

O/0050/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NUMBERS

**4139869, 4140520, 4142255, 4142248, 4142246, 4142243,
4166425, 4166460 AND 4167939**

BY

SHENZEN SKE TECHNOLOGY CO., LTD.

AND

**THE LATE FILING OF FORMS TM8 AND COUNTERSTATEMENTS
FILED IN DEFENCE OF APPLICATIONS FOR OPPOSITION
NUMBERS**

**454295, 454200, 454223, 454224, 454294, 454205, 454211,
454212 AND 454213**

BY

BARGAIN BUSTING LIMITED

Background and pleadings

1. This decision concerns a procedural issue relating to the late filing of nine Form TM8s and counterstatements in response to nine separate oppositions filed against the following nine applications by Shenzhen SKE Technology Co., Ltd. (“the applicant”):

i) **CRYSTAL BAR**

UKTM No. 4139869

Filing date: 20 December 2024

For goods in classes 9 and 34

Opposition No. 454295

ii) **CRYSTAL BAR**

UKTM No. 4140520

Filing date: 23 December 2024

For goods in classes 9 and 34

Opposition No. 454200



iii)

UKTM No. 4142255

Filing date: 30 December 2024

For goods in class 34

Opposition No. 454223



iv)

UKTM No. 4142248

Filing date: 30 December 2024

For goods in class 34
Opposition No. 454224



- v) UKTM No. 4142246
Filing date: 30 December 2024
For goods in class 34
Opposition No. 454294



- vi) UKTM No. 4142243
Filing date: 30 December 2024
For goods in class 34
Opposition No. 454205



- vii) UKTM No. 4166425
Filing date: 27 February 2025
For goods in class 34
Opposition No. 454211



viii) UKTM No. 4166460
Filing date: 27 February 2025
For goods in class 34
Opposition No. 454212

ix) **SKE CRYSTAL**
UKTM No. 4167939
Filing date: 3 March 2025
For goods in class 34
Opposition No. 454213

2. The applications were all published for opposition purposes on 14 March 2025.

3. On 14 May 2025, Bargain Busting Limited (“the opponent”) opposed the applications by way of filing nine separate notices of opposition (“Form TM7”). The oppositions are based on sections 5(2)(b) and 3(6) of the Trade Marks Act 1994 (“the Act”) and are directed to all of the goods applied for. I note that the oppositions were filed without notice.¹

4. On 9 June 2025, the Registry served the TM7s on the applicant. Each Form TM7 was accompanied by a serving letter, the relevant paragraphs of which are as follows:

“Please find enclosed a copy of the notice of opposition - Form TM7 - filed against your application.

¹ No Notices of Threatened Opposition (Form TM7a) were filed; in the Form TM7s, the box at ‘[6] Opposition notification date’ have been left blank.

If you wish to continue with your application, you need to file a notice of defence and counterstatement by completing Form TM8 - please note the important deadline below [...]

Rule 18(1) and 18(3) of the Trade Marks Rules 2008 require that you must file your notice of defence and counterstatement (Form TM8) within **two months** from the date of this letter [...]

IMPORTANT DEADLINE: A completed Form TM8 (or Form TM9c) MUST be received on or before 11 August 2025.

Rule 18(2) of the Trade Marks Rules 2008 states that “*where an applicant fails to file a Form TM8 within the relevant period, the application for registration, insofar as it relates to the goods and services in respect of which the opposition is directed, shall, unless the registrar otherwise directs, be treated as abandoned.*” **It is important to understand that if the deadline date is missed, then in almost all circumstances, the application will be treated as abandoned.** [original emphasis]

5. The applicant did not file a Form TM8 in respect of any of the oppositions, and so, on 17 September 2025, the Registry wrote to the applicant again in relation to all nine oppositions. Each letter stated the following:

“As no TM8 and counterstatement has been filed within the time period set, Rule 18(2) applies. Rule 18(2) states that the application:

“.....shall, unless the registrar otherwise directs, be treated as abandoned.”

