

ESTTA Tracking number: **ESTTA530683**

Filing date: **04/05/2013**

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	04/17/2013
Address	One Coca-Cola Plaza Atlanta, GA 30313 UNITED STATES

Attorney information	Cynthia Parks Parks IP Law 730 Peachtree Street NE Suite 600 Atlanta, GA 30308 UNITED STATES tmdocketing@parksiplaw.com, cparks@parksiplaw.com, vkeenan@coca-cola.com Phone: 678-365-4444
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Applicant Information

Application No	85672347	Publication date	12/18/2012
Opposition Filing Date	04/05/2013	Opposition Period Ends	04/17/2013
Applicants	Soler Alberto 7700 N. Kendall Dr. Suite # 701 miami, FL 33156 UNITED STATES Soler Miriam 4741 NW 5th St miami, FL 33126 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. All goods and services in the class are opposed, namely: Entertainment in the nature of an on-going special variety, news, music or comedy show featuring Fictional Character named Coki Loco broadcast over television, satellite, audio, and video media; Entertainment services, namely, providing a website at which the general public can receive advice from an individual or entity concerning happiness, such advice being for entertainment purposes only; Entertainment services, namely, providing a website featuring games and puzzles; Entertainment services, namely, providing an on-line computer game; Entertainment services, namely, providing online computer games that help maintain an active brain and thus improve memory, speed of processing, and that provide a variety of cognitive benefits that positively impact quality of life; Entertainment services, namely, providing online video games; Providing a website featuring information in the field of music and entertainment; Providing a website featuring information in the fields of education and entertainment

for children; Providing a website featuring information on exercise and fitness; Providing a website featuring non-downloadable videos, namely, video presentations of a comedic nature; Providing a website featuring online sports training and training advice and the recording of training and workouts; Providing an interactive website featuring information and links relating to fitness; Providing an Internet website portal in the field of music

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	Lack of Bona Fide Intent To Use

Marks Cited by Opposer as Basis for Opposition

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		

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.	415755	Application Date	03/27/1944
Registration Date	08/14/1945	Foreign Priority Date	NONE
Word Mark	COKE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class U045 (International Class 032). First use: First Use: 1941/12/10 First Use In Commerce: 1941/12/10 NON-ALCOHOLIC MALTLESS BEVERAGES AND THE SYRUPS FOR MAKING SUCH BEVERAGES

U.S. Registration No.	1260160	Application Date	09/23/1982
Registration Date	12/06/1983	Foreign Priority Date	NONE

Word Mark	DIET COKE
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Design Mark	
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 1982/07/00 First Use In Commerce: 1982/08/09 Soft Drinks (AND SYRUPS AND CONCENTRATES FOR MAKING THE SAME)

U.S. Registration No.	1432152	Application Date	05/27/1986
Registration Date	03/10/1987	Foreign Priority Date	NONE

Word Mark	COCA-COLA
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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]		

U.S. Registration No.	1824556	Application Date	06/08/1993
Registration Date	03/01/1994	Foreign Priority Date	NONE
Word Mark	COKE CLASSIC		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1985/07/19 First Use In Commerce: 1985/07/19 soft drinks and syrups and concentrates for making the same		

U.S. Registration No.	2757341	Application Date	05/10/2002
Registration Date	08/26/2003	Foreign Priority Date	NONE
Word Mark	VANILLA COKE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2002/05/08 First Use In Commerce: 2002/05/08 [Beverages, namely, drinking waters, bottled waters, flavored waters, mineral and aerated waters; and other] non-alcoholic beverages, namely, soft drinks [, energy drinks and sports drinks; fruit drinks and fruit juices; syrups, concentrates and powders for making beverages, namely, mineral and aerated waters, soft drinks, energy drinks, sports drinks, fruit drinks and fruit juices]		

U.S. Registration No.	3347889	Application Date	04/11/2007
Registration Date	12/04/2007	Foreign Priority Date	NONE
Word Mark	COKE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1941/12/10 First Use In Commerce: 1941/12/10 Non-alcoholic beverages, namely, soft drinks; syrups and concentrates for making non-alcoholic beverages, namely, soft drinks		

