

**Application For Extension Of Time To File Notice Of Opposition
In Trade Mark Application No. 11318/00
By Potomac Tobacco Company Limited**

And

**Objection
By Ritkam Trading & Manufacturing Pte Ltd**

*Before Principal Assistant Registrar P Arul Selvamalar
30 October 2002*

Interlocutory hearing - application for extension of time to file notice of opposition made 8 weeks and 6 days after advertisement of mark in the Trade Marks Journal - objection by Opponent to grant of extension of time - whether Registrar should exercise her discretion under rule 83 of TM Rules

Ritkam Trading & Manufacturing Pte Ltd are the applicants for the mark SUPERMATCH & Device, which was advertised in the Trade Marks Journal on 21 May 02. Potomac Tobacco Company Ltd are the intended Opponents who failed to file their Notice of Opposition or an application for an extension of time to file their Notice of Opposition by the deadline, 21 July 02. On 9 September 2002, a certificate of registration was sent by IPOS to the Applicant. On 19 September 02, the opponents filed form TM 48 seeking an extension of time to file their Notice of Opposition. This was 8 weeks and 6 days out of time. On 21 September 02 the Opponents' filed their Notice of Opposition. The Opponents reason for the delay is that they were not aware of the applicants mark until it was cited in their application for a trade mark SUPERMATCH and a letter was sent to them by the Registry of Trade Marks on 26 Aug 02.

Held, denying the application for an extension of time,

- Under rule 83 of the Trade Marks Rules 1998, the Registrar has a discretion to correct any irregularity in procedure, the irregularity in procedure in this case being the application for an extension of time being made 8 weeks and 6 days after the deadline, 21 July 2002.
- The Registrar considered that there is a public interest in that, if the registration of the Applicant's mark causes confusion among the public, the issue must be heard by conducting an opposition hearing. However this public interest may also be served by a hearing of the same issue at an invalidation proceeding. On the other hand, there is also a public interest in ensuring that rules relating to procedure are followed, so that there is certainty for the trade mark owners like the applicants.
- In this case, from 21 May 02 up to 21 July 02, the applicants had to wait and see whether any opposition was going to be filed or any application for an extension of time to file the opposition was going to be filed, against their trade mark application. It would not be fair for the applicant not to know even beyond that 2 months whether his mark is going to be registered. Even if the applicant should be expected to tolerate delays in the system, a delay of a few days with good reasons could be considered reasonable. However a delay of 8 weeks and 6 days, compounded with the reason that they did not know that the applicants mark had been advertised, is not a reasonable delay or explanation.
- The Opponents' reason for the delay is that they did not know of the existence of the applicant's mark. If the lack of knowledge is a good reason, then in every case where the opponent does not know that the applicants mark had been advertised, they may apply for an extension of time late and succeed. Then rule 29(1) would be otiose. Further the whole purpose of advertising the mark in the Trade Mark Journal would lose its efficacy.

Provisions of legislation discussed:

- Trade Marks Rules 1998, rules 29 and 83
- Rules of Court, Order 3 rules 2 & 4

Cases referred to:

- Branov v Sleep Better Bedding Mfg Pty Ltd [1995] 32 IPR 171

- Re Application by Playground Supplies Pty Ltd [1985] 5 IPR 433
- Racecase Pty Ltd v Calder Park Promotions Pty Ltd [1995] 32 IPR 635
- Hunt-Wesson Inc's Trade Mark Application Ch Div [1996] RPC 233
- Kaiser Aluminium & Chemicals Corp v The Reynolds Metal Co. [1969] 120 CLR 136

Representation:

- Ms. Lim Kim Hong (Mas & Pars) for the Applicants
- Mr P Sivakumar (Ella Cheong & Gladys Mirandah) for the Opponents