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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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Attachments	OpposersResponseToApplicants CombinedMotionToConsolidate.pdf(332564 bytes)

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

In re: Application Nos. 85/607,106 and 85/672,347
Marks: COLA DE COKI and COKI COLA HAPPY MOTION
Filed: April 4, 2010 and July 10, 2012
Published: October 2, 2012 and December 18, 2012

THE COCA-COLA COMPANY

Opposer,

v.

WILLIAM SOLER, DBA COLA DE COKI,

MIRIAM SOLER

and

ALBERTO SOLER, DBA COKI LOCO

Applicants.

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}Opposition No. 91209094 and 91210103
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**OPPOSER'S RESPONSE TO APPLICANTS' COMBINED MOTION TO
CONSOLIDATE**

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 the Combined Motion to Consolidate filed on behalf of Applicant William Soler with regard to Opposition No. 91209094 (the "094 Opposition") and Applicants Miriam Soler and Alberto Soler with regard to Opposition No. 91210103 (the "103 Opposition"), filed on May 5, 2013.

Alberto Soler, on behalf of himself, Miriam Soler, and William Soler, has requested that the Board consolidate the '094 Opposition and the '103 Opposition proceedings based on questions of fact and law common to both proceedings. Mr. Soler's motion was filed without consent from Opposer. Opposer hereby requests that Mr. Soler's motion be granted only with respect to the issues of fraud and priority raised in both oppositions, as the remaining substantive issues in each case require individual examination. Furthermore, Opposer requests that the proceedings be suspended until additional proceedings involving related parties may be joined on this issue.

MOTION WAS IMPROPERLY FILED AND NOT SERVED

As a preliminary matter, Applicant asserts in its motion that the motion was filed on May 5, 2013 and served by e-mail and first class mail to Opposer's representative. Applicant also acknowledges in its motion that Opposer has never consented to service via e-mail, and therefore e-mail service is not proper in this matter. Furthermore, as of May 15, 2013, Opposer has not received any service from Applicant by first class mail, but rather received a copy via an unsigned email on May 5, 2013 from the email address "Coki Loco [thenewkidontheblock@live.com]" and through Opposer's routine check of the proceedings online. Accordingly, Opposer requests leave to file this response at this time, as the tolling for the deadline to respond has not officially begun due to the failure of Applicant to complete proper service of the motion. Furthermore, according to Rule 5.11 of the TTAB Rules of Practice, a motion to consolidate is not generally accepted until after an answer has been filed in the opposition, and Applicant has yet to file an Answer in the '103 Opposition. Moreover, Applicant previously filed a Motion to Dismiss in the '103 Opposition, which has not yet been responded to by the

Board, compounding the inappropriate timing of the filing of the motion to consolidate. Notwithstanding Applicant's failure to respect the procedures and rules of the Board, Opposer has prepared and now submits this response to Applicant's motion.

BASIS FOR OPPOSITION – FRAUD

Pursuant to Fed. R. Civ. P. 42(a), "If actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions." One of Opposer's bases for opposition common to both the '094 Opposition and the '103 Opposition is that the Applicants committed fraud in attempting to obscure the true identity of the owner or owners in the respective applications as well as in at least five other related applications for marks which also infringe the Opposer's family of famous COCA-COLA Marks.

Specifically, Opposer alleges that Applicants made (1) a false representation of withholding of information; (2) regarding a material fact; and (3) that Applicant knew or should have known that it was false or misleading. See *J.E.M. Int'l Inc. v. Happy Rompers Creations Corp.*, 74 U.S.P.Q.2d (BNA) 1526, 1529 (T.T.A.B. 2005). As the Applicants now appear to acknowledge that they are in fact common owners of the applications in the '094 Opposition and the '103 Opposition, despite prior representations to the contrary, Opposer would consent to consolidation of these two oppositions on the issue of fraud, provided that the applications listed below also under common ownership will be included in the consolidation. If this issue is resolved in Opposer's favor, it would result in all of these oppositions being sustained without need to address the remaining substantive issues, which would be a considerable savings in time and effort for both parties as well as for the Board.

