

ESTTA Tracking number: **ESTTA372587**

Filing date: **10/11/2010**

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

Proceeding	92052908
Party	Defendant Joseph J. Norton
Correspondence Address	VIRGINIA R. RICHARD, ESQ. WINSTON & STRAWN LLP 200 PARK AVENUE NEW YORK, NY 10166 UNITED STATES
Submission	Reply in Support of Motion
Filer's Name	Virginia R. Richard
Filer's e-mail	trademarkny@winston.com
Signature	/W&S/
Date	10/11/2010
Attachments	92052908 Suppl Decl of V Richard in Support of Registrant's Reply in Support of Motion to Dismiss.pdf (6 pages)(116614 bytes)

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

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TRIUMBARI CORPORATION,	:	
	:	
Petitioner,	:	
	:	Cancellation No. 92052908
	:	
v.	:	
	:	
JOSEPH J. NORTON,	:	
	:	
Registrant.	:	
	:	
-----X		

**SUPPLEMENTAL DECLARATION OF
VIRGINIA R. RICHARD IN SUPPORT OF REGISTRANT’S REPLY
IN SUPPORT OF ITS MOTION TO DISMISS**

VIRGINIA R. RICHARD, pursuant to the provisions of 28 U.S.C. § 1746, declares under penalty of perjury that the following is true and correct:

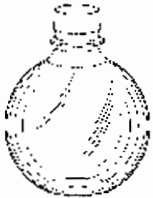

1. I am a partner with the law firm of Winston & Strawn LLP, counsel of record for Joseph J. Norton (“Norton”), the Registrant in the above-captioned proceeding.

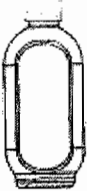


2. I make this declaration upon my personal knowledge and belief. I am submitting this declaration in support of Registrant’s Reply in support of its Motion to Dismiss against Triumbari Corporation (“Triumbari”), the Petitioner in the above-captioned proceeding.





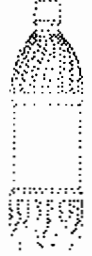
3. Registrant is the owner of Registration No. 3,323,848 for the BUG JUICE bottle design which was registered on October 30, 2007 on the Principal Register pursuant to 15 U.S.C. § 1052(f) in Class 32 for fruit flavored beverages. Attached hereto as Exhibit 1 is a copy of the



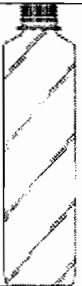
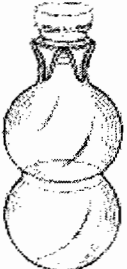

Certificate of Registration for the BUG JUICE bottle design.

4. The records of the U.S. Patent & Trademark Office (“PTO”) reveal the following registrations on the Principal Register for bottle design marks in Classes 5, 30 and 32 for beverages of various types:

MARK	REGISTRANT	REG. NO. / REG. DATE	GOODS	SECTION (f) CLAIM
	The Coca-Cola Company	3,692,638 October 6, 2009	Coffee; chocolate flavored food beverages with milk; tea, in Class 30; Beers; mineral and aerated waters; non-alcoholic drinks, namely, flavored waters, oxygenated waters; fruit drinks and fruit juices; other non-alcoholic beverages with the addition of oxygen, namely, fruit juices and fruit beverages; fruit beverages and fruit juices with the addition of oxygen; non-alcoholic beverages, namely, mineral water, fruit juices, fruit beverages and isotonic beverages containing vitamins and isotonic beverages with the addition of oxygen; and concentrates, syrups or powders used in the preparation of soft drinks, in Class 32	No
	Acb Marken GMBH & Co. KG	3,075,097 April 4, 2006	Beer, ale and porter; fruit drinks and fruit juices; spring, mineral and aerated waters; non-alcoholic beverages, namely, soft drinks, colas, fruit drinks, fruit juices, fruit-flavored drinks and sports drinks;	No

MARK	REGISTRANT	REG. NO. / REG. DATE	GOODS	SECTION (f) CLAIM
			syrups and other preparations for making beverages, namely, soft drinks, colas, fruit drinks, fruit juices, fruit-flavored drinks and sports drinks, all the aforementioned goods produced with the use of cola extract, in Class 32	
	Amazon Springs LLC	3,538,013 November 25, 2008	Bottled artesian water; Bottled drinking water; Bottled water; Drinking water; Spring water; Mineral water, in Class 32	No
	HiBix Corporation	3,778,947 April 20, 2010	<p>Nutraceuticals, namely, nutraceutical beverages for use as a dietary supplement; nutritionally fortified beverages, in Class 5;</p> <p>Non-alcoholic fruit extracts used in the preparation of beverages; preparations for making fruit drinks; fruit flavored beverages; non-alcoholic beverages containing fruit juices; non-alcoholic beverages, namely, carbonated beverages; non-alcoholic hibiscus extracts for use as an ingredient in beverages, in Class 32</p>	No
	Jamnica d.d.	3,472,523 July 22, 2008	Mineral and natural spring waters, in Class 32	No

MARK	REGISTRANT	REG. NO. / REG. DATE	GOODS	SECTION (f) CLAIM
	The Coca-Cola Company	3,232,602 April 24, 2007	Non-alcoholic beverages, namely soft drinks and energy drinks, in Class 32	No
	Nestle Waters North America Inc.	3,230,767 April 17, 2007	Spring water, in Class 32	No
	Voss of Norway ASA	3,259,981 July 10, 2007	Drinking water, in Class 32	Yes
	S. Martinelli & Company	2,945,840 May 3, 2005	Fruit juices, aerated fruit juices and sweet cider, in Class 32	Yes
	Pepsico, Inc.	2,838,555 May 4, 2004	Soft drinks, in Class 32	No

MARK	REGISTRANT	REG. NO. / REG. DATE	GOODS	SECTION (f) CLAIM
	In Zone Brands, Inc.	2,975,625 July 26, 2005	Fruit drinks, sports drinks and drinking water, in Class 32	No
	Ty Nant Spring Water Limited	2,920,581 January 25, 2005	Bottled drinking water; bottled mineral water; spring water and aerated water, in Class 32	No
	Voss of Norway ASA	3,474,308 July 22, 2008	drinking water, in Class 32	No
	Pom Wonderful LLC	3,633,116 June 2, 2009	fruit drinks; fruit juice concentrates; fruit smoothies, in Class 32	No
	Grupo Omnilife S.A. de C.V.	3,147,614 September 26, 2006	Bottled drinking water, in Class 32	Yes

Attached hereto as Exhibit 2 are copies of the TARR status of the foregoing registrations. It is noted that only 3 of the foregoing marks are registered under Section 2(f) which demonstrates

that the PTO does not consider bottle design packaging trade dress for beverages to be inherently functional.

5. Attached hereto as Exhibit 3 is a copy of the August 25, 2010 Declaration of Dominic Triumbari, Triumbari's principal, which was filed by Triumbari in support of its Combined Motion to Intervene and to Modify Consent Decree in *Bug Juice Brands, Inc. et al. v. Great Lakes Bottling Company*, Civil Action No. 1:10CV229 (PLM) (W.D. Mich.) which is currently pending before the United States District Court for the Western District of Michigan (hereinafter, the "Federal Action").

6. Attached hereto as Exhibit 4 is a copy of the September 21, 2010 Declaration of Dominic Triumbari, which was filed by Triumbari in support of its Reply to its Combined Motion to Intervene and to Modify Consent Decree filed in the Federal Action.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____

10/7/10



VIRGINIA R. RICHARD