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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
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Date	10/16/2013
Attachments	Opposer's Response to Applicant's Motion to Dismiss.pdf(221044 bytes)

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

In re: Application Nos. 85/607,106; 85/672,347; 85/738,874
Marks: COLA DE COKI; COKI COLA HAPPY MOTION; DKO
Filed: April 4, 2012; July 10, 2012; September 26, 2012
Published: October 2, 2012; December 18, 2012; April 9, 2013

THE COCA-COLA COMPANY

Opposer,

v.

**WILLIAM SOLER,
MIRIAM SOLER
ALBERTO SOLER, DBA COKI LOCO
and
JAMES WRIGHT**

Applicants.

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}
} Opposition Nos. 91209094, 91210103,
} and 91210647
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OPPOSER’S RESPONSE TO APPLICANTS’ MOTION TO DISMISS

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 Response to Applicants’ Motion to Dismiss dated October 4, 2013 (the “MTD”). In the MTD, Applicants failed to provide a legitimate reason to dismiss the subject Oppositions, making instead inaccurate and unfounded statements regarding the evidence provided by Opposer in a previous response to another of Applicants’ motions in these proceedings. Accordingly, as Applicants’ MTD appears to have been filed as yet another attempt by Applicants to delay these proceedings, cause Opposer to incur

additional legal fees, and waste the Board's time, Opposer requests that Applicants' motion be denied.

ALLEGED DISCLOSURE OF PRIVILEGED INFORMATION

Applicants allege that Opposer has disclosed privileged information from e-mail and wire-tapped conversations. This is not a proper ground for a motion to dismiss. Furthermore, it is not an accurate statement, as none of the e-mail communications or telephone conversations referenced by Opposer were "privileged" communications, nor was there any "wire-tapping" involved. Applicants do not object to the truth of Opposer's counsel's recollection of the telephone conversation (and in fact even affirm the time of day of the conversation) and therefore, Applicants appear to have confirmed Alberto Soler's admission of Applicants' fraudulent conduct as previously described.

FRAUD

Although it is unclear from the language of the MTD, Applicants appear to be reiterating yet again their belief that Opposer has not established a claim of fraud in these proceedings. Opposer again contests this allegation and respectfully asserts that the Amended Notices of Opposition in these proceedings contain sufficient information to establish a claim of fraud. Accordingly, Opposer will rely on its previous submissions at this time, as the Board had not had the opportunity to review and rule on the Amended Notices of Opposition prior to Applicants' submission of the current MTD.

SERVICE

Applicants also falsely assert that Opposer is required to serve all documents on Applicants via e-mail. While Opposer has consented to the option of service by e-mail, this is not the exclusive method of service. According to 37 CFR§2.119, cited at §113 of

the TBMP, transmission by first-class mail is one of the options for service, and electronic transmission is another option, when mutually agreed upon by the parties. According to TBMP §113.04, "Service of papers filed in inter partes cases may be made in any of the ways specified in 37 CFR §2.119(b)." As first-class mail is specifically included as one of the approved methods of service in this section, the documents in these matters were appropriately served, and Applicants' argument has no merit.

Furthermore, given Applicants' constantly changing e-mail addresses, and the lack of a common e-mail address of record for the three Oppositions referenced herein, it would not have been appropriate for Opposer to provide service for all three Oppositions via the theredluna@live.com e-mail address as Applicants suggest. As an example, this e-mail address is not the address of record for the subject application for COLA DE COKI, and accordingly, Opposer would not have been authorized by the Board to communicate with Applicants for that application via that e-mail address. The Board and Opposer have both informed Applicants that the parties can only provide service via an address of record with the PTO. Accordingly, Opposer properly provided service through Applicants' physical address.

ALBERTO SOLER IS NOT ENTITLED TO REPRESENT WILLIAM SOLER

According to TBMP §114.06, "If it comes to the attention of the Board that an individual who is not entitled, under 37 CFR §11.14(a), 37 CFR §11.14(b), 37 CFR §11.14(c), or 37 CFR §11.14(d), to practice before the Office in trademark cases, is attempting to represent a client in a Board proceeding, the Board will notify the individual that he or she is not entitled to do so." As previously indicated in the Board's ruling dated September 19, 2013 in Opposition No. 91209094, it is "improper for Alberto

Soler to sign the motions on behalf of William Soler.” Opposer submits that the current motion was similarly improperly signed by Alberto Soler and should be given no consideration with regard to Opposition No. 91209094, in accordance with the Board's previous ruling. The amendment of the contact information for this application on October 12, 2013 (subsequent to the filing of the MTD on October 4, 2013) to reference the “Soler Law Firm” is at best ineffectual, and at worst, evidence of additional fraudulent conduct, as upon information and belief, Alberto Soler is not an attorney.

CONCLUSION

Therefore, Opposer respectfully requests that the Board reject Applicants’ Motion to Dismiss for all three Oppositions and that the Board continue to disregard altogether submissions that are signed by Alberto Soler on behalf of William Soler.

Respectfully submitted this 16th day of October, 2013.

PARKS IP LAW LLC

/s/Cynthia R. Parks
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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 Response to Applicants' Motion to Dismiss by electronic mail to the addresses of record and by causing a true and correct copy thereof to be deposited in the United States Mail, postage prepaid, addressed to the attorneys of record for the Applicants as follows:

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This 16th Day of October, 2013.

/s/Cynthia R. Parks
Cynthia R. Parks