

ESTTA Tracking number: **ESTTA679394**

Filing date: **06/22/2015**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	The Coca-Cola Company
Granted to Date of previous extension	06/21/2015
Address	One Coca-Cola Plaza Atlanta, GA 30313 UNITED STATES

Attorney information	Jessica Lewis One Coca-Cola Plaza Atlanta, GA 30313 UNITED STATES jeslewis@coca-cola.com,vkeenana@coca-cola.com Phone:404-676-0394
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Applicant Information

Application No	85812957	Publication date	12/23/2014
Opposition Filing Date	06/22/2015	Opposition Period Ends	06/21/2015
International Registration No.	NONE	International Registration Date	NONE
Applicant	Philippe Aritz 2 Rue de Drinklange Troisvierges, L9911 LUXEMBOURG		

Goods/Services Affected by Opposition

Class 025. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Clothing, namely, bottoms and tops; shoes; caps; hats
Class 032. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Non-alcoholic drinks, namely, non-alcoholic cocktails, non-alcoholic beer, non-alcoholic cider; soft drinks; fruits drinks; non-alcoholic fruit-based drinks; syrup to make beverages; pops; powders to make soft, energy and sports drinks; energy drinks; beers
Class 033. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Alcoholic drinks, namely, spirits, prepared alcoholic cocktails, alcoholic maltcoolers; wine

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	22406	Application Date	05/14/1892
Registration Date	01/31/1893	Foreign Priority Date	NONE
Word Mark	COCA-COLA		
Design Mark			
Description of Mark	<p>The said trade-mark of said company consists of the word or words "Coca Cola". These words have been generally written as a compound word, and in the particular form represented in the accompanying fac-simile, that is to say, with the lower portion of the "C" beginning the word "Coca" extended under the entire word, in the form of a dash, and the top of the "C" beginning the word "Cola" extended over the letters following in the form of a dash. Upon the dash of the first "C" said corporation generally has the word "Trade-Mark". While said corporation prefers to form the initial "C's" as just described, and also to form the word as a compound word, yet the word may be altogether as one word or separately as two words, and the dashes omitted, without materially altering the character of the said trade-mark, the essential feature of which is the word "Coca-Cola".</p>		
Goods/Services	Class 032. First use: First Use: 1887/06/28 First Use In Commerce: 1887/06/28 [NUTRIENT OR] TONIC BEVERAGES		

U.S. Registration No.	238146	Application Date	09/13/1927
Registration Date	01/31/1928	Foreign Priority Date	NONE
Word Mark	COCA-COLA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1886/05/00 First Use In Commerce: 1886/05/00 BEVERAGES AND SYRUPS FOR THE MANUFACTURE OF SUCH BEVERAGES		

U.S. Registration No.	1287644	Application Date	12/15/1982
Registration Date	07/31/1984	Foreign Priority Date	NONE
Word Mark	COCA-COLA		

Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 006. First use: First Use: 1936/00/00 First Use In Commerce: 1936/00/00 Keyrings; Money Clips (Not Made of Precious Metal)</p> <p>Class 008. First use: First Use: 1906/00/00 First Use In Commerce: 1906/00/00 [POCKET KNIVES;] NONELECTRIC CAN/BOTTLEOPENERS; ((CUTLERY-NAMELY, FORKS, KNIVES, SPOONS USED AS TABLEWARE))</p> <p>Class 009. First use: First Use: 1900/00/00 First Use In Commerce: 1900/00/00 Thermometers; Radios; Calculators; [Telephones;] Sunglasses</p> <p>Class 011. First use: First Use: 1910/00/00 First Use In Commerce: 1910/00/00 Electric Lamps and Lighting Fixtures</p> <p>Class 014. First use: First Use: 1892/00/00 First Use In Commerce: 1892/00/00 Clocks; Watches; Jewelry-Namely, Charms, Pendants, Bracelets, Necklaces, [StickPins, Rings,] Money Clips (Made of Precious Metal) and Keyrings</p> <p>Class 016. First use: First Use: 1891/00/00 First Use In Commerce: 1891/00/00 Writing Instruments-Namely, Pens; Pencils and Mechanical Pencils; Folders and Portfolios for Papers; [Letter Openers;] Calendars; Pen and Pencil Holders; PaperClip Holders; Paper Weights; Playing Cards; Paper Napkins; Postcards; Posters and Adhesive Stickers</p> <p>Class 018. First use: First Use: 1903/00/00 First Use In Commerce: 1903/00/00 Purses and Handbags; Wallets; [Credit Card Holders]; Business Folders-Namely, Brief Case Type Portfolios,[Brief Cases,]Attache Cases (Made of Leather and Vinyl); Various Bags-Namely, Garment Bags for Travel, All Purpose Sporting Goods Bags, Gym Bags and All Purpose Gear Carrying Bags Made of Leather, Vinyl and Fabric; Umbrellas; Luggage Tags and Luggage</p> <p>Class 020. First use: First Use: 1903/00/00 First Use In Commerce: 1903/00/00 Mirrors</p> <p>Class 021. First use: First Use: 1898/00/00 First Use In Commerce: 1898/00/00 Porcelain Dishware-Namely, Plates, Bowls, Cups and Mugs; Dishware Made of Non-Precious Metal-Namely, Dishes, Bowls, Goblets, Tankards, Cups, Coasters; Serving Trays, Plastic Dishware-Namely, Mugs, Bowls, Coasters and Cups; Insulated Beverage Holders, Ice Chests and Beverage Coolers</p> <p>Class 025. First use: First Use: 1923/00/00 First Use In Commerce: 1923/00/00 Clothing-Namely, Mens and Womens T-Shirts, Sport Shirts, Night Shirts, Sweaters, Jackets, Shorts, Socks, [Overalls,] Uniforms for Work; Hats; [Scarves;] Neckties</p> <p>Class 026. First use: First Use: 1915/00/00 First Use In Commerce: 1915/00/00 [Belt Buckles (Not of Precious Metals);] [Sewing Kits-Namely, Thread, Needles, Thimble, and Straight Pins;] Badges; Tie Pins and] [Tieclips]</p> <p>Class 027. First use: First Use: 1976/00/00 First Use In Commerce: 1976/00/00</p>

	<p>[[(RUGS)]]</p> <p>Class 028. First use: First Use: 1930/00/00 First Use In Commerce: 1930/00/00 Sporting Equipment-Namely, Tennis Balls; [Tennis Rackets]; Golf Balls; Golf Tees; Golf Clubs; Bats; Toys-Namely, Cars; Trucks; [Whistles]; Yo Yo's] and Flying Discs</p> <p>Class 034. First use: First Use: 1907/00/00 First Use In Commerce: 1907/00/00 [Matches; Lighters and Ashtrays]</p>
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U.S. Registration No.	1257789	Application Date	09/23/1982
Registration Date	11/15/1983	Foreign Priority Date	NONE
Word Mark	DIET COCA-COLA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1982/07/00 First Use In Commerce: 1982/08/09 Soft Drinks (AND SYRUPS AND CONCENTRATES FOR MAKING THE SAME)		

U.S. Registration No.	1432152	Application Date	05/27/1986
Registration Date	03/10/1987	Foreign Priority Date	NONE
Word Mark	COCA-COLA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1986/01/14 First Use In Commerce: 1986/01/14 SOFT DRINKS [AND SYRUPS AND CONCENTRATES FOR MAKING THE SAME]		

U.S. Registration No.	1493254	Application Date	10/23/1987
Registration Date	06/21/1988	Foreign Priority Date	NONE
Word Mark	COCA-COLA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1977/07/00 First Use In Commerce: 1977/10/13 FOOTWEAR		

U.S. Registration No.	3252896	Application Date	11/01/2004
Registration Date	06/19/2007	Foreign Priority Date	NONE
Word Mark	COCA-COLA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2002/12/15 First Use In Commerce: 2003/01/01 Non-alcoholic beverages, namely, soft drinks; and syrups and concentrates for making beverages, namely, soft drinks		