U.S. Registration No.	3434466	Application Date	06/06/2007
Registration Date	05/27/2008	Foreign Priority Date	NONE
Word Mark	CHERRY COKE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1985/02/19 First Use In Commerce: 1985/02/19 Non-alcoholic beverages, namely, soft drinks; concentrate for making non-alcoholic beverages, namely, soft drinks		

U.S. Registration No.	3490468	Application Date	03/15/2006
Registration Date	08/19/2008	Foreign Priority Date	02/06/2006
Word Mark	DIET COKE PLUS		

Design Mark	DIET COKE PLUS		
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2007/05/01 First Use In Commerce: 2007/05/01 Non-alcoholic beverages, namely, carbonated soft drinks; syrups and concentrates for making beverages, namely, carbonated soft drinks		

U.S. Registration No.	3820750	Application Date	09/17/2009
Registration Date	07/20/2010	Foreign Priority Date	NONE

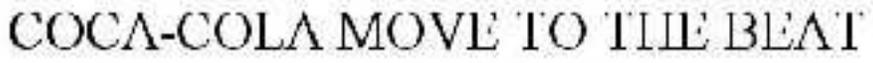
Word Mark	DIET COKE		
Design Mark	DIET COKE		
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1982/07/00 First Use In Commerce: 1982/08/09 Non-alcoholic beverages, namely, soft drinks; and syrups and concentrates for making non-alcoholic beverages namely soft drinks		

U.S. Registration No.	2607376	Application Date	08/03/2001
Registration Date	08/13/2002	Foreign Priority Date	NONE

Word Mark	COCA-COLA FAN LOT		
Design Mark	COCA-COLA FAN LOT		
Description of Mark	NONE		

Goods/Services	<p>Class 032. First use: First Use: 2000/03/01 First Use In Commerce: 2000/03/01 [SOFT DRINKS, SYRUPS AND CONCENTRATES FOR USE IN THE PREPARATION OF SOFT DRINKS]</p> <p>Class 041. First use: First Use: 2000/03/01 First Use In Commerce: 2000/03/01 ENTERTAINMENT SERVICES IN THE NATURE OF AN INTERACTIVE AREA AT BASEBALL STADIUMS, NAMELY A STRUCTURE COMPOSED OF WOOD BEAMS, CLIMBING AREAS AND SLIDES; ENTERTAINMENT IN THE NATURE OF A YOUTH BASEBALL THEME PARK FEATURING MINIATURE BASEBALL FIELDS ON WHICH CHILDREN CAN HIT, RUN AND CATCH BASEBALLS; AND ENTERTAINMENT SERVICES, NAMELY, PROVIDING STATIC EXHIBITS OF EMBOSSED SIGNATURES OF FAMOUS BASEBALL PLAYERS THAT CAN BE RUBBED TO CREATE AUTOGRAPHS</p>
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U.S. Registration No.	2150823	Application Date	04/09/1997
Registration Date	04/14/1998	Foreign Priority Date	NONE
Word Mark	COCA-COLA SCREEN PLAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1996/01/01 First Use In Commerce: 1996/01/01 entertainment services in the nature of film trivia slides displayed on-screen in movie theaters		

U.S. Application No.	85494701	Application Date	12/14/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	COCA-COLA MOVE TO THE BEAT		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: Digital media, namely, downloadable pre-recorded audio and video recordings featuring musical performances</p> <p>Class 041. First use: Entertainment services, namely, providing live musical performances; Entertainment services, namely, providing a website featuring non-downloadable, pre-recorded musical performances</p>		

Related Proceedings	91209094
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Attachments	NoticeofOpposition.pdf (10 pages)(534148 bytes) 71254695#TMSN.gif (1 page)(bytes) 71468708#TMSN.gif (1 page)(bytes) 73389669#TMSN.gif (1 page)(bytes) 73601167#TMSN.gif (1 page)(bytes) 76405693#TMSN.gif (1 page)(bytes) 77153712#TMSN.jpeg (1 page)(bytes) 77198674#TMSN.jpeg (1 page)(bytes) 78837882#TMSN.jpeg (1 page)(bytes) 77829084#TMSN.jpeg (1 page)(bytes) 76295295#TMSN.gif (1 page)(bytes) 85494701#TMSN.jpeg (1 page)(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 First Class Mail on this date.

