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

Proceeding	91185734
Party	Defendant The Coca-Cola Company
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Attachments	TCCC Brief In Opposition To AmBev Motions To Suspend.pdf ( 9 pages )(86243 bytes )

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COMPANHIA DE BEBIDAS DAS	)	
AMÉRICAS - AMBEV,	)	
	)	OPPOSITIONS
Opposer,	)	
	)	NO. 91185734
v.	)	NO. 91185739
	)	NO. 91185750
THE COCA-COLA COMPANY,	)	NO. 91186620
	)	
Applicant.	)	

APPLICANT’S BRIEF IN OPPOSITION TO  
OPPOSER’S MOTIONS FOR SUSPENSION

NOW COMES THE COCA-COLA COMPANY (“TCCC”), the Applicant in the above-captioned matters, and, in accordance with Rule 2.127 of the Trademark Rules of Practice and by and through its undersigned counsel, files this brief in opposition to the four motions styled “Opposer’s Motion For Suspension Of Opposition Proceedings” (the “Motions To Suspend”), served by opposer Companhia de Bebidas das Américas - AMBEV (“AmBev” and/or “Opposer”) in connection with the above-captioned matters on October 29, 2008 (as to

oppositions numbers 91185734, 91185739 and 91185750) and November 11, 2008 (as to opposition number 91186620).

### INTRODUCTION

TCCC opposes AmBev's Motions To Suspend these four proceedings. There is no reason to unduly prolong the pendency of these four cases, and the proper approach for the Board is to consolidate these four cases (and one other opposition also recently filed by AmBev) with the nine similar prior cases filed by AmBev that have previously been consolidated, and to set a revised schedule for the consolidated proceeding. TCCC further believes that a consolidated schedule should be adopted for the consolidated fourteen proceedings that makes sense in view of the issues in the individual proceedings and the current status of the several cases.

### ARGUMENT AND CITATION OF AUTHORITIES

As a preliminary matter, it is important to identify all of the proceedings that are relevant to AmBev's Motions To Suspend. AmBev's Motions To Suspend have been filed in four separate opposition proceedings. Those four proceedings relate to the applications filed by TCCC to register the following marks:

Opposition No. 91185734 – VANILLA COKE ZERO  
(Serial No. 77-176099)

Opposition No. 91185739 – COKE ZERO ENERGY  
(Serial No. 76-674382)

Opposition No. 91185750 – COKE ZERO BOLD  
(Serial No. 76-674383)

Opposition No. 91186620 – VANILLA COCA-COLA ZERO  
(Serial No. 77-257653)

In addition to these four recently-filed oppositions, there is also currently pending before the Board Opposition No. 91178953, which is itself a consolidated proceeding between these same parties that includes AmBev's oppositions to nine additional TCCC marks that include the word ZERO, namely COCA-COLA ZERO, COKE ZERO, SPRITE ZERO, PIBB ZERO, COCA-COLA CHERRY ZERO, COKE CHERRY ZERO, COCA-COLA VANILLA ZERO, CHERRY COCA-COLA ZERO and CHERRY COKE ZERO. Finally, AmBev and TCCC are also parties to an additional opposition proceeding, No. 91186661, relating to TCCC's FANTA ZERO mark.

On July 17, 2008, the Board entered an order consolidating the nine oppositions referenced above and reset the discovery and testimony schedules for the consolidated proceedings.

AmBev has filed the additional four cases that are the subject of the present Motions To Suspend and the pending FANTA ZERO case since the entry of the Board's July 17 order. The same reasons that supported and justified the consolidation of the first nine cases fully justify and support the consolidation of the five newer cases with the prior nine cases, so that all fourteen are consolidated into a single proceeding, with a single schedule for the consolidated discovery and testimony periods. See TBMP § 511.

In accordance with TBMP § 511, it is the Board's usual practice that

Upon consolidation, the Board will reset trial dates for the consolidated proceeding, usually by adopting the trial dates as set in the most recently instituted of the cases being consolidated.

TBMP § 511. In these cases, TCCC believes that it is not necessary for the Board to adopt in its entirety the discovery and trial schedule of the most recently-instituted cases. Rather, TCCC believes that it would be appropriate for the Board to adopt a schedule that includes dates that fall between those currently set in the first nine cases and those recently set in the newer five cases.

