

Intellectual Property Dept.,
Trade Marks Registry
15/F., Ocean Centre,
Curved Block,
Tsim Sha Tsui,
Kowloon.

14th February 1992

Circular No. 5 of 1992

Authorization of Agent

1. Introduction

1.1 This circular deals with the authorization of agent under the new Trade Marks Rules ("the New Rules") which were published in the Gazette LN 5 of 1992 on the 17th January 1992, and supersedes what is contained in Circulars No. 1 and 2 of 1987 as regards authorization of agents.

General

2. Rule 102 enables an agent to be appointed by any person who is required or permitted to do anything under the Trade Marks Ordinance (as amended) or the New Rules. The agents acting in trade marks matters need not, in all cases, be formally authorised.

3.1 The Registrar will in respect of any application, request or notice made by an agent assume that if an agent signs a Trade Mark form on behalf of his client, such agent does so as "agent for the applicants", and specific authorization will accordingly only be required in the following circumstances :

- (a) Where the Registrar has real doubts about the agent's authority to act or that authority is challenged or questioned by either the applicant or a third party.
- (b) In the case of a change of agent during the prosecution of an application.
- (c) Where an agent is appointed for the first time during the prosecution of an application. (This will normally happen where a private application lodges an application etc. and then subsequently decides to have it handled professionally but it could also happen in other circumstances.)

3.2 Under the provisions of Rule 102(4) of the New Rules, Authorisation of Agent on Form TM-50 is still required when there is a change of agent under paras. (b) & (c) above. In all other cases where the Registrar requires the agent to produce written evidence of his authority to act this can be given either by lodging Form TM-50 or on the production to the Registrar of evidence of the appointment of the agent or of his authority to act for the applicant.

3.3 In those cases where Form TM-No. 50 is required to be retained by the Registry, a global Form TM-No. 50 could be accepted where a number of applications or registered marks are dealt with at the same time. In addition to the original, it would be advisable for agents to file certified copies for each individual case.

4. Written Evidence of Authority/Rule 102 (3) and Type of Evidence

4.1 Rule 102 (2) and (3) expressly spells out the Registrar's authority to require the personal signature or presence of any person or evidence of authority.

4.2 The type of evidence of agent's authority to act which will be required by the Registrar will depend on the circumstances of each case but originals or certified copies of correspondence (e.g. fax, telex instructions), from an applicant to the agent instructing the agents to act will be accepted in most cases.

5. Contentious Matters

5.1 The above provisions will likewise apply to proceedings in contentious trade mark matters.

5.2 Where the Registrar does in fact require evidence of authority to act or Form TM-50 is required to be lodged, such evidence or Form TM-50 may be required to be filed -

- (a) before accepting a Notice of Opposition signed by the agent and lodged under Rule 23 and any such Notice of Opposition may be returned to the party lodging it;

(b) before any appearance is made by an Agent at any Hearing before the Registrar.

A handwritten signature in black ink, consisting of a capital letter 'R' enclosed in a square box, followed by the name 'Perera.' in a cursive script.

(R.J. Perera)
P. Registrar of Trade Marks