Signature	/Cynthia R. Parks/
Name	Cynthia Parks
Date	04/05/2013

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re: Application No. 85/672,347
Mark: COKI COLA HAPPY MOTION
Filed: July 10, 2012
Published: December 18, 2012

THE COCA-COLA COMPANY

Opposer,

v.

ALBERTO SOLER, DBA COKI LOCO

and

MIRIAM SOLER

Applicants.

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Opposition No. _____

NOTICE OF OPPOSITION

THE COCA-COLA COMPANY ("TCCC," or "Opposer"), a Delaware corporation having its principal place of business at One Coca-Cola Plaza, Atlanta Georgia 30313, believes that it would be damaged by registration of the mark COKI COLA HAPPY MOTION ("Applicant's Mark") for:

"Entertainment in the nature of an on-going special variety, news, music or comedy show featuring Fictional Character named Coki Loco broadcast over television, satellite, audio, and video media; Entertainment services, namely, providing a website at which the general public can receive advice from an individual or entity concerning happiness, such advice being for entertainment purposes only; Entertainment services, namely, providing a website featuring games and puzzles; Entertainment services, namely, providing an on-line computer game; Entertainment services, namely, providing online computer games that help maintain an active brain and thus improve memory, speed of processing, and that provide a variety of cognitive benefits that positively impact quality of life; Entertainment services, namely, providing online video games; Providing a

website featuring information in the field of music and entertainment; Providing a website featuring information in the fields of education and entertainment for children; Providing a website featuring information on exercise and fitness; Providing a website featuring non-downloadable videos, namely, video presentations of a comedic nature; Providing a website featuring online sports training and training advice and the recording of training and workouts; Providing an interactive website featuring information and links relating to fitness; Providing an Internet website portal in the field of music”

in International Class 41, which mark is the subject of application Serial No. 85/672,347 (the “Application”), filed on July 10, 2012 by Miriam Soler as an individual and Alberto Soler, doing business as Coki Loco (both collectively referred to herein as “Applicant”), and published for opposition in the Official Gazette on December 18, 2012. By and through its undersigned attorney, TCCC hereby opposes the Application.

The grounds for this Opposition are as follows:

1. Opposer is the world’s largest beverage company, serving more than 1.6 billion consumers each day, in more than 200 countries around the world. Opposer’s COCA-COLA, COKE and DIET COKE brands are cornerstones of its portfolio, which presently includes fifteen billion dollar brands. COCA-COLA and DIET COKE are the top two soft drink brands in the world.

2. Opposer is the owner of numerous federal registrations and pending applications for its COCA-COLA and COKE family of trademarks (collectively, the “COCA-COLA Marks”), including:

Trademark		Registration Date	Goods
	Reg. No. 238,146 <i>Incontestable</i>	January 31, 1927	Class 32 <i>Beverages and syrups for the manufacture of such beverages</i>

Trademark		Registration Date	Goods
COCA-COLA	Reg. No. 238,145 <i>Incontestable</i>	January 31, 1928	Class 32 <i>Beverages and syrups for the manufacture of such beverages</i>
Coke	Reg. No. 415,755 <i>Incontestable</i>	August 14, 1945	Class 32 <i>Non-alcoholic maltless beverages and the syrups for making such beverages</i>
diet Coke	Reg. No. 1,260,160 <i>Incontestable</i>	December 6, 1983	Class 32 <i>Soft Drinks</i>
	Reg. No. 1,432,152 <i>Incontestable</i>	December 16, 1986	Class 32 <i>Soft drinks</i>
COKE CLASSIC	Reg. No. 1,824,556 <i>Incontestable</i>	March 1, 1994	Class 32 <i>Soft drinks and syrups and concentrates for making the same.</i>
VANILLA COKE	Reg. No. 2,757,341 <i>Incontestable</i>	December 21, 2002	Class 32 <i>Non-alcoholic beverages, namely, soft drinks</i>
COKE	Reg. No. 3,347,889 <i>Incontestable</i>	December 4, 2007	Class 32 <i>Non-alcoholic beverages, namely, soft drinks; syrups and concentrates for making non-alcoholic beverages, namely, soft drinks.</i>
CHERRY COKE	Reg. No. 3,434,466	March 11, 2008	Class 32 <i>Non-alcoholic beverages, namely, soft drinks; concentrate for making non-alcoholic beverages, namely, soft drinks.</i>