The registry is minded to deem the application as abandoned as no defence has been filed within the prescribed period.

If you disagree with the preliminary view you **must** provide full written reasons and request a hearing on, or before, **1 October 2025**. This **must** be accompanied by a Witness Statement setting out the reasons as to why the TM8 and counterstatement are being filed outside of the prescribed period.” [original emphasis]

6. On 30 September 2025, the applicant filed nine Form TM8s, and a witness statement of Ms Jessica Wolff, an IA Director and Chartered Trade mark Attorney at Stobbs (IP) Ltd, the applicant’s representative. The witness statement is dated 29 September 2025 and sets out the reasons for missing the deadline in the nine proceedings. The witness statement is accompanied by three exhibits labelled JW1-JW3. The pertinent paragraphs of the witness statement are as follows:

“6. A paralegal at Stobbs, one of the team responsible for allocating UKIPO correspondence to files and creating deadlines, mistakenly uploaded the letters enclosed within each notification email in respect of the Oppositions from the UKIPO to one unrelated file in Stobbs' internal filing system. All were uploaded to a 'lead file' which was used to manage the iMiracle oppositions.

7. A 'lead file' in our system contains all the correspondence concerning a related set of matters, for example multiple oppositions against an applicant by the same opponent, to streamline documents and correspondence across a set of related matters. The 'lead file' relates to one of the matters in the set, but all correspondence relating to the set of matters, for example settlement negotiations, is saved on that file for efficient oversight.

8. In this case, the TM7s were all saved by the paralegal to the matter relating to Opposition No. 454718 by iMiracle against trade mark application UK00004139862 "CRYSTAL" in the name of the Applicant (the 718 Opposition), which was the 'lead file' in relation to the iMiracle oppositions, and had been created upon receipt of a TM7A on 2 May 2025. This paralegal created one TM8 deadline for the correct date, on this unrelated matter. Saving the TM7s to this matter and allocating just one deadline was not in accordance

with Stobbs' internal process which should be followed in each instance such notifications are received from the UKIPO.

[...]

10. In this case, the paralegal saw that the matter relating to the 718 Opposition was called the 'lead file' (because it was the lead file on the iMiracle oppositions). Receipt of TM7As in respect of the iMiracle oppositions had caused those matters to be opened before TM7s were received. The paralegal made two incorrect assumptions at this point. The first incorrect assumption was that the TM7s relating to the Oppositions at issue were connected to the iMiracle oppositions. The second incorrect assumption was that the wording 'lead file' indicated that the Oppositions connected to that file were consolidated. The fact that the TM7s all arrived in a short space of time in a bulk reporting reinforced the mistaken belief that the Oppositions were consolidated. Both of these incorrect assumptions were human error.

11. The consequence of the mistake was that new matters were not created in Stobbs' internal system for each of the Oppositions, and so relevant deadlines were not created within Stobbs' internal system in respect of any of the notifications received by the UKIPO in respect of the Oppositions, except the one deadline recorded against the incorrect matter. This is because it was not identified that the letters related to new, separate proceedings against each of the Applications. According to our normal procedure, each of the notifications should have been identified as being connected with a separate proceeding and individual matters created to record each deadline.

[...]

13. Since no deadlines were created in our internal system for the TM8s to be filed, the responsible attorneys were not notified as the deadline approached. Since no separate matters were created, the responsible attorneys did not notice that there were oppositions that should have such a deadline.”

7. On 6 November 2025, the Registry issued a preliminary view in respect of the nine oppositions and wrote to the applicant in the following terms:

8.

“I acknowledge receipt of the late filed TM8 and accompanying witness statement received 30 September 2025.

The case has been given consideration and it is the Tribunal’s preliminary view to accept the late filed TM8 into the proceedings.

