

O-067-21

TRADE MARKS ACT 1994

**IN THE MATTER OF A JOINT HEARING HELD IN RELATION TO
APPLICATION NO. 3443772
IN THE NAME OF RANA IMTIAZ AHMED BHATTI**

AND

**OPPOSITION THERETO UNDER NO. 419345
BY HYPERAMA PLC**

BACKGROUND

1. On 13 November 2019, Rana Imtiaz Ahmed Bhatti (“the Applicant”) sought registration of the trade mark shown below for “Cookware” in class 21, “Rice” in class 30 and “Juices” in class 32. The application (no. 3443772) was published for opposition purposes on 6 December 2019.



2. On 3 February 2020, Bison River Limited filed a Form TM7 (Notice of opposition and statement of grounds) on behalf of Hyperama Plc (“the Opponent”). The opposition, which is directed against “Rice” and “Juices” in the application, is based upon sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”), with the Opponent relying upon EU Trade Mark (“EUTM”) no. 4208542, UK Trade Mark (“UKTM”) no. 2380313 and rights in two earlier unregistered trade marks, all of which are shown below.

EUTM no. 4208542¹



¹ The goods relied upon are shown in Annex 1 to this decision.

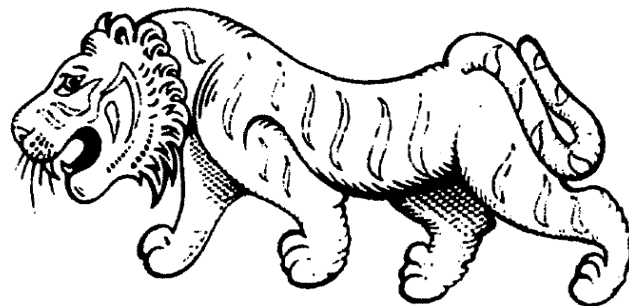
UKTM no. 2380313² (series of 3 marks)



Unregistered trade marks³

(i) TIGER TIGER

(ii)



² The goods relied upon are shown in Annex 2 to this decision.

³ The goods relied upon are shown in Annex 2 to this decision.

3. On 12 February 2020, the Tribunal served the Form TM7 on the Applicant. That letter contained the following:

“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. You will find a blank Form TM8 on the IPO website, together with brief guidance on what happens after it is filed: <https://www.gov.uk/government/publications/trade-mark-forms-and-fees/trade-mark-forms-and-fees>

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. Alternatively, if both parties wish to negotiate to resolve the dispute, they may request a “cooling off period” by filing a Form TM9C, which will extend the 2 month period in which to file a Form TM8 by up to a further seven months. Form TM9C is also available on the IPO website (above). Please note both parties must agree to enter into cooling off.

IMPORTANT DEADLINE: A completed Form TM8 (or else a Form TM9C) MUST be received on or before 14 April 2020.

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.”

4. On 22 February 2020, the Tribunal received an email from the Applicant stating that he was out of the country between 19 December 2019 and 17 February 2020 and that the email containing the Form TM7 went into his junk folder. The Applicant requested a period of time to discuss the matter with the Opponent in an attempt to settle the matter.

5. In an official letter dated 4 March 2020, sent to both parties, the Tribunal stated:

“If both parties wish to negotiate to resolve the dispute, you may enter a “cooling off period” by filing a Form TM9C, which will extend the 2 month period in which to file a Form TM8 by up to a further seven months. Please note both parties must agree to enter into cooling off.

You are reminded that a completed Form TM8 (or else a Form TM9C) **MUST** be received on or before **14 April 2020.**”

6. An email from the Applicant to the Tribunal dated 3 April 2020 reads as follows:

“I receive (*sic*) an Opposition Notice No. OP000419345 dated on 12/02/2020 against my application for Trade mark No. UK00003443772. My last date of filing for the counterstatement of above mentioned opposition notice is 14/04/2020 and due to Corona Virus vocations all solicitors offices are closed since last many days (*sic*) and no one is accepting my case. In this situation I am also facing trouble for the collection of evidences (*sic*) from the USA, Pakistan, Eu and middle Eastern Countries where we are doing business since 1965 in this trade mark due to international Corona epidemic.

