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Legislative Council

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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting commencing on 2 April 2003

**Proposed resolution under section 34(2) of
the Interpretation and General Clauses Ordinance**

I forward for Members' consideration a proposed resolution which the Secretary for Commerce, Industry and Technology will move at the Council meeting commencing on 2 April 2003 under section 34(2) of the Interpretation and General Clauses Ordinance relating to the Trade Marks Rules. The President has directed that "it be printed in the terms in which it was handed in" on the Agenda of the Council.

2. The speech which the Secretary for Commerce, Industry and Technology will deliver when moving the proposed resolution will be issued as soon as it is available.

(Ray CHAN)
for Clerk to the Legislative Council

Encl.

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION

(Under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1))

Trade Marks Rules

RESOLVED that the Trade Marks Rules, published in the Gazette as Legal Notice No. 30 of 2003 and laid on the table of the Legislative Council on 12 February 2003, be amended –

- (a) in rule 2(1), in the definition of “opponent”, by repealing “16(1)” and substituting “16”;
- (b) in rule 13 –
 - (i) in subrule (2), by repealing “within the period beginning on the date of the notice and ending 6 months after that date” and substituting “at any time during the period beginning on the date of the notice and ending 6 months after that date, do either or both of the following”;
 - (ii) in subrule (3), by repealing “before the expiry of the 6-month period referred to” and substituting “within the period specified”;
 - (iii) by repealing subrules (4), (5) and (6) and substituting –
 - “(4) If –
 - (a) the applicant files written representations or a request for amendment under subrule (2) within the period specified in that subrule or, where the

Registrar has granted an extension of time under subrule (3), within the period as so extended; and

- (b) it appears to the Registrar, after considering the representations or request for amendment, that the application, or the application as amended or proposed to be amended, does not meet the requirements for registration,

the Registrar shall inform the applicant of his opinion by notice in writing.

(5) Where a notice is sent to the applicant under subrule (4), the applicant may, at any time during the period beginning on the date of the notice and ending 3 months after that date, do any or all of the following –

- (a) file written representations or further written representations to establish that the requirements for registration are met;
- (b) file a request or a further request under section 46 of the Ordinance to amend his application so as to meet those requirements (see rule 24); or
- (c) file a request for a hearing.

(6) The Registrar may, on a request being filed by the applicant on the specified form within the period specified in subrule (5) or, where the Registrar has previously granted an extension of time under this subrule, within the period as so extended, extend the time for filing written representations or a request under subrule (5) for such period or periods, not exceeding 3 months at any one time, and on such terms, if any, as he may direct, if he is satisfied that –

- (a) where the notice sent to the applicant under subrule (4) raises an objection to the registration of the trade mark on any of the grounds mentioned in section 12(1), (2) or (3) of the Ordinance (relative grounds for refusal of registration) –
 - (i) the applicant needs additional time to obtain the consent of the owner of a relevant earlier trade mark;
 - (ii) the applicant needs additional time to obtain an assignment of a relevant earlier trade mark; or
 - (iii) proceedings for the invalidation or revocation of a relevant earlier trade mark are pending

and time should be extended to allow for the proceedings to be disposed of;

- (b) the applicant needs additional time to prepare evidence of use to be filed in support of the application; or
- (c) other exceptional circumstances exist to justify the granting of an extension of time.”;

(c) by repealing rule 14(2) and (3) and substituting –

“(2) Subject to subrule (3), where –

- (a) the Registrar sends a notice to the applicant under rule 13(1);
- (b) the applicant files written representations or a request for amendment under rule 13(2) within the period specified in that rule or as extended under rule 13(3); and
- (c) the Registrar sends a notice to the applicant under rule 13(4),

the prescribed period for the application is the period beginning on the date of the notice sent to the applicant under rule 13(1) and ending 3 months after the date of the notice sent to the applicant under rule 13(4) or, where the Registrar has granted an extension of time under rule 13(6), ending on the last day of the period as so extended.

