolegal.com

/s/Humberto Rubio
Humberto Rubio, Jr.

Attorney for Applicant,
MVS International, Inc.

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

IN THE MATTER OF APPLICATION SERIAL NO. 86/384,378:

Mark	: AQUAFIX
Applicant	: MVS International Inc.
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PEPSICO, INC.,

Opposer, Opposition No. 91221666

v.

MVS INTERNATIONAL INC.,

Applicant.

APPLICANT'S RESPONSES & OBJECTIONS
TO OPPOSER'S REQUEST FOR ADMISSIONS

Applicant MVS International, Inc., by and through their undersigned attorneys, hereby respond to Opposer's Request for Production propounded by Opposer dated September 16 2015 (sent via courier). The following responses are based upon information presently available to Applicant; which it believe are correct. The following responses are made without prejudice to Applicant' right to utilize subsequently discovered facts. Applicants reserve the right to supplement their responses to these requests as allowed by the applicable rules. No incidental or implied admissions of fact by Applicant are made by the responses below. The fact that Applicant has answered any request herein may not properly be taken as an admission that Applicant accepts the existence of any facts set forth or assumed by such request or that such response constitutes admissible evidence. The fact that Applicant has answered part or all of any request is not intended, and shall not be construed, to be a waiver of all or part of any objection to any request made by Applicant.

Applicant responds to Opposer's Requests as follows:

General Objections

Applicant adopt and incorporate by reference each of the following General Objections into each of its specific responses to the Opposer's Requests:

1. Applicant object to the Opposer's Requests to the extent the same calls for information protected by the attorney-client privilege, accountant-client privilege, work-product doctrine, or any other privilege or immunity. Any information or documents inadvertently produced which includes such privileged information shall not be deemed a waiver by Applicant of such privilege or doctrine. Applicant construe each request not to reach or include legal memoranda, drafts of pleadings, attorneys' notes, communications between Applicant and their counsel, or other documents and communications that have come into existence in anticipation of or after the commencement of this action. Consequently, Applicant' privilege log will not include such documents, but Applicant still assert the attorney-client privilege and work-product doctrine for all such documents.

2. Applicant objects to the Opposer's Requests to the extent that the same seek information or documents which are unreasonably cumulative or duplicative, or which are obtainable from some other source or in some other manner that is more convenient, less burdensome, and less expensive.

4. Applicant objects to the "instructions" and "definitions" to the extent that they attempt to impose obligations or requirements do not conform to or conflict with applicable law.

5. Applicant objects to Opposer's Requests to the extent they seek information or materials containing financial, bank, and net worth information and records of Applicant.

Specific Objections and Responses

Subject to and without waiving the above General Objections, Applicant further responds to the Opposer's Requests as follows:

Request No. 1.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant denies.

Request No 2.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant admits.

Request No 3.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant denies.

Request No 4.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant denies.

Request No. 5.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant denies.

Request No. 6.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant denies.

Request No. 7.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant denies.

Request No. 8.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant denies.

Request No. 9.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant denies.

Request No. 10.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant admits that they contain similar chemical attributes.

Request No. 11.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence.

Request No 12.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant is states that after reasonable inquiry it lacks sufficient knowledge or information to admit or deny.

Request No 13.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant is states that after reasonable inquiry it lacks sufficient knowledge or information to admit or deny.

Request No 14.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant is states that after reasonable inquiry it lacks sufficient knowledge or information to admit or deny.

Request No. 15.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant denies.

Request No. 16.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant denies.

Request No. 17.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant denies.

Request No. 18.

Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant denies.

Request No. 19.

Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant denies.

Request No 20.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence.

Request No. 21.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence.

Request No 22.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence.

Request No 23.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant denies.

Request No 24.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence.

Request No. 25.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence.

Request No. 26.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence.

Request No. 27.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant denies.

Request No. 28.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant denies.

Request No. 29.

Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant denies.

Request No 30.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant denies.

Request No. 31.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant denies.

Request No 32.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence.

Request No 33.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence.

Request No 34.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant denies.

Request No. 35.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant denies.

Request No. 36.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence.

Request No. 37.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence.

Request No. 38.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence.

Request No. 39.

Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence.

Request No 40.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant denies.

Request No. 41.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant denies.

Request No 42.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant admits.

Request No 43.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant admits.

Request No 44.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant denies.

Request No. 45.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant denies.

Request No. 46.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence.

Request No. 47.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence.

Request No. 48.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence.

Request No. 49.

Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence.

Request No 50.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant denies.

Request No. 51.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence.

EXHIBIT J

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

Patron Spirits International AG,	Opposition No. 91213827
Opposer,	Application Serial NO.: 85/644,021
v.	
DESTILERIA 501, S.A. DE C.V.,	
Applicant.	

Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

APPLICANT'S
SUPPLEMENTAL ANSWERS & OBJECTIONS TO OPPOSER'S INTERROGATORIES

NOTICE IS HEREBY GIVEN that MVS International Inc., by and through the undersigned attorneys, hereby supplements its responses to Interrogatories propounded by Opposer. The response is attached hereto.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served via electronic mail and US Mail this 30th day of October, 2015to PepsiCo, Inc., Paul Lee, Esq., 700 Anderson Hill Road ,Purchase, NY 10577, and BAKER BOTTS, LLC, Paul J. Reilly, Esq., Lauren Emerson, Esq., 30 Rockefeller Plaza, 44th FL., New York, New York 10112-4498.