That’s why it’s very difficult for me to submit the counterstatement until the deadline.

I am requesting to you due to this situation please give me extention (*sic*) in the deadline of filing my counterstatement and notice of defence.”

7. In an official letter dated 6 April 2020, sent to both parties, the Tribunal stated:

“I refer to the email dated 3 April 2020 requesting an extension to file the TM8.

The period to file the TM8 and counterstatement is a non-extendable period, however, your attention is drawn to the update issued on the IPO website in relation to interrupted days:

<https://www.gov.uk/government/news/coronavirus-important-update-on-ipo-services>

The applicant’s original deadline to file the TM8 falls within the interrupted days period. In line with the above notice, this deadline is now extended until the day following the end of the interrupted days period.

The notice states that the Registry will review the situation in three weeks’ time (17 April 2020) and will either continue with the period of interruption or announce that the period will end after a further two weeks. Based on the current guidance, if notice of the end of interrupted days is given on 17 April 2020, the applicant will be expected to file their TM8 and counterstatement on or before **4 May 2020.**”

8. On 6 April 2020, the Applicant responded to the Tribunal by email requesting clarification of the deadline to file the Form TM8. The Tribunal responded on 7 April 2020 to confirm the deadline of 4 May 2020.

9. In an email to the Tribunal on 30 April 2020, the Applicant attached correspondence from the Opponent and again requested an extension to file the Form TM8.

10. In an official letter dated 1 May 2020, sent to both parties, the Tribunal reiterated that the period to file the Form TM8 is a non-extendable period but that the period of

interrupted days was to be continued and the Applicant's deadline to file the Form TM8 would be extended until the day following the end of the interrupted days period. The link to the IPO website was provided to draw to the Applicant's attention any updates or announcements in relation to the end of the interrupted days period. The website was updated as follows:

27 March 2020: The notice of interruption was first published;

22 April 2020: The continuation of the interrupted days period was confirmed;

7 May 2020: Update to the period of interruption and the next date for review;

29 May 2020: Update to the period of interruption and the next date for review;

22 June 2020: Update to inform customers of the end of interrupted days;

15 July 2020: Certificate ending the period of interruption added;

17 July 2020: Further clarity on when the period of interruption will end; and

30 July 2020: Updated because the period of interruption had ended.

11. In an official letter dated 20 August 2020, sent to both parties, the Tribunal stated:

“As the deadline specified to file Form TM8 fell within the interrupted days period, in line with the above notice, the deadline was extended until the end of the interrupted days. As such, Form TM8 and counterstatement was due to be filed on, or before **30 July 2020**.”

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, **03 September 2020**. 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.

If no response is received the registry will proceed to deem the application abandoned and the opposed items will be struck out and the application will proceed to registration for the following specifications:

Class 21: Cookware.”

12. An email sent from the Applicant to the Tribunal on 30 August 2020 confirms receipt of the Tribunal’s letter of 20 August 2020 and reads as follows:

“I received an e-mail and letter with your signatures Dated on 20 August 2020 under the reference number Opposition No. OP000419345 Trade Mark No. UK00003443772 Opponent: Hyperama plc.

When I was preparing my counterstatement I received a call from my Opponent they (*sic*) shows their desire to settle all matters out of court. I informed Examiner Janeve Morgan via e-mail on 30-04-20 about this. Now I sending you Our all conversations are as below first e-mail (*sic*) from the office of Rosario Knight (Bison River) opponent solicitors Dated on 19-03-20.

[...]

I did not receive any kind of e-mail/ Letter or WhatsApp text from the opponent even I also sent a text message to Rosario Knight via WhatsApp on 10-07-20 for any response she red (*sic*) it but did not reply.

Now I am waiting my opponent (*sic*) response when they reply me (*sic*) then I can able for counterstatement (*sic*).”

13. In an official letter dated 4 September 2020, sent to both parties, the Tribunal attached all previous correspondence for reference and drew the Applicant’s attention to each letter sent by the Tribunal that reminded him of the deadline to file his Form TM8. The letter, directed at the Applicant, went on to state:

“You refer in your email that both parties are negotiating however in order to have extended the period to file your defence a TM9C would have been required and agreed by both parties. Therefore, as no TM9C was filed your TM8 and counterstatement deadline remained 30 July 2020.

