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

Proceeding	91178927
Party	Defendant The Coca-Cola Company
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Date	09/24/2007
Attachments	ROYALCROWNANSWER.pdf (17 pages)(656037 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ROYAL CROWN COMPANY, INC.,	)	
	)	
Opposer,	)	OPPOSITION
	)	
v.	)	NO. 91178927
	)	
THE COCA-COLA COMPANY,	)	
	)	
Applicant.	)	

ANSWER OF APPLICANT THE COCA-COLA COMPANY

NOW COMES THE COCA-COLA COMPANY ("TCCC"), the owner of and applicant named in application Serial No. 78/580,598 (the "Application") for the mark COCA-COLA ZERO ("Applicant's Mark") for "beverages, namely soft drinks; syrups and concentrates for the making of the same" in International Class 32, filed on March 4, 2005 and published for opposition on April 17, 2007, and, in accordance with Rules 2.106 and 2.116 of the Trademark Rules of Practice and by and through its undersigned counsel, files this answer to the Notice Of Opposition (the "Opposition") filed by opposer Royal Crown Company, Inc. ("Royal Crown" and/or "Opposer") on August 14, 2007, and in support thereof respectfully shows as follows:

ANSWER TO OPPOSITION

TCCC responds to the Opposition filed by Royal Crown as follows:

In response to the introductory unnumbered paragraph of the Opposition, TCCC admits that the mark COCA-COLA ZERO is the subject of application Serial No. 78/580,598, that the Application recites "beverages, namely soft drinks; syrups and concentrates for the making of the same" in International Class 32, and that Royal Crown has opposed the Application; denies that Royal Crown will be damaged by the issuance of a registration for Applicant's Mark; and states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of the first, unnumbered paragraph.

TCCC responds to the separately-numbered paragraphs of the Opposition as follows:

1. TCCC is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the Opposition.

2. TCCC is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 of the Opposition.

3. TCCC is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 of the Opposition.

4. In response to the allegations of paragraph 4 of the Opposition, TCCC denies that the term ZERO is merely descriptive of characteristics of Opposer's

diet beverages, and states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 4 .

5. In response to the allegations of paragraph 5 of the Opposition, TCCC admits that records of the United States Patent and Trademark Office ("USPTO") reflect that Opposer apparently filed, on February 28, 2005, an application to register the mark DIET RITE PURE ZERO for "soft drinks and syrups used in the preparation thereof" in International Class 32, that the application was based on an intent to use, and that the application was assigned serial number 78/576,257; and states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 5.

6. In response to the allegations of paragraph 6 of the Opposition, TCCC admits that records of the USPTO reflect that a non-final Office Action was issued with respect to application Serial No. 78/576,257 on August 9, 2005 requiring that Opposer disclaim the term ZERO and identifying Applicant's Mark as a possible bar to registration of the mark shown in application Serial No. 78/576,257, and that proceedings with respect to application Serial No. 78/576,257 were suspended on August 2, 2006; denies that ZERO is merely descriptive of one or more features of Opposer's product; and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 6.

7. In response to the allegations of paragraph 7 of the Opposition, TCCC admits that records of the USPTO reflect that Opposer apparently filed, on March 7, 2005, an application to register the mark PURE ZERO for "soft drinks, and syrups and concentrates used in the preparation thereof" in International Class 32, that the application was based on an intent to use, and that the application was assigned serial number 78/581,917; and states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 7.

8. In response to the allegations of paragraph 8 of the Opposition, TCCC admits that records of the USPTO reflect that a non-final Office Action was issued with respect to application Serial No. 78/581,917 on August 9, 2005 requiring that Opposer disclaim the term ZERO, that the USPTO suspended action on the application based on the earlier filing date of the Application; denies that ZERO merely describes one or more features of Opposer's product; and states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 8.

9. In response to the allegations of paragraph 9 of the Opposition, TCCC denies that the term ZERO is used in Applicant's Mark to describe characteristics of Applicant's goods, and states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9.

