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

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| Proceeding | 91210103 |
| Party | Defendant Alberto Soler DBA Coki Loco and Miriam Soler |
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| Submission | Other Motions/Papers |
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re: Applications 85/672,347 and 85/672,347

Marks: COLA DE COKI and COKI COLA HAPPY MOTION

Filed: April 04, 2012 and July 10, 2012

Published: October 02, 2012 and December 18, 2012

WILLIAM SOLER, DBA COLA DE COKI,

MIRIAM SOLER,

and

ALBERTO SOLER, DBA COKI LOCO

Applicants,

v.

Opposition: 91209094/ 91210103

The Coca-Cola Company

Opposer.

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**REPLY TO OPPOSER'S RESPONSE TO APPLICANT'S REQUEST FOR
CONSOLIDATION; (A) NOTICE OF OPPOSER'S FALSE STATEMENTS, (B)
OBJECTIONS TO OPPOSER'S CIRCUMVENTING CONSOLIDATION AND
(C) OBJECTION TO OPPOSER'S REQUEST FOR SUSPENSION**

Applicant Alberto Soler (hereinafter Soler) and in pursuant to 37 CFR 2.127 and the applicable rules of TMBP, hereby replies to Opposer's (hereinafter TCCC) false statements and bad faith response to applicant's request for consolidation of the above opposition proceedings.

In support thereof, Soler speaks further the truth:

**REPLY TO TCCC RESPONSE TO APPLICANT'S REQUEST FOR
CONSOLIDATION**

(A) NOTICE OF TCCC'S FALSE STATEMENTS:

1. Opposer (hereinafter TCCC) finds comfort in blaming Soler for a late filing response to Soler's request for consolidation filed 05/05/2013. TCCC'S counsel of record is somewhat suggesting to the Board that Soler failed to follow and does not respect the Board's rules of proper service thus, late filing should be accepted. TCCC has forgotten that they had 15-20 days to response to Soler's motion. 37 CFR 2.127(a). Thus, their response was timely filed and no explanation was required as excuse for the timely filed response. Nonetheless and for the record to sustain further TCCC'S bad faith activities in these proceedings, TCCC'S stated words for incorrectly thinking late, are as follow:

*“ Furthermore, As of May 15, 2013, Opposer has not receive any service from Applicant by first Class mail, but rather received a copy via an unsigned email on May 05, 2013 from the email address of Coki Loco {**thenewkidontheblock@live.com**} and through
Opposer's routine check of the proceedings online ”*

In email communications dated as (A) Jan. 28th, 2013; (B) Feb. 06th and (C) 18th, 2013; (D)(E)April 22/22, 2013; (F) April 25th, 2013 and (G) May 05th, 2013; we will find email messages by Soler forward to TCCC'S counsel of record requesting information, forwarding motions and advising for email consent for service of motions/consolidation.

(A) On Jan/28, Soler requesting information on who will be TCCC'S counsel of record that would be handling a cancellation against mark 0022406 if counter claims are

warranted;

(B) On Feb/06, Soler requesting consent for service of papers thru email;

(C) On Feb/18, TCCC'S counsel forwarding Soler a copy of a response motion thru-email service;

(D)(E) On April/22/22, Soler forwarding the present MTD thru email services and the a instant email reply generated by TCCC'S counsel email-system after Soler's email sent, advising;

"I am traveling internationally on business until April 26. I will check email intermittently, and will reply as soon as possible...."

(F) On April/25th, Soler requesting consent for consolidation of both opposition proceedings;

(G) On May/05, Soler forwarding a copy of the consolidation request motion thru email service to both TCCC'S counsel of record.

(These email messages will not be submitted/release here as attachments due to confidentiality and will only be release if order by the Board)

Those are the true facts and not what TCCC'S counsel has stated being a responsible and ethical member of the bar and these proceedings.

Was TCCC'S counsel of record moonlighting and arrived back late? Or was counsel never sitting at the desk and waiting at the front entrance for the postman to arrive with the mail or was counsel sitting at the desk but never checking for email messages or did counsel never founded Soler's mail until later when arriving back from the trip and after searching throughout the piles of mail that was stack up or scarred all over or on top of

the desk? What about TCCC'S counsel on 02/18 forwarding Soler a motion response via email service and now suggesting never consenting to service via email.

To sustain even further the intentional false statements by TCCC, we also find TCCC complaining that the email address related to Soler's service of pleadings was not known to them on who is this kid.

The kid was well known.

On March 12, 2013, when TCCC filed a response to Cola de Coki motion to dismiss, we see in the certificate of service page that a copy was forwarded to the applicant's address of record and at the same time states and describes the email address of one of applicant/representative to be the same kid they now say they don't know. Again, On April 05, 2013 when TCCC filed the opposition against the mark Coki Cola Happy Motion, we see and read on the certificate of service that they knew again about the same kid who is DBA Coki Loco and the applicant here.