If you wish the Registry to consider a request to allow the filing of a TM8 at this stage you would be required to request a hearing, file a Form TM8 and a Witness Statement with a covering letter clearly explaining why the defence has been filed late.

You are required to respond 14 days from the date of this letter that is on or before **18 September 2020**.

Before requesting a hearing to challenge a preliminary view, you should bear in mind the following points:

- the deadline for filing a counter-statement on Form TM8 is not flexible time limit (see Trade Mark Rule 77(6) and Schedule 1 to those rules);
- the legal constraints on the exercise of discretion by the Registrar in these circumstances; and

- that in the event that the hearing officer upholds the preliminary view, there may be costs implications arising from the hearing against the party who requested the hearing.

The above information is not intended to dissuade you from requesting a hearing, but merely to inform you of the potential consequences should you be unsuccessful in overturning the preliminary view.”

14. The Applicant sent an email to the Tribunal on 17 September 2020 confirming receipt of the Tribunal’s letter dated 4 September 2020 and stating that the Form TM8 and counterstatement had not been filed on time due to COVID-19 and its impact on the Applicant’s ability to: (i) collect evidence from his lawyers in America and Pakistan and (ii) hire a solicitor in the UK. The Applicant’s email was accompanied by a hearing request and a Form TM8.

15. The Tribunal replied to the Applicant on 17 September 2020 reiterating that the hearing request would need to be accompanied by a witness statement and covering letter explaining why the Form TM8 was filed late. The Applicant was given until 1 October 2020 to comply.

16. On 30 September 2020, the Applicant filed a witness statement, giving the following reasons for the late filing of his Form TM8:

“1. I could not submit TM8 due to COVID-19.

2. The second reason was not to submit TM8 because opponent started negotiation with us and I informed to the examiner time by time all evidence of our conversation are attached with this statement (*sic*).

3. I requested to your examiner in my e-mail of 04/03/20 at 6:01pm please extend my date of submission because I am facing problems to submit my TM8 (Counter statement) due to COVID-19.

4. I am delayed also because the offices of my lawyers of America and Pakistan (Who deals with my trademarks in USA and Pakistan) were closed due to COVID-19 and I am facing problems to collect the evidences of our registered brands from America and Pakistan.

5. Here mostly solicitors were not working in their offices due to COVID-19 and I was also new in this country so that's why I faced problem to hire a solicitor (*sic*).

6. I was in touch with you in my capacity and explained you every thing as per my understandings (*sic*)."

17. In an official letter dated 6 October 2020, sent to both parties, the Tribunal issued a preliminary view to accept the late filed Form TM8 into the proceedings, in light of the further information provided in the Applicant's witness statement. The parties were given until 20 October 2020 to request a hearing if they wished to challenge the preliminary view.

18. On 14 October 2020, the Tribunal received an email from the Opponent which reads as follows:

" [...] We can confirm that the Opponent disagrees with the Preliminary view and does want to request a hearing in this matter. The Opponent considers the justification provided by the Applicant is weak and filled with a series of incongruencies and information that does not agree with the real facts on this matter. The Applicant seems to be abusing the system and the current pandemic to justify his negligence and lack of serious engagement in the process. The Opponent will be filing its skeleton arguments in support of its position at the appropriate time and prior to the hearing."

19. On 21 October 2020, the Tribunal wrote to the parties, that letter contained the following:

“I refer to the request for a joint hearing in respect of the above proceedings. The Hearing is to discuss the Registry’s preliminary view to accept the late filed Form TM8 and counterstatement into the proceedings. The Hearing Officer will make a decision in respect of the above and may give case management directions in addition to deciding the issue giving rise to the hearing.

The Hearing Officer has reviewed the papers and is of the opinion that this matter can be dealt with as a telephone hearing. I hereby give you notice that the Hearing will take place on **Wednesday 4 November 2020 at 14.00** via the **Telephone Conference Link.**”

The joint hearing

Representation

20. The joint hearing took place before me, by telephone, on 4 November 2020. Ms Rosario Knight of Bison River Limited attended on behalf of the Opponent. The Applicant attended, representing himself. Both parties filed skeleton arguments, but it was established at the hearing that the Applicant’s skeleton arguments were not relevant to the issue being discussed at the hearing.

