

ESTTA Tracking number: **ESTTA571741**

Filing date: **11/19/2013**

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

Proceeding	91178927
Party	Defendant The Coca-Cola Company
Correspondence Address	BRUCE W BABER KING & SPALDING LLP 1180 PEACHTREE STREET ATLANTA, GA 30309 UNITED STATES bbaber@kslaw.com, ebrown@kslaw.com
Submission	Other Motions/Papers
Filer's Name	Bruce W. Baber
Filer's e-mail	bbaber@kslaw.com, ebrown@kslaw.com
Signature	/Bruce W. Baber/
Date	11/19/2013
Attachments	TCCC Supplement to Notice of Reliance.pdf(38690 bytes)

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

ROYAL CROWN COMPANY, INC.	)	<u>Consolidated Proceedings:</u>
and DR. PEPPER/SEVEN UP, INC.,)	
)	
Opposers,	)	OPPOSITION NO. 91178927
	)	OPPOSITION NO. 91180771
	)	OPPOSITION NO. 91180772
v.	)	OPPOSITION NO. 91183482
	)	OPPOSITION NO. 91185755
THE COCA-COLA COMPANY,	)	OPPOSITION NO. 91186579
	)	OPPOSITION NO. 91189847
Applicant.	)	OPPOSITION NO. 91190658

– and –

THE COCA-COLA COMPANY,)	
)	
Opposer,)	
)	
v.	)	OPPOSITION NO. 91184434
)	
ROYAL CROWN COMPANY, INC.)	
and DR. PEPPER/SEVEN UP, INC.,)	
)	
Applicants.)	

SUPPLEMENT TO
THE COCA-COLA COMPANY’S NOTICE OF RELIANCE
ON PRINTED PUBLICATIONS, OFFICIAL RECORDS
AND DISCOVERY REQUEST RESPONSES

The Coca-Cola Company (“TCCC”), by and through its undersigned counsel and pursuant to and in accordance with Rule 2.122 of the Trademark Rules of Practice, hereby serves this supplement to its Notice of Reliance on Printed Publications, Official Records and Discovery Responses, Docket No. 110, filed on October 15, 2013 (the “TCCC Notice of Reliance”). TCCC files this supplement in order to address certain

issues raised by Royal Crown Company, Inc. and Dr Pepper/Seven Up, Inc. (collectively, "RC") regarding the TCCC Notice of Reliance.

INTRODUCTORY STATEMENT

On October 15, 2013, during its opening testimony period, TCCC timely filed and served the TCCC Notice of Reliance. In the Notice, TCCC made of record a number of documents. On November 6, 2013, counsel for RC notified counsel for TCCC that RC took issue with certain specific paragraphs of TCCC's Notice of Reliance, and requested that TCCC "amend" the notice to provide additional information regarding the documents described in those paragraphs. More specifically, RC requested that TCCC provide additional information regarding the relevance of the documents described in paragraphs 49 through 56 of the TCCC Notice of Reliance.

TCCC has agreed to provide additional information as requested by RC, and files this supplement to the TCCC Notice of Reliance to address the issues raised by RC. In order to minimize unnecessary paperwork, TCCC includes in this supplement revised descriptions for only the eight paragraphs of the TCCC Notice of Reliance as to which RC has raised issues, and does not attach hereto additional copies of the documents themselves, all of which were attached to the original notice as filed on October 15, 2013.

TCCC further notes that the documents described in all eight paragraphs supplemented below are documents that reflect the resolution of opposition proceedings before the Board and that, in each case, RC has made of record the opposition filed by TCCC together with a statement that the oppositions "bear on the extent of TCCC's

claim of rights in the ZERO mark [sic].” TCCC reserves all rights regarding the relevance of the documents made of record by RC and, as the supplemental descriptions below confirm, makes of record the additional documents in order to provide a more complete and accurate record of the opposition proceedings to the extent the Board deems those proceedings to be relevant.