If either party disagrees with the preliminary view, they should provide full written reasons and request a hearing on, or before, **20 November 2025.**”
[original emphasis]

9. On 20 November 2025, the opponent filed a request for a hearing, accompanied by written submissions in which it challenged the preliminary view. Whilst I do not intend to summarise the submissions here. However, I confirm that I have taken all filed documents into account and will refer to them to the extent that I deem necessary.

THE HEARING

10. A hearing took place before me, by telephone conference, on 17 December 2025. Mr Stephen Lowry, of Brandsmiths SL Limited, appeared for the opponent. Mr Julius Stobbs of Stobbs, appeared for the applicant. Prior to the hearing, both parties filed detailed skeleton arguments.

11. I invited Mr Lowry to make his submissions first, given that the opponent had challenged the preliminary view.

12. At the hearing, Mr Lowry outlined the relevant statutory and caselaw provisions, focusing on the factors to be considered when determining whether to grant discretion, as set out in *Music Choice Limited*.² He submitted that the statutory deadline at Rule 18 of the Trade Mark Rules 2008 (“The Rules”) is non-extendable,

² [2005] RPC 18

unless the applicant demonstrates extenuating circumstances sufficient for the Registrar to exercise its narrow discretion under Rule 18(2). In this case, he submitted that no such circumstances were present.

13. He contended that the applicant's reasons for missing the deadlines did not amount to simple human error but instead demonstrated a series of errors by the applicant's representatives. He noted three key mistakes: (i) uploading correspondence for ten oppositions to an incorrect "lead file", (ii) diarising only one deadline and omitting nine entirely, and (iii) assuming consolidation merely because emails were received within a short timeframe. Mr Lowry stated that any competent representative should have opened and read the individual communications and understood that they related to separate proceedings with independent deadlines.

14. Mr Lowry acknowledged the authorities cited by the applicant, including *Femme Luxe*³ and contrasted these with *Crystal Bar (6 & 1)*,⁴ a decision involving the same parties in which a TM8 filed one day late was refused. He argued that the present cases are far more serious as nine deadlines were missed followed by a 50-day delay before the applicant rectified the position.

15. He submitted that permitting the nine late TM8s would undermine consistency, set a dangerous precedent, and raise the question of what would ever constitute a non-extenuating circumstance. He therefore asked that the discretion not be exercised.

16. In respect of the *Music Choice* factors, Mr Lowry submitted:

- The applicant's errors were numerous, not compelling and not extenuating.
- There is an arguable case under sections 5(2)(b) and 3(6), including allegations of questionable filing behaviour by the applicant.
- The applicant would not suffer any real prejudice as they have many other

³ BL O/366/23

⁴ BL O/0531/25

“Crystal” marks and could rely on those as earlier rights in any future proceedings that may arise.⁵

- The opponent has already suffered prejudice including the preparation of submissions, skeleton arguments and attendance at two procedural hearings in six months.⁶ Further costs will be incurred by the opponent as they will need to seek advice on newly-filed replacement applications.⁷
- Although many related proceedings exist, this cannot overcome the lack of compelling justification for the missed deadlines.

17. In response, Mr Stobbs confirmed that both parties agree that the Registrar has discretion under Rule 18(2), and that the correct assessment is by reference to the *Music Choice* factors. He clarified that the applicant was not pursuing any argument under Rule 77(5) or alleging a formal irregularity by the Registry.

18. Mr Stobbs accepted that an error had occurred but asked the Registrar to uphold the preliminary view and admit all nine TM8s.

19. On the circumstances of the missed deadlines, Mr Stobbs relied on Ms Wolff's witness statement explaining that the firm's docketing system is ordinarily robust, handling thousands of deadlines. A single mistake within that system resulted in all ten official letters being uploaded to an existing file relating to an earlier opposition by a different opponent. Because of this misallocation, no separate files and no TM8 deadlines were generated for the nine proceedings at issue. He emphasised that the error was singular in nature, even though it affected nine cases.

20. Mr Stobbs referred to *Femme Luxe*, *Noosphere*⁸ and *Victorian Plumbing*⁹ as examples of decisions where the Registrar had accepted that genuine docketing errors

⁵ A list of the applicant's "Crystal" marks was provided in Annex 1 of the opponent's skeleton arguments dated 15 December 2025.

