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

Proceeding	91210103
Party	Plaintiff The Coca-Cola Company
Correspondence Address	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
Submission	Other Motions/Papers
Filer's Name	Cynthia R. Parks
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Signature	/Cynthia R. Parks/
Date	10/01/2013
Attachments	TTAB 91210103.pdf(573345 bytes)

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

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

THE COCA-COLA COMPANY	}
	}
Opposer,	} Opposition No. 91210103
	}
v.	}
	}
	}
MIRIAM SOLER	}
	}
and	}
	}
ALBERTO SOLER, DBA COKI LOCO	}
	}
Applicants.	}

OPPOSER'S AMENDED NOTICE OF OPPOSITION AND RESPONSE TO APPLICANTS' MOTION FOR RECONSIDERATION

Opposer The Coca-Cola Company ("Opposer"), by and through its undersigned counsel and in accordance with Rule 2.127 of the Trademark Rules of Practice, files this Reply Brief to Applicants' Motion for Reconsideration dated September 30, 2013 (the "MFR") and Amended Notice of Opposition in response to the Board's ruling dated September 19, 2013 (the "Ruling"). In the MFR, Applicants reiterated their unfounded belief that Opposer was late in payment of the filing fee for the subject Opposition. Opposer repeats its denial of this claim, as previously accepted by the Board in the Ruling. The Board rejected Applicants' Motion to Dismiss with regard to all of Opposer's

claims in the previously submitted Notice of Opposition, except for Opposer's claim of fraud. Opposer herein continues its previously established standing, priority, and claims of likelihood of confusion, dilution, and lack of bona fide intent to use. Opposer amends the previous Notice of Opposition to include the claims of fraud and false suggestion of a connection, as argued below.

PAYMENT OF FILING FEE

As in the initial Motion to Dismiss filed by Applicants, the MFR again requests that the subject opposition be dismissed, claiming that the Notice of Opposition was untimely filed and that Opposer did not submit the required fee in a timely fashion. As previously noted by Opposer in its response to the initial Motion to Dismiss, and as acknowledged by the Board in the Ruling, the fee was submitted at the time of filing of the Notice of Opposition. Applicants appear to base their belief that the fee was filed later solely on the fact that the Board issued the opposition number on May 15, 2013. As previously explained, this timing has nothing whatsoever to do with the timing of Opposer submitting its filing fee. The online records for the opposition speak for themselves, as they clearly show the status of "Filed and Fee" as of April 5, 2013.

APPLICANT IDENTITY

Furthermore, in the MFR, Applicants appear to have re-named themselves as an entity, "The Red-Luna," using this name above the Applicants' names in the header of the MFR and as their collective identity throughout the motion. However, Applicants have not indicated a change of ownership from two individuals to an entity in the Application. As the issue of ownership of the application and other related applications is central to the question of fraud in this matter, Opposer requests that the Board

compel Applicants to clarify whether the subject application is owned by two individuals or by a corporate entity known as "The Red-Luna."

FRAUD

The Board indicated that "a trademark is obtained fraudulently under the Lanham Act only if the applicant or registrant knowingly makes a false, material representation with the intent to deceive the PTO." *Ruling*, at 9. The Board further specified that the difference between a "false" representation and a "fraudulent" one is that the latter involves "an intent to deceive, whereas the former may be occasioned by a misunderstanding, an inadvertence, a mere negligent omission, or the like." *Id.* The Board further stated that Opposer had not alleged that Applicants made a materially false statement with the intent to deceive the Patent and Trademark Office." *Id.* at 10.

Opposer respectfully submits that the pattern of behavior demonstrated by the Applicants indicates a clear intent to deceive the Patent and Trademark Office (the "PTO"). As previously stated, Applicant Alberto Soler appears to be the true applicant behind no less than eight trademark applications filed in the PTO, under a variety of different names, including the subject application, which was filed in his name as well as the name "Miriam Soler." Based upon communications with Alberto Soler, it appears that Miriam Soler does not have any true connection to the subject application, and her inclusion in the application was part of a scheme by Alberto Soler intended to defraud the PTO.