SUPPLEMENTAL DESCRIPTIONS

A. Official Records

49. [Supplemented] Copies of the Second Stipulated Motion to Amend Application and to Dismiss Opposition with Prejudice dated April 30, 2013 and the decision of the TTAB dated May 18, 2013, both in the proceeding captioned The Coca-Cola Company v. Red Mango, Inc., f/k/a Relay International Co., Ltd., Opposition No. 91184776. TCCC submits these documents in response to documents submitted by RC regarding Opposition No. 91184776, namely RC Exhibit 267. These additional documents reflect the resolution of Opposition No. 91184776 and therefore are relevant to provide a more complete record of that opposition. To the extent the opposition and the document made of record by RC are relevant to these proceedings, these additional documents show that the application that was the subject of the above-referenced opposition was amended with TCCC’s consent in a manner that is relevant to the strength of and/or acknowledgement or recognition by third parties of TCCC’s ZERO family of marks. Copies of the documents, which constitute official records in accordance with Rule 2.122(e) of the Trademark Rules of Practice, are attached to the TCCC Notice of Reliance as TCCC Exhibit 254.

50. [Supplemented] Copies of the Abandonment of Application Without Prejudice and Stipulation of Dismissal Without Prejudice dated October 19, 2012 and the decision of the TTAB dated October 22, 2012, both in the proceeding captioned The Coca-Cola Company v. Asahi Group Holdings, Ltd., Opposition No. 91204164. TCCC submits these documents in response to documents submitted by RC regarding Opposition No. 91204164, namely RC Exhibit 268. These additional documents reflect the resolution of Opposition No. 91204164 and therefore are relevant to provide a more complete record of that opposition. To the extent the opposition and the document made of record by RC are relevant to these proceedings, these additional documents show that the applicant agreed to abandon the application that was the subject of the above-referenced opposition, which is relevant to the strength of and/or acknowledgement or recognition by third parties of TCCC's ZERO family of marks. Copies of the documents, which constitute official records in accordance with Rule 2.122(e) of the Trademark Rules of Practice, are attached to the TCCC Notice of Reliance as TCCC Exhibit 255.

51. [Supplemented] Copies of the Abandonment of Application Without Prejudice and Stipulation of Dismissal Without Prejudice dated October 19, 2012 and the decision of the TTAB dated November 9, 2012, both in the proceeding captioned The Coca-Cola Company v. Asahi Group Holdings, Ltd., Opposition No. 91202105. TCCC submits these documents in response to documents submitted by RC regarding Opposition No. 91202105, namely RC Exhibit 269. These additional documents reflect the resolution of Opposition No. 91202105 and therefore are relevant to provide a more complete record of that opposition. To the extent the opposition and the document

made of record by RC are relevant to these proceedings, these additional documents show that the applicant abandoned the application that was the subject of the above-referenced opposition, which is relevant to the strength of and/or acknowledgement or recognition by third parties of TCCC's ZERO family of marks. Copies of the documents, which constitute official records in accordance with Rule 2.122(e) of the Trademark Rules of Practice, are attached to the TCCC Notice of Reliance as TCCC Exhibit 256.

52. [Supplemented] Copies of the Abandonment of Application Without Prejudice and Stipulation of Dismissal Without Prejudice dated March 21, 2013 and the decision of the TTAB dated April 10, 2013, both in the proceeding captioned The Coca-Cola Company v. Sam Radfar, Opposition No. 91207065. TCCC submits these documents in response to documents submitted by RC regarding Opposition No. 91207065, namely RC Exhibit 271. These additional documents reflect the resolution of Opposition No. 91207065 and therefore are relevant to provide a more complete record of that opposition. To the extent the opposition and the document made of record by RC are relevant to these proceedings, these additional documents show that the applicant abandoned the application that was the subject of the above-referenced opposition, which is relevant to the strength of and/or acknowledgement or recognition by third parties of TCCC's ZERO family of marks. Copies of the documents, which constitute official records in accordance with Rule 2.122(e) of the Trademark Rules of Practice, are attached to the TCCC Notice of Reliance as TCCC Exhibit 257.

53. [Supplemented] Copies of the Withdrawal of Application dated October 23, 2012 and the decision of the TTAB dated October 25, 2012, both in the proceeding captioned The Coca-Cola Company v. Double-Cola Co.-USA, Opposition

No. 91197019. TCCC submits these documents in response to documents submitted by RC regarding Opposition No. 91197019, namely RC Exhibit 272. These additional documents reflect the resolution of Opposition No. 91197019 and therefore are relevant to provide a more complete record of that opposition. To the extent the opposition and the document made of record by RC are relevant to these proceedings, these additional documents show that the applicant abandoned the application that was the subject of the above-referenced opposition and that a judgment was entered in TCCC's favor, which is relevant to the strength of and/or acknowledgement or recognition by third parties of TCCC's ZERO family of marks. Copies of the documents, which constitute official records in accordance with Rule 2.122(e) of the Trademark Rules of Practice, are attached to the TCCC Notice of Reliance as TCCC Exhibit 258.