Attachments	70022406#TMSN.png(bytes) 71254695#TMSN.png(bytes) 73406145#TMSN.png(bytes) 73388253#TMSN.png(bytes) 73601167#TMSN.png(bytes) 73691508#TMSN.png(bytes) 78509545#TMSN.png(bytes) Notice of Opposition - Americola.pdf(108364 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Jessica Lewis/
Name	Jessica Lewis
Date	06/22/2015

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

In The Matter Of: Application No. 85/812,957
Mark: AMERICOLA ORIGINAL (Design Plus Words)
Filed: December 31, 2012
Published: December 23, 2014

THE COCA-COLA COMPANY,

Opposer,

v.

PHILIPPE ARITZ,

Applicant.

Opposition No.

NOTICE OF OPPOSITION

THE COCA-COLA COMPANY (“Coca-Cola”), a Delaware corporation having its principal place of business at One Coca-Cola Plaza, Atlanta, Georgia 30313, believes it would be damaged by registration of the mark AMERICOLA ORIGINAL & Design (“Applicant’s Purported Mark”) for:

Non-alcoholic drinks, namely, non-alcoholic cocktails, non-alcoholic beer, non-alcoholic cider; soft drinks; fruits drinks; non-alcoholic fruit-based drinks; syrup to make beverages; pops; powders to make soft, energy and sports drinks; energy drinks; beers

in International Class 32,

Clothing, namely, bottoms and tops; shoes; caps; hats

in International Class 25,

Alcoholic drinks, namely, spirits, prepared alcoholic cocktails, alcoholic malt coolers; wine

in International Class 33,

(collectively “Applicant’s Goods”), which mark is the subject of application Serial Number 85/812,957 (the “Application”), filed on Dec. 31, 2012 by Philippe Aritz (“Applicant”), and published for opposition in the *Official Gazette* on Dec. 23, 2014. On January 22, 2015, Coca-Cola filed a request for a 90-day extension of time to oppose the Application, which was granted by order of the Trademark Trial and Appeal Board on the same day. On April 16, 2015, Coca-Cola filed a request for an additional 60-day extension of time to oppose the Application, which was also granted by order of the Trademark Trial and Appeal Board on the same day. The deadline to oppose the Application is June 22, 2015.

By and through its undersigned attorneys and in accordance with Trademark Rules of Practice Rules 2.101 through 2.104, Coca-Cola hereby opposes registration of the Application and requests that registration of Applicant’s Purported Mark be refused.

As grounds for this Opposition, Coca-Cola alleges as follows:

1. Coca-Cola is the world’s largest beverage company, serving more than 1.6 billion consumers each day, in more than 200 countries around the world

and is the owner of numerous famous brands worldwide, fifteen (15) of which are billion dollar brands.

2. Coca-Cola’s COCA-COLA brand is the centerpiece of its trademark portfolio. Indeed, Coca-Cola’s COCA-COLA and DIET COKE products are the top two soft drink brands on the planet. Coca-Cola and its related entities have continuously used its COCA-COLA mark since at least as early as 1887 in connection with beverages, syrups, and concentrates for making beverages.

3. In recognition of Coca-Cola’s rights in its COCA-COLA family of marks (collectively, the “COCA-COLA Marks”), the United States Patent and Trademark Office has issued Coca-Cola a number of federal trademark registrations. A non-exhaustive list of Coca-Cola’s registrations for its COCA-COLA Marks (the “COCA-COLA Registrations”) appears below:

Trademark	Registration No.	Registration Date	Goods
	Reg. No. 22,406 <i>Incontestable</i>	January 31, 1893	<u>Int’l Class 32</u> Nutrient or tonic beverages
	Reg. No. 238,146 <i>Incontestable</i>	January 31, 1927	<u>Int’l Class 32</u> Beverages and syrups for the manufacture of such beverages
	Reg. No. 1,287,644 <i>Incontestable</i>	July 31, 1984	<u>Int’l Class 25¹</u> Clothing-Namely, Mens and Womens T-Shirts, Sport Shirts, Night Shirts, Sweaters, Jackets, Shorts,

¹ Among other goods covered by this Registration.