Applicant Alberto Soler stated in a telephone call on August 26, 2013 to Opposer's counsel that he knowingly filed multiple applications in different names. This act was not a mere misunderstanding, negligent omission, or mistake. At a minimum, in

the telephone conversation Alberto Soler admitted that he is the true owner of Application Ser. No. 85/756,565 for COCA-LISCIOUS (filed by Samuel Akcime) and Registration No. 4,259,407 for COCALEAF (registered in the name of Juan Rodriguez). He also stated in the phone call that he no longer wanted to "play hide and seek" with the applications, indicating that he was fully aware of his deceptive behavior. It is not clear whether Samuel Akcime or Juan Rodriguez are living individuals, but it does appear that Alberto Soler is the true owner of both of these trademark filings.

Furthermore, in Applicant Alberto Soler's letter of protest to the PTO dated September 5, 2013 regarding another of Opposer's trademark applications, he (through his new entity, The Red Luna Co.), claimed ownership of the above-referenced application and registration as well as the subject application for COKI COLA HAPPY MOTION and Application Ser. No. 85/607,106 for COLA DE COKI (filed in the name of William Soler). A copy of this letter is attached hereto as Exhibit A.

Finally, Applicant Alberto Soler admitted his purposeful deception of the PTO in an e-mail to Opposer's counsel dated August 27, 2013, a copy of which is attached hereto as Exhibit B. Mr. Soler stated "I had no choice but to file the applications in different names and not me alone because I am a Cuban citizen who was order deported for my drug convictions not being a American Citizen and who came to this country being 4 years old." *See Exhibit B.* Mr. Soler claims that this deception is not fraud, but clearly it was undertaken with the intent to circumvent what he believed to be a legal restriction. "The Cuban Embargo Act of 1984, clever but not so clever Mr. Bacardi for I come to undone, could affects my trademark rights to claim mark right not being a American citizen but Cuban who has no legal status in the US for the

deportation order in place over me." *Id.* Mr. Soler here admits that he purposefully and intentionally filed the applications deceptively in order to avoid what he believed to be a legal restriction on his ability to own a trademark application.

While one application filed under an alias could possibly be construed as an error due to an applicant's inexperience with procedures in the PTO, the pattern of behavior here indicates a clear and sophisticated plan to deceive the PTO as to the true owner of the trademark applications and therefore should be viewed as fraudulent rather than a mere false misrepresentation. Mr. Soler himself has repeatedly admitted that this was no accident or simple mistake but instead was a thought-out scheme intended to avoid what he perceived as the PTO's legal requirements for trademark ownership. Mr. Soler has established a pattern of filing several applications under false names and making false representations that applicants such as Miriam Soler in the subject application have rights to the application which they do not in fact hold. Accordingly, Opposer submits that this pattern of activity qualifies as making materially false statements with the intent to deceive the PTO and establishes Applicants' fraud.

Opposer respectfully requests that the Board reject Applicants' Motion for Reconsideration and add this claim of fraud to the claims established in Opposer's previous Notice of Opposition.

Respectfully submitted, this lst day of October, 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

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 Opposer's Amended Notice of Opposition and Response to Applicants' Motion for Reconsideration, 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
c/o Jorge L. Flores P.A.
7700 North Kendall Drive
Suite #701
Miami, FL 33156
thenewkidontheblock@live.com,
jlflores@floreslawmiami.com

Miriam Soler
c/o Jorge L. Flores P.A.
7700 North Kendall Drive
Suite #701
Miami, FL 33156

This 1st Day of October, 2013

/s/Cynthia R. Parks
Cynthia R. Parks

Exhibit A: Alberto Soler's E-mail Dated September 10, 2013, with Opposer's Counsel's Response

Keely Herrick

From:	Cynthia Parks
Sent:	Thursday, September 19, 2013 9:27 AM
To:	Alberto Soler
Subject:	A.Soler - Email service and Answer (Our ref. 81253903)

Good morning Mr. Soler,

Thank you for your e-mails below. We sincerely appreciate your expression of your desire for a "peaceful resolution" to this business dispute. As previously requested, please refrain from making comments about counsel's personal life, i.e., "those who are around you who really cares who you are not just about you." Please stay focused only on the issues relevant to the trademark applications and oppositions.

