

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

CME

Mailed: November 14, 2013

Opposition No. 91210103

The Coca-Cola Company

v.

Alberto Soler d/b/a/ Coki Loco  
and Miriam Soler

Opposition No. 91210647

The Coca-Cola Company

v.

James Wright and Alberto Soler

**Christen M. English, Interlocutory Attorney:**

On November 13, 2013, pursuant to applicants' request, the Board participated in a telephone conference with the parties concerning the above-captioned oppositions.<sup>1</sup> Cynthia Parks and Keely Herrick appeared on opposer's behalf, applicants appeared pro se,<sup>2</sup> and the interlocutory attorney assigned to these

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<sup>1</sup> The above-captioned opposition proceedings are **not** consolidated, but for administrative convenience only, both cases were discussed during the teleconference and the Board issues this single order addressing the teleconference.

<sup>2</sup> An attorney, Jorge Flores, observed the conference on applicants' behalf, but did not participate as he has not entered an appearance in either of these proceedings on behalf of applicants.

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proceedings participated on behalf of the Board. This order summarizes what the Board perceives as the main points discussed during the teleconference.

The parties did not agree to e-mail service of papers exclusively, but did agree to e-mail service as one method of service of papers in these proceedings among the other methods provided for in Trademark Rule 2.119(b), 37 C.F.R. § 2.119(b). Opposer's e-mail address for e-mail service is [cparks@parksiplaw.com](mailto:cparks@parksiplaw.com) and applicant's e-mail address for e-mail service is [theredluna@live.com](mailto:theredluna@live.com).

Section 105 of the Trademark Trial and Appeal Board Manual (3d. ed. rev.2 2013) provides that "[p]arties or their attorneys or other authorized representatives may telephone the Board to inquire about the status of a case or to ask for procedural information, but not to discuss the merits of a case or any particular issue." Notwithstanding this provision, given the contentious nature of these proceedings, the Board reiterated that the assigned interlocutory attorney will not speak to either party about the status of these cases or any procedural matters without the other party or parties on the telephone.

Applicants have made a business decision not to retain counsel to represent them in these proceedings. Applicant, Alberto Soler, repeatedly indicated that the Board should "help" applicants in these proceedings as they are representing

themselves *pro se*. The Board made clear that it is an impartial administrative tribunal and it cannot provide any legal advice or assistance to applicants or any other party. The Board further stated that it is **strongly** advisable for any persons not acquainted with the technicalities of the procedural and substantive law involved in *inter partes* proceedings before the Board to secure the services of an attorney who is familiar with such matters.<sup>3</sup>

The Board advised that the attorney-client privilege does not apply to communications between applicants and opposer's counsel or between the parties and the Board. The Board noted, however, that the Board's standard protective order, available here:

<http://www.uspto.gov/trademarks/process/appeal/guidelines/syndgm>

is automatically applicable in these proceedings to govern the exchange of information between the parties.<sup>4</sup> See Trademark Rule 2.116(g), 37 C.F.R. § 2.116(g); see also Trademark Trial and Appeal Board Manual § 412. The Board also suggested that to the extent the parties wish to pursue settlement negotiations, they may want to consider pursuing negotiations in writing so as to

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<sup>3</sup> Information for parties representing themselves *pro se* is provided at the end of this order.

<sup>4</sup> Moreover, Section 120.02 of the Trademark Trial and Appeal Board Manual addresses the filing of confidential materials with the Board.

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minimize any misunderstandings and to designate such communications as settlement communications under Federal Rule of Evidence 408.

Applicant, Alberto Soler, also repeatedly stated that these proceedings are unfair and that the assigned interlocutory attorney has not acted impartially in these proceedings. Mr. Soler alluded to the economic discrepancy between the parties and alleged that opposer has "the power to change rulings." As previously stated, the Board is an impartial administrative tribunal empowered to determine only the right to register a trademark. See Trademark Trial and Appeal Board Manual § 102.01. **All** proceedings before the Board are governed by the Trademark Act, 15 U.S.C. § 1051 et. seq., which was enacted by Congress, and by the Trademark Rules of Practice, each rule of which proceeded through a notice and proposed rule making process before becoming a final rule. The Board applies the Trademark Act and the Trademark Rules impartially in all proceedings, including the above-captioned proceedings. The Board will not hear further arguments or complaints from applicants regarding the alleged unfairness of these proceedings.

Proceedings in both oppositions remain suspended pending applicants' motions to dismiss and requests for reconsideration.

Information for Pro Se Parties

A party may represent itself in *inter partes* proceedings before the Board. However, while Patent and Trademark Rule 11.14 permits any entity to represent itself, it is strongly advisable for any persons who are not acquainted with the technicalities of the procedural and substantive law involved in *inter partes* proceedings before the Board to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney.

Any party who does not retain counsel should be familiar with the rules governing these proceedings, and may access legal resources, such as the Trademark Trial and Appeal Board Manual of Procedure (TBMP) and the Trademark Rules of Practice, from the Board's web page at <http://www.uspto.gov/trademarks/process/appeal/index.jsp>. Also available are links to TTABVUE, where one can view filings, proceeding history and status at <http://ttabvue.uspto.gov/ttabvue>, and to ESTTA, the Board's electronic filing system at <http://estta.uspto.gov>. All parties are encouraged to use ESTTA to submit filings. Furthermore, many Federal Rules of Civil Procedure govern the conduct of this proceeding.

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is required of all parties, whether or not they are represented by counsel. See *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, n.2 (TTAB

2006).

Trademark Rules 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served on the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board. Therefore, copies of all papers filed in this proceeding must be accompanied by a signed statement indicating the date and manner in which such service was made. The statement, whether attached to or appearing on the paper when filed, will be accepted as prima facie proof of service. The statement should take the form of a certificate of service which must be signed and dated, and should read as follows (see Trademark Trial and Appeal Board Manual § 113.03):

**I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by mailing said copy on (insert date of mailing), via First Class Mail, postage prepaid (or insert other appropriate method of delivery) to: (set out name and address of opposing counsel or party).**

An *inter partes* proceeding before the Board is similar to a civil action in a Federal district court. The parties file pleadings and may file a wide range of possible motions, as appropriate. The process of discovery (serving of interrogatories, requests for production of documents and things and requests for admission, as well as depositions) is followed by a testimony (trial) period, after which final briefs on the case are filed. The Board does not preside at the taking

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of testimony; all testimony is taken out of the presence of the Board during the parties' assigned testimony (trial) periods, and the written transcripts thereof, together with any exhibits thereto, are then filed with the Board. No paper, document, or exhibit will be considered as evidence unless it has been introduced in evidence in accordance with the applicable rules.

The Board's orders instituting these proceedings also contain a vast amount of information regarding the parties' obligations and the manner in which these proceedings shall be conducted.

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