10. In response to the allegation of paragraph 10 of the Opposition, TCCC admits that records of the USPTO reflect that Opposer has agreed to disclaim the term ZERO in both application Serial No. 78/576,257 and application Serial No. 78/581,917, and states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 10.

11. In response to the allegations of paragraph 11 of the Opposition, TCCC denies that the term ZERO is commonly used in the trade and states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 11.

12. In response to the allegations of paragraph 12 of the Opposition, TCCC admits that it is incorporated in the state of Delaware and that it is located at and doing business at One Coca-Cola Plaza, Atlanta, Georgia 30313.

13. In response to the allegations of paragraph 13 of the Opposition, TCCC admits that it filed the Application for COCA-COLA ZERO for "beverages, namely soft drinks; syrups and concentrates for the making of the same" in International Class 32 on March 4, 2005, that the application was assigned serial number 78/580,598, and that the application was filed on the basis of an intent to use and was later amended to allege use since June 13, 2005; and states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 13.

14. In response to the allegations of paragraph 14 of the Opposition, TCCC admits that a USPTO Examining Attorney issued a non-final Office Action with respect to the Application on March 30, 2005 requesting Applicant to agree to a disclaimer of ZERO and that similar non-final Office Actions have been issued with respect to applications filed by Applicant to register other marks that include the term ZERO; denies that ZERO is merely descriptive of a feature of the Applicant's goods; and denies the remaining allegations of paragraph 14.

15. In response to the allegations of paragraph 15 of the Opposition, TCCC admits that it requested reconsideration of the disclaimer requirement on June 20, 2006 and that the Examining Attorney continued its requirement of a disclaimer despite TCCC's arguments submitted on June 20, 2006; and states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 15 to the extent they are understandable.

16. In response to the allegations of paragraph 16 of the Opposition, TCCC admits that it submitted arguments to the USPTO regarding the acquired distinctiveness of ZERO under Section 2(f) of the Lanham Act, 15 U.S.C. § 1052(f), on January 25, 2007; states that TCCC's January 25, 2007 submission to the USPTO, a true and correct copy of which (without the exhibits submitted therewith) is attached hereto as Exhibit A, speaks for itself as to its contents; and

states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 16.

ALLEGED FIRST CLAIM FOR RELIEF UNDER SECTION 2(e)

17. In response to the allegations of paragraph 17 of the Opposition, TCCC hereby repeats and realleges its responses to paragraphs 1 through 16 above as if fully set forth herein.

18. TCCC denies the allegations of paragraph 18 of the Opposition.

19. In response to the allegations of paragraph 19 of the Opposition, TCCC admits that certain materials submitted by Applicant to the USPTO refer to certain characteristics of Applicant's COCA-COLA ZERO products, and denies the remaining allegations of paragraph 19.

20. TCCC denies the allegations of paragraph 20 of the Opposition.

21. TCCC denies the allegations of paragraph 21 of the Opposition.

ALLEGED COUNT TWO -- FRAUD

22. In response to the allegations of paragraph 22 of the Opposition, TCCC hereby repeats and realleges its responses to paragraphs 1 through 21 above as if fully set forth herein.

23. In response to the allegations of paragraph 23 of the Opposition, TCCC denies that the allegations of paragraph 23 are true as a matter or law or as a

matter of fact, and denies that TCCC asserted, stated, proved or attempted to prove to the USPTO at any time in connection with the prosecution of the Application that it had made "substantially exclusive and continuous use" of ZERO as a mark, for the five years before the date on which TCCC's claim of acquired distinctiveness was made or for any other period of time.

24. In response to the allegations of paragraph 24 of the Opposition, TCCC admits that it made a claim of acquired distinctiveness to the USPTO on January 25, 2007, and states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 24.

25. In response to the allegations of paragraph 25 of the Opposition, TCCC denies that TCCC "could not have shown" that ZERO had acquired secondary meaning and become distinctive of TCCC's products as of January 25, 2007; states that TCCC's claim that ZERO had acquired secondary meaning and had become distinctive of TCCC's products was proper; and states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 25.