⁶ I note the other hearing Mr Lowry refers to is in relation to the late-filed defence for opposition no. 451306.

⁷ At the hearing, Mr Stobbs confirmed that the applicant had already pre-emptively re-filed the applications at issue in the event that the late-filed defences would be refused.

⁸ BL O/540/22

⁹ BL O/510/18

could amount to extenuating circumstances under Rule 18(2). He noted that in *Femme Luxe*, the representative mis-entered the deadline and acted on the mistaken belief that they were preparing evidence, yet discretion was still exercised. In *Noosphere*, an inaccurately recorded date resulted in the wrong deadline being monitored but was treated as an isolated administrative mistake. In *Victorian Plumbing*, a procedural lapse within an otherwise working system was similarly accepted. He submitted that the present cases involve a comparable, single misallocation of correspondence within an established docketing system, and that the authorities demonstrate the Tribunal's willingness to exercise discretion where a credible explanation for an internal administrative error is provided.

21. In respect of the *Music Choice* factors, Mr Stobbs submitted:

- The error was genuine, explained, and occurred despite the firm having a proper system in place.
- The section 5(2)(b) grounds are not clear-cut as the proof of use provisions are engaged for several of the earlier marks. The section 3(6) allegation is insufficiently pleaded and incapable of amounting to bad faith as a matter of law.
- The applicant had refiled the marks at [1] to mitigate prejudice, but any other applications filed by different parties in the meantime means the applicant would lose priority and could be disadvantaged in challenging later rights.
- Any prejudice to the opponent would be compensated by costs whereas refusing discretion could ultimately cause more work for the opponent because they would have to refile nine oppositions against the new applications.
- There are multiple sets of related proceedings which weighs in favour of allowing the defences. If discretion were exercised, the applicant would withdraw the later replacement applications.

22. In reply, Mr Lowry maintained that the applicant's explanation did not amount to an extenuating or compelling circumstance. He further submitted that the applicant's firm had now missed TM8 deadlines on two separate occasions within a six-month period, demonstrating a pattern of repeated procedural failures. He refuted Mr Stobbs' characterisation of the error as a single mistake, emphasising instead that the failure to act on nine independent official communications amounted to nine separate errors.

23. Addressing the section 3(6) ground, Mr Lowry submitted that the Tribunal had already found in *Crystal Bar (6 & 1)* that the opponent's case disclosed an arguable basis for bad faith.

24. On prejudice, he maintained that the applicant would not suffer any meaningful disadvantage from the refusal of the late TM8s, given that it holds numerous earlier "Crystal" marks which could be used against any intervening filings.

25. In closing, Mr Lowry submitted that accepting the applicant's explanation as "compelling" would stretch the Rule 18(2) discretion beyond recognition and render the threshold effectively meaningless. He drew attention to previous authorities, including *Phoenix*,¹⁰ in which circumstances as serious as bereavement had not been accepted as compelling. He therefore maintained that this was not a case where discretion should be exercised and invited the Registrar to refuse all nine late-filed TM8s.

26. At the conclusion of the hearing, I reserved my decision to give me an opportunity to properly reflect on the submissions put forward by the parties and all the circumstances of the case.

DECISION

27. The filing of a Form TM8 and counterstatement in opposition proceedings is governed by Rule 18 of the Rules. The relevant parts read as follows:

¹⁰ BL O/0355/25

“18. – (1) The applicant shall, within the relevant period, file a Form TM8, which shall include a counter-statement.

(2) Where the applicant fails to file a Form TM8 or counter-statement within the relevant period, the application for registration, insofar as it relates to the goods and services in respect of which the opposition is directed, shall, unless the registrar otherwise directs, be treated as abandoned.

(3) Unless either paragraph (4), (5) or (6) applies, the relevant period is the period of two months beginning immediately after the notification date.”

