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

Proceeding	91221666
Party	Defendant MVS International Inc.
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Date	06/03/2015
Attachments	Aquafix - Answer to Opposition.pdf(219773 bytes )

**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 ANSWER AND AFFIRMATIVE DEFENSES TO NOTICE OF  
OPPOSITION**

Applicant, MVS INTERNATIONAL INC, (“Applicant”), owner of the application Serial No. 86/384,378 for the mark AQUAFIX filed on September 3, 2014 for “Concentrates and powders used in the preparation of energy drinks and fruit-flavored beverages; Concentrates for making fruit drinks; 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” in International Class 32, hereby answers Opposer’s, PEPSICO, INC. (“Opposer”) Notice of Opposition filed on April 24, 2015 as follows:

1. As to Paragraph 1 of the Notice of Opposition, Applicant does not have sufficient knowledge to either admit or deny the allegations in this paragraph and thus denies the same, leaving Opposer to its strict proof at trial.

2. As to Paragraph 2 of the Notice of Opposition, Applicant does not have sufficient knowledge to either admit or deny the allegations in this paragraph and thus denies the same, leaving Opposer to its strict proof at trial.

3. As to Paragraph 3 of the Notice of Opposition, Applicant does not have sufficient knowledge to either admit or deny the allegations in this paragraph and thus denies the same, leaving Opposer to its strict proof at trial.

4. As to Paragraph 4 of the Notice of Opposition, Applicant does not have sufficient knowledge to either admit or deny the allegations in this paragraph and thus denies the same, leaving Opposer to its strict proof at trial.

5. As to Paragraph 5 of the Notice of Opposition, Applicant does not have sufficient knowledge to either admit or deny the allegations in this paragraph and thus denies the same, leaving Opposer to its strict proof at trial.

6. As to Paragraph 6 of the Notice of Opposition, Applicant does not have sufficient knowledge to either admit or deny the allegations in this paragraph and thus denies the same, leaving Opposer to its strict proof at trial.

7. As to Paragraph 7 of the Notice of Opposition, Applicant does not have sufficient knowledge to either admit or deny the allegations in this paragraph and thus denies the same, leaving Opposer to its strict proof at trial.

8. As to Paragraph 8 of the Notice of Opposition, Applicant does not have sufficient knowledge to either admit or deny the allegations in this paragraph and thus denies the same, leaving Opposer to its strict proof at trial.

9. As to Paragraph 9 of the Notice of Opposition, Applicant does not have sufficient knowledge to either admit or deny the allegations in this paragraph and thus denies the same, leaving Opposer to its strict proof at trial.

10. As to Paragraph 10 of the Notice of Opposition, Applicant does not have sufficient knowledge to either admit or deny the allegations in this paragraph and thus denies the same, leaving Opposer to its strict proof at trial.

11. As to Paragraph 11 of the Notice of Opposition, Applicant does not have sufficient knowledge to either admit or deny the allegations in this paragraph and thus denies the same, leaving Opposer to its strict proof at trial.

12. As to Paragraph 12 of the Notice of Opposition, Applicant admits to: “On September 3, 2014, Applicant, MVS International Inc., having an address at 2993 SW 141<sup>st</sup> Terrace, Davie, Florida 33330, filed Applications Serial no. 86/384,378 to register AQUAFIX, in connection with Concentrates and powders used in the preparation of energy drinks and fruit-flavored beverages; Concentrates for making fruit drinks; 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” in International Class 32”. Applicant denies each and every other allegation contained therein.

13. As to Paragraph 13 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

14. As to Paragraph 14 of the Notice of Opposition, Applicant does not have sufficient knowledge to either admit or deny the allegations in this paragraph and thus denies the same, leaving Opposer to its strict proof at trial.

15. As to Paragraph 15 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

16. As to Paragraph 16 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

17. As to Paragraph 17 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

17. As to Paragraph 17 of the Notice of Opposition, Applicant denies each and every allegation contained therein. (Paragraph 17 of the Notice of Opposition is duplicate and both are denied).

18. As to Paragraph 18 of the Notice of Opposition, Applicant does not have sufficient knowledge to either admit or deny the allegations in this paragraph and thus denies the same, leaving Opposer to its strict proof at trial.

19. As to Paragraph 19 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

### **AFFIRMATIVE DEFENSES**

1. Opposer fails to state legally sufficient grounds for sustaining the opposition and is merely anti-competitive in nature.
2. There is no likelihood of confusion between Applicant's mark 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 the overall commercial impression between Applicant's mark and the marks basis of the Opposer's opposition are very different as well.
3. Opposer is improperly dissecting Applicant's mark and claiming exclusive ownership to the tem AQUA. A mark has to be considered in its entirety and cannot be dissected to serve Opposer's purpose.
4. No damage or injury has resulted, will result, or is likely to result to Opposer from the registration of Applicant's trademark due to, among other factors, the difference between the marks and the different commercial channels where the goods are to be offered.

### **PRAYER FOR RELIEF**

In view of the foregoing, Applicant contends that this Notice of Opposition is groundless and baseless in fact; that Petitioner has not shown wherein it will be, or is likely to be, damaged by the registration of Applicant's trademark, that Applicant's trademark is manifestly distinct from any alleged mark of the Opposer or any designation of the Opposer, that Applicant's mark and the goods covered thereby are different from Opposer's mark and Applicant prays that the Board dismiss this opposition with prejudice and for such other relief as the Board may deem appropriate.

Respectfully submitted,

Dated: June 03, 2015

/Humberto Rubio/

Humberto Rubio

Law Firm of Rubio & Associates

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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 ANSWER TO NOTICE OF OPPOSITION, Opposition No. 91221666 to be served on this date via U.S. first class mail, postage prepaid, upon the correspondence address of record and domestic representative for Applicant as follows:

Applicant's Correspondence Address

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

Dated: June 03, 2015

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