The skeleton arguments

21. The Opponent’s skeleton arguments were lengthy and accompanied by five annexes, totalling 24 pages. I have taken into account all of the submissions made but consider it neither appropriate nor necessary to reproduce them here.

Hearing discussion

22. At the hearing, the Applicant submitted that the Form TM8 was late due to COVID-19 and that three of his family members passed away as a result of COVID-19; two in April 2020 and one in June 2020. The Applicant explained that he did not mention these deaths earlier in the proceedings because he did

not think it was relevant. The Opponent felt that this information should have been included in his witness statement.

23. The Applicant further submitted that he believed a Form TM8 was not necessary if there were ongoing negotiations between the parties. I asked the Applicant whether he received the Tribunal's letter dated 4 March 2020 stating that either a Form TM8 or TM9C (to enter a cooling-off period) would need to be filed by the deadline. The Applicant confirmed that he received this letter, but that he did not understand what a TM9C was. The Opponent denied that there were ongoing negotiations and explained that the negotiations came to end on 11 July 2020 when the Applicant did not accept the Opponent's offer.

24. Drawing on the Applicant's witness statement, I asked him why he needed to contact his lawyers in Pakistan and the United States in order to file the Form TM8. The Applicant explained that it would have been possible to file the Form TM8 without evidence, but that he thought it was necessary to file evidence of his business.

25. I asked the Applicant what problems he faced hiring a solicitor. The Applicant explained that he was new to the UK as of 2018 and that his cousin who passed away in April 2020 knew solicitors in the UK and dealt with that aspect of the Applicant's business.

26. The Opponent submits that the Tribunal put in place ways to deal with the pandemic, including extensions during the period of interrupted days, and that the Applicant had numerous chances to file the Form TM8 on time.

27. At the conclusion of the hearing, I reserved my decision to give me an opportunity to reflect on the additional reasons relied upon by the Applicant which were not foreshadowed in his witness statement.

Post hearing

28. I wrote to the parties on 12 November 2020, that letter contained the following:

"Hearing discussion

For reasons that will become apparent it is not necessary, at this stage, to go into detail about the submissions made by the parties at the hearing. However, at the hearing, Mr Bhatti raised additional reasons for the late filing of his Form TM8 that were not mentioned in his witness statement dated 30 September 2020. Those reasons related to the passing of three of Mr Bhatti's relatives from COVID-19. [...]

Decision

Given the additional reasons relied upon by Mr Bhatti, I direct that he file a further witness statement, confirming his submissions made at the hearing that were not foreshadowed in his original witness statement. The witness statement should detail the individuals concerned, the circumstances that occurred, and the effect they had on Mr Bhatti's ability to file the Form TM8 within the required time, accompanied by any evidence that he considers appropriate. The Opponent will then be given the opportunity to respond."

29. The Applicant filed a witness statement dated 22 November 2020, which reads as follows:

"I, RANA IMTIAZ AHMED BHATTI, applicant of XXX state the additional reasons for the delay of submissions TM8 as per your directions which confirming my submissions made at the hearing as below.

1. I was not able to submit TM8 at the time. The main reasons being COVID-19 which resulted in three bereavements as mentioned in my hearing dated 04 November 2020.

- (i) Mrs. Safia Bhatti Date of Death 22 April 2020 (enclosed)
- (ii) Mr. Shaukat Ali Sheikh Date of Death 16 June 2020 (enclosed)
- (iii) Mr. Tahir Iqbal Date of Death 11 April 2020 (not available)

I confirm that the contents of this statement are true and accurate to the best of my knowledge and understanding.”

30. On 4 December 2020, the Opponent filed written submissions, the witness statement of Jeanette Wood and accompanying exhibits in reply to the Applicant’s witness statement. The Opponent’s submissions are lengthy, and I do not intend to reproduce them. However, in summary, the Opponent explained why it is their belief that the reasons provided by the Applicant for the late filing of his Form TM8 cannot be considered extenuating circumstances, and that the application should be treated as abandoned.