(3) Where –

- (a) the Registrar sends a notice to the applicant under rule 13(4); and

- (b) the applicant files a request for a hearing within the period specified in rule 13(5) or, where the Registrar has granted an extension of time under rule 13(6), within the period as so extended,

the prescribed period for the application is the period beginning on the date of the notice sent to the applicant under rule 13(1) and ending on the last day of the hearing or at such time as the Registrar may decide the matter without a hearing under rule 75.”;

- (d) in rule 16, by adding –

“(4) The Registrar may, on a request being filed by any person on the specified form within the period specified in subrule (1), extend the time for filing a notice of opposition or anything referred to in subrule (2) by 2 months, which time may not be further extended.”;

- (e) in rule 17 –

- (i) in subrule (3) –

- (A) by renumbering it as subrule (4);

- (B) by adding “or as extended under subrule (3)” after “subrule (1)”;

- (ii) by adding –

“(3) The Registrar may, on a request being filed by the applicant on the specified form within the period specified in subrule (1), extend the time for filing a counter-statement by 2 months, which time may not be further extended.”;

- (f) in rule 18(1), by adding “or as extended under rule 17(3)” after “rule 17(1)”;

- (g) in rule 37(4), by repealing “he shall not be permitted to take part in the proceedings” and substituting “the Registrar may treat the application for revocation as being unopposed by the owner”;
- (h) in rule 41(3), by repealing “he shall not be permitted to take part in the proceedings” and substituting “the Registrar may treat the application for revocation as being unopposed by the owner”;
- (i) in rule 47, by adding “with necessary modifications” after “apply”;
- (j) in rule 50(6), by repealing “he shall not be permitted to take part in the proceedings” and substituting “the Registrar may treat the application for variation or rectification as being unopposed by the owner”;
- (k) in rule 74 –
 - (i) in subrule (3), by adding “or on the filing of a request for a hearing in accordance with rule 13(5)” after “subrule (2)”;
 - (ii) by repealing subrule (6);
 - (iii) by renumbering subrule (7) as subrule (6);
- (l) in rule 95 –
 - (i) in subrule (1) –
 - (A) in paragraph (b), by repealing “and (3)” and by adding “(but see rule 13(3))” after “amendment”;
 - (B) by repealing paragraph (c) and substituting –
 - “(c) rule 13(5) (time for filing representations, a request for amendment or a request for a hearing) (but see rule 13(6));”;
 - (C) in paragraph (e), by adding “(but see rule 16(4))” after “opposition”;
 - (D) in paragraph (f), by adding “(but see rule 17(3))” after “counter-statement”;

- (E) in paragraph (u), by repealing “121(a)” and substituting “121(1)(a)” and by adding “(but see rule 121(2))” after “opposition”;
- (F) in paragraph (v), by repealing “121(b)” and substituting “121(1)(b)” and by adding “(but see rule 121(3))” after “counter-statement”;
- (ii) by adding –
 - “(3) No period of time specified in rule 13(3) or (6), 16(4), 17(3) or 121(2) or (3) may be extended under rule 94(1).”;
- (m) in rule 121 –
 - (i) by renumbering it as rule 121(1);
 - (ii) by adding –
 - “(2) The Registrar may, on a request being filed by any person on the specified form within the period specified in subrule (1)(a), extend the time for filing a notice of opposition by 2 months, which time may not be further extended.
 - (3) The Registrar may, on a request being filed by the applicant on the specified form within the period specified in subrule (1)(b), extend the time for filing the counter-statement by 2 months, which time may not be further extended.”;
- (n) in the Schedule –
 - (i) in Fee No. 3, under the column “**Matter or proceeding**”, by adding “or (6)” after “rule 13(3)”;
 - (ii) in Fee No. 29, under the column “**Matter or proceeding**”, by repealing “94” and substituting “16(4), 17(3), 94 or 121(2) or (3)”.