

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Alexandria, VA 22313-1451
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CME

Mailed: November 4, 2015

Opposition No. 91210647

The Coca-Cola Company

v.

James Wright and Alberto Soler

Before Cataldo, Taylor, and Greenbaum,
Administrative Trademark Judges.

By the Board:

On July 14, 2014, the Board issued an order sustaining this opposition and refusing registration of the involved mark to Co-Applicant Alberto Soler (the “Final Decision”).¹ On November 26, 2014, the Board issued an order denying Applicants’ request for reconsideration of the Final Decision. This case now comes up on Applicants’ motion, filed April 20, 2015, seeking relief from final judgment pursuant to Fed. R. Civ. P. 60(d).²

¹ Prior to the Final Decision, Mr. Wright relinquished his rights in the involved application, but for discovery purposes, Mr. Wright was maintained as a party defendant in this proceeding. *See* 28 TTABVUE 3-4.

² In their motion, Applicants indicate that there is “no need” for Fed. R. Civ. P. 60(b)(2) and 60(b)(4) and that they “also don’t need” Fed. R. Civ. P. 60(b)(3). Motion, pp. 2-3. Accordingly, we have not given any consideration to these rules in determining Applicants’ motion.

Some procedural history is pertinent to Applicants' motion. During the course of this proceeding, Applicants filed a motion to dismiss the opposition as untimely arguing that Opposer did not submit the opposition filing fee by the opposition deadline. The Board issued an order on September 19, 2013 explaining that the Office's records showed that Opposer timely submitted the opposition fee on the last day of the opposition period. *See* 11 TTABVUE 2. Accordingly, the Board denied Applicants' motion. *See id.*

On September 24, 2013, Applicants filed a request for reconsideration of the September 19, 2013 decision arguing that the Board must produce a copy of the "recorded stamp date paid filing receipt for [Applicants'] examination" because "doubt" remained as to whether Opposer timely filed the opposition fee. 13 TTABVUE 4-5. The Board issued an order on February 3, 2014 denying Applicants' request for reconsideration. *See* 21 TTABVUE 4.

In their motion for relief from judgment, Applicants again raise arguments regarding the opposition fee. Specifically, Applicants appear to argue that: (1) Opposer improperly "submitted the notice of opposition fee on the last timely day by placing a telephone call to an Officer of the USPTO providing her personal Amex card for a timely filed mailroom date," 44 TTABVUE 2; (2) the Board denied

We also have not given any consideration to Applicants' filings of September 4, 2015 (52 TTABVUE) and September 19, 2015 (54 TTABVUE) as they consist solely of ad hominem attacks on the Board and the Deputy Commissioner for Trademark Examination Policy.

The Board notes Applicants' changes of correspondence address, filed May 17, 2015 (48 TTABVUE and 49 TTABVUE), and Opposer's power of attorney appointing new counsel, filed July 17, 2015 (50 TTABVUE), and change of correspondence address, filed July 21, 2015 (51 TTABVUE). The Board's records have been updated accordingly.

Applicants “due process” when it declined to produce proof that Opposer had timely paid the opposition fee, *id.* at pp. 2-3; (3) Opposer “fabricat[ed] ... evidence” showing that it timely submitted the opposition fee, *id.* at p. 4; and (4) the Board “did deceive the COURT into believing” that the opposition fee was timely paid “by directly corrupt[ing] the COURT’S administrative machinery....”³ *Id.* at 3 (capitalization in original).

Pursuant to Fed. R. Civ. P. 60(d)(3), a party may obtain relief from judgment where there has been “fraud on the court.” Fed. R. Civ. P. 60(d)(3). The type of fraud contemplated by Fed. R. Civ. P. 60(d)(3) is “the most egregious conduct involving a corruption of the judicial process itself.” 11 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2870 (3d ed. 2015). For the reasons explained below, there is no basis for granting Applicants’ motion.

First, Applicants’ own evidence, consisting of the USPTO’s response to a Freedom of Information Act (“FOIA”) request, shows that Opposer timely submitted the required opposition fee through the Board’s electronic filing system. *See* 44 TTABVUE 9-10. Second, even if Opposer had submitted the required fee via telephone, Applicants have not cited any rule that prohibits a party from submitting a USPTO filing fee via telephone or paying a USPTO filing fee with a personal credit card, and we are aware of none. Third, Applicants have not cited to any legal

³ On September 15, 2014, Applicants filed a Petition to the Director asserting arguments similar to those raised in the instant motion. *See* 41 TTABVUE. The Office of the Deputy Commissioner for Trademark Examination Policy dismissed the Petition on April 14, 2015 and denied Applicants’ request for reconsideration of the Petition decision on September 16, 2015. *See* 45 TTABVUE 1 and 53 TTABVUE 1.

authority to support the assertion that they were denied “due process” when the Board declined to produce proof that Opposer timely paid the opposition fee, and again, we are aware of none. Moreover, Applicants obtained the relevant accounting documents through a FOIA request, which was the appropriate mechanism for obtaining such records.⁴ Lastly, Applicants have not submitted *any* evidence that the Board or Opposer tampered with the Office’s accounting records or otherwise corrupted this proceeding.

In view of the foregoing, Applicants’ motion to set aside the Final Decision pursuant to Fed. R. Civ. P. 60(d) is **DENIED**.

Applicants have exhausted all of their remedies before the Board, and the time to appeal the Board’s final decision to the Court of Appeals for the Federal Circuit or to commence a civil action with respect to this proceeding has expired. *See* Trademark Rule 2.145(d). Accordingly, the Board will not acknowledge or consider any further papers filed by Applicants in this proceeding.

⁴ It appears that the FOIA request was made by a third party as the USPTO’s response to the FOIA request is addressed to Carlos Garcia.