We will consent to e-mail service for all of your filings, provided you 1) confirm which applications you claim as your own, and 2) take the proper steps to update the contact information for all TTAB proceedings related to these applications to include your new e-mail address, theredluna@live.com. These two steps are necessary because you have asked us to use ONLY the new email address, and we would violate TTAB rules were we to fail to send correspondence to the email address of record.

So, please confirm that, contrary to the names and addresses listed with the U.S. Patent and Trademark Office, you are actually the applicant and contact person for all of the following filings:

Ser. No. 85/738,874 for DKO,
Registration. No. 4,259,407 for COCALEAF,
Ser. No. 85/672,347 for COKI COLA HAPPY MOTION,
Ser. No. 85/607,106 for COLA DE COKI,
Ser. No. 85/756,565 for COCA-LISCIOUS,
Ser. No. 85/619,035 for COKI, and
Ser. No. 85/741,161 for DOKE.

Once we have received your confirmation of this information, we will consent to e-mail service.

With regard to your e-mail asking whether we would prefer for you to file a Motion to Dismiss or an Answer in the COCA-LISCIOUS matter, we recommend that you consult your own counsel in making this decision, as it is not appropriate for us to advise you in determining filing strategies.

From our perspective, the interests of efficiency would be appear to be served by filing of an Answer. Of course, you could also expressly abandon the application as you have done with your applications for COCA, COCA COLA, COCA LEAF WATER, UR COCA COLA, COCALEAF, and KO, which would save both parties considerable time and effort.

Kind regards,

Cynthia Parks
Parks IP Law LLC
730 Peachtree St NE
Suite 600
Atlanta, GA 30308
678.365.4444 main
678.365.4455 direct
678.365.4450 fax

www.parksiplaw.com

On Sep 10, 2013, at 1:21 AM, "Alberto Soler" <theredluna@live.com> wrote:

Hey sorry again. I just need to take these happy me things out of the way-got to much to do and my neck is still an issue because of all this-hating that now I have this matter.

Anyways let me say why i again bother; Soon I will need to file either a motion to dismiss or an answer to opposition Coca-Liscious. What do you prefer ? I dont care but do also- for you see either one but dont want to make things harder for all of us in the long run. So, if you dont even say anything back to me on this matter I will understand why you side stepped.

Just trying to push good for a peaceful resolution. Ok-thats all and thats why.

thanks again.

Begin forwarded message:

From: Alberto Soler <theredluna@live.com>
Date: September 10, 2013, 12:47:37 AM EDT
To: Cynthia Parks <CParks@parksiplaw.com>
Cc: "cokiloco@live.com" <cokiloco@live.com>
Subject: COKI -services of filings

Hello Cynthia. Hope all is well and further more to those who are around you who really cares who you are not just about you.

CONSENT/SERVICE

To correct the past and make things better for both to continue to a happy end please declare here, that you consent to email services filings on all our oppositions and cancellation proceedings as docketed.

Also, I would want to use this email account only, Ok girl; that will be better for us and further for me to start clean since now you guys know all about me clear indeed.

Thank you and b safe.

Exhibit B: Alberto Soler's Letter of Protest

We have received your Letter of Protest form below.

To the Commissioner for Trademarks:

The following is submitted for application serial number. 86037374 (Stylized and/or with Design, COCA-COLA LIFE) :

FORM INFORMATION

Protester, The Red Luna Co.(TRLC) files the following Letter of Protest (LOP) before the present application mark, Coca-Cola Life filed Aug 14, 2013, is assigned to the Examining Attorney (EA) as did The Coca-Cola Company (TCCC), also owner of the application here, was allowed and was granted in Application No. 85948513 on August 09, 2013. Thus, this LOP is timely and can not now be denied for being filed too early. Furthermore, a Petition to the Director (PD) will also be filed if either the Deputy Commissioner (DC) here denys the LOP and also if this LOP is granted but then denied by the EA of the present application. Although there is no provision allowing a PD as a third party there is still the "standing" doctrine as articulated in Ex parte Lasek, 115 USPQ 145 (Comm Pat 1957)(The Red Luna Company is currently in oppositions and cancellation proceedings with TCCC in which TCCC pleaded and claimed damages to all their Coca-Cola marks under class 032 that are currently register,thus, TRLC clearly will have standing)

