

Appendix C

Seven-Up Trademark Registrations

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Our study would not be complete without a discussion of Seven-Up trademarks. Trademarks are a regular part of our lives – a brand name, a drawing, a slogan, or even a container in a few cases like the famous Coca-Cola hobble-skirt bottle. These marks, names, etc. represent a specific company or product in the minds of most consumers, so they are very important to the manufacturing industry.

It may be helpful to understand the trademark process – handled through the U.S. Patent Office. When a person or organization applies for a trademark, that entity must already have used that name, slogan, or drawing for a period of time. The application begins a process, whereby the patent office gives the mark a serial number and conducts a search to determine whether the mark or name has already been registered by someone else.

As part of the process, the patent office publishes the application in a short form in the *Official Gazette* – including serial number, user of the mark, a short description, and an illustration (Figure 1). It is important to realize that this serial number was *not* the final registration number. It was only a place holder during the process. The Gazette listing was “published for opposition” – i.e., openly left for a period of time so that anyone contesting the validity of the mark could present his or her arguments to halt the process. If no opposition appeared, a clerk at the patent office would assign a final and permanent registration number, and the mark would become a registered trademark that could not be used except with the expressed permission of the trademark owner.

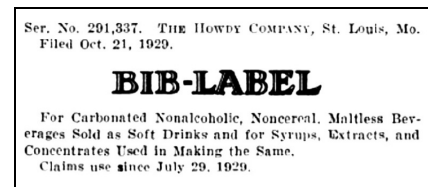


Figure 1 – Example of a gazette list

However, if an opponent challenged the veracity of the mark, a different process rolled into place. The person claiming the violation would present his/her argument (usually via a patent lawyer) before a patent officer in a court-like setting with another lawyer defending the firm attempting the trademark. If either party disagreed with the patent officer’s verdict, he or

she could appeal, and the process could take years. In unusual cases, the trademark registration could take a decade to be finalized. If the trademark were to be denied, only the listing in the *Official Gazette* would remain to show an attempt at a trademark.

To repeat, it is important for researchers to understand that the listings in the *Official Gazette* were *not* the final registrations, and the serial number was *not* the patent number. So, it is vital for researchers to be certain to locate the actual trademark documents rather than relying on the easier-to-find *Official Gazette* listings. In addition, the final patent document (example in Figure 2) contains a larger volume of information, often quite useful in assessing the value of the trademark to an individual research project.

As noted at the beginning of Chapter 2, there were three, sometimes four, dates associated with trademarks – and most researchers have generally chosen the *least* useful one, probably because the registration date was generally at the top of the application or listing. The registration date indicated when a clerk finally got around to posting the trademark and assigning a final number. It tells *nothing* about when a trademark was first used – *the* important information in most studies.

A slightly better choice was the application date (also called the filed date) – when the trademark’s user filed the application. At least, that showed the intent of the user to gain trademark protection. The most meaningful date, however, the one that most researchers quote the least often (usually never), was the date of first use. This was the date selected by the actual user to indicate when the company applied the mark on bottles, boxes, or other goods for the first time. Beginning in the late 1940s, listings included when the mark was first used in commerce, but the selected date was almost always the same as the first use date – at least with bottle-related trademarks.

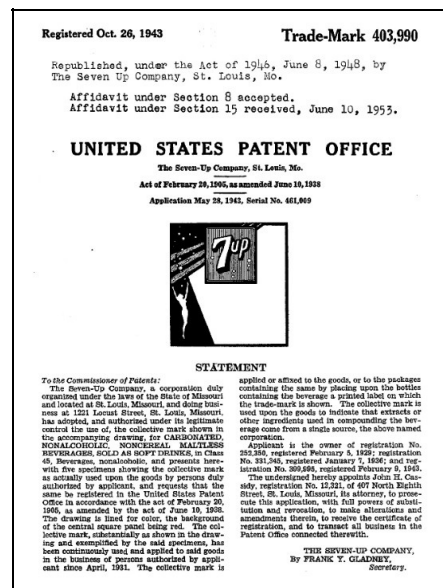


Figure 2 – Example of a trademark document

If you look at the full registration, it will include both the registration number and the serial number. As noted above, the serial number was a temporary number to hold a place until the clerk completed and posted the registration – the only meaningful number. The forms also tell how the trademarks were used, in this case, things like carbonated, non-alcoholic beverages, advertising, etc, as well as the name of the firm owning the trademark (e.g., the Seven-Up Co.).

