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

Proceeding	91178927
Party	Plaintiff Royal Crown Company, Inc.
Correspondence Address	Barbara A. Solomon Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations Plaza New York, NY 10017 UNITED STATES lpopp-rosenberg@fzlz.com,bsolomon@fzlz.com
Submission	Other Motions/Papers
Filer's Name	Laura Popp-Rosenberg
Filer's e-mail	lpopp-rosenberg@fzlz.com
Signature	/Laura Popp-Rosenberg/
Date	05/06/2009
Attachments	Reply brief in support of Motion to Amend (F0453416).PDF ( 5 pages )(176466 bytes )

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

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ROYAL CROWN COMPANY, INC.,	:	<b><u>Consolidated Proceedings</u></b>
	:	
Opposer,	:	Opposition No. 91178927
	:	Opposition No. 91180771
- against -	:	Opposition No. 91180772
	:	Opposition No. 91183482
THE COCA-COLA COMPANY,	:	Opposition No. 91185755
	:	Opposition No. 91186579
Applicant.	:	
-----X		

—and—

-----X		
THE COCA-COLA COMPANY,	:	
	:	
Applicant,	:	
	:	
- against -	:	Opposition No. 91184434
	:	
ROYAL CROWN COMPANY, INC.,	:	
	:	
Opposer.	:	
-----X		

**ROYAL CROWN COMPANY, INC.'S REPLY BRIEF  
IN FURTHER SUPPORT OF ITS MOTION FOR LEAVE TO AMEND**

Royal Crown Company, Inc. ("RC") submits this reply brief pursuant to Trademark Rule of Practice 2.127(a) in further support of its Motion for Leave to Amend.

RC moved to amend each of its six separately filed Notices of Opposition that have now been consolidated into a single proceeding by the Board. The Coca-Cola Company ("TCCC") responded to the substance of RC's Motion to Amend by stating that it "does not oppose RC's request that it permitted to amend its pleadings." (TCCC Brief at 2; *see also id.* at 4.) However, rather than simply consenting to RC's request for leave to amend, TCCC used its "opposition"

brief as a platform to seek relief from the Board without making the required motion. Specifically, TCCC improperly requests the Board to require RC not only to combine the six Notices of Opposition into one consolidated Amended Notice of Opposition (TCCC Brief at 2), but also to combine in that single Amended Notice of Opposition two additional Notices of Opposition, neither of which is part of the consolidated proceedings and one of which has not even been filed. (*Id.* at 2-3.) TCCC also makes the baseless suggestion that Opposer should be forced to withdraw certain grounds for relief in some of the underlying oppositions – without TCCC being required to move for dismissal or being required to show a legal basis for dismissal – so that the single Amended Notice of Opposition that TCCC envisions can come to fruition. (*Id.* at 4 n.3.) TCCC’s improper requests to the Board must be denied.

### ARGUMENT

Because TCCC states – twice – in its brief that it does not oppose RC’s request for permission to amend its pleadings, the motion filed by RC should be granted and no further consideration given to the ancillary suggestions made by TCCC.<sup>1</sup>

While RC does not believe it should be required to address TCCC’s ancillary requests because they are not supported by a proper motion and therefore not properly before the Board, 37 C.F.R. § 2.127, RC will nonetheless do so out of an abundance of caution. TCCC first requests that RC be required to file a single Amended Notice of Opposition rather than filing individual Amended Notices of Opposition for each of the six separate opposition proceedings consolidated herein. (*See* TCCC Brief at 2, 4-5.) TCCC attempts to justify this request on the grounds of supposed efficiency and economy to the parties and the Board. (*See id.* at 2, 4.)

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<sup>1</sup> Given TCCC’s concession to RC’s Motion for Leave to Amend, there is no need for RC to address TCCC’s comments regarding the alleged futility or supposed lateness of RC’s motion. (*See* TCCC Brief at 3-4.) In any event, RC’s arguments regarding these points were already fully made and supported in its moving brief, and TCCC’s half-arguments to the contrary are not only moot, but also simply miss the mark.

Given that the proceedings already are consolidated, no additional economies will be served by requiring RC to file one as opposed to six Amended Notices of Opposition. Indeed, if RC were required to prepare a single Amended Notice of Opposition addressing fifteen separate marks as opposed to filing the six proposed Amended Notices of Opposition that were already prepared and attached to RC's moving brief, RC would in fact incur additional work.

More importantly, not only is TCCC's suggestion inefficient, it also is impractical. As TCCC concedes, not all of RC's initial (and proposed amended) Notices of Opposition contain the same grounds for relief. (*See* TCCC Brief at 4 n.3.) Three of the six contain an additional claim for fraud. TCCC baldly asserts that RC's fraud count fails to state a claim and should be removed. (*Id.*) However, TCCC apparently does not have the courage of its conviction since it has never moved to dismiss the claims or otherwise sought judgment on those claims. As such, the fraud counts must remain, and the six separate Notices of Opposition cannot be combined into a single Amended Notice of Opposition as TCCC would prefer. Certainly there is no legal basis for requiring RC to withdraw its fraud claim and present a single Amended Notice of Opposition just to simplify matters for TCCC.

TCCC's second request is that RC be required to include in TCCC's wished-for single Amended Notice of Opposition RC's opposition to FULL THROTTLE ZERO (Opposition No. 91189847), which has yet to be consolidated with these proceedings, and RC's potential opposition to force the Board to VAULT ZERO (Application Serial No. 78/698,990), for which an opposition is not due until June 17, 2009. Such a request is an attempt to force the Board to consolidate proceedings it may choose not to consolidate, and an attempt to force RC to proceed with an opposition before its deadline to oppose expires. TCCC has no standing to request, much less force, either the Board or RC to take action that is solely for the TCCC's own convenience.

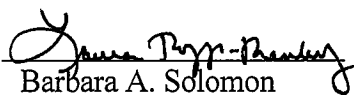
## CONCLUSION

For the reasons set forth herein, RC respectfully requests that it be granted leave to amend each of its six separate Notices of Opposition filed in this consolidated proceeding and that it be permitted to maintain the separate character of each such separate Amended Notices of Opposition.

Dated: New York, New York  
May 6, 2009

Respectfully submitted,

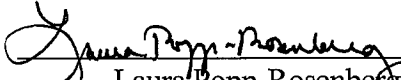
FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By:   
Barbara A. Solomon  
Laura Popp-Rosenberg  
866 United Nations Plaza  
New York, New York 10017  
Tel: (212) 813-5900  
Email: bsolomon@frosszelnick.com  
lpopp-rosenberg@frosszelnick.com

*Attorneys for RC Royal Crown Company, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a copy of the foregoing ROYAL CROWN COMPANY, INC.'S REPLY BRIEF IN FURTHER SUPPORT OF ITS MOTION FOR LEAVE TO AMEND to be sent by first class mail, postage pre-paid, to attorney for TCCC, Bruce Baber, Esq., King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036-4003, this 6th day of May 2009.

  
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Laura Popp-Rosenberg