

ESTTA Tracking number: **ESTTA282378**

Filing date: **05/06/2009**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	The Coca-Cola Company
Granted to Date of previous extension	05/06/2009
Address	One Coca-Cola Plaza Atlanta, GA 30313 UNITED STATES

Attorney information	Bruce W. Baber King & Spalding LLP 1180 Peachtree Street Atlanta, GA 30309 UNITED STATES BBaber@kslaw.com, EBrown@kslaw.com, DFolmar@na.ko.com, JoDenton@na.ko.com Phone:404-572-4826
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Applicant Information

Application No	77546959	Publication date	01/06/2009
Opposition Filing Date	05/06/2009	Opposition Period Ends	05/06/2009
Applicant	NPS Pharmaceuticals, Inc. 550 Hills Drive, 3rd Floor Bedminster, NJ 07921 UNITED STATES		

Goods/Services Affected by Opposition

Class 010. All goods and services in the class are opposed, namely: Drug delivery apparatus, namely, patient triggered injector for the delivery of pharmaceuticals
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Falsely suggests a connection or affiliation with Opposer

Mark Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	A distinctive bottle cap design that consists, in part, of a circular		

	element that is surrounded by a continuous series of five scalloped or semi-circular segments
Goods/Services	Energy drinks

Attachments	Opposition -- NPS Pharmaceuticals Design Mark.pdf (5 pages)(80414 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

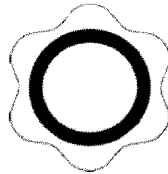
Signature	/Bruce W. Baber/
Name	Bruce W. Baber
Date	05/06/2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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THE COCA-COLA COMPANY,)	
)	
Opposer,)	
)	OPPOSITION NUMBER
v.)	
)	
NPS PHARMACEUTICALS, INC.)	
)	
Applicant.)	_____

OPPOSITION

THE COCA-COLA COMPANY, a Delaware corporation having its principal place of business at One Coca-Cola Plaza, Atlanta, Georgia 30313 (“Opposer”), believes it would be damaged by registration of the design mark shown below:



(“Applicant’s Alleged Mark”) for “drug delivery apparatus, namely, patient triggered injector for the delivery of pharmaceuticals” in International Class 10 (“Applicant’s Goods”), which mark is the subject of application Serial No. 77-546,959 (the “Application”), filed on August 14, 2008 by NPS Pharmaceuticals, Inc. (“Applicant”), and published for opposition in the Official Gazette of January 6, 2009, and, by and through its undersigned attorneys and in accordance with Rules 2.101 through 2.104 of the Trademark Rules of Practice, hereby opposes the same.

The grounds for this Opposition are as follows:

1. By the Application, Applicant seeks to register Applicant's Alleged Mark as a mark for Applicant's Goods. The Application is based on intent to use, and therefore claims no date of first use.

2. Opposer and its predecessors have adopted and used in interstate commerce and Opposer is and has been at all times pertinent hereto (including since long prior to the filing date of the Application), the owner of all right, title, and interest in and to a distinctive bottle cap design that consists, in part, of a circular element that is surrounded by a continuous series of five scalloped or semi-circular segments (the "Cap Design Mark") and that, when viewed from above, is extremely similar to Applicant's Alleged Mark. The Cap Design Mark has been used by Opposer and its predecessors for energy drink products ("Opposer's Goods"). Opposer and its predecessors have used the Cap Design Mark for and in connection with Opposer's Goods in interstate commerce in and throughout the United States continuously and extensively since at least as early as December 4, 2006.

3. As a result of the long, widespread, and extensive use by Opposer of the Cap Design Mark, the Cap Design Mark is of great value to Opposer in connection with the offering of Opposer's Goods. The Cap Design Mark is distinctive of Opposer's Goods and identifies and distinguishes Opposer's Goods from the goods, services, and businesses of others, symbolizes the goodwill of Opposer's business, and is well-known.