Often, people are confused by the initials used prior to the 1950s: REG. U.S. PAT. OFF. – Registered in the U.S. Patent Office. The full meaning is that the *trademark* is registered in the patent office; it does *not* refer to a patent. About 1950, an “R” in a circle ® replaced REG. U.S. PAT. OFF. as the symbol that a trademark was registered.

In our study of Seven-Up trademarks (below), we have included a drawing of each mark, the three (or four) dates involved, the lag between the claimed first use and the filing or application date, probable accuracy of the first use date based on the number of months or years in the gap, the registration number, the firm owning the trademark, a very brief description of the trademark, and additional information quoted from the trademark registration. Along with the probable accuracy of the first use date, we sometimes added an explanation of accuracy based on our research as well. The additional quoted information is often quite useful in determining how the mark was used. In one case – Bib-Label – there was no final trademark document, so we used information from the *Official Gazette* listing. Bib-Label never received actual trademark status.

Since the date of claimed first use was used throughout our study in the previous chapters, we have listed the relevant trademarks below in the order of the first use dates. However, in our conclusions section at the end, we have discussed the marks as groups according to when the applications were made and by whom.

Seven-Up Trademark Information – Ordered by Claimed First Use Date

“SEVEN-UP” (including the quotation marks) (Figure 3)

First Use: August 7, 1928

Application Date: October 4, 1928

Registration Date: February 5, 1929

Lag Between First Use and Application: Almost 2 months

Probable Accuracy of First Use Date: Almost certainly correct

Registration No.: 252,350

Firm: Howdy Co.

Other Information on the Patent Document: “Renewed February 5, 1949 to the Seven-Up Company, of St. Louis, Missouri.” “The trade mark is applied to the goods, or the packages or bottles containing same, by placing thereupon a printed label or metal crown cap on which the trade mark is shown.” The HOWDY COMPANY, C.L. GRIGG, *President*



Figure 3 – “SEVEN-UP”

Seven-Up “Square” logo (8 bubble) (Figure 4)

First Use: August 7, 1928

Application Date: September 24, 1935

Registration Date: January 7, 1936

Lag Between First Use and Application: 7 years, 1 month

Probable Accuracy of First Use Date: Doubtful, probably not used until 1931

Registration No.: 331,345

Firm: Howdy Co.

Other Information on the Patent Document: “The trade-mark is applied or affixed to the goods, or to the packages or bottles containing the same, by placing thereon a label or bottle cap on which the trade-mark is shown.” THE HOWDY COMPANY, BY C.L. GRIGG, *President*.

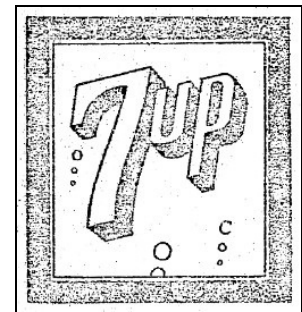


Figure 4 – “Square” logo

3-Dimensional 7up logo (Figure 5)

First Use: August 7, 1928

Application Date: September 22, 1942

Registration Date: February 9, 1943

Lag Between First Use and Application: 14 years, 1 month

Probable Accuracy of First Use Date: Totally unreliable, probably not used until 1931

Registration No.: 399,995



Figure 5 – 3-D Seven-Up logo

Firm: Seven-Up Co.

Other Information on the Patent Document: “five specimens The collective mark is applied or affixed to the goods, or the packages containing same, by placing thereon a printed label or bottle cap on which the trade-mark is shown, or by permanently imprinting the trade-mark on the bottles containing the beverage.” “The Seven-Up Company, By Frank Y. Gladney, Secretary”

BIB-LABEL (Figure 6)



Figure 6 – BIB-LABEL

First Use: July 29, 1929

Application Date: October 21, 1929

Lag Between First Use and Application: Almost 2 months

Probable Accuracy of First Use Date: Almost certainly correct

Serial No.: 291,337

Firm: Howdy Co.

Other Information: No actual trademark document available. However, the January 1930 issue of the *Beverage Journal* listed all the information above along with “Published for opposition - December 24, 1929.” Apparently, Bib-Label was contested by someone and fit into the invalid category – never actually receiving a trademark. Note also that December 24, 1929, was the date when the *Official Gazette* of the U.S. Patent Office published BIB-LABEL *without* a registration date, obviously open for contest. At that time, the mark had *only* received a serial number – *not* the final registration number.

