

ESTTA Tracking number: **ESTTA61569**

Filing date: **01/11/2006**

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	01/11/2006
Address	One Coca-Cola Plaza Atlanta, GA 30313 UNITED STATES

Attorney information	Larry H. Tronco King & Spalding LLP 1185 Avenue of the Americas New York, NY 10036 UNITED STATES ltronco@kslaw.com, bbaber@kslaw.com, cpearlstein@na.ko.com, lysims@na.ko.com, IP@kslaw.com
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Applicant Information

Application No	78492865	Publication date	09/13/2005
Opposition Filing Date	01/11/2006	Opposition Period Ends	01/11/2006
Applicant	Rothensteiner, Fredi Fliederhof 4/9 Wien, A 1100 AUSTRIA		

Goods/Services Affected by Opposition

Class 032. All goods and services in the class are opposed, namely: NON-ALCOHOLIC AND CARBONATED BEVERAGES CONTAINING TAURINE AND CAFFEINE

Attachments	cx2opp.pdf (5 pages)
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Signature	/larry h. tronco/
Name	Larry H. Tronco
Date	01/11/2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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THE COCA-COLA COMPANY,	:	
	:	
Opposer,	:	Opposition No.
	:	
v.	:	
	:	
FREDI ROTHENSTEINER,	:	
	:	
Applicant.	:	

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OPPOSITION

TO THE COMMISSIONER OF TRADEMARKS:

THE COCA-COLA COMPANY, a Delaware corporation located and doing business at One Coca-Cola Plaza, Atlanta, Georgia 30313, believes that it will be damaged by the registration of the designation CX2 as a trademark for “non-alcoholic and carbonated beverages containing taurine and caffeine” in International Class 32, as requested in Application Serial No. 78/492,865 (the “Application”) filed on October 1, 2004 by Fredi Rothensteiner, an individual residing at Fliederhof 4/9, Wien A 1100, Austria, and, having previously been granted an extension of time to oppose, hereby opposes the same.

The grounds for opposition are as follows:

1. Prior to October 1, 2004, the filing date of the Application, Opposer adopted and used and has continued to use the mark COCA-COLA C2 in interstate commerce on and in

connection with the sale of beverages. Opposer has continuously used said mark to identify and distinguish Opposer's goods from those of others since prior to October 1, 2004.

2. Opposer is the owner of Registration No. 2,992,985 on the Principal Register of the United States Patent and Trademark Office for the trademark COCA-COLA C2, issued on September 6, 2005 for "non-alcoholic beverages, namely soft drinks; syrups and concentrates for making beverages, namely soft drinks" ("Opposer's Goods") in International Class 32.

3. Prior to the filing date of the Application, the mark COCA-COLA C2 was applied to Opposer's Goods and to advertisements and promotional materials used in connection with the sale of Opposer's Goods. Opposer's Goods offered and sold under the mark COCA-COLA C2 have been extensively advertised and promoted, making clear and prominent use of the trademark COCA-COLA C2 to identify and distinguish Opposer's Goods from those sold by others. As a result of such advertising and promotion, Opposer has enjoyed extensive sales of its products offered and sold under Opposer's trademark COCA-COLA C2.

4. The trademark COCA-COLA C2 has been used by Opposer since prior to the filing date of the Application and continues to be used by Opposer for the purposes of identifying and distinguishing Opposer's Goods from the goods of others, and the trade and the consuming public have come to know and recognize said trademark as identifying the goods of Opposer as the source thereof exclusively.

5. Prior to the filing date of the Application, as a result of the skill and care exercised by Opposer in the conduct of its business, the uniform standards of high quality of Opposer's Goods offered and sold under Opposer's trademark COCA-COLA C2, and the advertising, promotion, distribution and acceptance thereof by the trade and consuming public, goods bearing Opposer's trademark have become well and favorably known. Opposer's Goods

sold under the mark COCA-COLA C2 have been the subject of extensive news stories and unsolicited media articles in the United States. As a result, the mark COCA-COLA C2 has acquired an extensive and favorable reputation, symbolizing the goodwill that Opposer has created throughout the United States and elsewhere in connection with the marketing and sale of beverages.

6. By the Application, Applicant seeks to register the designation CX2 as a trademark for “non-alcoholic and carbonated beverages containing taurine and caffeine.”

7. Applicant’s goods in Class 32 that are to be offered under the alleged mark CX2 are the same as or similar to the goods in Class 32 on and in connection with which Opposer has used and continues to use the well-known mark COCA-COLA C2.

8. The goods in Class 32 covered by the Application will be encountered by the same or similar class of purchasers as those who are interested in or familiar with the goods in Class 32 promoted, offered and provided by Opposer under the well-known mark COCA-COLA C2.

9. The goods in Class 32 on which Applicant’s claimed mark is intended to be used and the goods in Class 32 on and in connection with which Opposer has used and continues to use its COCA-COLA C2 trademark will be advertised, promoted, offered, and distributed through the same or similar channels of trade to the same or similar classes of purchasers, and the use by Applicant of a mark that is similar to Opposer’s COCA-COLA C2 mark in connection with such goods will be likely to cause confusion, or to cause mistake, or to deceive purchasers, all to the damage of Opposer.

10. Applicant's claimed mark CX2 so closely resembles Opposer's registered mark COCA-COLA C2 as to be likely, when applied to Applicant's goods, to cause confusion, to cause mistake and to deceive, with consequent injury to Opposer and the public.

11. Applicant's claimed mark CX2 so closely resembles Opposer's registered mark COCA-COLA C2 that, if and when Applicant uses its claimed mark, potential purchasers are likely to mistakenly believe that Opposer is the source of Applicant's goods or that Opposer has authorized, sponsored, approved of, or in some other manner associated itself with the goods of Applicant, and such use will therefore create a likelihood of confusion, deception or mistake, all to the damage of Opposer.

12. Opposer will be damaged by the registration sought by Applicant because such registration would support and assist Applicant in the confusing and misleading use of Applicant's claimed mark and would give color of exclusive statutory rights to Applicant, all in violation and derogation of the prior and superior rights of Opposer to the well-known mark COCA-COLA C2.

13. As alleged above, Opposer has adopted and used and has continued to use the federally registered mark COCA-COLA C2 in interstate commerce on or in connection with beverages. The mark COCA-COLA C2 has become a strong, distinctive and famous mark qualifying for protection under Section 13 and Section 43(c) of the Lanham Act, as amended, 15 U.S.C. §§ 1063 and 1125(c).


14. Opposer's mark COCA-COLA C2 is a famous mark within the meaning of Section 43(c) of the Trademark Act of 1946, as amended, and the use by Applicant of the designation CX2 would cause dilution of the distinctive quality of Opposer's mark COCA-COLA C2, in violation of Section 43(c).

15. By reason of the foregoing, Opposer believes it will be damaged by the registration of Applicant's claimed trademark.

WHEREFORE, Opposer THE COCA-COLA COMPANY respectfully prays that its opposition to Application Serial No. 78/492,865 for registration of the designation CX2 be sustained and that the registration sought by Applicant be refused.

Dated: January 11, 2006

KING & SPALDING LLP

By: 
Bruce W. Baber
Larry H. Tronco

1185 Avenue of the Americas
New York, New York 10036
(212) 556-2100

Attorneys for Opposer
THE COCA-COLA COMPANY