

立法會
Legislative Council

LC Paper No. CB(1)1216/02-03
(These minutes have been seen by
the Administration)

Ref: CB1/SS/3/02/1

**Subcommittee on
Trade Marks Rules and
Trade Marks Ordinance (Cap. 559) (Commencement) Notice 2003**

**Minutes of Meeting
held on Monday, 3 March 2003 at 8:30 am
in the Chamber of the Legislative Council Building**

Members present : Hon Margaret NG (Chairman)
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon HUI Cheung-ching, JP
Hon SIN Chung-kai
Hon Audrey EU Yuet-mee, SC, JP

Members absent : Hon Kenneth TING Woo-shou, JP
Hon CHAN Kam-lam, JP

Public officers attending : Commerce, Industry and Technology Bureau

Mr Donald CHEN
Principal Assistant Secretary for Commerce, Industry
and Technology (Commerce and Industry)

Miss Linda TSUI
Assistant Secretary for Commerce, Industry and
Technology (Commerce and Industry)

Intellectual Property Department

Mr Stephen SELBY
Director of Intellectual Property

Mrs Teresa GRANT
Assistant Director of Intellectual Property

Miss Finnie QUEK
Senior Solicitor (Registration), Intellectual Property
Department

Department of Justice

Mr Jeffrey E GUNTER
Senior Assistant Law Draftsman, Department of Justice

Miss Rayne CHAI Chih-hui
Government Counsel, Department of Justice

**Attendance by
invitation**

: Mr Robert SIU Shu-yok
Executive Director, The Hong Kong Association of the
Pharmaceutical Industry

Mr Homer YU Sau-ning
Honorary Life President, The Cosmetic and Perfumery
Association of Hong Kong Ltd.

Mrs Peggy CHEUNG
President, The Hong Kong Institute of Trade Mark
Practitioners

Ms Sandra GIBBONS
Vice-President, The Hong Kong Institute of Trade Mark
Practitioners

Mrs Jeannie SMITH
Asia-Pacific Subcommittee Chair, Legislation Analysis
Committee, International Trademark Association

Mr Henry WHEARE
Member of the Intellectual Property Committee, The
Law Society of Hong Kong (also representing Asian
Patent Attorneys Association, Hong Kong Group)

Clerk in attendance : Ms Connie SZETO
Chief Assistant Secretary (1)4

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Mr KAU Kin-wah
Assistant Legal Adviser 6

Mr S C TSANG
Senior Assistant Secretary (1)7

Ms Christina SHIU
Legislative Assistant

Action

I Meeting with deputations

- | | | |
|-----------------------------------|----|---|
| (LC Paper Nos. CB(1) 778/02-03 | -- | First submission from The Hong Kong Institute of Trade Mark Practitioners dated 20 January 2003 |
| LC Paper No. CB(1) 1005/02-03(01) | -- | Second submission from The Hong Kong Institute of Trade Mark Practitioners dated 28 February 2003 |
| LC Paper No. CB(1) 1005/02-03(02) | -- | Submission from International Trademark Association dated 3 March 2003 |
| LC Paper No. CB(1) 1005/02-03(03) | -- | Submission from The Law Society of Hong Kong dated 28 February 2003 |
| LC Paper No. CB(1) 1005/02-03(04) | -- | Submission from Asian Patent Attorneys Association, Hong Kong Group dated 28 February 2003 |
| LC Paper No. CB(1) 1005/02-03(05) | -- | Submission from China Patent Agent (HK) Ltd. dated 28 February 2003 |
| LC Paper No. CB(1) 1039/02-03(01) | -- | Oral submission from The Law Society of Hong Kong and Asian Patent Attorneys Association, Hong Kong Group |

Action

The Subcommittee deliberated (Index of proceedings attached at the **Annex**).

2. The Subcommittee received representations from the following organizations:

- (a) The Hong Kong Association of the Pharmaceutical Industry;
- (b) The Cosmetic and Perfumery Association of Hong Kong Ltd.;
- (c) The Hong Kong Institute of Trade Mark Practitioners;
- (d) International Trademark Association;
- (e) The Law Society of Hong Kong; and
- (f) Asian Patent Attorneys Association, Hong Kong Group.

3. The Subcommittee also noted the written submission from China Patent Agent (HK) Ltd. which had not attended the meeting.