Dated: October 30, 2015.

Respectfully submitted,

Law Firm of Rubio & Associates
8950 SW 74th Court, Suite 1804
Miami, Florida 33156
Phone: 305 670 0323
Fax: 305 670 0322
Email: hrubio@rubiolegal.com

/s/Humberto Rubio
Humberto Rubio, Jr.

Attorney for Applicant,
MVS International Inc.

General Objections

The responding Applicant adopts and incorporates by reference each of the following General Objections into each of its specific responses to Opposer's Interrogatories:

1. Applicant incorporates by reference its General Objections and Objections to Specific Interrogatories, served on August 3, 2015, into each of its responses set forth below as though fully set forth herein.

Specific Objections and Responses

Subject to and without waiving the above General Objections, the responding Applicant further responds to the Opposer's Interrogatories as follows:

Answer to No. 1.
Applicant objects to this question on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant states that it intends to develop products bearing Applicant's mark for the beverage industry, with an emphasis on concentrates and powders to be added to beverages. Once the products are developed, it will be distributed and marketed both in retail and wholesale.

Answer to No. 2.
Applicant objects to this question on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant states that products identified in the Applicant's application have not been offered for sale yet, and that at the present time, Applicant does not have a date certain of when such products will be offered for sale. However, Applicant expects to have its product ready for sale in the year 2016.

Answer to No 3.
Applicant objects to this question on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant states that Juan Iliopulos was responsible for the selection and creation of Applicant's marks. Juan Iliopulos c/o Rubio & Associates, 8950 SW 74 Ct # 1804, Miami, FL 33156. After searching through the world wide web and before the United States Trademark and Patent Office and finding that Applicant's mark was not commercialized or registered by anybody else and after finding hundreds of registered trademarks containing the word "aqua", Juan Iliopulos decided to adopt Applicant's mark.

Answer to No. 6.
Applicant objects to this question on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant intends to have Juan Iliopulos c/o Rubio & Associates, 8950 SW 74 Ct # 1804, Miami, FL 33156, be the person responsible (including hiring third parties, which have not been determined yet) for advertising and promoting Applicant's products.

Answer to No. 8.
Applicant objects to this question to the extent that any such searches were conducted for Applicant on the grounds that it is privileged attorney client privilege and otherwise objects on the grounds of attorney work product. However, without waiving said objection, Applicant states that searches were performed by Juan Iliopulos through the world wide web for Applicant's mark and searches were conducted before the United States Trademark and Patent office by Juan Iliopulos. During its search, Applicant did not encounter Applicant's mark. In addition, Applicant remembers encountering hundreds of registered trademarks containing the word "aqua".

Answer to No. 9.
Applicant objects to this question to the extent that any such searches were conducted for Applicant on the grounds that it is privileged attorney client privilege and otherwise objects on the grounds of attorney work product.

Answer to No. 10.
Applicant objects to this question on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant states that it may have seen Aquafina for water in the past, but it does not recollect the exact date when this happened or the circumstances surrounding it and it does not recollect seeing other Opposer's marks.

Answer to No 12.
Applicant objects to this question on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant states that it intends to promote, advertise and market the product identified by Applicant's mark by advertising in beverage magazines, by advertising in retail and wholesale store pamphlet, by advertising through the world wide web and by providing samples.

/s/ Juan Iliopulos,
Vice President of MVS International, Inc.
c/o Humberto Rubio, Jr.
Law Firm of Rubio & Associates, PA.
8950 SW 74 Ct, # 1804
Miami, FL 33156

EXHIBIT K

LAW FIRM OF
RUBIO & ASSOCIATES, P.A.

Town Center One
8950 SW 74 Ct., Suite 1804
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October 30, 2015

Via Electronic Mail and US Mail

Baker Botts, LLP
Lauren Beth Emerson, Esq.
30 Rockefeller Plaza
New York, New York 10112-4498

RE: PepsiCo, Inc. V. MVS International, Inc. – Opposition No. 91221666

Dear Ms. Emerson:

In response to your letter dated September 16, 2015 and in an effort to avoid unnecessary motion practice, enclosed please find supplemental responses to interrogatories. Please note that we do not agree with passages of your letter, but are in good faith trying to avoid burdening the Board.

Our client is in the process of addressing your concerns pertaining to your request for production and we shall have supplemental responses on this next week.

Let us know if you have any questions.

Regards,

RUBIO & ASSOCIATES, P.A.

Humberto Rubio, Jr.

Encl.

EXHIBIT L

BAKER BOTTS L.L.P.

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November 4, 2015

BY E-MAIL & EXPRESS COURIER

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Miami, FL 33156
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hrubio@rubiolegal.com

Re: PepsiCo, Inc. v. MVS International, Inc. Opposition No. 91221666

Dear Mr. Rubio:

As an initial matter, notwithstanding multiple emails and your assurances that we would hear from you shortly, we have yet to receive a substantive response to our letter of September 16, 2015 insofar as it addresses deficiencies in MVS's responses to PepsiCo's document requests. I note that we have received *Applicant's Supplemental Answers & Objections To Opposer's Interrogatories*, which bears an incorrect caption. Applicant's response to Interrogatory No. 9 remains deficient; as noted in our previous letter, "[t]he identification of discovery documents. . . is not privileged or confidential." TBMP 414.

The above-noted deficiencies are compounded by defects in *Applicant's Responses & Objections to Opposer's Request for Admissions*, which we have now reviewed. First, the responses are defective in their entirety as they were not signed. TBMP §407.03(c); Fed. R. Civ. P. 36(a)(3). Second, Applicant has failed to provide answers to Request Nos. 11, 20, 21, 22, 24, 25, 26, 32, 33, 36, 37, 38, 39, 46, 47, 48, 49 and 51.