26. In response to the allegations of paragraph 26 of the Opposition, TCCC specifically denies that TCCC made a claim of substantially exclusive use of ZERO for the five years preceding January 2007 or for any other period of time, and denies the remaining allegations of paragraph 26.

27. TCCC denies the allegations of paragraph 27 of the Opposition.

28. TCCC denies the allegations of paragraph 28 of the Opposition.

29. TCCC denies the allegations of paragraph 29 of the Opposition.

30. TCCC denies the allegations of paragraph 30 of the Opposition.

In response to the unnumbered paragraph that follows paragraph 30 of the Opposition, TCCC denies that Royal Crown's opposition should be sustained, denies that the term ZERO is merely descriptive, and denies that a disclaimer of the term ZERO should be required,

FIRST DEFENSE

Opposer has not pleaded any law or facts that justify the rejection of the Application, Opposer's opposition to the Application, or a refusal to register Applicant's Mark.

SECOND DEFENSE

TCCC has engaged in extended and extensive commercial activities that have resulted in the acquisition of distinctiveness for ZERO as an element of trademarks for beverage products manufactured by TCCC, and in the recognition by consumers and the beverage industry of the term ZERO as a source-identifying element for TCCC, and TCCC is therefore entitled to registration of the mark COCA-COLA ZERO without a disclaimer of the term ZERO.

THIRD DEFENSE

Count Two of Opposer's Opposition fails to state a claim upon which relief can be granted and should be dismissed.

FOURTH DEFENSE

Count Two of Opposer's Opposition is based on a misstatement of the applicable legal principles and a blatant misstatement of fact, as TCCC never made and was not required to make a claim of "substantially exclusive and continuous use" for the five years preceding the claim of acquired distinctiveness (or for any other period of time) for any reason or at any time in connection with the Application.

TCCC denies each and every allegation of the Opposition not specifically admitted or otherwise responded to herein. TCCC further denies that the application Serial No. 78/580,598 should be rejected for any reason and that TCCC should be required to disclaim the term ZERO in connection therewith; denies that Royal Crown has asserted any basis in law or in fact sufficient to sustain Royal Crown's opposition to the registration of Applicant's Mark for the goods claimed in the Application; denies that the Opposition should be sustained in favor of Royal Crown; and denies that Royal Crown is entitled to any relief whatsoever against TCCC.

WHEREFORE, having fully answered the Opposition, Applicant The Coca-Cola Company respectfully prays:

(i) that the Opposition be dismissed and/or denied in its entirety;

(ii) that judgment be entered in favor of TCCC on the Opposition and each and every claim and count thereof;

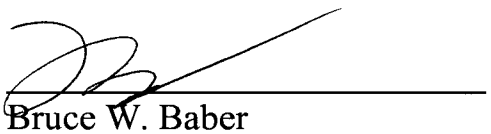
(iii) that a registration be issued to TCCC for Applicant's mark COCA-COLA ZERO, as applied for in application Serial No. 78/580,598, without a disclaimer of the term ZERO; and

(iv) that TCCC be granted such other and further relief as the Board deems just and proper.

This 24th day of September, 2007.

Respectfully submitted,

KING & SPALDING LLP



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Attorneys for Applicant
THE COCA-COLA COMPANY

EXHIBIT A

Response to Office Action

The table below presents the data as entered.

SERIAL NUMBER	78580598
LAW OFFICE ASSIGNED	LAW OFFICE 105
MARK SECTION (no change)	
ARGUMENT(S)	

I. REMARKS

A. INTRODUCTION

The Examining Attorney has maintained the requirement that Applicant disclaim ZERO apart from the mark as shown under Section 6(a) of the Trademark Act, and has also requested that Applicant provide evidence in support of Applicant's claim that ZERO has acquired distinctiveness and serves as a source identifier for Applicant that is recognized by consumers. Applicant respectfully requests that the Examining Attorney reconsider her disclaimer requirement in light of Applicant's previous arguments in favor of suggestiveness as well as the additional evidence provided in this Response, and notes that its claim in the alternative of acquired distinctiveness does not constitute a concession by Applicant that ZERO, as used in Applicant's mark, is not inherently distinctive. TMEP § 1212.02(c).

