

**IN THE HEARINGS AND MEDIATION GROUP OF  
THE INTELLECTUAL PROPERTY OFFICE OF SINGAPORE  
REPUBLIC OF SINGAPORE**

Trade Mark Application Nos. T1010045B  
Hearing Date: 28 November 2013

**APPLICATION FOR  
RESTORATION OF TRADE MARK APPLICATION  
AND REQUEST FOR EXTENSION OF TIME  
TO FILE EVIDENCE  
IN A TRADE MARK OPPOSITION  
BY V HOTEL PTE LTD**

**AND**

**OBJECTION THERETO  
BY JELCO PROPERTIES PTE LTD**

Principal Assistant Registrar Sandy Widjaja  
Decision date: 21 January 2014

*Interlocutory hearing – application for restoration of trade mark application and for extension of time to file evidence – objection by Respondents – Applicants requested for extension of time after Registrar notified Applicants of deemed withdrawal of trade mark application – whether restoration of trade mark application and late application for request for extension of time allowed*

***Facts***

1. The Applicants, V Hotel Pte Ltd ("Applicants"), filed an application for the following mark, T1010045B on 5 August 2010



for the following services in class 43:

Hotel reservations; hotels; boarding houses; cafes; cafeterias; rental of meeting rooms; rental of temporary accomodation; restaurants; self-service restaurants; snack-bars

("Application Mark").

2. The Application Mark was published in the Trade Marks Journal on 1<sup>st</sup> July 2011. The Respondents filed their Notice of Opposition on 1<sup>st</sup> November 2011. This marked the start of the opposition proceedings.
3. Parties were given fast track timelines at the 2<sup>nd</sup> Case Management Conference ("CMC") on 2 April 2012 as they indicated that they were not willing to negotiate at that point. The Respondents, then Far East Hospitality Services Pte Ltd (Jelco Properties Pte Ltd became the Respondents via an assignment of the Application Mark), were given 6 months from the date of the 2<sup>nd</sup> CMC to file their evidence in support of the opposition. The maximum timeline for the Respondents was subsequently adjusted, and the Respondents filed their evidence on 2 April 2013. Thus it was the Applicants' turn to file their evidence and they had a maximum timeline of 6 months from 2 April 2013 to do so, ie up to 2 October 2013.
4. At CMCs, timelines are provided after taking into account the particular facts of each case. The purpose of such a timeline is to ensure the just, expeditious and economical disposal of a case as per Rule 81A of the Trade Mark Rules (2008 Rev. Ed.) ("*Trade Marks Rules*"). However, this timeline does not substitute the statutory deadlines stipulated by the Trade Mark Rules. This is clearly explained as such in HMD Circular 4/2010 (dated 20 August 2010):

Parties should note that statutory deadlines and CMC timelines run concurrently. CMC timelines and any further extensions of time beyond CMC timelines granted *do not negate* the need for parties to apply for extensions of time in accordance with the Trade Marks Rules, including, where applicable, filing Form TM 50 and fee.

[Emphasis mine].

5. On 31 May 2013, the Applicants requested for an extension of time to file evidence. The request was granted and thus in accordance with Rule 33 of the Trade Marks Rules the Applicants had until 2 October 2013 to file their evidence. However, 2 October 2013 came and went and there was no evidence filed by the Applicants. On 16 October 2013, the Registrar issued a letter informing the Applicants that as they did not file their evidence by the deadline of 2 October 2013, the Application Mark was deemed withdrawn pursuant to Rule 33(3) of the Trade Marks Rules.
6. On 21 October 2013, the Applicants wrote to the Registrar to request for an extension of time to file evidence as the parties were engaged in negotiations. In Form TM50, the Applicants explained that the Applicants needed more time to file evidence as parties were engaged in negotiations and that the request for an extension of time was filed out of time due to a docketing error. The Applicants submitted that Rule 83 should be invoked to allow for the extension of time in the best interests of parties. Rule 83 provides that any irregularity in procedure which, in the opinion of the Registrar, is not detrimental to the interests of any person or party may be corrected on such terms as the Registrar may direct. On 28 October 2013, the Applicants filed a statutory declaration in support of their application for the restoration of the Application Mark and for an extension of time to file evidence, essentially confirming the information set out in Form TM50. On 29 October 2013, the Respondents wrote to the Registrar objecting to the Applicants' request for an extension of time. They submitted that the request for an extension of time was only filed on 21 October 2013, close to 3 weeks after the

deadline on 2 October 2013 and, notably, after the Registrar's notification on 16 October 2013 that the Application Mark had been deemed withdrawn.