Obviously once again, TCCC has pleaded false statements to the Board.

Furthermore and to claim why TCCC sought there was a late filing, there is evidence on the record that suggests that counsel of record was in fact late but in a different opposition proceeding to the mark DKO, # 91210647, that will now trigger a dismissal as nullity.

Nevertheless and for whatever the reason why the wrong thinking, one thing is obviously clear here; TCCC'S counsel of record made false statements to the Board and is advocating unethically. *37 CFR 11.301/303/304/804*

Pro se Soler is the one here who is being harassed and unfairly prejudiced by TCCC

bad faith tactics and intentional delays of these proceedings and now also with the false and ridiculous allegations that they have not been properly served. Have they forgotten who they are or the other way around.

The cost will be on them with a cause.

(B) OBJECTION TO TCCC CIRCUMVENTING CONSOLIDATION

2. Soler requested consolidation to expedite the proceedings and so that TCCC stops the false statements alleging that Soler is delaying the proceeding/answer by filing motions to dismiss. TCCC still continues with false talk by now complaining that Soler's request for consolidation was filed immature before answer and w/o their consent, but then becomes a opportunist by consenting as they please in requesting for separate joiner of grounds in both proceedings.

Delaying Soler's right to walk and talk in the same land of trade they rule is what they are truly seeking by attempting to circumvent rule 42 of the FRCP.

Consolidated cases do not lose their separate identity because of consolidation. Each proceeding retains its separate character and requires filing of separable pleadings and entry of separate judgment. TMBP. 511

If we take the road that TCCC wants us to take, we will be lost in the pleadings outside of both proceedings. Requesting that the grounds of Priority and Fraud of both oppositions be joined and separate from the remaining 3 grounds of both opposition proceedings renders that there will be four and not just two pleadings having (2) separate consolidated proceedings. *Dating DNA LLC v. Imajini*, 94 USPC2d 1889 (TTAB 2010)

Do we need more pleadings and proceedings or do we need a prompt and fair

judgment.

Obviously, TCCC is still continuing their bad faith activities in these proceedings by now attempting to circumvent the Federal Rules of Civil Procedures.

This Board should now put a stop to TCCC intentional delays of these proceedings by denying what they seek through consolidation and either grant or deny Soler's requests for consolidation.

(C) OBJECTION TO TCCC'S REQUEST FOR SUSPENSION

3. Apart from TCCC true request for a slower pace to the proceedings, they also want no pace to take place.

Soler has not found any Board ruling nor Board rule that allows suspension as TCCC please. TMBP 510.02/03 clearly speaks there is none for what TCCC seeks. TCCC nonetheless pleads another way for persuasion. They suggest that the Board will be better served until other applications allegedly related are ripe for opposition and consolidation with these proceedings because they will "be able to provide the Board with the most accurate and efficient presentation of the pattern of activity".

The Board would not be better served.

TCCC will not be aiding the Board for a just and fair result but instead favorably themselves for advantage. Nonetheless, for they are again wrong for why the aiding favor. Out of the seven pending applications that TCCC speaks relationship apart from mark DKO, only ONE is pending opposition jurisdiction, Coca-Liscious, and the remaining (6) will never or might never reach the opposition stage for initial Office Action refusals: KO; UR Coca-Cola; Coca-Cola; Coca, suspension for the pending

opposition; Coki, and a suspicious rescind of a approved publication date; Doke.

TCCC clearly is instead attempting to *jack* these proceedings as a last resort to permanently suspend Soler's marks from use in the same trade they want to stay king when the land is called free.

Thus, it is TCCC'S bad faith pattern of activities in these proceeds that should be suspended, indefinitely.

FOR THE RECORD

4. TCCC, in a effort to get what they want not knowing the cost, pleaded in their response that Soler's marks Cola de Coki (TCCC mistakenly not, described the mark as Coki de Cola) and Coki Happy Motion, "are not identical in *sight, sound or meaning*"

How could either of the Coki marks be confused/similar with TCCC'S so-called fame Coca-Cola/Coke marks when there is no confusion between both of the Coki marks. There is no confusion with two named the same as Coki but there will be false identification between one named Coca and the other named Coki..

There is confusion in these proceedings but is not about trademarks.

CONCLUSION

5. Wherefore Soler respectfully requests the Board to notice of TCCC'S false statements and pattern of bad faith activities in these proceedings, and respectfully requests the Board to deny TCCC'S attempts to circumvent the consolidation rule of FRCP as they please and to their advantage that suspends Soler's rights to walk and talk in the trade land all calls free.

Filed this 4th day of June 2013 via ESTTA electronic filing system

Respectfully submitted,

ALBERTO SOLER,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished via first class US mail and email attachment this 4th day of June 2013, to TCCC'S attorney of record:

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ALBERTO SOLER