Request No. 11 called for an admission that "sparkling water" is related to "drinking water." MVS objects on the grounds that this request is "vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence." The objection is unfounded. This request is straightforward and highly relevant to the relatedness of the parties' goods, a factor in the likelihood of confusion analysis. Furthermore, Applicant's ability to answer Request Nos. 4-10 show that this Request is not in any way "unduly burdensome," "harassing" or "oppressive."

Request Nos. 20, 21, 22, 24, 25, 26, 32, 33, 36, 37, 38, 39, 46, 47, 48 and 49 address MVS's experience in selling the very products it purports to intend to market under the mark at issue, and Request No. 51 pertains to the steps taken by MVS to market those goods. Applicant's experience and marketing activities are directly related to its *bona fide* intent to use the mark. Applicant denies that its application is the only document related to its intention to use the mark in commerce, yet it has failed to product any other documents. Further, Applicant's

response to identical questions in connection with other goods (see, e.g., Request Nos. 18, 19, 23, 27, 28, 29, 30, 31, 34, 35, 40, 41, 42, 43, 44, and 45) undermines its overblown objections to PepsiCo's clear and relevant inquiries.

If PepsiCo does not receive complete, proper responses to its requests for admission, along with Applicant's supplemental responses to PepsiCo's document requests and interrogatories, and supplemental production by November 11, 2015, it will have no choice but to move to compel. Thank you in advance for your prompt attention to this matter.

Regards,

Lauren Beth Emerson

EXHIBIT M

LAW FIRM OF
RUBIO & ASSOCIATES, P.A.

Town Center One
8950 SW 74 Ct., Suite 1804
Miami, Florida 33156

Telephone: (786) 220-2061
Facsimile: (786) 220-2062
E-Mail: hrubio@rubiolegal.com
Web Site: www.rubiolegal.com

November 13, 2015

Via Electronic Mail Only

Baker Botts, LLP
Lauren Beth Emerson, Esq.
30 Rockefeller Plaza
New York, New York 10112-4498

RE: PepsiCo, Inc. V. MVS International, Inc. – Opposition No. 91221666

Dear Ms. Emerson:

In response to your letter dated November 4, 2015, please note that we object to your allegation that you have not heard from us or that you have failed to receive a substantive response to your letter dated September 16, 2015. As a matter of fact, enclosed to our letter dated October 30, 2015, we included Applicant's Supplemental Answers and Objections to Interrogatories.[1] It seems your only objection relates to the answer to Interrogatory No. 9, which asks about opinions received by Applicant concerning Applicant's mark and in such regard, it is our position that any such opinions (if any) would be protected by attorney-client privilege. Please review Fisons Ltd. v. Capability Brown Ltd., 209 USPQ 167 (TTAB 1980); Goodyear Tire & Rubber Co. v. Tyrco Industries, 186 USPQ 207 (TTAB 1975); and Miles Laboratories, Inc. v. Instrumentation Laboratory, Inc., 185 USPQ 432 (TTAB 1975). Axiohm S.A. & Axiohm, Ipb, OPPOSITION 106,410, 2000 WL 1720151, at *3 (Oct. 18, 2000).

Similarly, our October 30, 2015 letter also explained that we were in the process of obtaining better responses to your request for production. Enclosed please find Applicant's Supplemental Responses to Opposer's Request for Production and responsive documents.

In addition, we disagree with your interpretation regarding Applicant's Responses to Request for Admissions. For example, you complain about the response to Request No. 11, but cite the incorrect request for admission. Furthermore, the objection to Request No. 11 is pertinent because Applicant does not know and has no way of determining what you mean by "table water". While we do not wish to engage in unnecessary motion practice, we would be happy to further articulate why "table water" squarely fits the definition of vagueness and broadness. Nonetheless, enclosed find supplemental responses to Opposer's Request for Admissions.

---

[1] Applicant's Supplemental Answers to Opposer's Interrogatories ("Applicant's Answer to Interrogatories") had the incorrect caption, and we are enclosing the Applicants Answer to Interrogatories with the correct caption.

Regards,

RUBIO & ASSOCIATES, P.A.

Humberto Rubio, Jr.

Encl.

EXHIBIT N

MVS INTERNATINOAL, INC.

AQUAFIX

AQUAFIX PRESENTATION

Overview

Demand for bottled drinking water has been growing rapidly since the 2000s, increasing nearly 400% in the last decade according to the Bottled Water Manufacturers, as a result of declining consumer confidence in the safety and quality of municipal water supplies.
It's no small wonder that the world currently spends more than $100 billion per year on bottled water. Many people buy bottled water for use outside of the home during work or exercise. Others drink it as a substitute for having to filter their own tap water. It is easy to carry around, relatively inexpensive, and good for you since it's not filled with unhealthy ingredients and empty calories.
But what is bottled water really? Many bottled waters are simply tap water, "purified" and bottled up to look more attractive and sold in mass quantity. Countless brands of water now fill the shelves of retail stores, and many people would be surprised to learn that many of the most common brands of water measure very acidic on the pH scale. In fact, some well-known store brands could have a pH value as low as 4, while many others hover in the 5 to 6 range. A pH of 7 means neutral (ordinary tap water is commonly in the 7 to 8 range).
Alkaline water, not included as part of this list, varies in pH from around 7.4 (mildly alkaline) all the way to 10 which is highly alkaline, sometimes referred to in the media as "super pH". Improperly balanced water does not provide a pleasant taste. Water also lacks nutrients and vitamins. **AQUAFIX** will change this by providing different enjoyable flavors, by providing fruit flavored concentrates and powders to be added to the water. **AQUAFIX** will include a line of products designed to attract athletes by including "an energy drink" component/line of product and added vitamins.