28. The combined effect of Rules 77(1), 77(5) and Schedule 1 of the Rules means that the time limit in Rule 18, which sets the period in which the defence must be filed, is non-extensible other than in the circumstances identified in Rule 77(5) which states:

“A time limit listed in Schedule 1 (whether it has already expired or not) may be extended under paragraph (1) if, and only if—

(a) the irregularity or prospective irregularity is attributable, wholly or in part, to a default, omission or other error by the registrar, the Office or the International Bureau; and

(b) it appears to the registrar that the irregularity should be rectified.”

29. At the hearing, it was confirmed that the late filing of the applicant’s TM8s in this instance was not because of an irregularity, default, omission or other error on the part of, *inter alia*, the Registrar. Consequently, the only basis on which the applicant may be allowed to defend the opposition proceedings is if I exercise in its favour the discretion afforded to me by the use of the words “unless the registrar otherwise directs” in Rule 18(2).

30. In approaching the exercise of discretion in these circumstances, I consider the decisions of the Appointed Person in *Kickz AG v Wicked Vision Limited* (“*Kickz*”)¹¹ and *Mark James Holland v Mercury Wealth Management Limited* (“*Mercury*”)¹² i.e. I must be satisfied that there are extenuating circumstances which justify the exercise of the discretion in the applicant’s favour.

31. In *Music Choice*, the Court indicated that a consideration of the following factors (underlined below) is likely to be of assistance in reaching a conclusion as to whether or not discretion should be exercised in favour of a party in default. That is the approach I intend to adopt.

The circumstances relating to the missing of the deadline including reasons why it was missed and the extent to which it was missed;

32. As stated above, the failure to file the TM8 within the prescribed period arose from an internal administrative error on the part of the applicant’s representatives. The consequence was that the TM8s were filed 50 calendar days after the statutory deadline.

The nature of the opponent’s allegations in its statement of grounds;

33. The oppositions are brought under section 5(2)(b) and 3(6) of the Act. The opponent seeks to rely on four earlier rights. Three of the earlier rights relied upon are subject to revocation and/or invalidation proceedings.¹³

34. Whilst it is not for the present hearing to determine the merits of each case, there is nothing to suggest that the oppositions are without merit.

The consequences of treating the applicant as defending or not defending the opposition;

¹¹ BL/O/035/11

¹² BL/O/050/12

¹³ UK00003235344, UK00003330869 and UK00003534551

35. If the applicant is allowed to defend the oppositions, the proceedings will likely be consolidated and continue with the parties given an opportunity to file evidence. The matter will then be determined on its merits.

36. If, however, the defences are not admitted into the proceedings, the applications will be deemed abandoned, and the applicant's marks will lose their respective filing dates set out above at [1]. I note that the applicant has already pre-emptively re-filed their applications, which may, in turn, be opposed again by the opponent (or any other party).

Any prejudice caused to the opponent by the delay;

37. The opponent submitted that they have already suffered prejudice including the preparation of submissions, skeleton arguments and attendance at two procedural hearings in six months. Furthermore, costs will be incurred by the opponent as they will need to seek advice on newly-filed replacement applications.

Any other relevant considerations such as the existence of related proceedings between the parties;

38. In addition to the nine oppositions at issue, at the time of writing this decision, there are 62 ongoing related proceedings between the parties. It is anticipated that these cases will be consolidated into several smaller groups, all of which are to be suspended pending the outcome of High Court proceedings in respect of cancellation action CA507571.

Conclusions

39. In reaching my decision, as noted above, I recognise that if the discretion is not exercised in the applicant's favour, the oppositions will succeed, and the applicant's marks will lose their filing dates in respect of all the goods in the applications (since the oppositions are directed against the applications in full). I further recognise that the applicant has pre-emptively re-filed their applications and that these may, once again, be opposed by the opponent resulting in opposition proceedings arising at some point in the future.

