

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

coggins

Mailed: August 16, 2012

Opposition No. 91183352

The Coca-Cola Company

v.

Rola Cola Inc.

By the Board:

On July 17, 2012, the Board issued an order stating, *inter alia*, that applicant's June 27, 2012, motion for relief from final judgment was untimely -by almost two years- and would be given no consideration. Now before the Board is applicant's July 26, 2012, filing which the Board construes as a motion for reconsideration under Trademark Rule 2.127(b).¹

A request for reconsideration under Trademark Rule 2.127(b) provides an opportunity for a party to point out any

¹ The filing fails to indicate proof of service on opposer as required by Trademark Rule 2.119. In order to expedite this matter, opposer is directed to the following URL where it may view a copy of the paper:

<http://ttabvue.uspto.gov/ttabvue/v?pno=91183352&pty=OPP&eno=19>

Applicant was advised of its service obligations under Trademark Rule 2.119 in the Board's July 16, 2012, order which alerted opposer to applicant's June 27th filing. Strict compliance with the Trademark Rules is required of applicant.

error the Board may have made in considering the matter initially. It is not to be a reargument of the points presented in the original motion; rather, the motion should be limited to a demonstration that based on the facts before it and the applicable law, the Board's ruling is in error and requires appropriate change. See TBMP § 518 (3d ed. rev. 2012).

By way of its motion for reconsideration, applicant states that the Board placed "too much emphasis on the time and date of the case rather than [j]ustice and fair play," that applicant was not aware that it could have filed a motion for relief from final judgment "until someone in the Trademark [O]ffice made [applicant] aware of it," and that because applicant's prior counsel "committed malpractice" the Board should reopen proceedings out of fairness to applicant. Applicant has not provided any citation or legal support for its arguments.²

As to applicant's argument that the Board overly emphasized the one-year deadline for filing a motion for relief from final judgment, the Board finds no error with its decision. The Board's primary reviewing court has noted that "[w]hile it is true that the law favors judgments on the

² The Board reminds applicant that all parties before the Board "are required to conduct their business with decorum and courtesy." Trademark Rule 2.192. The Board will overlook the disrespectful statements in applicant's motion.

merits whenever possible, it is also true that the Patent and Trademark Office is justified in enforcing its procedural deadlines." *Hewlett-Packard Co. v. Olympus Corp.*, 931 F.2d 1551, 18 USPQ2d 1710, 1713 (Fed. Cir. 1991). 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 one year if the motion is based on, *inter alia*, excusable neglect. Applicant's original motion was three days shy of being two years late. That is a substantial delay. *Cf. Wells Cargo, Inc. v. Wells Cargo, Inc.*, 197 USPQ 569, 571 (TTAB 1977), *aff'd*, 606 F.2d 961, 203 USPQ 564 (CCPA 1979) ("The conservation of the Board's time and resources and the need for finality to litigation require that the party which failed to contest the matter at its first opportunity should not, at its option, be permitted to reopen questions that have been concluded.").

As to applicant's argument that it was unaware of the deadline or even the possibility of filing a motion for relief from final judgment, this is a reargument of a point raised in the original motion. See Original Motion, p. 2 (unnumbered) ("And the reason I am asking you to re-open proceedings at such a late date is because I had no idea what to do, or whether I had the right to do so."). Moreover, the Supreme Court has stated that "ignorance of the rules[] or mistakes construing the rules do not usually constitute 'excusable'

neglect." *Pioneer Investment Services Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 392 (1993).

As to applicant's argument that its former attorney is the cause of the judgment from which applicant seeks relief, this, too, is a reargument of a point raised in the original motion. See Original Motion, p. 1 (unnumbered) ("we didn't [] lose this case by merit but by neglect, and I beg the Court not to punish us for it as we are the victims of such actions."). Although the merits of applicant's original motion were not considered, the Board addressed applicant's argument at footnote 1 in the July 17, 2012, order. The footnote stated that "[a]lthough 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. [v. Ultraphonics of N. Am. Inc.]*, 52 USPQ2d 1300, 1302 (TTAB 1999)] (internal citations omitted)."

Opposition No. 91183352

The Board has carefully reviewed the matter and finds no error with the July 17, 2012 order. Accordingly, applicant's motion for reconsideration is denied.³

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

cc:

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

Pamela C. Mallari⁴
1 Coca Cola Plz NW
Atlanta GA 30313-2420

³ The Board reminds applicant that the Board's jurisdiction is limited to determining only the right to register. The Board is not authorized to determine the right to use, nor may it decide broader questions of infringement or unfair competition. See TBMP § 102.01 (3d ed. rev. 2012), and cases cited therein.

⁴ Opposer's change of correspondence address (filed August 9, 2012) is noted and entered.