Applicant respectfully submits that it has engaged in extended and extensive commercial activities that have resulted in the acquisition of distinctiveness for ZERO as an element of trademarks for beverage products; that such marks, including COCA-COLA ZERO, identify and are recognized as products produced and marketed by Applicant; and that ZERO is therefore recognized by consumers and the industry as a source-identifying element of Applicant's marks.

B. ACQUIRED DISTINCTIVENESS

In support of its claim of acquired distinctiveness, Applicant submits herewith evidence demonstrating that ZERO, as used in connection with a family of beverage products produced by Applicant, has achieved a secondary meaning and distinctiveness under Section 2(f) of the Lanham Act. Specifically, Applicant provides three (3) different types of evidence, namely, unsolicited media coverage, examples of advertising materials for ZERO-branded beverage products produced by Applicant, and advertising and sales figures relating to the goods offered under Applicant's family of ZERO marks.

As an initial matter, it is important to note that ZERO is an element that appears in five (5) pending applications owned by Applicant, for the marks COCA#COLA ZERO (78/580,598), SPRITE ZERO (78/316,078), FANTA ZERO

(78/620,677), COKE ZERO (78/664,176), and VAULT ZERO (78/698,990), and that, in addition to products bearing these five marks, Applicant also sells products under the mark PIBB ZERO. Because Applicant's ZERO marks are used on such a wide variety of beverage products, all produced by Applicant, the connection between such beverage products and Applicant is enhanced in the minds of consumers. This is especially true in view of the fact that Applicant introduced its first ZERO product in September 2004.

Since September of 2004, Applicant has made continuous use of its ZERO marks, and ZERO is now an element of six different trademarks owned and used by Applicant. Moreover, Applicant has extensively advertised, promoted, and marketed its family of ZERO products during the past two and one-half years. As a result of Applicant's extensive and effective marketing of its beverage products bearing its ZERO marks, consumers have come to identify COCA#COLA ZERO and other members of Applicant's ZERO family of products with Applicant. In fact, COCA-COLA ZERO was one of the three products that debuted in 2005 that were most remembered by consumers. Tim Barker, *Survey: Product Launches Score Hit With TV Ads*, Orlando Sentinel, March 6, 2006 (included as part of Exhibit A submitted herewith).

1. Unsolicited Media Coverage

Unsolicited media coverage is evidence that a mark has achieved secondary meaning and acquired distinctiveness. Thompson Medical Co., Inc. v. Pfizer Inc., 753 F.2d 208, 217, 225 USPQ 124, 131-32 (2d Cir. 1985). Applicant submits herewith as Exhibit A numerous examples of unsolicited media coverage. That media coverage demonstrates: (1) that Applicant's ZERO marks are perceived and recognized as trademarks of Applicant, (2) that Applicant's ZERO products are correctly considered to be related and to come from the same source, and (3) that ZERO, when used as part of a beverage name, is recognized as an element that identifies products of Applicant. The references in the attached articles to the family of ZERO marks owned by Applicant are evidence that ZERO, when used as part of a beverage product name, is recognized by the purchasing public as identifying Applicant as the source of the beverage products on which it appears.

2. Promotional Materials

In response to the Examining Attorney's request, Applicant also submits, as Exhibit B to this Response, examples of numerous advertising specimens that promote COCA#COLA ZERO and/or one or more of Applicant's other ZERO-branded beverage products. As Exhibit B reflects, a number of these advertisements promote Applicant's entire family of ZERO products. These advertisements also clearly demonstrate that ZERO is used by Applicant to convey many different, non-descriptive messages to consumers. For example, Applicant's ZERO beverages are promoted as featuring "Original Taste" with "ZERO Guilt."

Transcripts of two FANTA ZERO radio commercials are included in Exhibit B.

