

Rules of the High Court (Amendment) Rules 2006

The Rules of the High Court (Cap 4A)

Order 100 - THE TRADE MARKS ORDINANCE

Remarks

2. Appeals and applications under the Trade Marks Ordinance

(O. 100, r. 2)

(1) Every appeal to the Court under the Trade Marks Ordinance (Cap 559), shall be heard and determined by a single judge. (35 of 2000 s. 98)

(2) Subject to rule 3, every application to the Court under the said Ordinance ~~must be begun by originating motion~~ **may be begun by originating summons in Form No. 10 in Appendix A.**

Rule 45
Rec 10-16

(3) ~~Notice of the motion~~ **The summons** by which any such application is made must be served on the Registrar of Trade Marks.

(4) Where the Registrar of Trade Marks refers to the Court an application under the said Ordinance made to him, then, unless within one month after receiving notification of the decision to refer, the applicant makes to the Court the application referred, he shall be deemed to have abandoned it.

(5) The period prescribed in relation to an appeal to which paragraph (1) applies or the period prescribed by paragraph (4) in relation to an application or appeal to which that paragraph applies may be extended by the Registrar of Trade Marks on the application of any party interested and may be so extended although the application is not made until after the expiration of that period, but the foregoing provision shall not be taken to affect the power of the Court under Order 3, rule 5, to extend that period.

(6) (Repealed 35 of 2000 s. 98)

3. Proceedings for infringement of registered trade mark: validity of registration disputed (O. 100, r. 3)

(1) Where in any proceedings a claim is made for relief for infringement of the right to the use of a registered trade mark, the party against whom the claim is made may in his defence put in issue the validity of the registration of that trade mark or may counterclaim for an order that the register of trade marks be rectified by cancelling or varying the relevant entry or may do both those things.

(2) A party to any such proceedings who in his pleading (whether a defence

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or counterclaim) disputes the validity of the registration of a registered trade mark must serve with the pleading particulars of the objections to the validity of the registration on which he relies in support of the allegation of invalidity.

(3) A party to any such proceedings who counterclaims for an order that the register of trade marks be rectified must serve on the Registrar of Trade Marks a copy of the counterclaim together with a copy of the particulars mentioned in paragraph (2); and the Registrar of Trade Marks shall be entitled to take such part in the proceedings as he may think fit but need not serve a defence or other pleading unless ordered to do so by the Court.

(Enacted 1988)

4. Transitional provision relating to rule 45 of Amendment Rules 2007 (O. 100, r. 4)

Rule 46
Rec 10-16

Where, immediately before the commencement of rule 45 ("the amending rule") of the Amendment Rules 2007, an application by originating motion made under rule 2(2) as in force immediately before the commencement is pending, then the application is to be determined as if the amending rule had not been made.