Paper Label Template (Figure 7)

First Use: April 1931 (no day)

Application Date: May 28, 1943

Registration Date: October 26, 1943

Lag Between First Use and Application: 12 years, 6 months

Probable Accuracy of First Use Date: Doubtful [However ads and other information make the date pretty likely]

Registration No.: 403,990

Firm: Seven-Up Co.

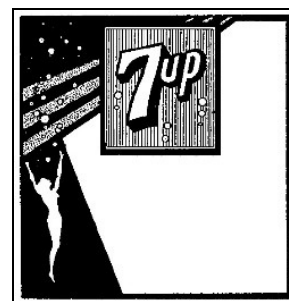


Figure 7 – Paper Label template

Other Information on the Patent Document: “Presents here five specimens showing the collective mark as actually used on the goods. . . . The drawing is lined for color, the background of the central square panel being red. . . . The collective mark is applied or affixed to the goods, or to the packages containing the same by placing upon the bottles containing the beverage a printed label on which the trade-mark is shown.” “The Seven-Up Company, By Frank Y. Gladney, Secretary”

ACL Template (Figure 8)

First Use: April 2, 1936

Application Date: October 18, 1943

Registration Date: March 14, 1944

Lag Between First Use and Application: 7 years and 6 months

Probable Accuracy of First Use Date: Doubtful [However ads and other information make the date pretty likely]

Registration No.: 406,182

Firm: Seven-Up Co.

Other Information on the Patent Document: “The drawing is lined for color, the background or base being emerald green, upon which is superimposed white and an orange hue of red. . . . continually used and applied to said goods . . . since on or about April 2, 1936. . . . The collective mark is applied of affixed to the goods, or to the packages containing the same, as an ‘applied color label,’ that is by fusing the colors forming the mark, white and an orange hue of red, upon an emerald green glass bottle.” THE SEVEN-UP COMPANY, BY FRANK Y. GLADNEY, *Secretary*.

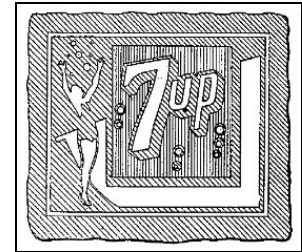


Figure 8 – ACL template

YOU LIKE IT / IT LIKES YOU (Figure 9)

First Use: March 1937 (no day)

First Use in Commerce: March 1937

Application Date: June 24, 1955

Registration Date: April 3, 1956

Lag Between First Use and Application: 19 years

Probable Accuracy of First Use Date: Probably a guess, likely accurate based on research



Figure 9 – YOU LIKE IT

Registration No.: 624,588

Firm: Seven-Up Co.

Other Information on the Patent Document: *Much* less information: Seven-Up Company but no agent.

ACL Template with ACL Neck Label (Figure 10)

First Use: October 11, 1937

Application Date: December 6, 1943

Registration Date: December 11, 1945

Lag Between First Use and Application: 6 years, 2 months

Probable Accuracy of First Use Date: Doubtful [However ads and other information make the date pretty likely]

Registration No.: 418,191

Firm: Seven-Up Co.

Other Information on the Patent Document: “The drawing is lined for color, the background or base being emerald green, upon which is superimposed white and an orange hue of red. . . . continually used and applied to said goods . . . since on or about October 11, 1937. . . . The mark comprises a body label and a neck label in spaced relation. The collective mark is applied of affixed to the goods, or to the packages containing the same, as an ‘applied color label,’ that is by fusing the colors forming the mark, white and an orange hue of red, upon an emerald green glass bottle.” THE SEVEN-UP COMPANY, BY FRANK y. GLADNEY, *Secretary*.

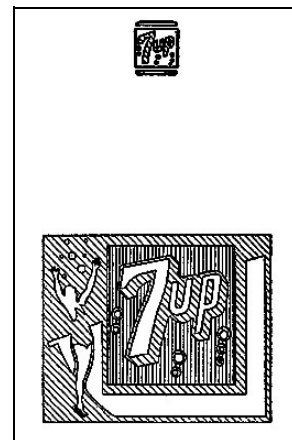


Figure 10 – ACL template with neck label

“Fresh up” (Figure 11)

First Use: June 1939

First Use in Commerce: June, 1939

Application Date: August 29, 1947

Registration Date: December 7, 1948

Lag Between First Use and Application: 8 years

Probable Accuracy of First Use Date: Questionable

Registration No.: 504,531



Figure 11 – “Fresh Up”

Firm: Seven-Up Co.