			Socks, Uniforms for Work; Hats; Neckties
	Reg. No. 1,257,789 <i>Incontestable</i>	Nov.15, 1983	<u>Int'l Class 32</u> Soft drinks (and syrups and concentrates for making the same)
	Reg. No. 1,432,152 <i>Incontestable</i>	March 10, 1987	<u>Int'l Class 32</u> Soft drinks and syrups and concentrates for making the same in class.
	Reg. No. 1,493,254 <i>Incontestable</i>	June 21, 1988	<u>Int'l Class 25</u> Footwear
	Reg. No. 3,252,896 <i>Incontestable</i>	June 19, 2007	<u>Int'l Class 32</u> Non-alcoholic beverages, namely, soft drinks; and syrups and concentrates for making beverages, namely, soft drinks

4. Coca-Cola's registrations for its COCA-COLA Marks are valid and subsisting in law, were duly and legally issued, are prima facie evidence of the validity of the marks registered and constitute constructive notice of ownership of these marks by Coca-Cola in accordance with Sections 7(b) and 22 of the Trademark Act of 1946, 15 U.S.C. §§ 1057(b) and 1072.

5. Well before Applicant's alleged date of priority² for its Purported Mark, Coca-Cola has continuously and widely used one or more of its COCA-COLA Marks in connection with a distinctive red and white color scheme and design. A representative example of a COCA-COLA Mark incorporating

² The Applicant filed the Application on Dec. 31, 2012 under Sections 1(b) and 44(e) of the Lanham Act.

Coca-Cola's distinctive red and white color scheme and distinctive design appears below:



Through many years of use and substantial advertisement, consumers have long recognized Coca-Cola's distinctive red and white color scheme as a source identifier for Coca-Cola's products.

6. Coca-Cola has used the COCA-COLA Marks continuously in interstate commerce, and is and has been at all pertinent times the owner of all right, title and interest in and to the COCA-COLA Marks for a wide range of goods and services, including, among other things, beverages and soft drinks in International Class 32.

7. Coca-Cola has invested a substantial amount of time, effort, money and other resources in advertising and promoting products offered in connection with the COCA-COLA Marks and have continuously and extensively used the COCA-COLA Marks in the United States in connection with its goods and

services well prior to Applicant's purported priority date. Specifically, Coca-Cola spends hundreds of millions of dollars each year on measured media in connection with the COCA-COLA Marks along with millions more on other media touch points, such as sponsorships, product placement, premiums, and coupons.

8. As a result of Coca-Cola's use and advertisement of the COCA-COLA Marks in the United States, the COCA-COLA Marks have become famous and well-known to consumers in the United States, have become widely associated with Coca-Cola, point uniquely and unmistakably to Coca-Cola, and are an asset of considerable value to Coca-Cola. Between Coca-Cola and Applicant, Coca-Cola is the senior user.

9. By the Application, Applicant seeks to register Applicant's Purported Mark as a mark for Applicant's Goods in International Classes 25, 32 and 33.

10. The Application was filed with the United States Patent and Trademark Office on Dec. 31, 2012 on the basis of Applicant's alleged intent to use Applicant's Purported Mark in commerce under Section 1(b) of the Lanham Act, 15 U.S.C. §1051(b), and under Section 44(e) of the Lanham Act, 15 U.S.C. §1126(e). The Application was filed in the name of Philippe Aritz, an individual, and was assigned serial number 85/812,957.

11. The Application was published for opposition in the *Official Gazette* on Dec. 23, 2014. Coca-Cola timely sought and obtained appropriate extensions of

time to oppose the registration of Applicant's Purported Mark, which extended the opposition period until June 22, 2015. This Notice of Opposition is timely filed.