Industry Size and Consumption

By far, the most popular type of water in the U.S. market is non-sparkling water; in year 2000 sales of non-sparkling water were $3,000,000,000, according to the *Report on Bottled Water Manufacturing,* Total bottled water sales as of (2014) are $10,000,000,000, including both domestic sparkling and imported drinking waters.
Per capita consumption of bottled water in the U.S. is also increasing dramatically, rising from 4.5 gallons per person in 2000 to 10.9 gallons per person, in 2014. **AQUAFIX** will target regular water (non-sparkling water) at first.

Name

The trade name **AQUAFIX** will be registered, and the product logo will be created.

Management Team

Juan iliopulos is the individual behind the **AQUAFIX** brand, bringing years of experience in the consumer industry including the beverage industry. Also, his family has operated a thriving bottled water business in Venezuela for over 15 years, which he helped to run. In addition, commission sales associates will be hired to secure new customer accounts with retailers, distributors and wholesalers.

Product Description

AQUAFIX is a high quality water enhancer with several fruit flavors and with added vitamins. Initially it will be a syrup but a powder will also be available. A sports line will be developed with an energy drink focus.

Advertising

AQUAFIX intends to advertise its free trial offers by way of secured through cross-promotion with fitness events.
Store samples, magazines and any other fitness event in our area.
It is thought that an annual marketing budget of $35,000 will be necessary for the first year of operation.

Initial Products

AQUAFIX will initially be in the form of a syrup/concentrate water enhancer with different fruit flavors. Powder will also be developed and will carry fruit flavors. The enhancer will have vitamins and will eventually have a sports line with energy drink properties.

Projected Products

Based upon the experience of bottling water in Venezuela, **AQUAFIX** may develop a line of product that offering water only with added vitamins and eventually water with different flavors and vitamins.

ANOTHER PRODUCT BROUGHT TO YOU BY MVS INTERNATIONAL!

Questions:
MVS International
10396 W State Rd.84
Suite 110
DAVIE, FL 33324

EXHIBIT O

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

IN THE MATTER OF APPLICATION SERIAL NO. 86/384,378:

Mark	: AQUAFIX
Applicant	: MVS International Inc.
Filed	: September 3, 2014
Published in the Official Gazette	: December 30, 2014

PEPSICO, INC.,

Opposer, Opposition No. 91221666

v.

MVS INTERNATIONAL INC.,

Applicant.

NOTICE OF SUBMITTING APPLICANT'S SUPPLEMENTAL RESPONSES & OBJECTIONS TO OPPOSER'S REQUEST FOR ADMISSIONS

NOTICE IS HEREBY GIVEN that MVS International, Inc., by and through their undersigned attorneys, hereby files its supplemental responses and objection to Opposer's Request for Admissions propounded by Opposer.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served via electronic mail and US Mail this 13th day of November, 2015 to PepsiCo, Inc., Paul Lee, Esq., 700 Anderson Hill Road, Purchase, NY 10577, and BAKER BOTTS, LLC, Paul J. Reilly, Esq., Lauren Emerson, Esq., 30 Rockefeller Plaza, 44th FL., New York, New York 10112-4498.

Dated: November 13, 2015.

Respectfully submitted,

Law Firm of Rubio & Associates
8950 SW 74th Court, Suite 1804
Miami, Florida 33156
Phone: 305 670 0323
Fax: 305 670 0322
Email: hrubio@rubiolegal.com

/s/Humberto Rubio
Humberto Rubio, Jr.

Attorney for Applicant,
MVS International, Inc.

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

IN THE MATTER OF APPLICATION SERIAL NO. 86/384,378:

Mark	: AQUAFIX
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PEPSICO, INC.,

Opposer, Opposition No. 91221666

v.

MVS INTERNATIONAL INC.,

Applicant.

APPLICANT'S SUPPLEMENTAL RESPONSES & OBJECTIONS TO OPPOSER'S REQUEST FOR ADMISSIONS

Applicant MVS International, Inc., by and through their undersigned attorneys, hereby supplements its responses to Opposer's Request for Production propounded by Opposer dated September 16 2015 (sent via courier). The following responses are based upon information presently available to Applicant; which it believe are correct. The following responses are made without prejudice to Applicant' right to utilize subsequently discovered facts. Applicants reserve the right to supplement their responses to these requests as allowed by the applicable rules. No incidental or implied admissions of fact by Applicant are made by the responses below. The fact that Applicant has answered any request herein may not properly be taken as an admission that Applicant accepts the existence of any facts set forth or assumed by such request or that such response constitutes admissible evidence. The fact that Applicant has answered part or all of any request is not intended, and shall not be construed, to be a waiver of all or part of any objection to any request made by Applicant.

Applicant responds to Opposer's Requests as follows:

General Objections

Applicant adopt and incorporate by reference each of the following General Objections into each of its specific responses to the Opposer's Requests:

1. Applicant incorporates by reference its General Objections and Objections to Specific Interrogatories, served on October 21, 2015, into each of its responses set forth below as though fully set forth herein.

Specific Objections and Responses

Subject to and without waiving the above General Objections, Applicant further responds to the Opposer's Requests as follows:

Request No 20.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant admits.

Request No. 21.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant admits

Request No 22.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant admits.

