

Objections to amendment of applications for trade marks

Section 46 of the Ordinance provides for amendment of a trade mark application, on the request of the applicant, in certain defined circumstances. Rule 24 prescribes the procedure.

As such a request may be granted after particulars of the application have been published under rule 15 and after the time limit for lodging notice of opposition has expired, rule 25 provides that if the amendment affects the representation of the trade mark or the goods and services covered by the application, the Registrar shall publish particulars of the amendment in the Hong Kong Intellectual Property Journal.

Rule 26 provides that any person claiming to be affected by the proposed amendment may file a notice of objection to the amendment on the specified form. The specified form is Form T6, which currently includes a fee of \$800. The fee must be paid at the time the notice of objection is filed (rule 4(3)). The objector must also file an address for service in Hong Kong either on Form T6 or by separate notification in writing (rule 105(1)(d)). The form and fee must be received by the Registry within 3 months after the date of publication of the particulars of the proposed amendment. This time limit is non-extendable – rule 95(1)(g).

A notice of objection is not the same as a notice of opposition. The notice must include a statement of the grounds of objection and, in particular, must explain how the objector would be affected by the amendment and why the amendment would be contrary to section 46. In other words, the objection is confined to challenging the decision made by the Registrar in accepting the amendment. It cannot be a back door way of initiating opposition out of time.

At the same time as the notice of objection and statement of grounds of objection is filed, a copy must be sent to the applicant (rule 26(4)).

The provisions of rule 74 apply thereafter – see chapter on Hearings.

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