**GROUND FOR OPPOSITION 1: LIKELIHOOD OF CONFUSION
(SECTION 2(d), 15 U.S.C. § 1052(d))**

12. Coca-Cola has priority over Applicant based on both its prior registrations and common-law rights.

13. The COCA-COLA Registrations are now incontestable under 15 U.S.C. § 1065.

14. Applicant's Purported Marks — AMERICOLA ORIGINAL & Design — is confusingly similar in appearance, meaning and commercial impression to the COCA-COLA Marks, which the public exclusively associates with Coca-Cola. For example, the stylized script used in Applicant's Purported Mark is confusingly similar in sight and impression to the world-famous Spencerian Script used with one or more of the COCA-COLA Marks, which is compounded by the fact that Applicant's Purported Mark: mimics Coca-Cola's well know red and white color scheme; includes one or more confusingly similar design elements; and incorporates the suffix COLA.

15. Both the COCA-COLA Marks and Applicant's Purported Marks are either used in connection with identical goods (e.g., "soft drinks" in Class 32; "hats" in Class 25) or highly-related goods (e.g., "alcoholic drinks" in Class 33 vis a vis "Non-alcoholic beverages" in Class 32).

16. Because of the high degree of similarity between the marks and between the parties' goods, Applicant's use of its Purported Mark is likely to lead consumers to mistakenly believe that Coca-Cola is the source of Applicant's goods or that Applicant is affiliated with, endorsed by or sponsored by Coca-Cola.

**GROUND FOR OPPOSITION 2: LIKELIHOOD OF DILUTION
(SECTION 1(a), 15 U.S.C. § 1051(a))**

17. The COCA-COLA Marks are highly distinctive and famous within the meaning of Section 43(c) of the Lanham Act, and became famous long before the date of the application to register Applicant's Purported Mark.

18. Applicant's use of its Purported Mark in connection with Applicant's Goods is likely to (and will) cause dilution of the COCA-COLA Marks, by blurring the distinctive quality of Coca-Cola's famous COCA-COLA Marks, by tarnishing the reputation of Coca-Cola's famous COCA-COLA Marks, or both.

19. Applicant's planned use and registration of its Purported Mark in connection with Applicant's Goods is a purposeful and unlawful attempt to trade on the fame and notoriety of the COCA-COLA Marks.

20. By reason of the foregoing, Coca-Cola would be damaged by the registration of Applicant's Purported Mark because, *inter alia*, such registration will assist Applicant in diluting the distinctiveness of the COCA-COLA Marks and will give Applicant color of right to Applicant's Purported Mark in violation of Coca-Cola's prior, established and superior statutory and common law rights.

WHEREFORE, Coca-Cola respectfully prays that the Application be refused, that no registration be issued thereon to Applicant, that this opposition be sustained in favor of Coca-Cola, and for any different and additional relief as this Board deems just and proper.

Respectfully submitted this 22nd day of June, 2015.

/Jessica Lewis/

Jessica Lewis, Esq.

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THE COCA-COLA COMPANY

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Attorney for Opposer

The Coca-Cola Company

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

In The Matter Of: Application No. 85/812,957
Mark: AMERICOLA ORIGINAL (Design Plus Words)
Filed: December 31, 2012
Published: December 23, 2014

THE COCA-COLA COMPANY,

Opposer,

v.

PHILIPPE ARITZ,

Applicant.

Opposition No.

CERTIFICATE OF SERVICE

This is to certify, in accordance with Rule 2.101(b) of the Trademark Rules of Practice, that I have this day served the foregoing Notice of Opposition on the Applicant, by causing a true and correct copy thereof to be deposited in the United States Mail, postage prepaid, addressed to the Applicant's attorney of record as follows:

Jeffrey H. Greger
LOWE HAUPTMAN HAM & BERNER, LLP
2318 Mill Road, Suite 1400
Alexandria, VIRGINIA 22314

This 22nd day of June, 2015.

/Jessica Lewis/

Jessica Lewis