

香港特別行政區政府
工商及科技局
工商科



香港金鐘道八十八號
太古廣場第一期二十九樓

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6 March 2003

Miss Anita HO
Assistant Legal Adviser
Legislative Council Secretariat
Legal Service Division

Dear Miss Ho,

Trade Marks Rules (L.N. 30 of 2003)

Thank you for your letter dated 3 March 2003.

On consultation with our legal adviser, we are satisfied that rules 37(4), 41(3) and 50(6), when taken together with the appeal channel provided by section 84 of the Trade Marks Ordinance (Cap. 559), comply with Article 10 of the Hong Kong Bill of Rights Ordinance.

Nevertheless, we have reconsidered the wording in rules 37(4), 41(3) and 50(6), and are prepared to amend the rules as follows:

Rule 37(4)

“If the owner does not file a counter-statement and either evidence of use or a statement giving reasons for non-use within the period specified in subrule (1), **the Registrar may treat the application for revocation as being unopposed by the owner.**”

Rule 41(3)

“If the owner does not file a counter-statement within the period specified in subrule (1), **the Registrar may treat the application for revocation as being unopposed by the owner.**”

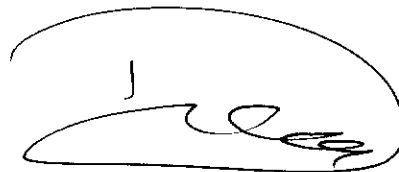
Rule 50(6)

“If the owner does not file a counter-statement within the period specified in subrule (3), **the Registrar may treat the application for variation or rectification as being unopposed by the owner.**”

The rationale for the original wording is that, a registered trade mark is personal property (section 27(1), Cap. 559), and it is for the owner to take appropriate steps to safeguard his personal property. If, upon his mark being challenged in the proceedings in question, the owner does not take the step to defend his mark by filing a counter-statement, the proceedings should proceed to the next step. Having said that, upon reconsideration, we feel that the provisions do not need to go so far as to absolutely exclude him from taking part in the proceedings; hence the proposed amendments. If the owner can give good reasons why the application should not be treated as unopposed by him even though he had not filed a counter-statement, the Registrar can consider them.

In considering the above amendment to the wording, we have made reference to the UK Trade Marks Rules 2000 (rule 31(3)). We will prepare the necessary amending resolution.

Yours sincerely,

A handwritten signature in black ink, enclosed within a hand-drawn oval. The signature is stylized and appears to read 'Donald Chen'.

(Donald Chen)

for Secretary for Commerce, Industry and Technology

c.c.

DIP (Attn : Mr Stephen Selby)

D of J (Attn : Mr Dominic Lai, Mr Jeffrey Gunter, Miss Rayne Chai)