DECISION

Statutory provisions

31. The filing of a Form TM8 and counterstatement in opposition proceedings is governed by rule 18 of the Trade Marks Rules 2008 (“the Rules”). The relevant parts read as follows:

“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 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.

(4) This paragraph applies where—

(a) the applicant and the person opposing the registration agree to an extension of time for the filing of Form TM8;

(b) within the period of two months beginning immediately after the notification date, either party files Form TM9C requesting an extension of time for the filing of Form TM8; and

(c) during the period beginning on the date Form TM9C was filed and ending nine months after the notification date, no notice to continue on Form TM9t is filed by the person opposing the registration and no request for a further extension of time for the filing of Form TM8 is filed on Form TM9e,

and where this paragraph applies the relevant period is the period of nine months beginning immediately after the notification date.”

32. The combined effect of rules 77(1), 77(5) and Schedule 1 of the Rules mean 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.”

33. There is no suggestion that there has been any irregularity on the part of the Tribunal. Consequently, the only basis on which the Applicant may be allowed to defend the opposition proceedings is if I exercise in his favour the discretion afforded to me by the use of the words “unless the registrar otherwise directs” in rule 18(2).

34. In approaching the exercise of discretion in these circumstances, I take into account the decisions of the Appointed Person in *Kickz AG v Wicked Vision Limited* (BL O-035-11) and *Mark James Holland v Mercury Wealth Management Limited* (BL O-050-12) i.e. I have to be satisfied that there are extenuating circumstances which justify the exercise of the discretion in the Applicant’s favour.

35. In *Music Choice Ltd’s Trade Mark* [2005] RPC 18, 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, referring to the parties’ submissions to the extent that I consider it necessary to do so.

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

36. The Form TM8 was due by 30 July 2020; it was received by the Tribunal on 17 September 2020. Due to the period of interrupted days, the deadline to file the Form TM8 changed several times following the initial deadline of 14 April 2020. The Applicant was updated every time there was a change to the deadline to file his Form TM8. Although the Applicant confirmed on numerous occasions that he was fully aware of the official deadline, the Form TM8 was not filed on time because: (i) he was negotiating with the Opponent; (ii) he faced difficulties

due to COVID-19; (iii) COVID-19 meant that he could not contact his lawyers or hire a solicitor; and (iv) three of the Applicant's relatives died.

The nature of the Opponent's allegations in its statement of grounds

37. The Opponent relied upon grounds under sections 5(2)(b), 5(3) and 5(4)(a) of the Act. There is nothing to suggest that the opposition is without merit.

The consequences of treating the Applicant as defending or not defending the opposition

38. If the Applicant is allowed to defend the opposition, the proceedings will continue with the parties given an opportunity to file evidence and the matter will be determined on its merits.

39. If, however, the Applicant is not allowed to defend the opposition, his application will be deemed abandoned in respect of those goods against which this opposition is directed, and he will lose his filing date of 13 November 2019. The application will proceed to registration for those goods that are unopposed. It will also remain open to the Applicant to re-file his application for those goods against which this opposition is directed which may, in turn, be opposed again by the Opponent.

Any prejudice caused to the Opponent by the delay

40. The Opponent fairly submits that the prejudice extends to a significant time delay and additional costs.

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

41. There do not appear to be any other relevant considerations.

Conclusions

42. In reaching my decision, as noted above, I recognise that if the discretion is not exercised in the Applicant's favour, the opposition will succeed and the Applicant will lose his filing date in respect of those goods against which the opposition is directed. I further recognise that it may be that the Applicant will simply re-file his application in respect of those goods and that this may, once again, be opposed by the Opponent resulting in opposition proceedings arising at some point in the future. However, 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 Form TM8, these are not factors that, in my view, are particularly compelling.

43. In the official letters dated 12 February 2020 and 4 March 2020, the Tribunal made it very clear that if both parties wished to negotiate, a Form TM9C would need to be filed. The deadline for filing either a Form TM8 or TM9C was highlighted and the parties were provided with a link to the IPO website, where a TM9C could be found. The Applicant confirmed at the hearing that he received both of these official letters. I therefore do not consider that negotiating with the Opponent is a compelling reason for failing to file the Form TM8 in time.