For comparison purposes, the current schedule in the previously-consolidated nine cases provided for discovery to close on September 30, 2008, whereas the schedules in the newer cases provide for a close of discovery in either mid-April 2009 (oppositions numbers 91185734, 91185739 and 91185750) or

early June 2009 (opposition number 91186620). AmBev, however, has recently filed a motion to extend for forty-five days the deadline for its pretrial disclosures and the remaining deadlines in the nine consolidated cases, and has noted in its motion that there are several outstanding discovery issues relating to the consolidated proceeding that are being discussed by the parties. In addition to the issues noted by AmBev, moreover, there are also several outstanding issues relating to AmBev's inadequate responses to TCCC's discovery requests in the consolidated cases and AmBev's refusal to engage in good faith discussions regarding certain discovery issues, which will likely result in TCCC filing one or more motions to compel against AmBev in the near future.

TCCC believes that due to the number of marks that are at issue in the fourteen proceedings and the current status of these proceedings, a schedule such as the following would be appropriate for the consolidated fourteen cases:<sup>1</sup>

Close of discovery – January 15, 2009

Plaintiff's pretrial disclosures due – February 27, 2009

Plaintiff's 30-day testimony period to close – April 15, 2009

Defendant's pretrial disclosures due – April 30, 2009

Defendant's 30-day testimony period to close – June 15, 2009

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<sup>1</sup> TCCC does not believe that further Initial Disclosures or Expert Disclosures should be required in any of the consolidated cases, as the parties have already exchanged such disclosures in the consolidated cases and/or the newer cases.

Plaintiff's rebuttal disclosures due – June 30, 2009

Plaintiff's 15-day rebuttal testimony period to close – July 31, 2009

A schedule consistent with the above should enable the parties to be able to resolve all outstanding issues and complete any remaining discovery that is needed in all of the consolidated cases and prepare for and present any testimony that is needed in the consolidated cases. It will also significantly shorten the pendency of these cases in the aggregate, as all testimony periods will be concluded by the end of July 2009 – as compared to the current schedules that extend until mid-December of next year.

TCCC further believes, moreover, that the Board should also provide in its order that any additional oppositions filed by AmBev to any additional TCCC ZERO marks – such as TCCC's pending application Serial Number 77-309752 for the mark POWERADE ZERO, which was published on September 9, 2008 and with respect to which AmBev has obtained an extension of time to oppose through January 7, 2009 – shall also be consolidated with the existing cases upon the filing of TCCC's answer, without further modification to the remaining schedule in the consolidated cases.

If the Board determines not to consolidate these additional five proceedings with the nine that have previously been consolidated, TCCC believes that it would

be inappropriate in any event to suspend proceedings in these newer cases. The parties should be permitted to prepare these cases for trial without further delay, and suspension of them at this point – given the current status of the consolidated proceedings – would serve no useful purpose.

Finally, TCCC believes that a conference with the Board regarding these issues would be helpful, as was the conference with the Board that resulted in the Board's July 17 scheduling order in the consolidated cases.

#### CONCLUSION

For the reasons stated above, TCCC respectfully requests that the Board enter an Order denying AmBev's Motions To Suspend in the above-captioned matters, consolidating all fourteen of the pending oppositions filed by AmBev to TCCC's applications to register marks that include ZERO, and entering a scheduling order for the consolidated proceedings consistent with the above.



Respectfully submitted, this 18th day of November, 2008.

KING & SPALDING LLP

A handwritten signature in black ink, appearing to read "Bruce W. Baber", written over a horizontal line.

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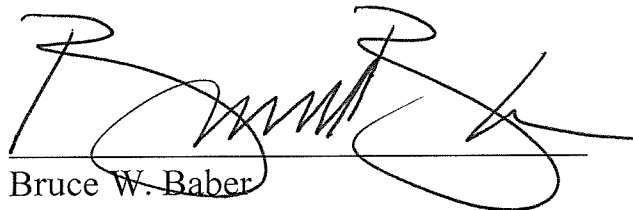
Attorneys for Applicant  
THE COCA-COLA COMPANY

CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing Applicant's Brief In Opposition To Opposer's Motions For Suspension 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:

Mr. W. Mack Webner  
Sughrue Mion, PLLC  
2100 Pennsylvania Avenue, N.W.  
Washington, DC 20037

This 18th day of November, 2008.

  
Bruce W. Baber