

Substitution of parties

Substitution of a party to any proceedings is governed by rule 83. Rule 83(1) applies where a party is a body corporate or other legal entity and has been wound-up, merged with another body corporate or legal entity, or has been acquired by any person. Rule 83(2) applies where a party assigns or otherwise disposes of any interest in a trade mark application or other thing the subject of the proceedings to another.

A party claiming an interest in the proceedings by virtue of any of the matters specified above may request leave to be substituted as a party. There is no specified form nor fee payable for such a request. An address for service for the applicant for substitution must be filed at the same time (rule 105(1)(r)). This can be done by notifying the Registrar of the address for service in writing. The application cannot be considered until an address for service has been filed.

The applicant for substitution must state the nature of his interest in sufficient detail to enable the Registrar, at his discretion, to refuse or grant such leave and upon such terms as he thinks fit to impose.

If leave is granted, the party shall thereafter be treated as a party to the opposition (or revocation etc.) subject to any terms and conditions which the Registrar has imposed (rule 83(3)).

The terms and conditions which an applicant for substitution can expect to be imposed are :

- that the party is bound by the pleadings (and evidence if applicable) filed to date by the party he is substituting; and

- that the party accepts liability for costs of the whole proceedings in the event that costs are awarded against it.

Bankruptcy or receivership

If an applicant or opponent becomes bankrupt or goes into receivership after formal opposition has been filed, the proceedings may be continued in the name of the liquidator, official receiver or trustee. The proceedings continue in the name of the applicant or opponent but must be noted to reflect the position of the applicant or opponent e.g. “in receivership”. Subsequent communication is then with the party administering the assets of the opponent or applicant.

Proceedings commenced or defended by the wrong party

Rules 37, 41 and 50(3) provide for the filing of a counter-statement by the owner of the registered trade mark in question. If the owner does not do so, the Registrar may treat the proceedings as not opposed by the owner. “Owner” is defined in section 2. If, as the result of a merger, the “owner” is no longer a legal entity, the counter-statement cannot be filed by it and should not purport to be so filed. If the subsequent owner has not sought leave to intervene or otherwise taken steps to record himself as the subsequent owner, the subsequent owner cannot take part. This appears to be the effect of *Cernivet Trade Mark* [2002] RPC 585 at 594.

* * *