Trademark		Registration Date	Goods
DIET COKE PLUS	Reg. No. 3,490,468	August 19, 2008	Class 32 <i>Non-alcoholic beverages, namely, carbonated soft drinks; syrups and concentrates for making beverages, namely, carbonated soft drinks.</i>
DIET COKE	Reg. No. 3,820,750	July 20, 2010	Class 32 <i>Non-alcoholic beverages, namely, soft drinks; syrups and concentrates for making non-alcoholic beverages, namely, soft drinks.</i>
COCA-COLA FAN LOT	Reg. No. 2,607,376	August 13, 2002	Class 32 <i>Soft drinks, syrups and concentrates for use in the preparation of soft drinks</i> Class 41 <i>Entertainment services in the nature of interactive area at baseball stadiums, namely a structure composed of wood beams, climbing areas and slides; Entertainment in the nature of a youth baseball theme park featuring miniature baseball fields on which children can hit, run and catch baseballs; and entertainment services, namely, providing static exhibits of embossed signatures of famous baseball players that can be rubbed to create autographs.</i>
COCA-COLA SCREEN PLAY	Reg. No. 2,150,823	April 14, 1998	Class 41 <i>Entertainment services in the nature of film trivia slides displayed on-screen in movie theaters.</i>

Trademark		Registration Date	Goods
COCA-COLA MOVE TO THE BEAT	App. Ser. No. 85/494,701	Published January 8, 2013	Class 9 <i>Digital media, namely, downloadable pre-recorded audio and video recordings featuring musical performances</i> Class 41 <i>Entertainment services, namely, providing live musical performances; Entertainment services, namely, providing a website featuring non- downloadable, pre-recorded musical performances.</i>

All of these filings are valid and subsisting, in full force and effect, and are conclusive evidence of Opposer's exclusive right to use the COCA-COLA Marks for the goods and services referenced therein as well as for related goods and services.

3. Opposer has used the COCA-COLA Marks continuously in interstate commerce, and is and has been at all pertinent times the owner of all right, title and interest in and to the COCA-COLA Marks for a wide range of goods and services, including entertainment services in Class 41.

4. Opposer has invested a substantial amount of time, effort and money to promote its products and services offered under the COCA-COLA Marks, as well as to promote its corporate identity. In fact, Opposer spends hundreds of millions of dollars each year on measured media in connection with the COCA-COLA Marks, along with millions more on other media touchpoints, such as sponsorships, product placement, premiums, and coupons.

5. Accordingly, consumers exclusively associate Opposer's COCA-COLA Marks with Opposer, and the COCA-COLA Marks have established good will and enjoy fame of incalculable value in the U.S. and throughout the world.

FIRST BASIS FOR OPPOSITION – OWNERSHIP OF PRIOR REGISTRATIONS

6. The Application is based on the Applicant's purported intent to use Applicant's Mark, and therefore, the Application claims no date of first use.

7. Upon information and belief, Applicant is unable to establish priority of use of Applicant's Mark with respect to Opposer's COCA-COLA Marks.

8. Opposer has clear priority, given the longstanding use and registrations of the COCA-COLA Marks.

SECOND BASIS FOR OPPOSITION – LIKELIHOOD OF CONFUSION

9. Opposer would be damaged by registration of Applicant's Mark because Applicant's Mark is confusingly similar in appearance, sound and meaning to the COCA-COLA Marks, which the public exclusively associates with Opposer. Specifically, the "COKI" term in Applicant's Mark is nearly identical in sight, sound, and meaning to the Opposer's famous COKE marks, and the "COKI COLA" combination is nearly identical to the COCA-COLA portion of the COCA-COLA Marks. Given that Applicant's services make reference to a character named "Coki Loco" and not "Coki Cola," it appears likely that the COLA term was incorporated into Applicant's Mark primarily to cause confusion with Opposer's famous COCA-COLA Marks.