7. In light of the above, on 30 October 2013, the Applicants sought leave for an interlocutory hearing.

*Applicants' submissions*

8. The Applicants submitted that, as confirmed by *Asian Aisle Pte Ltd v Ricegrowers Co-operative Limited* [2002] SGIPOS 7, Rule 83 applies to matters in respect of time and this is the power to restore the Application Mark. The discretionary power accorded to the Registrar is applicable to the time period dictated in Rule 33(6) of the Trade Marks Rules.
9. The Applicants submitted that, when considering whether to exercise the discretion under Rule 83, the Registrar ought to adopt the principles applied by the Court of Appeal in *The Tokai Maru* [1998] 2 SLR(R) 646 ("*The Tokai Maru*"). The principles expounded by *The Tokai Maru* include:
  - i. The rules of civil procedure guide the courts and litigants towards the just resolution of the case and should of course be adhered to. Nonetheless, a litigant should not be deprived of his opportunity to dispute the plaintiff's claims and have a determination of the issues on the merits as a punishment for a breach of these rules unless the other party has been made to suffer prejudice which cannot be compensated for by an appropriate order as to costs.
  - ii. Save in special cases or exceptional circumstances, it can rarely be appropriate then, on an overall assessment of what justice requires, to deny a defendant an extension of time where the denial would have the effect of depriving him of his defence because of a procedural default which, even if unjustified, has caused the plaintiff no prejudice for which he cannot be compensated by an award of costs.
10. The Applicants submitted that in *Hau Khee Wee and another v. Chua Kian Tong and another* [1986] SLR 484 it was established that the four essential factors which the court would consider in an application for an extension of time to file a notice of appeal were (a) the length of the delay; (b) the reasons for the delay; (c) the chances of the appeal succeeding if time for appealing were extended; and (d) the prejudice caused to the would be respondent if an extension of time was in fact granted.
11. The Applicants submitted that, in the current case, the delay was by about 15 days. The Applicants submitted that it is not an inordinate delay given the circumstances whereby the solicitor in charge was away due to mandatory reservist (in camp training) coupled with a docketing error in the database system of the agents. The Applicants referred to *SOS International A/S v AEA International Holdings Pte Ltd & Anor* [2011] SGIPOS 10 ("*SOS*") and submitted that the Registrar granted the extension of time to file evidence out of time despite a delay of 13 days.
12. The Applicants referred to *Perdigao Agroindustrial SA v Barilla GER Fratelli-Societa Per Azioni* [2009] SGHC 210 ("*Perdigao*") where it was held that the Registrar could exercise his discretion to grant the extension of time even if the lapse was due to an

oversight by the solicitors, if there was a good explanation for the oversight. The Applicants submitted that the statutory declaration of 28 October 2013 detailed the specific circumstances which were beyond the control of the solicitor.