CONFUSION/SUSPENSION

TCCC has filed Oppositions against TRLC marks Nos. 91209094-Cola de Coki, 91210103-Coki Cola Happy Motion, 91211081-Coca-Liscious, and Cancellation Nos. 92057485-Coca Leaf, by pleading and claiming damages to all their Coca-Cola marks register under class 032 on the basis of priority, confusion and dilution.

Thus, TRLC hereby requests that the present application mark Coca-Cola Life be either denied registration for confusion similar to any of TRLC earlier filed applications as stated above or be suspended. If the present DC designated official denys the LOP on this ground obviously only aids TRLC in defensing the oppositions/cancellation proceeding, thus, either result is welcome and a record will be established here.

DISCLAIMER/COLA

Its been established by history and trademark authorities and third party registrations under class 032 that the word "Cola" from the mark here Coca-Cola Life should be disclaimed by TCCC. Classic Cola, Serial no. 550,670 (TTAB Feb. 19 1988); 15 USC 1056(a); TMEP 1213. TCCC has never disclaimed the word "Cola".The time has come or later by the record here in opposition and cancellation proceedings

37 CFR 2.61

The EA should be order or informed to exercise 37 CFR 2.61(b) and request information form TCCC'S attorney of record to declare under penalty of perjury if the goods under class 032 contains coca/coca leaf extract. If TCCC states yes, the word Coca of the mark should also be disclaimed; if TCCC states no, the mark should be denied registration for being deceptive. If TCCC'S stays mute or declines to answer the EA question as posed, the mark should be refused registration for violating 37 CFR 2.61(b). Benton, 675 F.3d 1368 (Fed. Cir. 2012). If none above is undertaken by either the DC and the EA, then the application mark here Coca-Cola Life if later allowed to register, will be living in interstate as a "deceptive de facto secondary meaning" mark as all of present TCCC marks now register under class 032. A creature not

known to the People in the land call free. The record is now establish here so that the land stays free.

THE RBD LUNA Co.,
17649 Middlebrook Way
Boca Raton, Fl 33496
livecocabhappy@live.com

Submission Signature
Signature: /Alberto Soler/ Date: 09/05/2013
Signatory's Name: Alberto Soler
Signatory's Position: Majority Partner

Exhibit C: E-mail Dated August 27, 2013 from Alberto Soler to Opposer's Counsel

Cynthia Parks

From: Alberto Soler [madcubanrum@gmail.com]
Sent: Tuesday, August 27, 2013 1:22 AM
To: Cynthia Parks

Hey, sorry for this late email. I forgot to tell you something else important just in case we never again have any discussion. I probably was kind of nervous that you will mistakenly find me not capable of succeeding with my ambitions I said. Nevertheless I founded comfort that you now might find comfort in proceeding to do your job and attempt to succeed and claim also comfort for your client.

I had no choice but to file the applications in different names and not me alone because I am a Cuban citizen who was order deported for my drug convictions not being a American Citizen and who came to this country being 4 years old. I never plan this against you guys but now you think or think fraud. It is not either.

The Cuban Embargo Act of 1984, clever but not so clever Mr. Bacardi for I come to undone, could affects my trademark rights to claim mark right not being a American citizen but Cuban who has no legal status in the US for the deportation order in place over me. Cuba last year lost the rights to the mark Havana Club in the US because of the Bacardi Act-thats another story to all this story.

I cant believe I came at 4 and dont deserve to be here because for my crime although I came so young and learn all that crime here. Anyways forget all that but is part why all this is now here.

There is no application filed under me alone, I wanted all that but got force to bring others i cant never trust to be able to proceed without later thinking that your client will attempt to stop me before i can even bother.

So Cynthia, now you know why all this matter for i will never lie on any matter.

b safe, please