10. The similarities between Applicant's Mark and the COCA-COLA Marks, in conjunction with Applicant's intent to use its Mark in connection with entertainment

services substantially related to those that Opposer offers under its COCA-COLA Marks, is likely to cause confusion, or to cause mistake, or to deceive with respect to the source or origin of Applicant's services, and is likely to cause consumers to believe Opposer sponsors or is affiliated with the Applicant. Such confusion would irreparably harm Opposer, particularly because Opposer has no control over the nature or quality of the services provided or produced by Applicant under Applicant's Mark. Opposer takes extensive measures to ensure the quality of any goods and services offered under its COCA-COLA Marks, and it would suffer irreparable harm if Applicant is allowed to offer the proposed services under Applicant's Mark without any quality control by Opposer.

11. Upon information and belief, the services that Applicant intends to offer under the COKI COLA HAPPY MOTION mark and those offered by the Opposer under certain of the COCA-COLA Marks are closely related, are or may be offered through the same, substantially the same, and/or related channels of distribution, and to the same, substantially the same, and/or related classes of purchasers; and are or may be advertised, marketed and promoted through the same media channels. The Company's prior-filed and presently allowed application to register the mark COCA-COLA MOVE TO THE BEAT is a representative example of its COCA-COLA Marks covering related entertainment services. The risk of confusion with Opposer's famous COCA-COLA Marks is especially high given that Applicant appears to be aiming its services at an audience of young children, who would be impressionable, unsophisticated consumers.

THIRD BASIS FOR OPPOSITION – DILUTION

12. The COCA-COLA Marks are famous marks within the meaning of Section 43(c) of the Lanham Act, and became famous long before the date of the application to

register Applicant's Mark. The use by Applicant of Applicant's Mark for Applicant's proposed services would be likely to cause dilution, by blurring the distinctive quality of Opposer's famous COCA-COLA Marks, by tarnishing the reputation of Opposer's famous COCA-COLA Marks, or both.

FOURTH BASIS FOR OPPOSITION - FRAUD

13. Upon information and belief, the Application is related to at least one other pending application for a trademark that also infringes Opposer's rights in and to the COCA-COLA Marks, namely trademark application Serial No. 85/607,106 for the term COLA DE COKI. Accordingly, Opposer has reason to believe that Applicant has intentionally misidentified the true owner of the Application, and may have otherwise committed fraud in the attempt to register Applicant's Mark. It has also come to Opposer's attention that this pattern of fraud extends to an entire family of applications for COKI formative marks all filed by entities that appear to have misrepresented the nature of their relationship to one another.

FIFTH BASIS FOR OPPOSITION – LACK OF BONA FIDE INTENT TO USE

14. Upon information and belief, and in view of the forgoing, Applicant lacks a bona fide intent to use Applicant's Mark. In particular, intentional selection of an infringing mark and misidentification of the true owner(s) of the present application belies Applicant's claim that Applicant has any real and legitimate stake in acquiring a registration.

CONCLUSION

15. For at least the forgoing reasons, Opposer will be damaged by Applicant's registration of Applicant's Mark.

WHEREFORE, Opposer respectfully requests that this Opposition be sustained and that the Application for registration by Applicant be refused.

Respectfully submitted, this 5th day of April, 2013.

PARKS IP LAW LLC

/s/ Cynthia R. Parks

Cynthia R. Parks

730 Peachtree Street NE
Suite 600
Atlanta, Georgia, 30308
Telephone: 678-365-4444
Facsimile: 678-365-4450

Attorney for Opposer
THE COCA-COLA COMPANY

CERTIFICATE OF SERVICE

This is to certify, in accordance with Rule 2.101(b) of the Trademark Rules of Practice, that I have this day served the foregoing Opposition of the Applicants, by causing a true and correct copy thereof to be deposited in the United States Mail, postage prepaid, addressed to the attorney of record for the Applicants as follows:

Alberto Soler
DBA Coki Loco
7700 N. Kendall Drive
Suite 701
Miami, Florida 33156

Miriam Soler
4741 NW 5th Street
Miami, Florida 33126

Laudis Moreira
Domestic Representative
Banah Sugar/UR COLA
215 SE 10th Avenue (Banah Sweetway)
Hialeah, Florida 33010
thenewkidontheblock@live.com

This 5th day of April, 2013.

/s/ Cynthia R. Parks
Cynthia R. Parks