44. The Applicant submits that he faced difficulties filing his Form TM8 due to COVID-19. On 22 February 2020, the Applicant confirmed receipt of the Form TM7 and accompanying letter confirming the deadline for filing his Form TM8. The UK did not face restrictions relating to the pandemic until 23 March 2020 and so the Applicant's reasoning is not relevant until that point. On 27 March 2020 the Tribunal established a period of interrupted days in order to limit the impact of the pandemic on its customers' ability to deal with their intellectual property rights. The period of interrupted days meant that the Applicant was afforded multiple extensions to the deadline for filing his Form TM8. The Applicant was made aware of these extensions in official letters and advised to stay updated using the link to the IPO website. I can only assume, given the regular correspondence via email from 22 February 2020 to date, that the Applicant has had access to a computer and the Internet since the beginning of

these proceedings. As a consequence, this is not a factor that assists the Applicant.

45. Similarly, the Applicant's inability to contact his lawyers or hire a solicitor are not compelling reasons for failing to file his Form TM8. This is especially so given that the Applicant managed to file his Form TM8 in his own name, with no apparent assistance from a legal representative on 17 September 2020. I see no reason why this could not have been completed prior to the eventual deadline of 30 July 2020.

46. In relation to the bereavements suffered by the Applicant, I pass on my sincere condolences, as I did in the hearing. In my letter of 12 November 2020 I invited the Applicant to file a witness statement with very clear guidance as to what should be included i.e. details of the individuals concerned, the circumstances that occurred and – crucially – the effect on the Applicant's ability to file the Form TM8 within the given time. My reasons for asking for this information were so that I could firstly, piece together a timeline and secondly, understand how the Applicant was suffering. In his witness statement, the Applicant has failed to explain his relationship to the individuals who passed away, whether or not he was involved in any funeral arrangements, for example, rendering him unable to deal with the opposition proceedings, or explain any specific reasons for his inability to complete the Form TM8. The Applicant had the opportunity to raise these bereavements with the Tribunal at any point during the proceedings and, in fact, he has continued to communicate with the Tribunal and the Opponent throughout the entire process. While I have sympathy for the Applicant, with no specific explanation as to why the Form TM8 could not be filed (particularly given there were six weeks between the passing of Mr. Shaukat Ali Sheikh on 16 June 2020 and the Applicant's deadline of 30 July 2020), I am not satisfied that these reasons constitute extenuating circumstances or compelling reasons. Having considered all of the Applicant's reasons for his failure to file his Form TM8 by the deadline set, they are not, in my view, sufficient to enable me to exercise my discretion to admit the late filed Form TM8 into these proceedings.

Outcome

47. My decision is not to exercise the discretion available under rule 18(2) in favour of the Applicant. Subject to appeal, the application is deemed abandoned in respect of the following goods:

Class 30 Rice
Class 32 Juices

48. The application can proceed to registration in respect of the unopposed goods:

Class 21 Cookware

Costs

49. As my decision terminates the proceedings, I must consider the matter of costs. As the Opponent has been successful, it is entitled to a contribution towards its costs. Awards of costs in proceedings are governed by Annex A of Tribunal Practice Notice (“TPN”) 2/2016. The Opponent, in its written submissions dated 4 December 2020, has requested the Tribunal awards costs off the scale, the associated submissions read as follows:

“17. The Opponent is committed to the process and has been at all times in compliance with the deadlines and requirements to maintain the integrity of the process. Further, it has had to expend over above the usual professional fees in this opposition, which by the way is not even half way through the process, because of the way the Applicant has conducted himself. The only party that has been disadvantaged in these proceedings is the Opponent who has had to deal with the protracted ongoing case including attending a hearing and then making additional written submissions. The Opponent does not believe it acceptable for the

Applicant to continue to manipulate the system and requests fair treatment in the application of the rules by the Registry.

18. The Opponent requests an award of costs in its favour off the scale to reflect the actual costs incurred by the Opponent in these matters.”

