

ESTTA Tracking number: **ESTTA202359**

Filing date: **04/02/2008**

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	04/02/2008
Address	One Coca-Cola Plaza Atlanta, GA 30313 UNITED STATES

Attorney information	Kamau King, James Johnson The Coca-Cola Company, and Sutherland, Asbill & Brennan 999 Peachtree St., NE Atlanta, GA 30309 UNITED STATES james.johnson@sablaw.com, kaking@na.ko.com Phone:404-853-8000
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**Applicant Information**

Application No	76657209	Publication date	12/04/2007
Opposition Filing Date	04/02/2008	Opposition Period Ends	04/02/2008
Applicant	ROLA COLA INC. 510 Deal Lake Drive Allenhurst, NJ 07712 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 032. First Use: 1982/12/00 First Use In Commerce: 1982/12/00 All goods and services in the class are opposed, namely: Non-alcoholic carbonated beverages; non-alcoholic beverages derived from the kola nut; non-alcoholic beverages made from fruit juices
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**Applicant Information**

Application No	76657207	Publication date	12/04/2007
Opposition Filing Date	04/02/2008	Opposition Period Ends	
Applicant	ROLA COLA, INC. 510 Deal Lake Drive Allenhurst, NJ 07712 UNITED STATES		

**Goods/Services Affected by Opposition**

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## Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

## Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	22406	Application Date	05/14/1892
Registration Date	01/31/1893	Foreign Priority Date	NONE
Word Mark	COCA-COLA		
Design Mark			
Description of Mark	The said trade-mark of said company consists of the word or words "Coca Cola". These words have been generally written as a compound word, and in the particular form represented in the accompanying fac-simile, that is to say, with the lower portion of the "C" beginning the word "Coca" extended under the entire word, in the form of a dash, and the top of the "C" beginning the word "Cola" extended over the letters following in the form of a dash. Upon the dash of the first "C" said corporation generally has the word "Trade-Mark". While said corporation prefers to form the initial "C's" as just described, and also to form the word as a compound word, yet the word may be altogether as one word or separately as two words, and the dashes omitted, without materially altering the character of the said trade-mark, the essential feature of which is the word "Coca-Cola".		
Goods/Services	Class U045 (International Class 032). First use: First Use: 1887/06/28 First Use In Commerce: 1887/06/28 NUTRIENT OR TONIC BEVERAGES		

U.S. Registration No.	238145	Application Date	09/13/1927
Registration Date	01/31/1928	Foreign Priority Date	NONE
Word Mark	COCA-COLA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U045 (International Class 032). First use: First Use: 1886/05/00 First Use In Commerce: 1886/05/00 BEVERAGES AND SYRUPS FOR THE MANUFACTURE OF SUCH BEVERAGES		

U.S. Registration No.	238146	Application Date	09/13/1927
Registration Date	01/31/1928	Foreign Priority Date	NONE
Word Mark	COCA-COLA		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class U045 (International Class 032). First use: First Use: 1886/05/00 First Use In Commerce: 1886/05/00 BEVERAGES AND SYRUPS FOR THE MANUFACTURE OF SUCH BEVERAGES		
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U.S. Registration No.	1432152	Application Date	05/27/1986
Registration Date	03/10/1987	Foreign Priority Date	NONE
Word Mark	COCA-COLA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1986/01/14 First Use In Commerce: 1986/01/14 SOFT DRINKS [ AND SYRUPS AND CONCENTRATES FOR MAKING THE SAME ]		

Attachments	70022406#TMSN.gif ( 1 page )( bytes ) 71254695#TMSN.gif ( 1 page )( bytes ) 73601167#TMSN.gif ( 1 page )( bytes ) DOC024.PDF ( 7 pages )(216621 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 Overnight Courier on this date.

Signature	/James Johnson/
Name	Kamau King, James Johnson
Date	04/02/2008

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

THE COCA-COLA COMPANY,

Opposer,

v.

ROLA COLA, INC.,

Applicant.