In order to avoid duplication of efforts on this issue, Opposer requests that the current proceedings be suspended until the remaining eight applications also fraudulently filed by Applicants and their related parties are ripe for consolidation on this issue. The remaining applications known to Opposer at this time are Ser. No. 85/619,035 for COKI, 85/734,620 for KO, 85/738,874 for DKO, 85/813,590 for UR COCA COLA, 85/848,317 for COCA COLA, 85/756,565 for COCA-LISCIOUS, 85/756,528 for COCA and 85/741,161 for DOKE. As not all of these applications are currently ripe for opposition, Opposer requests suspension of these proceedings until the issues that are common to all of the Applicants' fraudulently filed applications can be consolidated, in order for Opposer to be able to provide the Board with the most accurate and efficient presentation of the pattern of activity. Opposer has recently filed Opposition No. 91210647 against the application for DKO, and certainly that opposition could be included in these proceedings.

BASIS FOR OPPOSITION: PRIORITY

Similarly, the issue of Opposer's priority of rights with regard to its COCA-COLA Marks is also common to both the '094 Opposition and the '103 Opposition, as well as the other applications discussed above. Therefore, this issue would also appear to be appropriate for consolidation, once the other applications listed above are available for opposition.

REMAINING ISSUES

"In determining whether to consolidate proceedings, the Board will weigh the savings in time, effort, and expense, which may be gained from consolidation, against any prejudice or inconvenience that may be caused thereby." See TBMP, §501, citing

Envirotech Corp. v. Solaron Corp., 211 USPQ 724 (TTAB 1981), where consolidation was denied as possibly prejudicial where defendant's involved marks were not all the same. Opposer respectfully requests that all remaining issues before the Board be maintained separately in the '094 Opposition and the '103 Opposition, as the prejudice and inconvenience outweigh any alleged savings that may arise from consolidation. The differences in the Applicants' marks for each proceeding, namely, COLA DE COKI and COKI COLA HAPPY MOTION, will require individual consideration on the issues of likelihood of confusion, dilution, and lack of bona fide intent to use, and therefore consolidating the proceedings on those issues would not result in a savings of the Board's time or effort. These issues are fact specific to each mark and require, at a minimum, careful examination of the sight, sound, and meaning of each mark in comparison to the Opposer's family of COCA-COLA marks. The facts surrounding selection of each mark and intent to use each mark are also likely to differ.

While the Applicants assert in their motion that "virtually all evidence at trial will likely be the same" and that both of Applicants' marks consist of the terms "COKI" and "COLA," this claim either presents a misunderstanding or deliberate misstatement of the reality of these proceedings. First, the marks COKI DE COLA and COKI COLA HAPPY MOTION are not identical in sight, sound, or meaning, and the goods and services proposed under each mark, as the Applicants admit, are not identical. As stated above, each mark will need to be compared separately with the Opposer's marks in order to determine whether there is a likelihood of confusion or dilution, even though the Applicants concede in their motion that there is a "similarity in the words between Coki and Opposer," apparently admitting that both of their marks are similar to Opposer's

marks. Consolidation of the proceedings will not avoid the need for each mark to be examined separately on these issues, and therefore it will not result in a savings of time, expense, or effort.

Therefore, despite the Applicants' misrepresentation, judicial economy would not be served by consolidation of the oppositions on these issues as each mark would still require individual discussion and examination. Furthermore, Opposer's claims may be prejudiced by the relative strength or weakness of the COLA DE COKI mark as opposed to the COKI COLA HAPPY MOTION mark and the potential for confusion in discussing both marks in the same context.

CONCLUSION

For at least the forgoing reasons, Opposer will be damaged by Applicants' requested consolidation on all issues except for the issues of fraud and priority.

WHEREFORE, Opposer respectfully requests that the Oppositions be consolidated only on the issues of Applicants' fraud and Opposer's priority of rights, and that the Oppositions be suspended until the subsequent applications also fraudulently filed by Applicants can be consolidated on this issue.

Respectfully submitted, this 17th day of May, 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 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:

William Soler
16 Alcantarra Avenue
Coral Gables, Florida 33134

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

Miriam Soler
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Miami, Florida 33126

Laudis Moreira
Banah Sugar / UR-COLA
215 SE 10th Avenue (Banah SweetWay)
Miami, Florida 33010

This 17th day of May, 2013.

/s/ Cynthia R. Parks
Cynthia R. Parks