13. The Applicants submitted that the Respondents will not suffer any real prejudice if the request for an extension of time is allowed as this would allow parties to continue negotiations or allow for a fair resolution of the matter through a final decision. The Applicants submitted that the Applicants should not be deprived of their opportunity to dispute the Respondents' claims and have a determination of the issues on the merits as a punishment for a procedural breach. The Applicants also submitted that they have a reasonable chance of success in this matter. The Applicants submitted that in the unlikely event that the Opponents may suffer prejudice such prejudice may be compensated by an award of costs. The Applicants submitted that furthermore the current proceedings are already in a matured stage, with the Applicants preparing to file their evidence in support of the Application Mark.
14. The Applicants submitted that they have provided good and sufficient reasons as to why the extension of time should be granted as per the statutory declaration filed on 28 October 2013. The Applicants referred to HMD Circular 4/2010 and submitted that as per the reasons in the statutory declaration of 28 October 2013, the Opponents have satisfied at least (i), (iv) and (vi) of the circumstances listed in the Circular. Further, the Applicants submitted that the list is not exhaustive and there is discretion for other reasons which may serve as justifications for requests for extensions of time.
15. The Applicants referred to *GSM (Operations) Pty Ltd and Ors v Martin Joseph Peter Myers [2009] SGIPOS 8* where it was held that procedural default by a party should not prevail over the interests of justice between the parties especially when there is no prejudice or consequence to the counter party.
16. The Applicants submitted that it was held in *The Tokai Maru* that a more stringent approach is to be taken towards applications for extensions of time for the filing or serving of a notice of appeal than towards other applications for extensions of time, in the interests of finality. In the current case, the application for extension of time is in relation to a procedural aspect of the proceedings rather than an appeal.
17. The Applicants submitted that in *Perdigao* it was maintained that the requirement to balance adherence to procedural requirements with substantive justice is paramount. Procedural rules are intended to facilitate legal proceedings and procedural justice dictates that all parties involved in the proceedings abide by the same rules. On the other hand, courts ought to be wary of a blind adherence to procedure without regard to the substantive outcomes. The Applicants submitted that given the circumstances of the case, a blind adherence would be unnecessarily draconian given the current state of proceedings and the consequences of not allowing the extension of time.
18. The Applicants submitted that in *Management Corporation Strata Title Plan No. 2911 v Tham Keng Mun and others [2011] 1 SLR 1263* an extension of time was granted even though the delay of 9 days was not *de minimis* and the appellants' reasons for the delay were not entirely satisfactory.

19. The Applicants submitted that on the balance of factors, weighing both the circumstances and reasons for the delayed application as well as the consequences to both parties and the public interests, the Applicants submitted that this is an exceptional case and that the Application Mark should be restored and the extension of time granted.

*Respondents' Submissions*

20. The Respondents submitted that the relevant provision in this current case is Rule 83 of the Trade Marks Rules in that it has been recognized that the failure to comply with procedural requirements in respect of time is an irregularity in procedure which falls within the scope of Rule 83. The Registrar has the power to restore an application that was earlier deemed withdrawn under Rule 33(3) following the decisions of *SOS* and *Sao Paolo Alpargatas SA v But Fashion Solutions – Comercio E Industria de Artigos Em Pele, LDA [2011] SGIPOS 16* ("*Sao Paolo*").
21. The onus in this interlocutory hearing lies on the Applicants who are applying for the Registrar to exercise discretion not to deem the Application Mark withdrawn notwithstanding Rule 33(3) and to grant an extension of time to file its statutory declaration (*Sao Paolo*).
22. The exercise of the discretion under Rule 83 is a balancing exercise involving a consideration of public interest that rules relating to procedure are followed so that parties have the benefit of certainty and finality and the need to ensure the proper adjudication of cases on the basis of their merits in the interest of justice between the parties (*SOS, Distileerderij En Likburstokerij Herman Jansen B V v Tilaknagar Industries Ltd [2013] SGIPOS 3* ("*Tilaknagar*"). Unless there are exceptional or extenuating circumstances which dictate otherwise, in most circumstances, the overall consideration of public interest of certainty and transparency and the need to promote the expeditious disposal of disputes require that the Registrar should not allow non-compliance with the procedural time limits provided for in the Trade Mark Rules (*SOS*).
23. In considering an application under Rule 83, a solicitor's mistake, oversight or omission is only one factor in the Registrar's overall consideration of whether to exercise discretion to allow for an extension of time. A *bona fide* mistake, oversight or omission on the part of a solicitor or his staff *per se* may not be sufficient to enable the Registrar to exercise discretion in favour of an extension of time. There must be some extenuating circumstances explaining the mistake, oversight or omission (*Nomura Regionalisation Venture Fund Ltd v Ethical Investments Ltd [2000] 2 SLR(R) 926* ("*Nomura*"), *Denko-HLB Sdn Bhd v Fagerdala Singapore Pte Ltd [2002] 3 SLR 357* ("*Denko*"), *Tilaknagar*).
24. The Registrar's power to exercise discretion under Rule 83 is premised on the requirement that there is no detriment or prejudice to the interests of the parties. An applicant cannot rely on the consequences of his own default as a type of prejudice that the applicant would suffer, to support his application under Rule 83 (*Tilaknagar, Wee Soon Kim Anthony v UBS AG and others [2005] SGCA 3*).