**E-FILING**

Opposition No.: \_\_\_\_\_

App. No.: 76/657,209

Mark: ROLA COLA

App. No.: 76/657,207

Mark: ROLA COLA NATURAL...LY

**CONSOLIDATED NOTICE OF OPPOSITION**

The Coca-Cola Company (“Opposer”), a corporation organized and existing under the laws of the state of Delaware, having its office and principal place of business at One Coca-Cola Plaza, N.W., Atlanta, GA 30313, believes that it will be damaged by registration of ROLA COLA, Application Serial No. 76/657,209, and ROLA COLA NATURAL...LY, intent-to-use Application Serial No. 76/657,207, as they relate to all goods recited in the applications, namely, “[n]on-alcoholic carbonated beverages; non-alcoholic beverages derived from the kola nut; non-alcoholic beverages made from fruit juices.”<sup>1</sup> As grounds for opposition, Opposer hereby alleges:

1. On information and belief, Rola Cola, Inc. (“Applicant”) is a New Jersey corporation having its principal place of business at 510 Deal Lake Drive, Allenhurst, New Jersey 07712.

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<sup>1</sup> The applications at issue herein are owned by the same entity, recite the same goods, and are directed to marks, one of which completely encompasses the other. Therefore, the Coca-Cola Company has filed a single Consolidated Notice of Opposition in accordance with 37 C.F.R. § 2.104(b) and TBMP § 305.

2. Since as early as 1887, Opposer and its related companies have used the mark COCA-COLA and various formatives thereof (collectively, the “COCA-COLA Marks”) in connection with beverages and syrups and concentrates for making beverages, in International Class 32. The Opposer is also the owner of numerous federal registrations for the COCA-COLA Marks including:

Mark	Registration Number	Registration Date	International Class	Goods
	22406	1/31/1893	32	Nutrient or tonic beverages
COCA-COLA	0238145	9/13/1927	32	Beverages and syrups for the manufacture of such beverages.
	0238146	9/13/1927	32	Beverages and syrups for the manufacture of such beverages
	1432152	5/27/1986	32	Soft drinks and syrup and concentrate for making the same

3. The aforementioned registrations are valid, subsisting and incontestable and are *conclusive* evidence of Opposer’s exclusive right to use the COCA-COLA Marks and to prevent registration of confusingly similar marks.

4. Opposer and its predecessors in interest have used the COCA-COLA Marks in the United States and all over the world in connection with its beverage products.

5. The COCA-COLA Marks have achieved substantial fame and goodwill through Opposer’s continuous and extensive use in commerce.

6. The applications opposed herein were signed by Joseph Dwek on March 21, 2006 and filed on March 24, 2006. The application for ROLA COLA claims a first use date of December, 1982, and was assigned Application Serial No. 76/657,209 by the U.S. Patent and

Trademark Office. The application for ROLA COLA NATURAL...LY was filed on an intent-to-use basis and was assigned Application Serial No. 76/657,207 by the U.S. Patent and Trademark Office.

7. The opposed goods recited in both applications, namely, “[n]on-alcoholic carbonated beverages; non-alcoholic beverages derived from the kola nut; non-alcoholic beverages made from fruit juices” are identical and/or closely related to the goods promoted and sold by Opposer through use of the COCA-COLA Marks.

8. The ROLA COLA and ROLA COLA NATURAL...LY marks of the applications at issue herein are very similar in appearance to Opposer’s COCA-COLA Marks.

9. The ROLA COLA and ROLA COLA NATURAL...LY marks of the applications at issue herein are very similar in pronunciation to Opposer’s COCA-COLA Marks.

10. Upon information and belief, neither Applicant nor any predecessor or related company of Applicant has any constructive or actual right in the ROLA COLA mark prior to the date of first use of December, 1982 alleged in the application opposed herein.

11. As to the ROLA COLA mark, there is no issue of priority. Opposer has priority by virtue of its registration and continuous use of the COCA-COLA Marks well prior to the alleged date of first use recited in the application opposed herein.

12. Upon information and belief, neither Applicant nor any predecessor or related company of Applicant has any constructive or actual right in the ROLA COLA NATURAL...LY mark prior to March 24, 2006, the filing date of the intent-to-use application opposed herein.

13. As to the ROLA COLA NATURAL...LY mark, there is no issue of priority. Opposer has priority by virtue of its registration and continuous use of the COCA-COLA Marks well prior to the filing date of the intent-to-use application opposed herein.

14. By virtue of Opposer's extensive advertising, promotion and sales through use of the COCA-COLA Marks, the COCA-COLA Marks have become well known to the public as an indication of source for Opposer's various beverage and related goods.

