

ESTTA Tracking number: **ESTTA915968**

Filing date: **08/15/2018**

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

|                               |  |
|-------------------------------|--|
| <b>Proceeding</b>             | 91225933   |
| <b>Party</b>                  | Plaintiff<br>The Coca-Cola Company   |
| <b>Correspondence Address</b> | BRUCE W BABER<br>KING & SPALDING LLP<br>1180 PEACHTREE ST<br>ATLANTA, GA 30309<br>UNITED STATES<br>bbaber@kslaw.com, kmccarthy@kslaw.com, nytrademarks@kslaw.com<br>404-572-4826 |
| <b>Submission</b>             | Other Motions/Papers   |
| <b>Filer's Name</b>           | Bruce W. Baber   |
| <b>Filer's email</b>          | bbaber@kslaw.com, kmccarthy@kslaw.com, nytrademarks@kslaw.com  |
| <b>Signature</b>              | /Bruce W Baber/  |
| <b>Date</b>                   | 08/15/2018   |
| <b>Attachments</b>            | 2018.08.15 Response to Order.pdf(24753 bytes )   |

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

|                          |   |                         |
|--------------------------|---|-------------------------|
| THE COCA-COLA COMPANY,   | ) |                         |
|                          | ) |                         |
| Opposer,                 | ) | OPPOSITION NO. 91225933 |
|                          | ) |                         |
| v.                       | ) |                         |
|                          | ) |                         |
| REPLANET HOLDINGS, INC., | ) |                         |
|                          | ) |                         |
| Applicant.               | ) |                         |

OPPOSER'S RESPONSE TO  
ORDER DATED JULY 10, 2018

Opposer The Coca-Cola Company ("TCCC"), by and through its undersigned counsel, files this response to the Board's July 10, 2018 order (TTABVUE 26) denying without prejudice the parties' consent motion, filed on July 3, 2018 (TTABVUE 25), to extend the testimony periods in this proceeding. For the reasons stated below, TCCC requests that the Board approve the extension that was the subject of the parties' July 3 consent motion.

ARGUMENT AND CITATION OF AUTHORITIES

In its order dated March 24, 2018 (TTABVUE 24), the Board granted a consent motion, filed on March 19, 2018, to extend the discovery period. In that order, the Board imposed "a condition on the approval of all future motions to suspend or extend **for settlement**" (24 TTABVUE 1)(emphasis added), requiring that the parties must include in any such motion "a status report on the parties' settlement efforts." The order further stated that "**the parties may no longer use the ESTTA 'Consent Motions'**

**forms to submit motions to extend or suspend dates for settlement.”** *Id.* at 2 (emphasis in original). The order also made clear, however, that the requirement to use the general filings option and provide such a status report “is ***limited to consent motions based on settlement discussions***, and ***does not prohibit the use of ESTTA consent forms for other filings.***” *Id.* (emphases added).

Based on the above language, TCCC believed that it was proper for the parties to use the ESTTA consent motion form for the July 3 motion. Unlike several earlier consent motions submitted in connection with this proceeding, the July 3 motion was not “for settlement” and the form did not so indicate. *Compare* TTABVUE 25 (grounds for request were “Parties are unable to complete discovery/testimony during assigned period”) *with* TTABVUE 17, 19, 21 (grounds included that “Parties are engaged in settlement discussions”).

Following receipt of the Board’s March 24 order, the parties had discontinued their settlement discussions and, during the months of April and May, had been actively engaged in discovery. More specifically, TCCC served written discovery requests on Applicant rePlanet Holdings, Inc. (“rePlanet”) in April, and rePlanet served responses to those requests in May. As of the date of the July 3 motion, the parties were engaged in discussions regarding outstanding discovery issues that had not been completed, and the July 3 motion was filed in order to provide the parties the time needed to resolve those issues and complete discovery. While the parties had discussed the possibility of reopening their past discussions and resolving this proceeding through a settlement, no settlement discussions were actively ongoing at the time the consent motion was filed and the extension was not sought for purposes of pursuing settlement.

In view of the above, TCCC respectfully requests that the use of the ESTTA consent motion form was proper at the time it was used on July 3, and that the Board, consistent with the clear language of its March 28 order, should have approved that motion without requiring “a status report on the parties’ settlement efforts.”

Approximately one week after the July 3 motion was filed, however, the parties did in fact resume discussions regarding possible settlement of this matter. On July 11, 2018, counsel for TCCC sent to rePlanet’s counsel an e-mail message outlining the terms on which TCCC would be willing to resolve this matter. rePlanet’s counsel provided a preliminary response with respect to which the parties’ counsel had a further e-mail exchange that same day (July 11) and, on August 2, 2018, rePlanet provided a written substantive response to each of the terms proposed by TCCC. On Sunday, August 12, counsel for the parties spoke by telephone. Based on that conversation, TCCC believes that the parties have reached an agreement in principle regarding settlement of this matter. TCCC’s counsel is now preparing a draft agreement between the parties that reflects that agreement in principle, and expects to forward that draft to rePlanet’s counsel within the next few days.

Under the current schedule, TCCC’s testimony period is scheduled to close on August 17, 2018. The consent motion submitted on July 3 would extend that date until September 16, 2018. In view of the current status of this matter and the parties’ most recent discussions, as outlined above, TCCC’s undersigned counsel expects that the parties will be able to finalize and consummate their settlement prior to that extended September 16 date.

CONCLUSION

In view of the above, TCCC respectfully requests that the Board approve the consent motion filed on July 3, 2018 that was previously denied without prejudice and extend, to and including September 16, 2018, TCCC's testimony period in this matter, as requested in the July 3, 2018 consent motion.

Respectfully submitted,

KING & SPALDING LLP

Date: August 15, 2018

/Bruce W. Baber/

Bruce W. Baber

Kathleen E. McCarthy

1180 Peachtree Street, N.E.  
Atlanta, Georgia 30309-3521  
(404) 572-4600

1185 Avenue of the Americas  
New York, New York 10036  
(212) 556-2100

Attorneys for Opposer  
THE COCA-COLA COMPANY

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.