25. Where the parties have received the Registrar's notification that the application has been deemed withdrawn before an application to request for an extension of time, there is a legitimate expectation that the opposition will be dealt with in accordance with the rules of procedure set out under the Trade Mark Rules, unless good and sufficient reasons displace this expectation (*Sao Paolo, Tilaknagar*).
26. The Respondents submitted that there were no extenuating circumstances that explained the administrative oversight for the late application for extension of time in the instant case. The Applicants had a deadline of 2 October 2013 to file its evidence. The Applicants only applied for an extension of time on 21 October 2013, after the Registrar notified the parties that the Application Mark was deemed withdrawn pursuant to Rule 33(3).
27. In the supporting evidence, the Applicants explained that the late application for an extension of time was due to an administrative oversight brought about by a docketing error in the electronic records system database of the agent. The Applicants also stated in the supporting evidence that the inadvertency in the late application for the extension of time was compounded by the fact that the solicitor in charge of the matter was away for national reservist duty (in camp training) during the relevant period. Due to the docketing error, the covering personnel had no indication of the deadline of 2 October 2013.
28. The Applicants submitted that it is clear from previous IPOS decisions for applications for an extension of time to file evidence out of time under Rule 83 that oversights in terms of docketing deadlines *per se*, without more, are insufficient for an exercise of discretion under Rule 83 (*Sao Paolo, Tilaknagar*). Even though a docketing error may have been a *bona fide* mistake, the Respondents submitted such an administrative error is not sufficient to enable the Registrar to exercise discretion in favour of a request for an extension of time (*Nomura, Tilaknagar*). The Respondents submitted that it is an established principle that an applicant must show that there are extenuating circumstances which provide an explanation for the oversight or at least some explanation which could mitigate or excuse the oversight (*Nomura* as referred to in *Denko and Tilaknagar*).
29. The Respondents submitted that in the present case, there were no extenuating circumstances to explain or mitigate the docketing error that led to the failure of the Applicants to either file for an extension of time or file its evidence on 2 October 2013. The Respondents submitted that the fact that the solicitor in charge was away on reservist is not an extenuating circumstance to explain the docketing error or mitigate the error since there was cover arrangements. The Respondents submitted that the onus is on the Applicants to show extenuating circumstances to support an exercise of discretion in the Applicants' favour. However, this has not been shown.
30. The Respondents submitted that there is a legitimate expectation on the part of the Respondents that the opposition be dealt with in accordance with the Trade Marks Rules. In particular, as the Applicants had not requested for any extension of time prior to 2 October 2013 and the Registrar subsequently issued the notification on the deemed withdrawal of the Application Mark on 16 October 2013, the Respondents were led to believe that the Application Mark was indeed withdrawn. The Respondents had relied on the aforementioned and considered the Application Mark withdrawn. The

Respondents submitted that the Applicants only applied for an extension 19 calendar days after the original deadline of 2 October 2013. More importantly, it was only after the Registrar had notified parties that the Application Mark had been treated as withdrawn that the Applicants realized that the deadline for them to file their evidence had expired and applied for an extension of time.