15. Concurrent registration of the ROLA COLA and ROLA COLA NATURAL...LY marks by Applicant in association with the opposed goods would result in irreparable damage to Opposer as consumers would be likely to believe, mistakenly, that Applicant's registered marks are affiliated with or approved by Opposer.

16. Concurrent registration of the ROLA COLA and ROLA COLA NATURAL...LY marks by Applicant in association with the opposed goods would result in irreparable damage to Opposer as consumers would be likely to consider Applicant's goods offered under its registered marks as emanating from Opposer, and purchase such goods, resulting in a loss of sales to Opposer.

17. If Applicant is permitted to obtain registration of the ROLA COLA and ROLA COLA NATURAL...LY (and Design) marks in association with the opposed goods, confusion within the meaning of Section 2(d) of the Trademark Act (15 U.S.C. § 1052(d)) is likely to result, to the detriment of COCA-COLA.

18. By virtue of Opposer's extensive and continuous use of the COCA-COLA Marks, Opposer's identity in the trade is associated with, and symbolized by, the COCA-COLA Marks.

19. The ROLA COLA and ROLA COLA NATURAL...LY marks opposed herein are a close approximation of Opposer's identity and, if registered, will be recognized as such by consumers.

20. If Applicant is permitted to obtain registrations for the ROLA COLA and ROLA COLA NATURAL...LY marks opposed herein in association with the opposed goods, such registrations will uniquely and unmistakably call to mind and point to Opposer's famous identity, thereby falsely suggesting an association with Opposer in violation of Section 2(a) of the Trademark Act (15 U.S.C. § 1052(a)).

21. Registration of the ROLA COLA and ROLA COLA NATURAL...LY marks by Applicant are likely to dilute and impair Opposer's rights and otherwise lessen the capability of Opposer's famous COCA-COLA marks to identify and distinguish Opposer's goods and services. Such contemporaneous use and registration will eventually result in a lack of designation and indication of origin, and a loss of distinctiveness and exclusivity of Opposer's famous COCA-COLA marks in violation of Section 43(c) of the Trademark Act (15 U.S.C. § 1125(c)).

22. The bona fides of Applicant's intent-to-use the ROLA COLA NATURAL...LY mark are not apparent from materials of record in Application Serial No. 76657207. Opposer therefore challenges the same and leaves Applicant to its proofs regarding the nature and sufficiency of its intent-to-use at the time of Joseph Dwek's execution of the intent-to-use application opposed herein.

WHEREFORE, Opposer requests that Application Serial Nos. 76/657,209 and 76/657,207 be rejected for all goods recited in class 32, that no registrations be issued in connection with the opposed goods of the applications, and that this consolidated opposition be sustained in favor of Opposer.

SUTHERLAND ASBILL & BRENNAN LLP



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Attorney for Opposer

Dated: April 2, 2008

**PROOF OF SERVICE**  
[F.R.C.P. Rule 5, F.R.A.P. 25]

I declare that I am employed in Atlanta, GA; I am over the age of 18 and am not a party to the above identified action; my business address is 999 Peachtree St., Atlanta, Georgia, 30309. On the date set forth below, I served a true and accurate copy of the document(s) entitled: CONSOLIDATED NOTICE OF OPPOSITION on the party(ies) in this action by placing said copy(ies) in a sealed envelope each addressed as follows:

*Applicant:*

ROLA-COLA  
510 Deal Lake Drive  
Allenhurst, New Jersey 07712

[By First Class Mail] I am readily familiar with Sutherland Asbill & Brennan LLP's practice for collecting and processing documents for mailing with the United States Postal Service. On the date listed herein, following ordinary business practice, I served the within document(s), by placing a true copy thereof, enclosed in a sealed envelope, with postage thereon fully prepaid, for collection and mailing with the United States Postal Service where it would be deposited with the United States Postal Service that same day in the ordinary course of business.

[By Overnight Courier] I caused each envelope to be delivered by a commercial carrier service for overnight delivery to the offices of the addressee(s).

[By Hand] I directed each envelope to the party(ies) so designated on the service list to be delivered by courier this date.

[By Facsimile Transmission] I caused said document to be sent by facsimile transmission to the fax number indicated for the party(ies) listed above.

[By Electronic Transmission] I caused said document to be sent by electronic transmission to the e-mail address(es) indicated for the party(ies) listed above.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this date at Atlanta, Georgia.

Dated: 4/21/08

Walter D. Young