Request No 24.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant admits.

Request No. 25.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant admits.

Request No. 26.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant denies.

Request No 32.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant admits.

Request No 33.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant admits

Request No. 36.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant admits.

Request No. 37.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant admits.

Request No. 38.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant admits.

Request No. 39.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant admits.

Request No. 46.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant admits.

Request No. 47.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant admits.

Request No. 48.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant admits.

Request No. 49.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant admits.

Request No 50.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant denies.

Request No. 51.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. However, without waiving said objection, Applicant denies.

/Humberto Rubio/
Humberto Rubio
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8950 SW 74th Court, Suite 1804
Miami, Florida 33156
Phone: 305 670 0323
Fax: 305 670 0322

Attorney for Applicant,
MVS International Inc.

EXHIBIT P

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

IN THE MATTER OF APPLICATION SERIAL NO. 86/384,378:

Mark	: AQUAFIX
Applicant	: MVS International Inc.
Filed	: September 3, 2014
Published in the Official Gazette	: December 30, 2014

PEPSICO, INC.,

Opposer, Opposition No. 91221666

v.

MVS INTERNATIONAL INC.,

Applicant.

NOTICE OF SUBMITTING APPLICANT'S SUPPLEMENTAL RESPONSES & OBJECTIONS TO OPPOSER'S REQUEST FOR PRODUCTION

NOTICE IS HEREBY GIVEN that MVS International, Inc., by and through their undersigned attorneys, hereby supplements its responses and objection to Opposer's Request for Production propounded by Opposer.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served via electronic mail and US Mail this 13th day of November , 2015to PepsiCo, Inc., Paul Lee, Esq., 700 Anderson Hill Road ,Purchase, NY 10577, and BAKER BOTTS, LLC, Paul J. Reilly, Esq., Lauren Emerson, Esq., 30 Rockefeller Plaza, 44th FL., New York, New York 10112-4498.

Dated: November 13, 2015.

Respectfully submitted,

Law Firm of Rubio & Associates
8950 SW 74th Court, Suite 1804
Miami, Florida 33156
Phone: 305 670 0323
Fax: 305 670 0322
Email: hrubio@rubiolegal.com

/s/Humberto Rubio
Humberto Rubio, Jr.
Attorney for Applicant,
MVS International Inc.

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

IN THE MATTER OF APPLICATION SERIAL NO. 86/384,378:

Mark	: AQUAFIX	
Applicant	: MVS International Inc.	
Filed	: September 3, 2014	
Published in the Official Gazette	: December 30, 2014	

PEPSICO, INC.,	:	
Opposer,	:	Opposition No. 91221666
v.	:	
MVS INTERNATIONAL INC.,	:	
Applicant.	:	

APPLICANT'S SUPPLEMENTAL RESPONSES & OBJECTIONS TO OPPOSER'S REQUEST FOR PRODUCTION

Applicant MVS International, Inc., by and through their undersigned attorneys, hereby files supplemental responses to Opposer's Request for Production propounded by Opposer. The following responses are based upon information presently available to Applicant; which it believe are correct. The following responses are made without prejudice to Applicant' right to utilize subsequently discovered facts. Applicants reserve the right to supplement their responses to these requests as allowed by the applicable rules. No incidental or implied admissions of fact by Applicant are made by the responses below. The fact that Applicant has answered any request herein may not properly be taken as an admission that Applicant accepts the existence of any facts set forth or assumed by such request or that such response constitutes admissible evidence. The fact that Applicant has answered part or all of any request is not intended, and shall not be construed,

to be a waiver of all or part of any objection to any request made by Applicant. Applicant responds to Opposer's Requests as follows:

General Objections

Applicant adopt and incorporate by reference each of the following General Objections into each of its specific responses to the Opposer's Requests:

1. Applicant Applicant incorporates by reference its General Objections and Objections to Specific Interrogatories, served on August 3, 2015, into each of its responses set forth below as though fully set forth herein.

Specific Objections and Responses

Subject to and without waiving the above General Objections, Applicant further responds to the Opposer's Requests as follows:

Request No. 1.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it has not identified any documents responsive to this request.

Request No 2.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Subject to this objections, Applicant responds:
See attached documents bates stamped 017-019.

Request No 3.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Subject to this objections, Applicant responds:
See attached documents bates stamped 017-019.

Request No 4.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it has not identified any documents responsive to this request.

Request No. 5.

Response: *Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it has not identified any documents responsive to this request.*

Request No. 6.
Response: *Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it has not identified any documents responsive to this request.*

Request No. 7.
Response: *Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Subject to this objections, Applicant responds:*
See attached documents bates stamped 017-019.

Request No. 8.

Response: *Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it has not identified any documents responsive to this request.*

Request No. 9.
Response: *A Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Subject to this objections, Applicant responds:*
See attached documents bates stamped 017-019.

Request No. 10.
Response: *Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it has not identified any documents responsive to this request.*

Request No. 11.
Response: *Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it has not identified any documents responsive to this request.*

Request No 12.
Response: *Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it has not identified any documents responsive to this request.*

Request No 13.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it has not identified any documents responsive to this request.

Request No 14.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it has not identified any documents responsive to this request.