54. [Supplemented] Copies of the Abandonment of Application With Prejudice and Stipulation of Dismissal Without Prejudice dated January 26, 2012 and the decision of the TTAB dated February 9, 2012, both in the proceeding captioned The Coca-Cola Company v. LTZ, LLC, Opposition No. 91183580. TCCC submits these documents in response to documents submitted by RC regarding Opposition No. 91183580, namely RC Exhibit 275. These additional documents reflect the resolution of Opposition No. 91183580 and therefore are relevant to provide a more complete record of that opposition. To the extent the opposition and the document made of record by RC are relevant to these proceedings, these additional documents show that the applicant abandoned the application that was the subject of the above-referenced opposition with prejudice, which is relevant to the strength of and/or acknowledgement or recognition by third parties of TCCC's ZERO family of marks. Copies of the

documents, which constitute official records in accordance with Rule 2.122(e) of the Trademark Rules of Practice, are attached to the TCCC Notice of Reliance as TCCC Exhibit 259.

55. [Supplemented] Copies of the Notice of Default dated December 1, 2010 and the decision of the TTAB dated March 29, 2011, both in the proceeding captioned The Coca-Cola Company v. Skinny Nutritional Corporation, Opposition No. 91196328. TCCC submits these documents in response to documents submitted by RC regarding Opposition No. 91196328, namely RC Exhibit 278. These additional documents reflect the resolution of Opposition No. 91196328 and therefore are relevant to provide a more complete record of that opposition. To the extent the opposition and the document made of record by RC are relevant to these proceedings, these additional documents show that the applicant did not file an answer to TCCC's opposition and that judgment was entered in TCCC's favor, which is relevant to the strength of and/or acknowledgement or recognition by third parties of TCCC's ZERO family of marks. Copies of the documents, which constitute official records in accordance with Rule 2.122(e) of the Trademark Rules of Practice, are attached to the TCCC Notice of Reliance as TCCC Exhibit 260.

56. [Supplemented] Copies of the Notice of Default dated January 7, 2009 and the decision of the TTAB dated February 24, 2009, both in the proceeding captioned The Coca-Cola Company v. MinTech, Inc., Opposition No. 91187355. TCCC submits these documents in response to documents submitted by RC regarding Opposition No. 91187355, namely RC Exhibit 279. These additional documents reflect the resolution of Opposition No. 91187355 and therefore are relevant to provide a more

complete record of that opposition. To the extent the opposition and the document made of record by RC are relevant to these proceedings, these additional documents show that the applicant did not file an answer to TCCC's opposition and that judgment was entered in TCCC's favor, which is relevant to the strength of and/or acknowledgement or recognition by third parties of TCCC's ZERO family of marks. Copies of the documents, which constitute official records in accordance with Rule 2.122(e) of the Trademark Rules of Practice, are attached to the TCCC Notice of Reliance as TCCC Exhibit 261.

Dated: November 19, 2013

Respectfully submitted,

KING & SPALDING LLP

/Bruce W. Baber/

Bruce W. Baber

Emily B. Brown

1180 Peachtree Street, N.E.
Atlanta, Georgia 30309
Telephone: (404) 572-4600
Facsimile: (404) 572-5145

Attorneys for Applicant and Opposer
THE COCA-COLA COMPANY

CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing Supplement To The Coca-Cola Company's Notice Of Reliance On Printed Publications, Official Records And Discovery Request Responses upon opposers and applicants Royal Crown Company, Inc. and Dr. Pepper/Seven Up, Inc. by causing a true and correct copy thereof to be deposited in the United States mail, addressed to counsel of record for Royal Crown Company, Inc. and Dr. Pepper/Seven Up, Inc. as follows:

Ms. Laura Popp-Rosenberg
Fross Zelnick Lehrman & Zissu, P.C.
866 United Nations Plaza
New York, New York 10017

This 19th day of November, 2013.

/Bruce W. Baber/
Bruce W. Baber