3. Advertising and Sales Figures

As noted in TMEP § 1212.06(b), significant expenditures "in promoting and advertising goods and services under a particular mark are significant to indicate the extent to which a mark has been used." Accordingly, Applicant states that it has spent in excess of one hundred fifty million dollars ($150,000,000.00) advertising and promoting its ZERO family of beverage products, which includes COCA-COLA ZERO, SPRITE ZERO, FANTA ZERO, VAULT ZERO, and PIBB ZERO, through a myriad of advertising and promotional channels. Applicant has spent over one hundred million dollars ($110,000,000.00) advertising and promoting COCA#COLA ZERO alone.

Sales of Applicant's ZERO products during the past two years exceed *one billion dollars* ($1,000,000,000.00) in total, with over one-third of that amount attributable to sales of COCA#COLA ZERO. To date, the equivalent of over fifty million (50,000,000) 288-fluid ounce cases of COCA-COLA ZERO have been sold by Applicant. Applicant further states that COCA-COLA ZERO and its other ZERO products are offered to consumers nationwide through numerous different channels of trade and at thousands of retail outlets that reach virtually all consumers, including supermarkets, chain stores, and convenience and petroleum outlets.

When considered together with the representative advertising specimens submitted as Exhibit B, these very substantial advertising and sales figures clearly indicate that Applicant has emphasized its ZERO family of marks, and that Applicant's promotional efforts have been successful. Such efforts have educated the public to associate Applicant's family of ZERO products and marks, including COCA-COLA ZERO, with each other and with Applicant.

II. CONCLUSION

Applicant respectfully submits that it has established, by a preponderance of the evidence, that the purchasing public has come to view ZERO, when used as an element of a beverage product name, as an indicator of origin identifying Applicant. As a result of Applicant's broad, varied, and extensive promotional activities, consumers encountering Applicant's beverage products bearing Applicant's ZERO marks, including the COCA-COLA ZERO mark, identify such products as originating from Applicant, which fact is highlighted by the extensive unsolicited media coverage Applicant's ZERO products have received.

Having responded to all outstanding issues raised by the Examining Attorney, Applicant respectfully requests that its mark COCA-COLA ZERO be passed on to publication without a disclaimer of ZERO.

EVIDENCE SECTION

EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_64745533-155706098_._Exhibit_A.pdf
CONVERTED PDF FILE(S) (75 pages)	\\TICRS2\EXPORT12\785\805 \78580598\xml1\ROA0002.JP G
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DESCRIPTION OF EVIDENCE FILE	Examples of unsolicited media coverage of Applicant's ZERO products and advertising specimens promoting Applicant's ZERO products

SIGNATURE SECTION

DECLARATION SIGNATURE	/Bruce W. Baber/
SIGNATORY'S NAME	Bruce W. Baber
SIGNATORY'S POSITION	Attorney for Applicant
DATE SIGNED	01/25/2007
RESPONSE SIGNATURE	/Bruce W. Baber/
SIGNATORY'S NAME	Bruce W. Baber
SIGNATORY'S POSITION	Attorney for Applicant
DATE SIGNED	01/25/2007
AUTHORIZED SIGNATORY	YES

FILING INFORMATION SECTION

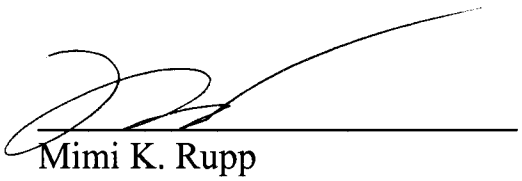
SUBMIT DATE	Thu Jan 25 16:52:57 EST 2007

CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing Answer Of Applicant The Coca-Cola Company upon Opposer, by causing a true and correct copy thereof to be deposited in the United States mail, postage prepaid, addressed to Opposer's counsel of record as follows:

Ms. Barbara A. Solomon
Fross Zelnick Lehrman & Zissu, P.C.
866 United Nations Plaza
New York, NY 10017

This 24th day of September, 2007.



Mimi K. Rupp