

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: April 6, 2009

Opposition No. 91183352

The Coca-Cola Company

v.

Rola Cola Inc.

**Robert H. Coggins,
Interlocutory Attorney:**

The record showing no response by applicant to opposer's motion to compel (filed March 4, 2009), the motion to compel is hereby granted as conceded. See Trademark Rules 2.120(e) and 2.127(a).

Interrogatories and Production of Documents

Applicant is permitted until thirty days from the mailing date of this order to provide complete responses to opposer's interrogatories and document requests. Moreover, applicant's responses must be made without objection because applicant failed either to timely respond or to object to opposer's discovery requests. See *No Fear Inc. v. Rule*, 54 USPQ2d 1551 (TTAB 2000). Should applicant fail to provide the ordered responses, then opposer's remedy will lie in a motion for entry of sanctions, in the form of entry of

judgment sustaining the opposition. See Trademark Rule 2.120(g).

Requests for Admission

As opposer noted in its motion (at p.3, fn.1) opposer's requests for admission are automatically admitted pursuant to Fed. R. Civ. P. 36(a)(3) because applicant failed to respond thereto. TBMP Section 407.03(a) (2d ed. rev. 2004).

Motion for Sanctions

Embedded in opposer's motion to compel is a motion for sanctions against applicant for applicant's failure to respond to discovery. Opposer's motion is denied, without prejudice, as premature. See *Kairos Institute of Sound Healing, LLC v. Doolittle Gardens, LLC*, 88 USPQ2d 1541, 1543 (TTAB 2008), citing *Fort Howard Paper Co. v. G.V. Gambina Inc.*, 4 USPQ2d 1552, 1553 (TTAB 1987) (motion for discovery sanctions "not legally cognizable ... until the party failing to answer discovery had violated a Board order compelling such discovery").

As noted above, should applicant fail to provide the responses as ordered herein (i.e., in this order compelling discovery), then opposer's remedy will lie in a motion for entry of sanctions in the form of entry of judgment sustaining the opposition. See Trademark Rule 2.120(g).

Trial Dates

Proceedings are resumed. Disclosure, discovery, and trial dates are reset as follows.

Expert Disclosures Due	5/13/2009
Discovery Closes	6/12/2009
Plaintiff's Pretrial Disclosures	7/27/2009
Plaintiff's 30-day Trial Period Ends	9/10/2009
Defendant's Pretrial Disclosures	9/25/2009
Defendant's 30-day Trial Period Ends	11/9/2009
Plaintiff's Rebuttal Disclosures	11/24/2009
Plaintiff's 15-day Rebuttal Period Ends	12/24/2009

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125. Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on

the USPTO website via these web addresses:

<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>