Other Information on the Patent Document: THE SEVEN-UP COMPANY, BY HOWARD E. RIDGEWAY, *Vice President*.

ACL Shield Label (Figure 12)

First Use: January 1, 1953

First Use in Commerce: January 1, 1953

Application Date: March 5, 1953

Registration Date: September 21, 1954

Lag Between First Use and Application: 2 months

Probable Accuracy of First Use Date: Almost certainly correct

Registration No.: 595,639

Firm: Seven-Up Co.

Other Information on the Patent Document: *Much* less information: Seven-Up Company but no agent.

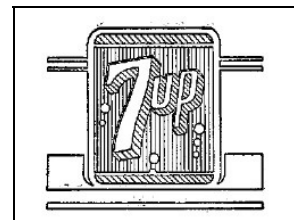


Figure 12 – “Shield” logo

Conclusions

The Howdy Co. began with careful attention to trademarks – with only a two-month lag between the application and the claim for first use on both “SEVEN-UP” and BIB-LABEL – both applications placed by C.L. Grigg, the president. However, in 1935, Grigg recognized that the “Square” logo had not received a trademark and hustled to correct the mistake, claiming August 7, 1928 (the first use date used for “SEVEN-UP”) as the first use of the “Square” logo. Our research (see Chapter 2) shows that this date was bogus – almost certainly a guess. The first ad we could find for the “Square” logo was from the Carthage Bottle Co., Carthage, Missouri, on June 6, 1931 – a much more accurate first use date.

The firm reorganized as the Seven-Up Co. in 1936, and the trademark issue apparently returned to the back burner. However, in 1943, Frank Y. Gladney, secretary for the firm, realized that the three-dimensional 7up logo had never been trademarked – and hustled to rectify the error. Once again, the Gladney chose August 7, 1928, as the best date. Since this was more than 15 years later, the date was unquestionably bogus. Although Seven-Up advertised a similar

three-dimensional logo in ads beginning March 22, 1929, it was not until the June 6, 1931, ad mentioned above that the final three-dimensional Seven-Up ad arrived – the one illustrated in the application.

Later that year (1943), Gladney recognized that the paper-label template also lacked a trademark and claimed a date of April 1938, twelve-and-a-half years earlier as the first use. Even though the huge gap belies any credibility for the date, subsequent research suggests that it was pretty accurate. In 1944, the process was repeated with the ACL template, selecting a date of April 2, 1936, as first use. Again, despite the almost eight year gap, the date is likely correct. Then, the following year (1945), the trademark for the neck label (October 11, 1937) was surprisingly on target despite another eight-year gap.

In another late hit, Howard E. Ridgeway, vice president by that time, decided that “*Fresh Up*” also deserved a trademark, choosing June 1939 as the first use date, probably questionable unless Ridgeway had access to some early records. On ACL bottles, the term A FRESHER UP began in 1936 with the unusual A REAL FRESH UP DRINK in 1937. Also in 1936, another set of Seven-Up back labels began with A FRESH UP DRINK. This continued until 1938, when the term switched to THE “*Fresh Up*” DRINK (with “*Fresh Up*” in italics and quotation marks. The 1953 bottle (and ads) changed to the Shield Logo, which used “*Fresh Up*” with 7up on the back label. So, 1939 only seems to be about a year off, since “*Fresh Up*” in italics and quotation marks appeared in 1938.

The final trademark of interest to this study was for the Shield logo with the registration date only two months after the first use claimed at January 1, 1953. This date, of course, is almost certainly accurate. Although the 1955 application for YOU LIKE IT IT LIKES YOU, like the Shield logo document, lacked a name for the applicant, that person finally recognized that this slogan was important enough to deserve a trademark. The person selected March 1937 as a first use date, probably pretty correct despite the 19 year lag. Possibly the firm retained a sample of the © 1937 label and noticed that was the first use of the slogan.

The Howdy Co. was obviously on the ball in the beginning, applying for trademarks almost as soon as a name (SEVEN-UP, BIB-LABEL) was created. Then, the trademark idea seems to have gotten lost – possibly because of the distraction of the Great Depression – until

Frank Y. Gladney woke up briefly in 1936 and 1937. But, it was seven years later (1943) that Gladney again realized that important trademarks were *not* protected, possibly because of so many copycat lemon or lemon-lime drinks. Without an official trademark, Seven-Up could not seek legal action against other bottlers using its name. By 1953, when the firm adopted the Shield logo, it was back on target, getting its new trademark in just two months.