31. The Respondents submitted that to allow the Applicants' application to restore the Application Mark and grant an extension of time to file the evidence would be detrimental to the interest of the Respondents and such prejudice cannot be compensated by an award of costs.
32. The Respondents submitted the current case is similar to that of *Sao Paolo* and *Tilaknagar* and likewise, the Applicants' application to restore the Application Mark and file their evidence should be refused. The Respondents submitted that it is prejudicial to them if the Applicants are now allowed to file their evidence out of time and after the Registrar had issued the notification that the Application Mark has been withdrawn. The Respondents also submitted that it is in the public interest that trade mark owners are assured of certainty and finality in the procedural rules.
33. The Applicants had stated in their evidence that it is a matter of public policy that the Applicants be allowed to defend the Application Mark and that all evidence should be considered before a decision on the registration of an application be made. The Respondents submitted that the loss of the opportunity to defend the Application Mark is a direct consequence of the Applicants' failure to comply with procedural timelines and is not a prejudice which should be considered for the purposes of determining if the Registrar should exercise discretion under Rule 83. Further and/or in the alternative, the onus is on the Applicants to show that there are compelling reasons or specific circumstances for the Registrar to allow the Applicants to defend the Application Mark. The Respondents submitted that the interest of allowing the Applicants to continue to defend the Application Mark on its own, is not sufficient. The Respondents submitted that in the current case, the public interest in adherence to rules of procedure, particularly in contentious proceedings and the sanctity of the Registrar's notification of the Application Mark being deemed withdrawn outweighs the Applicants' interest in defending the Application Mark.
34. The Respondents submitted that in the current case, there is no prejudice to the Applicants if the Application Mark is disallowed as it is always open for the Applicants to expeditiously file a fresh application after the Application Mark is deemed withdrawn. In any case, the Application Mark was filed after the applications that the Respondents are relying on in the opposition. Thus a new application for the same mark and specification of services as the Application Mark will not lead to a premature determination of the respective rights of the parties in the present dispute.
35. The Respondents submitted that although the Applicants had put forth a "without prejudice" proposal on 9 July 2013, it was within both parties' reasonable expectations that each party would proceed accordingly in the opposition proceedings to preserve their legal rights and position. Thus, the mere fact that there was a "without prejudice" proposal does not give rise to an expectation on the part of the Respondents that the Applicants would not be requesting for an extension of time prior to 2 October 2013 or filing their evidence on 2 October 2013 to preserve the Applicants' legal rights. The

Applicants had stated in their evidence that the grant of the Applicants' application to restore the Application Mark and for an extension of time will allow parties to continue to pursue their negotiations to reach a settlement agreement which will be in the best interests of the parties and the public. The Respondents submitted that parties would be free to pursue "without prejudice" negotiations even if the Application Mark is deemed withdrawn. Thus this is not a factor that should weigh in favour of allowing the Application Mark under Rule 83.

36. The Respondents concluded that the reason for the late application for an extension of time to file the evidence is the administrative oversight from the docketing error. The Respondents submitted that the Applicants have not shown any extenuating circumstances to explain the oversight or to mitigate or excuse the oversight. The Respondents submitted that in absence of such extenuating circumstances, the public interest in upholding adherence to rules of procedure to give certainty and finality, particularly in contentious proceedings outweighs the Applicants' interest to defend the Application Mark.
37. The Respondents concluded that for the reasons set out above, there are no good and sufficient reasons for the Registrar to exercise discretion under Rule 83 and to allow the Applicants to file their evidence out of time and to allow the restoration of the Application Mark.

**Held, refusing the application to restore Trade Mark Application No. T1010045B and the request for an extension of time for the Applicants to file evidence**

- i. Rule 33 provides that any request for an extension of time must be made within 2 months from the date of receipt by the applicants of a copy of the opponents' statutory declaration. Rule 77 is the general provision which relates to requests for extension of time to any prescribed periods of time under the Trade Marks Rules. It is noted that Rule 77(6)(ca) specifically provides that Rule 77 shall not apply to the filing of any statutory declaration under Rule 33. Therefore, there is no general discretion granted to the Registrar to extend any prescribed time periods provided under Rule 33. In view of the above, the provisions under Rule 33 in relation to time periods are to be construed strictly unless there are exceptional circumstances which dictate otherwise.
- ii. Rule 83 relates to the discretionary power of the Registrar to correct any irregularity in procedure. "Irregularities" in Rule 83 refer to failures to comply with the procedural requirements of the Trade Marks Act (Cap 332, 2005 Rev Ed) and the Trade Marks Rules. This includes matters in respect of time. Therefore, the Registrar has the power to restore an application that was earlier deemed withdrawn under Rule 33(3) of the Trade Marks Rules.
- iii. The exercise of this discretionary power of the Registrar under Rule 83 is a balancing exercise, involving a consideration of the public interest that rules relating to procedure are followed so that there is certainty for trademark owners, and the need to ensure the proper adjudication of the case based on its merits in the interest of justice between the parties. While the balancing exercise is to be carefully weighed and will turn on the particular facts of each case, the overall consideration of public interest of certainty and transparency and the need to promote the expeditious disposal of disputes would warrant the Registrar not allowing the overstepping of time limits in the legislation under most

circumstances. Therefore, the mere fact that the Registrar has such a discretion under Rule 83 does not justify its exercise in every case or where no good reasons are shown. It is also not sufficient to argue that the extension should be granted to a party because otherwise his case fails (as per *Sao Paolo*).

