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

Proceeding	91197767
Party	Plaintiff The Coca-Cola Company
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

THE COCA-COLA COMPANY,)	
)	
Opposer,)	
)	OPPOSITION
v.)	
)	NO. 91197767
ROBERT J. CORR)	
d/b/a NATURALLY ZERO,)	
)	
Applicant.)	

OPPOSER’S MEMORANDUM IN RESPONSE TO
APPLICANT’S MOTION TO SUSPEND PROCEEDINGS

NOW COMES THE COCA-COLA COMPANY (“TCCC”), the Opposer in the above-captioned matter, and, in accordance with Trademark Rule 127, 37 C.F.R. § 2.127, files this memorandum in response to the Motion To Suspend Proceedings filed by applicant Robert Corr (“Corr”) on February 18, 2011.

ARGUMENT AND CITATION OF AUTHORITIES

The relief Corr seeks is premature. Until Corr has answered TCCC’s opposition herein, neither TCCC nor the Board will know whether the suspension requested by Corr is appropriate.

In his motion to suspend, Corr asks the Board to suspend proceedings herein pending final resolution of: (1) an action pending in the United States District Court for the Northern District of Illinois (the “Illinois Action”); and

(2) certain opposition proceedings to which TCCC is also a party (the “ZERO Oppositions”). Corr asserts that suspension in view of the Illinois Action is appropriate because the Illinois Action “may affect the outcome of this opposition” and that suspension in view of the ZERO Oppositions is appropriate because those proceedings “affect the registrability of” the marks asserted by TCCC in this opposition.

Corr has not provided the Board with a sufficient basis for suspension and has not complied with the Board’s rules and procedures regarding suspensions in view of pending civil actions. Section 510.02(a) of the Board’s manual provides that:

When a motion to suspend pending the outcome of a civil action is filed, the Board normally will require that a copy of the pleadings from the civil action be submitted, so that the Board can ascertain whether the final determination of the civil action will have a bearing on the issues before the Board.

TBMP § 510.02(a).

Corr has not provided with his motion copies of any pleadings from the Illinois Action, and has not provided any information regarding the Illinois Action other than its caption and civil action number. Corr is not a party to the Illinois Action, which is between an individual named Mirza N. Baig (“Baig”) and an entity named Bluesprings Water Co. (“Bluesprings”), as plaintiffs, and TCCC as defendant.¹ Based on the skeletal assertions in Corr’s motion, the Board cannot

¹ TCCC, Baig and Bluesprings were also parties to a prior civil action in the U.S. District Court for the Northern District of Georgia that was filed in June 2008 and resulted in a judgment in favor of TCCC.

determine whether suspension in view of the Illinois Action is appropriate or even the reasons why suspension may be appropriate.

It also will not be possible for either the Board or TCCC to determine whether suspension in view of the Illinois Action may be appropriate until after Corr has answered TCCC's Opposition. In the Opposition, TCCC has alleged that Corr claims to be associated with Baig and/or Bluesprings (the "Illinois Parties"). (Opposition ¶ 2). TCCC has also alleged that Corr does not claim in his application to register the mark NATURALLY ZERO any priority based on any alleged rights of the Illinois Parties (Opposition ¶ 3), that the Illinois Parties never had protectable rights to the mark NATURALLY ZERO, and that any rights that Baig and/or Bluesprings may have had in the past were abandoned years ago. (Opposition ¶¶ 4-5). Until Corr responds to these allegations, it is impossible to determine whether the outcome of the Illinois Action may or may not have a bearing on the issues in this proceeding.

By its Order dated February 24, 2011, the Board granted Corr's motion for extension of time to file his answer to the Opposition and set March 28, 2011 as the extended deadline for Corr's answer. Thus, Corr's answer will be filed in the near future. Requiring receipt of the answer is not only especially appropriate in this instance for the reasons stated above, it is consistent with the applicable provision of the Board's Manual, which states that:

The Board does not usually require that an issue be joined (that an answer be filed) in one or both proceedings before the Board will consider suspending a Board proceeding pending the outcome of another proceeding. ***Such a requirement is made only in those cases where there is no stipulation to suspend and it is not***

possible for the Board to ascertain, prior to the filing of an answer in one or both proceedings, whether the final determination of the other proceeding will have a bearing on the issues before the Board.

TBMP § 510.02(a) (emphasis added; footnote number omitted).

Finally, Corr's assertion that the outcome of the other pending ZERO Oppositions may have a bearing on the issues in this proceeding is also premature. While the pending ZERO Oppositions referenced by Corr relate to the registration of TCCC's marks,² TCCC has alleged in its Opposition common law rights based on use that will not be affected by the outcome of the ZERO Oppositions. (Opposition ¶¶ 6-7). And until Corr responds to the Opposition, it will be premature for the Board to consider Corr's motion on this ground as well. If, for example, Corr does not dispute TCCC's rights and asserts only no likelihood of confusion, there will be no basis for suspension based on the ZERO Oppositions.

CONCLUSION

For the foregoing reasons, TCCC respectfully prays that the Board either:

- (1) deny Corr's Motion To Suspend, or
- (2) defer consideration of Corr's Motion To Suspend until such time as:

² Corr references in his motion to suspend at least one opposition – number 91177358 – that was terminated in September 2006 after entry of an order by the Board granting TCCC's motion to dismiss.

(a) Corr has filed his answer to TCCC's
Opposition,

(b) Corr has provided the Board with the pleadings
in the Illinois Action and an explanation as to how the
outcome of the Illinois Action may affect the issues in this
proceeding, and

(c) TCCC has had an opportunity to respond to
any further materials submitted by Corr in support of his
motion.

Respectfully submitted, this 14th day of March, 2011.

KING & SPALDING LLP

/s/ Bruce W. Baber/

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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 Opposer's Memorandum In Response To Applicant's Motion To Suspend Proceedings on the Applicant, by causing a true and correct copy thereof to be deposited in the United States Mail, postage prepaid, addressed to Applicant as follows:

Mr. Robert J. Corr
P.O. Box 2517
Glenview, Illinois 60025

This 14th day of March, 2011.

/s Bruce W. Baber/

Bruce W. Baber