4. Upon information and belief, Applicant is unable to establish, with respect to Opposer's use of the Cap Design Mark, priority of use or priority of rights in the United States in connection with Applicant's Alleged Mark.

5. Upon information and belief, the types of consumers interested in or familiar with the goods on and in connection with which Opposer uses Opposer's Cap Design Mark overlap, at least in part, with those consumers interested in or familiar with the goods on and in connection with which Applicant intends to use Applicant's Alleged Mark.

6. Upon information and belief, Applicant's Alleged Mark, when used in connection with Applicant's Goods, so resembles Opposer's Cap Design Mark as to be likely to cause confusion, or to cause mistake, or to deceive with respect to the source or origin of Applicant's Goods, with respect to Opposer's sponsorship thereof or connection or affiliation therewith, and/or in other ways.

7. Upon information and belief, Applicant's Alleged Mark so closely resembles Opposer's Cap Design Mark that potential purchasers of the goods intended to be offered under Applicant's Alleged Mark would be likely to believe that Opposer is the source of such goods, or that Opposer has authorized, sponsored, approved of, or in some other manner associated itself with Applicant's Goods, thereby creating a likelihood of confusion, deception or mistake, all to the damage of Opposer.

8. Opposer would be damaged by registration of Applicant's Alleged Mark because such registration would constitute prima facie evidence of Applicant's exclusive right to use Applicant's Alleged Mark for and in connection with Applicant's Goods,

which would be inconsistent with and detrimental to Opposer's prior and established rights in Opposer's Cap Design Mark.

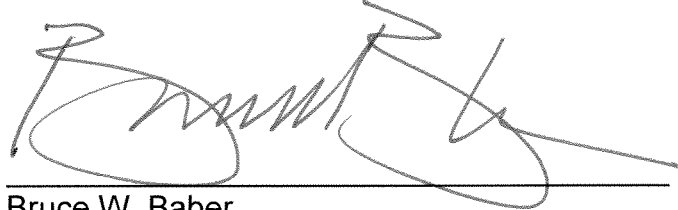
9. Applicant's Alleged Mark falsely suggests a connection or affiliation with Opposer and Applicant is therefore not entitled to registration of Applicant's Alleged Mark.

The Patent and Trademark Office is authorized to deduct the filing fees of three hundred dollars (\$300.00), and any other fees necessary in connection with the filing of this Opposition, from the deposit account of King & Spalding LLP, Opposer's undersigned counsel, account number 11-0980.

WHEREFORE, Opposer The Coca-Cola Company respectfully prays that the application of NPS Pharmaceuticals, Inc., Serial Number 77-546,959, filed August 14, 2008 for registration of the design mark shown therein for "drug delivery apparatus, namely, patient triggered injector for the delivery of pharmaceuticals" in International Class 10 be refused, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Respectfully submitted, this 6th day of May, 2009

KING & SPALDING LLP



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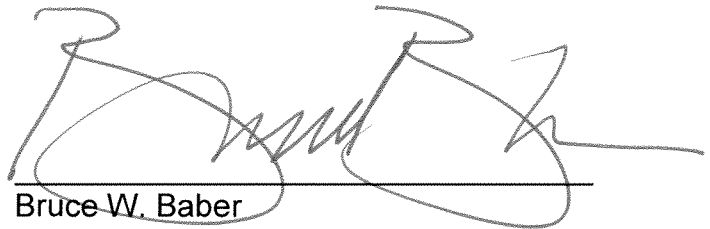
Attorneys for Opposer
THE COCA-COLA COMPANY

CERTIFICATE OF SERVICE

This is to certify, in accordance with Rule 2.101(b) of the Trademark Rules of Practice, that I have this day served the foregoing Opposition on the Applicant, by causing a true and correct copy thereof to be deposited in the United States Mail, postage prepaid, addressed to the attorney of record for the Applicant as follows:

Mr. Michael E. Mangelson
Stoel Rives LLP
201 South Main Street, Suite 1100
Salt Lake City, Utah 84111

This 6th day of May, 2009.



Bruce W. Baber