

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

coggins

Mailed: July 17, 2012

Opposition No. 91183352

The Coca-Cola Company

v.

Rola Cola Inc.

By the Board:

This case comes up on applicant's motion (filed June 27, 2012) for relief from final judgment under Fed. R. Civ. 60(b). Although applicant titled its motion as one "to re-open proceedings," it is clearly a motion for relief from final judgment.

Background

On July 1, 2009, opposer's earlier motion for discovery sanctions was granted as conceded, judgment was entered against applicant, and the opposition was sustained. See Board order dated July 1, 2009. Opposer's motion for discovery sanctions was predicated on applicant's alleged failure to provide the discovery responses ordered by the Board's April 6, 2009 order which granted opposer's earlier motion to compel as conceded. See Board order dated April 6, 2009.

Motion for Relief from Final Judgment

Fed. R. Civ. P. 60(b) provides for relief from judgment in specified instances, and Fed. R. Civ. P. 60(c)(1) requires that any motion for such relief be made within a "reasonable time," and within one year if the motion is based on, *inter alia*, excusable neglect. In this case, applicant appears to base its motion on excusable neglect. Specifically, applicant states that it lost "this case by ... neglect" and that it was the "attorney's neglect" which led to the entry of judgment against applicant. The Board has determined cases under the theory of excusable neglect where a party seeks relief (e.g., to reopen an opposition after judgment) based on its attorney's inaction. See, e.g., *CTRL Sys. Inc. v. Ultraphonics of N. Am. Inc.*, 52 USPQ2d 1300 (TTAB 1999).

The current motion was filed on June 27, 2012, almost three years after the Board entered judgment. Inasmuch as the motion was not filed with the one-year limit provided by Fed. R. Civ. P. 60(c)(1), the motion is untimely and will be given no consideration.¹

¹ Although the merits of the motion are not considered, the Board notes (1) that "[t]he Supreme Court ... has established, and the Board has subsequently followed, a method for analyzing excusable neglect which holds a party accountable for the acts or omissions of its counsel and renders irrelevant any distinction between neglect of counsel and neglect of the party" and (2) that "it is well settled that the client and the attorney share a duty to remain diligent in prosecuting or defending the client's case ... and that action, inaction or even neglect by the client's chosen attorney will not excuse the inattention of the client so as to yield the client another day in court." *CTRL Sys. Inc., infra*, 52 USPQ2d at 1302 (internal citations omitted).

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Summary

Applicant's motion is untimely (by almost two years) and will be given no consideration.

A copy of this order has been sent to each address below.

cc:

Ezra Sutton
Law Offices of Ezra Sutton PA
900 US Highway 9 N
Plaza 9 Building
Woodbridge NJ 07095-1025

Joe Dwek
Rola Cola Inc.
510 Deal Lake Dr Apt 9A
Asbury Park NJ 07712-5164

James Johnson
Sutherland Asbill Brennen LLP
999 Peachtree St NE Ste 2300
Atlanta GA 30309-3996