

## Three, Two, One, Coke Zero: Coca-Cola’s Trademark Battle Nears its End By Blake E. Guerrero, J.D. Candidate 2018 | February 19, 2016

Since Coke Zero was first introduced in [2005](#), the Coca-Cola Company (Coke) has been involved in domestic and international efforts to acquire rights over the English word “zero.” The fight over the term “zero” may seem trivial at first glance, but Coke Zero currently makes up 3% of the \$168 billion soda industry. Though Diet Coke remains the top-selling diet cola with 4.8% share of the soda market, global sales of Coke Zero rose 6% while Diet Coke fell 6% in 2015. This large success is essentially because men tend to avoid drinks labeled “diet” but not drinks labeled “zero.” Realizing that men could not “bridge the [gender gap](#) image-wise without a new brand and product just for them,” the black-canned cola was specially marketed to this demographic.

Though Coke Zero has been a market success, Coke’s trademark battle has been largely [unsuccessful](#). Coke has argued that their creative marketing campaign has made the term “zero” distinctive. However, in Canada and the United Kingdom, regulators have rejected Coke’s trademark applications.

In the United States, Coke has attempted to register “zero” with the U.S. Patent and Trademark Office (PTO). The PTO [permits](#) any original or fanciful (e.g. Exxon), arbitrary (e.g. “Apple” computers), and suggestive marks to be trademarked. Descriptive or generic marks which merely describe a quality or a type of a good cannot be trademarked.

The challenge that Coke faces is that many third party beverage companies already use the word “zero” in their advertising (e.g. [Monster Energy Zero](#)). [Pepsi](#) and other competitors who oppose Coke’s attempt to trademark the term argued that “zero” refers generically to any calorie-free soda. In an appearance before a Trademark Trial and Appeal Board panel last week, Dr. Pepper [cited a survey](#) showing 92% of consumers understand “zero” to refer to calorie-free drinks generally. It is worth noting that the Latin American branch of company [Anheuser-Busch](#) also attempted to argue that “zero” was merely descriptive in their 2012 opposition to Coke’s trademark application for Coke Zero and Sprite Zero, yet they did not prevail.

If Coke prevails in their trademarking efforts, they will be able to successfully sue imitators. Coke would gain the exclusive right to the English word “zero” in the beverage market. Though other companies commonly register combinations of words, registering a single word can be a difficult task. In the 1970s, [Miller Brewing Co.](#) unsuccessfully attempted to register “lite” to similarly convey a low calorie beverage within the beer market.

If Coke is unsuccessful in these attempts, other companies will be free to use the term “zero” which Coke argues will dilute their [brand](#). Coke claims that the term zero, when used with beverages, is “[exclusively associated](#)” with the company brand to a level which would cause confusion if used by others. A [Coke-sponsored survey](#) in 2008 showed that 52% of consumers associated the term “zero” with Coke.

Unlike patents, which aim to incentivize innovation by allowing [temporary monopolies](#), trademarks merely serve to reduce consumer confusion. Allowing Coke to trademark “zero”, however, could consequentially allow them to have a [virtual monopoly](#) on men’s diet soda. Oral arguments ended in December 2016 and a ruling by the PTO on Coke’s trademark application is expected by [summer 2016](#).