II Meeting with the Administration

- | | |
|-----------------------------------|--|
| (LC Paper No. CB(1) 845/02-03 | -- Administration's response to the first submission from The Hong Kong Institute of Trade Mark Practitioners dated 20 January 2003 |
| LC Paper No. CB(1) 1005/02-03(06) | -- Information paper provided by the Administration on comparison between the new Trade Marks Ordinance (Cap. 559) and the Trade Marks Act 1994 in the United Kingdom) |

Admin

4. The Administration undertook to take follow-up actions as below:
- (a) To provide the legal advice on which the Administration would consider Rule 95 intra vires;
 - (b) To provide information on the time limits for trade mark registration adopted in overseas jurisdictions;
 - (c) To provide information on the legal effect of deleting Rule 95 of the Trade Marks Rules and the consequences on the operation of the trade mark registration regime; and

- (d) To provide written responses on other major issues or concerns raised in the submissions from deputations.

III Any other business

5. Members agreed to hold the next meeting on **Friday, 7 March 2003 at 8:30 am**. If necessary, an additional meeting will be scheduled for **Friday, 14 March 2003 at 10:45 am**.

6. There being no other business, the meeting ended at 10:45 am.

Council Business Division 1
Legislative Council Secretariat
26 March 2003

**Proceedings of the meeting of the
Subcommittee on Trade Marks Rules and
Trade Marks Ordinance (Cap. 559) (Commencement) Notice 2003
on Monday, 3 March 2003 at 8:30 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000400	Chairman	Opening remarks; Meeting with deputations	
000400 - 000515	The Hong Kong Association of the Pharmaceutical Industry	Presentation of views	
000515 - 001830	The Hong Kong Institute of Trade Mark Practitioners (HKITMP)	Presentation of views	
001830 - 003100	International Trademark Association (ITA)	Presentation of views	
003100 - 004240	The Law Society of Hong Kong (LSHK) Asian Patent Attorneys Association (APAA)	Presentation of views	
004240 - 005610	Administration Ms Audrey EU Mrs Selina CHOW Mr SIN Chung-kai Mr HUI Cheung-ching Chairman	Query on why the Administration had not accepted deputation's proposal to allow extension on time limits under certain rules of the Trade Mark Rules (the Rules)	
005610 - 005805	Mrs Selina CHOW	Enquiry on the policy behind for stipulating non-extendible time limits for trade mark registration	
005805 - 010100	Ms Audrey EU Chairman Administration	Concern on whether Rule 95 was ultra vires The issue had been raised previously by the Hong Kong Bar Association. The Administration had sought legal advice that Rule 95 was intra vires.	

Time marker	Speaker	Subject(s)	Action required
		The Administration undertook to provide the legal advice for the Subcommittee's reference.	Admin
010100 - 011235	Ms Audrey EU Chairman ITA LSHK APAA Administration	<p>Enquiry on the time limits for trade mark registration adopted in overseas jurisdictions</p> <p>The time limits varied in different jurisdictions. The Administration considered that it was appropriate to set time frames so that the business community would know when an application for trade mark registration would be completed. This was important because a registered trade mark took effect retrospectively from the date on which the relevant application was filed.</p> <p>The Administration emphasized that the Rules had already provided flexibility for compliance by trade mark applicants or owners.</p> <p>The Administration undertook to provide information on the time limits for trade mark registration adopted in overseas jurisdictions.</p>	Admin
011235 - 011610	Mrs Selina CHOW Chairman Administration	<p>Concern that the time limits prescribed in the Rules would pose hardship for trade mark applicants or owners to comply with</p> <p>The Administration clarified that the proposed time limits were to provide certainty and to strike the right balance between the interests of trade mark applicants, trade mark agents and other stakeholders in the business community.</p>	
011610 - 012500	Mrs Selina CHOW	Concern on complaints from the	

Time marker	Speaker	Subject(s)	Action required
	Ms Audrey EU Chairman Administration	business sector on the time taken for registration of trade marks. It was noted that while many had requested for more time, the Chinese Manufacturers' Association of Hong Kong gave a comment that the timeframe for opposition proceedings to registration should be shorter.	
012500 - 015400	Ms Audrey EU Mrs Selina CHOW HKITMP ITA LSHK APAA Administration Chairman	Enquiry on the legal effect of deleting Rule 95 and the consequences on the operation of the trade mark registration regime Deputations supported in general the deletion of Rule 95 to provide greater flexibility for registration of trade marks. The Administration undertook to consider deputations' views further.	Admin
015400 - 018500	Mrs Selina CHOW HKITMP ITA LSHK APAA	Discussion on the practicability of the proposed time limits under the new Rules	
018500 - 020000	Ms Audrey EU Chairman Administration	Confirmation that an applicant would be allowed to make multiple submissions to the Registrar within the prescribed time limits	
020000 - 020200	Chairman Administration	Request to provide written responses on other major issues or concerns raised in the submissions from deputations	Admin
020200 - 020700	Chairman	Legislative timetable; Date of next meetings	

Note: The audio records of the above proceedings are kept at the Legislative Council Library.

Council Business Division 1
Legislative Council Secretariat
26 March 2003