- iv. The onus lies on the party applying for the Registrar to exercise discretion in his favour notwithstanding the application of prescribed rules that result in an outcome against his favour. In the present case, under Rule 33(3), the Application Mark was deemed withdrawn as the Applicants did not file their evidence or seek an extension of time to do so by the deadline. The Applicants are applying for the Registrar to exercise his discretion not to deem the Application Mark withdrawn notwithstanding Rule 33(3) and for an extension of time to file their evidence.
- v. In this instance, the delay was 19 days. The Applicants' evidence was due on 2 October 2013 and the Applicants wrote in to request for an extension of time on 21 October 2013. While this was not an inordinate delay such as in the case of *Tilaknagar* where the delay was 67 days, it was not a short delay either. As per *Perdigao* at [34]:

*It is therefore difficult to state conclusively when a delay would be deemed too lengthy to warrant an extension. Ultimately, "each case involving procedural lapses or mishaps must be assessed in its proper factual matrix"...*

[Emphasis mine.]

- vi. As per the statutory declaration filed by the Applicants on 28 October 2013 (in support of their application for restoration of the Application Mark and for the extension of time), the Applicants put forth the reason for the delay as a docketing error in the electronic records system database of the agent for the Applicants. The Applicants submitted that this inadvertency was compounded by the fact that the lawyer in charge of the matter was away on national reservist duty (in camp training) during the relevant period. The Applicants explained that although there were arrangements in place with regards to coverage of duties, due to the docketing error, the covering personnel had no indication of the deadline of 2 October 2013.
- vii. It has been held by the courts in *Nomura*, that:

*There was no absolute rule of law which prescribed that an error on the part of a solicitor or his staff could never, under any circumstances, be a sufficient ground to grant an extension of time to file or serve a notice of appeal...There were no hard and fast rules as to the circumstances under which a mistake or error on the part of the solicitor or his staff would be held to be sufficient to persuade the court to show sympathy to the application. It was the overall picture that emerges to the court that would be determinative...A mistake of the solicitor or his staff, even bona fide, was only one factor in the overall consideration. Such a mistake per se may not be sufficient to enable the court to exercise its discretion in favour of an extension. The question was had the applicant shown 'grounds sufficient to persuade the court to show sympathy to him...*

and in *Denko* at [18]:

*Some explanation should have been offered to mitigate or excuse the oversight. If, in every case, "oversight" is per se a satisfactory ground, we run the risk of turning the rules prescribing time into dead letters. It would be observed in breach. It would be all too simple for a party to run to a judge to ask for indulgence because of oversight. The need for finality must be borne in mind.*

[Emphasis mine.]