Request No. 15.
Response: Applicant objects to this Request on the grounds that Opposer has requested for Applicant to select documents that prove or tend to prove certain the existence or denial of certain facts or allegations or claim – the thought process an attorney engages as proofs are selected to support or contradict certain allegations in the case. Defendants object on the grounds of attorney work product as to the compilation and organization of documents in support of certain claims. "Counsel's ordering of 'facts', referring to respective proofs, organizing, aligning and marshaling data with a view to combative employment is the mark of the adversary enterprise." Information sought by defendants regarding the existence of documents selected by opposing parties counsel as important to her legal theories concerning the case is protected as work product; Spork v. Peil, 759 F.2d 312, 316 (3D Cir. 1985. Selection and compilation of documents by counsel falls within the highly protective category of opinion work product; cert. denied, 474 U.S. 903 (1985); American National Red Cross v. Travelers Indemnity Co., 896 F. Supp. 8, 13-14 (D.D.C. 1995) (requests for description of facts and documents which opposing party contends support each affirmative defense is an intrusion upon protected work product).

Request No. 16.
Response: Applicant objects to this Request on the grounds that Opposer has requested for Applicant to select documents that prove or tend to prove certain the existence or denial of certain facts or allegations or claim – the thought process an attorney engages as proofs are selected to support or contradict certain allegations in the case. Defendants object on the grounds of attorney work product as to the compilation and organization of documents in support of certain claims. "Counsel's ordering of 'facts', referring to respective proofs, organizing, aligning and marshaling data with a view to combative employment is the mark of the adversary enterprise." Information sought by defendants regarding the existence of documents selected by opposing parties counsel as important to her legal theories concerning the case is protected as work product; Spork v. Peil, 759 F.2d 312, 316 (3D Cir. 1985. Selection and compilation of documents by counsel falls within the highly protective category of opinion work product; cert. denied, 474 U.S. 903 (1985); American National Red Cross v. Travelers Indemnity Co., 896 F. Supp. 8, 13-14 (D.D.C. 1995) (requests for description of facts and documents which opposing party contends support each affirmative defense is an intrusion upon protected work product).

Request No. 17.
Response: Applicant objects to this Request on the grounds that Opposer has requested for Jarabes to select documents that prove or tend to prove certain the existence or denial of certain facts or allegations or claim – the thought process an attorney engages as proofs are selected to support

or contradict certain allegations in the case. Defendants object on the grounds of attorney work product as to the compilation and organization of documents in support of certain claims. "Counsel's ordering of 'facts', referring to respective proofs, organizing, aligning and marshaling data with a view to combative employment is the mark of the adversary enterprise." Information sought by defendants regarding the existence of documents selected by opposing parties counsel as important to her legal theories concerning the case is protected as work product; Spork v. Peil, 759 F.2d 312, 316 (3D Cir. 1985. Selection and compilation of documents by counsel falls within the highly protective category of opinion work product; cert. denied, 474 U.S. 903 (1985); American National Red Cross v. Travelers Indemnity Co., 896 F. Supp. 8, 13-14 (D.D.C. 1995) (requests for description of facts and documents which opposing party contends support each affirmative defense is an intrusion upon protected work product).

Request No. 18.
Response: Applicant objects to this Request on the grounds that Opposer has requested for Applicant to select documents that prove or tend to prove certain the existence or denial of certain facts or allegations or claim – the thought process an attorney engages as proofs are selected to support or contradict certain allegations in the case. Defendants object on the grounds of attorney work product as to the compilation and organization of documents in support of certain claims. "Counsel's ordering of 'facts', referring to respective proofs, organizing, aligning and marshaling data with a view to combative employment is the mark of the adversary enterprise." Information sought by defendants regarding the existence of documents selected by opposing parties counsel as important to her legal theories concerning the case is protected as work product; Spork v. Peil, 759 F.2d 312, 316 (3D Cir. 1985. Selection and compilation of documents by counsel falls within the highly protective category of opinion work product; cert. denied, 474 U.S. 903 (1985); American National Red Cross v. Travelers Indemnity Co., 896 F. Supp. 8, 13-14 (D.D.C. 1995) (requests for description of facts and documents which opposing party contends support each affirmative defense is an intrusion upon protected work product).

Request No. 19.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it has not identified any documents responsive to this request.

Request No 20.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Subject to this objections, Applicant responds:
See attached documents bates stamped 017-019.

Request No. 21.
Response: Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it has not identified any documents responsive to this request.

Request No 22.

Response: *Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it has not identified any documents responsive to this request.*

Request No 23.
Response: *Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Applicant responds that it has not identified any documents responsive to this request.*

Request No 24.
Response: *Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Subject to this objections, Applicant responds:*
See attached documents bates stamped 001-016.

Request No. 25.
Response: *Applicant object to this Request on the grounds that it is vague, overly broad, unduly burdensome, harassing, oppressive, and seeks information that is not reasonably calculated to lead to relevant evidence. Subject to this objections, Applicant responds:*
See attached documents bates stamped 001-016.

CERTIFICATE OF SERVICE

As counsel for Applicant, I hereby certify that I caused a true and correct copy of the attached APPLICANT'S RESPONSES TO REQUEST FOR PRODUCTION was served on this date via electronic to mailto:lauren.emerson@bakerbotts.com and Paul.Reilly@bakerbotts.com mail and U.S. first class mail, postage prepaid, upon the correspondence address of record as follows:

Applicant's Correspondence Address

PepsiCo, Inc.
Paul Lee, Esq.
700 Anderson Hill Road
Purchase, NY 10577
UNITED STATES

BAKER BOTTS, LLC
Paul J. Reilly, Esq.
Lauren Emerson, Esq.
30 Rockefeller Plaza, 44th FL.
New York, New York 10112-4498

Dated: November 13, 2015.

