

## Trade marks of companies incorporated in the Hong Kong SAR that are dissolved

When a company incorporated in the Hong Kong SAR is dissolved, any property or right vested in or held on trust for the company immediately before the dissolution is vested in the Government as *bona vacantia* (i.e. ownerless property) (in accordance with section 752(1) of the Companies Ordinance (Cap. 622) (“CO”)).<sup>1</sup>

Section 752(1) covers all forms of property. Accordingly, if the dissolved company owns a registered trade mark immediately before dissolution, the mark is vested in the Government as *bona vacantia*.

The Registrar of Companies (“CR”) has authority to act as agent on behalf of the Government in *bona vacantia* cases. The CR may dispose of or otherwise deal with the *bona vacantia* in question as he sees fit.

### Trade marks subject to invalidation or revocation proceedings

If the Registrar becomes aware that the owner of a registered trade mark subject to invalidation or revocation proceedings is a dissolved Hong Kong SAR company, he will:

- stay such proceedings in question in accordance with rule 90; and
- (unless he has received information of any disposal by the owner of any right or interest in the registered trade mark before dissolution) inform the CR of the proceedings.<sup>2</sup>

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<sup>1</sup> Section 752 of the CO applies to companies incorporated in the Hong Kong SAR and dissolved on or after 3 March 2014. For companies dissolved under the predecessor Companies Ordinance (Cap. 32) (“predecessor CO”) prior to 3 March 2014, section 292 of the predecessor CO would have applied at the time of dissolution to vest the property in the Government as *bona vacantia*.

<sup>2</sup> It has been held that a company incorporated in the Hong Kong SAR that is dissolved ceases to exist as a legal entity and (absent any express statutory provision to the contrary) is not normally in a position

There is a possibility that the CR may determine that the registered trade mark is *bona vacantia* but nevertheless consider it appropriate to disclaim the Government's title to the same (in accordance with section 753(1) of the CO)<sup>3</sup>. The effect of a disclaimer is that the registered trade mark disclaimed will be regarded as not having been vested in the Government. Moreover, the disclaimer terminates, with effect from the date of the disclaimer, the company's rights, interests and liabilities in or in respect of the registered trade mark disclaimed (section 754 of the CO).

If the CR decides to disclaim the Government's title to a registered trade mark and the Registrar is informed of a notice of disclaimer in respect of the registered trade mark issued under section 753(1) of the CO<sup>4</sup>, the Registrar will consider if the mark appears to him to have ceased to have effect.

Where the Registrar is satisfied that the mark appears to him to have ceased to have effect and proposes to remove the same from the register, he will (in accordance with rule 67(1)):

- publish a notice of his proposal for removal in the Hong Kong Intellectual Property Journal; and
- where it appears to him that any person is likely to be affected by the proposed removal, send a notice of his proposal for removal to that person.

Any person claiming to be affected by the proposed removal may, within 3 months after the date of publication of the Registrar's notice, file a notice of opposition (rule 67(2)).

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either to sue or be sued or indeed to do any other legal act (*Lau Yun Lin v Kwan Tsung Co Ltd.* [2017] 2 HKLRD 596 (HCMP 29/2017)). See also section 186 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

<sup>3</sup> Section 753 of the CO applies to a disclaimer of property vested in the Government on or after 3 March 2014. In relation to disclaimer of property vested in the Government prior to 3 March 2014, section 290C of the predecessor CO is applicable.

<sup>4</sup> See footnote 3.

Any person who receives a notice sent by the Registrar under rule 67(1)(b) may file written objections to the proposed removal or file a request for a hearing within 3 months after the date of the notice (rule 67(5)).

See also the chapter on Opposition or objection to removal of matter from the register.

If no notice of opposition or objection is filed within such period, the Registrar may, if he is satisfied that the registered mark has ceased to have effect, proceed to remove the mark from the register under section 57(7).

## **Trade marks blocking later applications for registration**

Where an application for registration is blocked by an earlier registered trade mark the owner of which is a company incorporated in the Hong Kong SAR that is dissolved, the applicant for registration may consider writing to the CR. The CR may dispose of or otherwise deal with any *bona vacantia* in question as he sees fit.

If the CR decides to disclaim the Government's title to such earlier registered trade mark and the Registrar is informed of a notice of disclaimer in respect of the mark issued under section 753(1) of the CO<sup>5</sup>, the Registrar will consider if the mark appears to him to have ceased to have effect in accordance with the practice and procedure outlined above.

As a matter of practice, the Registrar will not maintain a citation based on an earlier registered trade mark once it has been removed under section 57(7).

For the avoidance of doubt, the practice and procedure outlined above has no application to trade marks owned by dissolved companies that are incorporated outside the Hong Kong SAR.

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<sup>5</sup> See footnote 3.