- viii. Unfortunate as it may be, in the current case, there were no extenuating circumstances to mitigate the oversight. It seems to me that it pares down to, in essence, an administrative error on the part of the agents of the Applicants. The fact that the lawyer in charge was away cannot be regarded as an extenuating circumstance as there were covering arrangements in place. A distinction is to be drawn from *Perdigao*, where the delay was caused by a clerical oversight *contributed to* by the relocation of the plaintiff solicitor's firm.
- ix. In relation to the merits of the case, the Applicants submitted that there is a reasonable chance of success should the Application Mark be restored and the opposition be allowed to proceed. I am of the view that, at this stage, without the Registrar having had an opportunity to have a thorough examination of the case, all that can be said is that the application for the Application Mark is not hopeless.
- x. In this case, as mentioned above, the Applicants' evidence was due on 2 October 2013 and the Applicants wrote in to request for an extension of time on 21 October 2013. The notification from the Registrar that the Application Mark was deemed withdrawn was sent on 16 October 2013. Thus, the Applicants only requested for the extension of time 4 days *after* the Registrar's notification. From the chronology of events, it would appear that the Applicants only realized that they had missed their deadline after the Registrar's notification. As held in *Sao Paolo* at [6], such conduct does not assist the Applicants against the plain application of the legislation.
- xi. There is a legitimate expectation that the opposition be dealt with in accordance with the rules of procedure, unless good and sufficient reasons displace this expectation (*Sao Paolo* at [8]). The Applicants' failure to request for any extension of time or file any evidence prior to 2 October 2013 as well as the Registrar's notification of the deemed withdrawal of the Application Mark on 16 October 2013 would have led the Respondents to believe that the Application Mark has been deemed withdrawn. Thus the Respondents will be prejudiced if the Application Mark is restored. There is also public interest in ensuring that rules relating to procedure are followed, especially so in contentious proceedings (*Sao Paolo* at [8]). In this regard, I agree with the Respondents that whilst the Applicants have put forth a without prejudice proposal in July 2013, it was within parties' reasonable expectations that each party would continue to preserve their rights in the opposition proceedings. In the current case, there were no other indications which may suggest otherwise.
- xii. The prejudice caused to the Applicants, in this case, in that the Application Mark will be deemed withdrawn, is a direct factual consequence of the Applicants' default. An applicant cannot rely on the consequences of his own default as a type of prejudice that the applicant would suffer, to support his application for an exercise of the Registrar's discretion under Rule 83 (*Tilaknagar* at [10]). Further, unlike *SOS*, there is no

intervening application filed by the Respondents and the Applicants can expeditiously file another application.

- xiii. In light of the above, taking into account all the facts in this case, the Applicants have not shown that there are such exceptional circumstances or good reasons to justify the Registrar's exercise of discretion pursuant to Rule 83.
- xiv. By reason of the foregoing, the Applicants' application to restore the Application Mark and request for an extension of time to file their statutory declaration is refused. Taking into account Rule 75 and the Fourth Schedule of the Trade Mark Rules, the Respondents are awarded costs of S\$550, S\$450 being costs of preparation and S\$100 being costs for attendance. Such costs are to be paid by the Applicants to the Respondents within 1 month from the date of this decision.

**Legislation discussed:**

*Trade Marks Rules* (Cap 332, Rev. Ed. 2008), Rule 33, Rule 75, Rule 77, Rule 81A, Rule 83, Fourth Schedule

**Cases referred to:**

*Asian Aisle Pte Ltd v Ricegrowers Co-operative Limited* [2002] SGIPOS 7

*The Tokai Maru* [1998] 2 SLR(R) 646

*Hau Khee Wee and another v. Chua Kian Tong and another* [1986] SLR 484

*SOS International A/S v AEA International Holdings Pte Ltd & Anor* [2011] SGIPOS 10

*Perdigao Agroindustrial SA v Barilla GER Fratelli-Societa Per Azioni* [2009] SGHC 210

*GSM (Operations) Pty Ltd v Martin Joseph Peter Myers* [2009] SGIPOS 8

*Management Corporation Strata Title Plan No. 2911 v. Tham Keng Mun and others* [2011] 1 SLR 263

*Sao Paulo Alpargatas S.A. v But Fashion Solutions Comercio E Industria De Artigos Em Pele, LDA* [2011] SGIPOS 16

*Distileerderij En Likburstokerij Herman Jansen B V v Tilaknagar Industries Ltd* [2013] SGIPOS 3

*Nomura Regionalisation Venture Fund Ltd v Ethical Investments Ltd* [2000] 2 SLR(R) 926

*Denko-HLB Sdn Bhd v Fagerdala Singapore Pte Ltd* [2002] 3 SLR 357

*Wee Soon Kim Anthony v UBS AG and others* [2005] SGCA 3

**Representation:**

Ms Chua Shang Li (Donaldson & Burkinshaw) for the Applicants  
Ms Gloria Goh En-Ci and Mr Marc Wei An Min (Allen & Gledhill LLP) for the Respondents  
(Trade Mark Opponents)