/Humberto Rubio/
Humberto Rubio
Law Firm of Rubio & Associates
8950 SW 74th Court, Suite 1804
Miami, Florida 33156
Phone: 305 670 0323
Fax: 305 670 0322

Attorney for Applicant,
MVS International Inc.

EXHIBIT Q

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December 4, 2015

BY E-MAIL & EXPRESS COURIER

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Humberto Rubio, Jr., Esq.
Law Firm of Rubio & Associates, P.A.
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Miami, FL 33156
Tel: (786) 220-2061
hrubio@rubiolegal.com

Re: PepsiCo, Inc. v. MVS International, Inc. Opposition No. 91221666

Dear Mr. Rubio:

I am in receipt of your letter of November 13, 2015. I write to reiterate certain persisting deficiencies in Applicant's responses and document production, as discussed in greater detail below, and to demand that you fully and completely respond to PepsiCo's document requests, request for admissions and interrogatories.

1. Interrogatory No. 9

As previously noted, the *identification* of discovery documents is not privileged. *See* TBMP 414. The cases you cite do not hold otherwise. Indeed, in *Goodyear Tire & Rubber Co. v. Tyrco Industries*, the Board addressed this very issue and held that "the fact that an attorney may have given an opinion to a client is not in and of itself privileged information; only the substance of the communication is considered privileged." *Fisons Limited v. Capability Brown Limited* concerned a request to disclose the substance of an opinion, which is a different request entirely. Likewise, *Miles Laboratories, Inc. v. Instrumentation Laboratory, Inc.* and *Axiohm S.A. and Axiohm, IPB v. Axiom Technology, Inc.* merely distinguish between search reports, which must be produced, and opinions, which need not be; Interrogatory No. 9, however, calls for the identification of a document, not its production. Please supplement your response immediately.

2. Document Requests No. 15-18

Applicant has maintained its objection to these Requests on the basis of work product immunity. As previously explained, the cases you cite are inapposite. Each pertains to a request to identify a subset of previously produced documents. In neither case was the party asserting the privilege withholding information. Here, MVS International is withholding information; Applicant's paltry production contains but two documents, neither of which addresses the allegations at issue. PepsiCo seeks factual, non-privileged evidentiary material—regardless of whether MVS International's counsel has or has not reviewed or considered it.

Any insight into counsel's understanding of this case that might be gleaned from the production of these documents is outweighed by PepsiCo's right to understand the evidentiary basis of the allegations in the Answer. Please provide the requested documents.

3. Request to Admit No. 11

You assert that "table water" is vague and broad, and that Applicant does not know and cannot determine what "table water" is. It does not appear that MVS International has made the reasonable inquiry required under the circumstances. I note that the Patent and Trademark Office deems "table water" to be a sufficiently definite identification of goods; indeed, it is expressly approved in the identification manual. Please supplement your response immediately.

If we do not receive Applicant's supplemental responses and production within ten (10) days from the date of this letter, we will move to compel. Further, we note that Applicant's unwillingness to comply with its discovery obligations has caused delay in this proceeding; please let us know by close of business on December 7, 2015 if MVS International will consent to a ninety (90) day extension of all dates in the proceeding. Thank you in advance for your prompt attention to this matter.

Regards,

Lauren Beth Emerson

EXHIBIT R

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

IN THE MATTER OF APPLICATION

Mark	: AQUAFIX
Applicant	: MVS International Inc.
Serial No.	: 86/384,378
Filed	: September 3, 2014
Published in the Official Gazette	: December 30, 2014

PEPSICO, INC.,	:	
Opposer,	:	Opposition No. 91221666
v.	:	
MVS INTERNATIONAL INC.	:	
Applicant.	:	

OPPOSER'S SECOND SET OF INTERROGATORIES TO APPLICANT

Opposer, PepsiCo, Inc., by its attorneys, hereby submits to Applicant, MVS International Inc., the following Interrogatories and requests that separate, full and complete written answers thereto, under oath, be made within thirty (30) days from service hereof, at the offices of Baker Botts L.L.P., 30 Rockefeller Plaza, New York, New York 10112-4498, in accordance with Trademark Rule 2.120, 37 C.F.R. § 2.120, and Rule 33 of the Federal Rules of Civil Procedure.

These Interrogatories shall be answered in accordance with the Instructions and Definitions set forth in Opposer's First Set of Interrogatories to Applicant. The full text of such Instructions and Definitions shall be deemed incorporated into each Interrogatory below.

INTERROGATORIES

INTERROGATORY NO. 14:

Identify A) the individual or individuals who prepared the document bearing production numbers PEPSICO V. AMVS 017-019 and attached as Exhibit A; B) the individual or individuals who instructed or directed that the document be created; and C) the individuals or entities to whom the document has been distributed or shown.

INTERROGATORY NO. 15:

Describe the purpose and use and/or intended use of the document bearing production numbers PEPSICO V. AMVS 017-019.

INTERROGATORY NO. 16:

State the dates on which the document bearing production numbers PEPSICO V. AMVS 017-019 was 1) first created and 2) lasted edited or revised.

INTERROGATORY NO. 17:

Identify any other versions of the document bearing production numbers PEPSICO V. AMVS 017-019.

Respectfully submitted,

BAKER BOTTS L.L.P.

Dated: December 4, 2015

Paul J. Reilly
Lauren Beth Emerson
30 Rockefeller Plaza
New York, New York 10112-4498
(212) 408-2500
Attorneys for Opposer

EXHIBIT A

MVS INTERNATINOAL, INC.