50. TPN 2/2000 recognises that it is vital that the Registry has the ability to award costs off the scale, approaching full compensation, to deal proportionately with wider breaches of rules, delaying tactics or other unreasonable behaviour. TPN 4/2007 provides further guidance and states:

5. [...] Whilst TPN 2/2000 provides some examples of unreasonable behaviour, which would lead to an off scale award of costs, it acknowledges that it would be impossible to indicate all the circumstances in which a Hearing Officer could or should depart from the published scale of costs. The overriding factor was and remains that the Hearing Officer should act judicially in all the facts of a case. It is worth clarifying that just because a party has lost, this in itself is not indicative of unreasonable behaviour.

[...]

7. Any claim for cost approaching full compensation or for “extra costs” will need to be supported by a bill itemising the actual costs incurred.”

51. Whilst the Applicant filed his Form TM8 out of time and I have concluded that the reasons are not sufficient to enable me to exercise my discretion to admit the late filed Form TM8 into these proceedings, I am not satisfied that the Applicant’s behaviour constitutes a breach of the rules, delaying tactics or is sufficiently unreasonable to justify awarding costs off the standard scale. Further, the Opponent’s request for costs off the scale has not been supported by a bill itemising the actual costs incurred. I decline to make an award of costs off the scale. I will, however, take into account the tasks required of the Opponent as a result of the Applicant’s late-filing of his Form TM8 that would

otherwise not have been necessary. Consequently, I award costs to the Opponent on the following basis:

Official fee for filing the Form TM7	£200
Preparing the statement of case	£200
Reviewing witness statements and preparing written submissions	£400
Preparing for and attending the joint hearing	£300
Total	£1100

52. I order RANA IMTIAZ AHMED BHATTI to pay HYPERAMA PLC the sum of £1100 as a contribution towards its costs. This sum is to be paid within 21 days of the expiry of the appeal period or within 21 days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 29th day of January 2021

E VENABLES

For the Registrar

Annex 1

Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs, milk and milk products; edible oils and fats; sesame oil, ground nut oil; preserved black beans; dried and preserved pulses; dried and preserved beans, peas and lentils; chutney (pickle); pickles; canned and bottled fruit; canned and bottled vegetables; desserts, puddings; prepared meals and snacks; cooked meals and snacks; salads; soups; starters and entrees consisting predominately from ingredients in this class, but not including cheese, cheese products or goods in which cheese predominates.

Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; ices; mustard; ice; curry paste and powder; chutneys; ice cream; desserts and puddings; beverages including tea, coffee and chocolate; flour and preparations made from cereals, bread, pastry and confectionary; honey, treacle; yeast, baking-powder; salt, vinegar, sauces (condiments); spices; soy sauce, black bean sauce, hoy sin sauce; prepared meals and snacks; cooked meals and snacks; rice based dishes; pizzas; pasta and pasta based dishes; spaghetti and spaghetti based dishes; prepared sauces; biscuits; bread; cakes; fruit sauces; excluding breakfast cereals, cereal based snack bars, snacks containing cereal and confectionery containing cereals.

Mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages; coconut milk; coconut juice but not including ale, malt beverages, stout, lager, goods in the nature of lager, beer, non-alcoholic beer.

Annex 2

Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces, compotes; eggs, milk and milk products; edible oils and fats; sesame oil, ground nut oil; preserved black beans; dried and preserved pulses; dried and preserved beans, peas and lentils; chutney (pickle); pickles; canned and bottled fruit; canned and bottled vegetables; desserts, puddings; prepared meals and snacks; cooked meals and snacks; salads; soups; starters, entrees but not including cheese, cheese products or goods in which cheese predominates.

Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; ices; mustard; ice; curry paste and powder; chutneys; ice cream; desserts and puddings; beverages including tea, coffee and chocolate; excluding breakfast cereals, cereal based snack bars, snacks containing cereals and confectionery containing cereals; flour and preparations made from cereals, bread, pastry and confectionary; honey, treacle; yeast, baking-powder; salt, vinegar, sauces (condiments); spices; soy sauce, black bean sauce, hoy sin sauce; prepared meals and snacks; cooked meals and snacks; rice based dishes; pizzas; pastas and pasta based dishes; spaghetti and spaghetti based dishes; prepared sauces; biscuits; bread; cakes.

Mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages; coconut milk; coconut juice but not including ale, malt beverages, stout, lager, goods in the nature of lager, beer, non-alcoholic beer.