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Filing date: **07/02/2019**

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

Proceeding	91178927
Party	Plaintiff Royal Crown Company, Inc. and Dr. Pepper/Seven Up, Inc.
Correspondence Address	Laura Popp-Rosenberg FROSS ZELNICK LEHRMAN & ZISSU, P.C. 4 Times Square, 17th Floor New York, NY 10036 UNITED STATES lpopp-rosenberg@fzlj.com, bsolomon@fzlj.com, eweiss@fzlj.com 212-813-5900
Submission	Other Motions/Papers
Filer's Name	Laura Popp-Rosenberg
Filer's email	lpopp-rosenberg@fzlj.com, bsolomon@fzlj.com, eweiss@fzlj.com
Signature	/Laura Popp-Rosenberg/
Date	07/02/2019
Attachments	Notice of Appeal second appeal.PDF(434948 bytes)

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

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ROYAL CROWN COMPANY, INC. and	:	
DR PEPPER/SEVEN UP, INC.,	:	<u>Consolidated Proceedings:</u>
	:	Opposition No. 91178927
Opposers-Appellants,	:	Opposition No. 91180771
	:	Opposition No. 91180772
- against -	:	Opposition No. 91183482
	:	Opposition No. 91185755
THE COCA-COLA COMPANY,	:	Opposition No. 91186579
	:	Opposition No. 91190658
Applicant-Appellee.	:	
-----X		

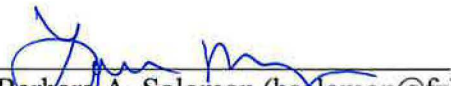
Office of the General Counsel
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, Virginia 22313-1450

**OPPOSERS' NOTICE OF APPEAL TO THE
UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

Notice is hereby given that the Opposers Royal Crown Company, Inc. and Dr. Pepper/Seven Up, Inc. appeal from the final decision of the Trademark Trial and Appeal Board, dated May 3, 2019, the appeal being to the United States Court of Appeals for the Federal Circuit pursuant to 15 U.S.C. § 1071 and 37 C.F.R. § 2.145. A copy of the decision is attached hereto as Exhibit A.

Dated: New York, New York
July 2, 2019

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: 
Barbara A. Solomon (bsolomon@fzlj.com)
Laura Popp-Rosenberg (lpopp-rosenberg@fzlj.com)
Emily Weiss (eweiss@fzlj.com)
151 West 42nd St., 17th Floor
New York, New York 10036
Phone: (212) 813-5900

Attorneys for Opposers-Appellants

Certificate of Express Mailing

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service and is addressed to Ms. Sarah Harris, Office of the General Counsel, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia, 22313-1450.

"Express Mail" mailing label No.: EF 201988250 US

Date of Deposit: July 2, 2019


Yuoseph Karzoan

EXHIBIT A

**This Decision is Not a
Precedent of the TTAB**

Mailed: May 3, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Royal Crown Company, Inc. and Dr Pepper/Seven Up, Inc.
v.
The Coca-Cola Company

Opposition Nos. 91178927 (Parent Case); 91180771; 91180772; 91183482;
91185755; 91186579; and 91190658

Barbara A. Solomon, Laura Popp-Rosenberg, and Emily Weiss of Fross Zelnick Lehrman & Zissu, P.C., for Royal Crown Company, Inc. and Dr Pepper/Seven Up, Inc.

Bruce W. Baber of King & Spalding LLP for The Coca-Cola Company.

Before Zervas, Hightower, and Lynch,
Administrative Trademark Judges.