40. As the loss of priority and possibility of further proceedings on much the same basis is often the consequence of a failure to comply with the non-extensible deadline to file a TM8, these are not factors that, in my view, are particularly compelling.

41. Whilst Mr Stobbs cited cases in which discretion had been exercised in cases where there had been related proceedings, I also recognise that the existence of related proceedings is an insufficient basis for the Tribunal to exercise its discretion in the absence of extenuating circumstances or compelling reasons. This position can be found in *Praesidiad NV*,¹⁴ where the applicant faced losing an IR designation in the UK with the consequence that it would not be able to challenge the validity of another mark. The Hearing Officer in that case found that the severity of these consequences counted for less than the inadequacy of the explanation for non-compliance put forward [39]. This decision was upheld by Mr Hobbs QC (as he then was) who stated (at [44]):

“I readily accept that human error is not necessarily inconsistent with the existence of extenuating circumstances or compelling reasons for permitting invalidity proceedings to be defended in the exercise of the discretion conferred by rule 41(6) [...] It is nonetheless clear that the test to be applied cannot be taken to permit or require all human errors to be treated as excusable for the purposes of rule 41(6). There must, in other words, be a fact specific evaluation for the purpose of determining whether the particular error in question should or should not be treated as excusable in the circumstances of the case at hand.”

42. Whilst *Praesidiad NV* concerned an application for invalidity, the same assessment is relevant to the late filing of a Form TM8 and counterstatement in opposition proceedings. Mr Hobbs acknowledged that human errors can be consistent with extenuating circumstances or compelling reasons sufficient for the exercise of discretion, where the specific facts of the case merit it.

¹⁴ BL O/193/19

43. I acknowledge the applicant's representative's acceptance of full responsibility for the oversight that resulted in the relevant deadlines being missed. However, having carefully taken all of the relevant circumstances into account, I do not consider the reasons provided amount to extenuating circumstances, nor do they constitute compelling reasons that would justify exercising my narrow discretion in the applicant's favour.

44. In my view, the reasons for missing the deadlines by 50 calendar days amounts to the failure to exercise the 'minimal degree of vigilance' as set out by Mr Hobbs in *Kickz*. Therefore, whilst it is possible for a human error to amount, in some cases, to extenuating circumstances for exercising discretion, given the facts, I do not find that to be the case here. I consider that had the responsible team member applied a minimal degree of vigilance when setting the deadlines, they would have observed that each Tribunal letter contained a different application and opposition number

45. I recognise that the existence of a large number of related cases can carry considerable weight in the assessment. I also acknowledge the previous cases that the applicant has directed me to in which human error was deemed consistent with extenuating circumstances/compelling reasons. However, each case is to be determined on its own merits and these factors are insufficient to outweigh the fact that the deadlines were missed by 50 calendar days. In my view, the applicant's reasons and the extent to which the deadlines were missed do not reach the standard of 'extenuating circumstances' or 'compelling reasons'.

46. Taking all of the above into account and having regard to the factors set out in the case law in *Kickz*, *Mercury* and *Music Choice*, I see no compelling reason or extenuating circumstance which would justify the use of the Registrar's discretion provided under Rule 18(2).

CONCLUSION

47. The Registry's preliminary view is overturned and the late-filed TM8s are not admitted into the proceedings. The applicant will be treated as not defending the

oppositions. Subject to any successful appeal, the nine applications are deemed abandoned in respect of all the applied for goods.

COSTS

48. As my decision terminates the proceedings, I must consider the matter of costs.

49. The opponent has been successful and would normally be entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023.

50. In this case, the oppositions were all filed without notice. At the hearing, I brought this to the parties attention and highlighted that in circumstances where an action is undefended, costs will not be awarded against parties who do not defend an action which has been brought against them without prior notice.¹⁵ Mr Lowry confirmed that the opponent did not seek to argue against this point. As such, I make no order for costs.

Dated this 26th day of January 2026

Catrin Williams
For the Registrar

¹⁵ See paragraph 7 of TPN 1/2023.