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

Proceeding	91177358
Party	Defendant The Coca-Cola Company
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Date	06/19/2008
Attachments	Opp 91177358 Declaration.pdf (51 pages)(1090854 bytes)

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

MATT EHRLICH and SHLOMO)	
FRIED and/or MAYIM TOVIM,)	
)	
Opposers,)	OPPOSITION NO. 91177358
)	
v.)	
)	
THE COCA-COLA COMPANY,)	
)	
Applicant.)	

DECLARATION OF BRUCE W. BABER

Bruce W. Baber declares as follows:

1. My name is Bruce W. Baber. I am a partner in the law firm of King & Spalding LLP and am counsel of record for applicant The Coca-Cola Company ("TCCC") in the above-captioned matter. I give this declaration freely and voluntarily, in support of TCCC's motion to dismiss this proceeding, filed concurrently herewith, and in opposition to the motion to extend testimony period filed herein on behalf of opposers Matt Ehrlich and Shlomo Fried and/or Mayim Tovim ("Opposers") on May 30, 2008.

2. On December 3, 2007, we served on Opposers' counsel, Mr. Simon Klein of the firm of Klein and Suslovich, TCCC's first set of interrogatories and first set of requests for production of documents and things ("TCCC's Discovery

Requests”) in this matter. True and correct copies of TCCC’s Discovery Requests, as served on December 3, 2007, are attached hereto as Exhibits A and B. TCCC’s interrogatories are attached as Exhibit A and TCCC’s requests for production are attached as Exhibit B.

3. On December 3, 2007, I also forwarded to Mr. Klein by e-mail courtesy copies of TCCC’s Discovery Requests. A true and correct copy of my December 3, 2007 e-mail message to Mr. Klein is attached hereto as Exhibit C.

4. TCCC’s Discovery Requests were served on Mr. Klein by certified U.S. Mail, return receipt requested. A true and correct copy of the “domestic return receipt” postcard that I received back from the U.S. Postal Service, which shows that TCCC’s Discovery Requests were received by Mr. Klein’s office on December 5, 2007, is attached hereto as Exhibit D.

5. I did not receive any responses from Opposers to TCCC’s Discovery Requests on or in the days following January 7, 2008, the date by which such responses were due to be served.

6. On February 14, 2008, I sent to Opposers’ counsel Mr. Klein an e-mail message in which I inquired whether Opposers had served responses to TCCC’s Discovery Requests. A true and correct copy of my February 14 message to Mr. Klein is attached as Exhibit E.

7. I received no response from Mr. Klein to my February 14 e-mail message.

8. On March 6, 2008, at approximately 4:00 p.m., I telephoned Mr. Klein and left a voice mail message for him, asking him to call me regarding this matter at his earliest convenience.

9. I received no response from Mr. Klein to my March 6 voice mail message.

10. On March 7, at approximately 1:30 p.m., I telephoned Mr. Klein again and left another voice mail message, asking him to call me regarding this matter.

11. I received no response from Mr. Klein to my March 7 voice mail message.

12. On March 11, at approximately 4:40 p.m., I telephoned Mr. Klein again and spoke with him. He acknowledged that he had received my earlier messages, and apologized for not responding to them. I asked Mr. Klein whether Opposers intended to respond to TCCC's Discovery Requests, and Mr. Klein stated that he did not know the status of this matter and needed to check with "someone else" who was working on this case. Mr. Klein indicated that he would be back to me in the near future and hoped to be able to provide me with a response by late the next day.

13. I did not hear back from Mr. Klein regarding Opposers' responses to TCCC's Discovery Requests on March 12 or any time thereafter.

14. On March 20, I telephoned Mr. Klein again and left him a voice mail message to the effect that I was following up on our conversation of March 11 and asked that he let me know whether Opposers intended to respond to TCCC's Discovery Requests and, if so, when Opposers intended to respond.

15. As of the date hereof, I have not heard back from Mr. Klein in response to my March 20 message, nor have I received any communication of any kind from him since he and I spoke on March 11, 2008.

16. On the afternoon of May 30, 2008, I received a voice mail message from an individual who identified himself as Steven Horowitz. Mr. Horowitz's message indicated that he had been retained by Opposers, was calling about this matter and needed urgently to speak with me that day if at all possible regarding a possible extension of Opposers' testimony period. At approximately 3:40 p.m. on May 30, I returned Mr. Horowitz's call and spoke with him about this matter.

17. In our conversation on May 30, Mr. Horowitz asked if I would consent, on behalf of TCCC, to an extension of Opposers' testimony period. I advised Mr. Horowitz that I would not consent to such an extension and further advised him that I planned to file a motion on behalf of TCCC to dismiss the Opposition. I advised Mr. Horowitz in our conversation that we had served

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