Hightower, Administrative Trademark Judge:

On September 27, 2018, after remand of this case by the Court of Appeals for the Federal Circuit in *Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d 1358, 127 USPQ2d 1041 (Fed. Cir. 2018), the Board resumed proceedings and ordered the parties to rebrief certain issues. 175-77 TTABVUE. In lieu of a brief, Applicant The Coca-Cola Company (TCCC) filed, without consent from Opposers Royal Crown Company, Inc. and Dr Pepper/Seven Up, Inc. (RC), a motion to amend its sixteen pending applications subject to these proceedings to disclaim the word ZERO pursuant to

Trademark Act Section 6, 15 U.S.C. § 1056, and Trademark Rule 2.133, 37 C.F.R. § 2.133. Motion to Amend, 183 TTABVUE. “TCCC believes that entry of these disclaimers will resolve the issues in these proceedings without any further activity needed on the part of the Board.” Motion to Amend, 183 TTABVUE 2.¹

RC filed a brief in opposition, arguing in part that: “Opposers’ request for relief has always been a determination that ‘zero’ is generic or merely descriptive. Entry of a disclaimer is the manner in which that relief is demonstrated, but a disclaimer in and of itself does not resolve the legal issues in this opposition.” Opposition to Motion to Amend at 2, 184 TTABVUE 3. RC asks that the Board defer ruling on the motion to amend until it has issued a full decision on the merits.

In reply, TCCC argues that the issues RC raises are moot in light of its agreement to enter the disclaimers. *See* Reply in Support of Motion to Amend at 4, 186 TTABVUE 5. “Granting the motion now will result in the termination of these proceedings without any further unnecessary expenditure of time or resources by the Board or by the parties; no ‘final decision’ is necessary for Opposers to obtain the relief they seek.” *Id.* at 5, 186 TTABVUE 6. TCCC further notes that “Opposers’ pleadings contain no prayer for such relief [a declaration as to genericness or descriptiveness] . . . , and the Board could not entertain such a request for declaratory relief in any event.” *Id.*

¹ We find that this motion supersedes TCCC’s pending motions, filed July 22, 2016, to amend the descriptions of the goods in the four applications subject to Opposition Nos. 91185755 and 91190658. On August 26, 2016, consideration of those motions was deferred until conclusion of the appeal. The superseded motions are dismissed as moot.

We agree with TCCC. Disclaimer of the term ZERO from each of the applications was the only relief sought by RC in its Amended Notice of Opposition. 39 TTABVUE. Because the disclaimers are acceptable, the Board in its discretion grants TCCC's motion under Trademark Rule 2.133(a). See Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 514.03 (2018) ("The Board, in its discretion, may grant a motion to amend an application or registration that is the subject of an inter partes proceeding, even if the other party or parties do not consent thereto.").

The amendments are approved, the reference to Section 2(f) in part is deleted, and the following disclaimer is entered in each of the applications listed below: "No claim is made to the exclusive right to use 'ZERO' apart from the mark as shown."

Opposition No.	Application No.	Mark
91178927	78580598	COCA-COLA ZERO
91180771	78316078	SPRITE ZERO
91180772	78664176	COKE ZERO
91183482	77175066	COKE CHERRY ZERO
91183482	77175127	CHERRY COCA-COLA ZERO
91183482	77176108	COCA-COLA VANILLA ZERO
91183482	77176127	CHERRY COKE ZERO
91183482	77176279	COCA-COLA CHERRY ZERO
91183482	77097644	PIBB ZERO
91185755	76674382	COKE ZERO ENERGY
91185755	76674383	COKE ZERO BOLD
91185755	77176099	VANILLA COKE ZERO
91186579	77257653	VANILLA COCA-COLA ZERO

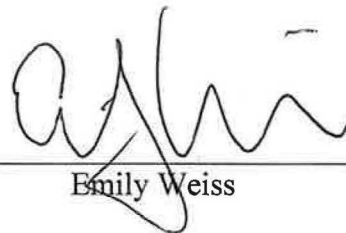
Opposition Nos. 91178927 et al.

Opposition No.	Application No.	Mark
91186579	77309752	POWERADE ZERO
91186579	78620677	FANTA ZERO
91190658	78698990	VAULT ZERO

These consolidated opposition proceedings are dismissed.

CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2019, a copy of the foregoing **OPPOSERS' NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT** was sent by first-class mail postage pre-paid and by email to counsel for The Coca-Cola Company, Bruce W. Baber, Esq., at the address King & Spalding LLP, 1185 Avenue of the Americas, New York, New York 10036-4003 and the email address bbaber@kslaw.com.

A handwritten signature in black ink, appearing to read "Emily Weiss", is written over a horizontal line. The signature is fluid and cursive.

Emily Weiss