AQUAFIX

AQUAFIX PRESENTATION

Overview

Demand for bottled drinking water has been growing rapidly since the 2000s, increasing nearly 400% in the last decade according to the Bottled Water Manufacturers, as a result of declining consumer confidence in the safety and quality of municipal water supplies.
It's no small wonder that the world currently spends more than $100 billion per year on bottled water. Many people buy bottled water for use outside of the home during work or exercise. Others drink it as a substitute for having to filter their own tap water. It is easy to carry around, relatively inexpensive, and good for you since it's not filled with unhealthy ingredients and empty calories.
But what is bottled water really? Many bottled waters are simply tap water, "purified" and bottled up to look more attractive and sold in mass quantity. Countless brands of water now fill the shelves of retail stores, and many people would be surprised to learn that many of the most common brands of water measure very acidic on the pH scale. In fact, some well-known store brands could have a pH value as low as 4, while many others hover in the 5 to 6 range. A pH of 7 means neutral (ordinary tap water is commonly in the 7 to 8 range).
Alkaline water, not included as part of this list, varies in pH from around 7.4 (mildly alkaline) all the way to 10 which is highly alkaline, sometimes referred to in the media as "super pH". Improperly balanced water does not provide a pleasant taste. Water also lacks nutrients and vitamins. **AQUAFIX** will change this by providing different enjoyable flavors, by providing fruit flavored concentrates and powders to be added to the water. **AQUAFIX** will include a line of products designed to attract athletes by including "an energy drink" component/line of product and added vitamins.

Industry Size and Consumption

By far, the most popular type of water in the U.S. market is non-sparkling water; in year 2000 sales of non-sparkling water were $3,000,000,000, according to the *Report on Bottled Water Manufacturing,* Total bottled water sales as of (2014) are $10,000,000,000, including both domestic sparkling and imported drinking waters.
Per capita consumption of bottled water in the U.S. is also increasing dramatically, rising from 4.5 gallons per person in 2000 to 10.9 gallons per person, in 2014. **AQUAFIX** will target regular water (non-sparkling water) at first.

Name

The trade name **AQUAFIX** will be registered, and the product logo will be created.

Management Team

Juan iliopulos is the individual behind the **AQUAFIX** brand, bringing years of experience in the consumer industry including the beverage industry. Also, his family has operated a thriving bottled water business in Venezuela for over 15 years, which he helped to run. In addition, commission sales associates will be hired to secure new customer accounts with retailers, distributors and wholesalers.

Product Description

AQUAFIX is a high quality water enhancer with several fruit flavors and with added vitamins. Initially it will be a syrup but a powder will also be available. A sports line will be developed with an energy drink focus.

Advertising

AQUAFIX intends to advertise its free trial offers by way of secured through cross-promotion with fitness events.
Store samples, magazines and any other fitness event in our area.
It is thought that an annual marketing budget of $35,000 will be necessary for the first year of operation.

Initial Products

AQUAFIX will initially be in the form of a syrup/concentrate water enhancer with different fruit flavors. Powder will also be developed and will carry fruit flavors. The enhancer will have vitamins and will eventually have a sports line with energy drink properties.

Projected Products

Based upon the experience of bottling water in Venezuela, **AQUAFIX** may develop a line of product that offering water only with added vitamins and eventually water with different flavors and vitamins.

ANOTHER PRODUCT BROUGHT TO YOU BY MVS INTERNATIONAL!

Questions:
MVS International
10396 W State Rd.84
Suite 110
DAVIE, FL 33324

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, a true and accurate copy of the foregoing OPPOSER'S SECOND SET OF INTERROGATORIES TO APPLICANT was served on Applicant, MVS International, Inc., by express courier and email, at the following address of record:

HUMBERTO RUBIO
LAW FIRM OF RUBIO & ASSOCIATES PA
8950 SW 74TH CT STE 1804
MIAMI, FL 33156-3177
UNITED STATES
hrubio@rubiolegal.com

Dated: December 4, 2015

Lauren Beth Emerson

EXHIBIT S

Albert, Julie Beth

From: Lauren.Emerson@BakerBotts.com
Sent: Friday, March 18, 2016 5:10 PM
To: hrubio@rubiolegal.com
Cc: john.mitchell@bakerbotts.com
Subject: FW: PepsiCo, Inc. v. MVS International, Inc., Opposition No. 91221666

Dear Mr. Rubio,

The deadline to respond to PepsiCo's Second Set of Interrogatories to Applicant, which were served on December 4, 2015, passed over two months ago. Moreover, we have yet to receive any response to our letter of the same date. Please provide your responses no later than March 25, 2016; otherwise, we will recommend that our client move forward with a motion to compel.

Additionally, we note that the discovery period in this proceeding is set to close on March 29, 2016. Please let us know if MVS will consent to a further 90 day extension of all dates in the proceeding so that we may complete discovery.

Regards,
Lauren Emerson

Lauren Emerson
Baker Botts LLP
30 Rockefeller Plaza
New York, NY 10112
Direct: (212) 408-2533
Fax: (212) 259-2533
mailto:lauren.emerson@bakerbotts.com

From: Mitchell, John
Sent: Friday, December 04, 2015 5:07 PM
To: 'hrubio@rubiolegal.com'
Cc: Emerson, Lauren; Izak, Dorothy E.
Subject: PepsiCo, Inc. v. MVS International, Inc., Opposition No. 91221666

Dear Mr. Rubio:

Please see attached.

Sincerely,

John P. Mitchell

John P. Mitchell
Senior Paralegal
212-408-2560
347-260-1762 (mobile)
212-259-2560 (fax)

john.mitchell@bakerbotts.com

Baker Botts L.L.P.
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New York, NY 10112-4498