

**TRADE MARKS ACT 1994**

**OPPOSITION No. 92785**

**IN THE NAME OF OLYMPUS KK**

**TO TRADE MARK APPLICATION No. 2360538**

**IN THE NAME OF AJIT KUMAR**

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**DIRECTION UNDER RULES 57 AND 65(4)**

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1. On 31 August 2006, the Registrar's Hearing Officer (Mr. David Landau) issued a decision in writing (BL 0-249-06) rejecting Opposition No. 92785 in the name of Olympus KK to Trade Mark Application No. 2360538 in the name of Ajit Kumar.
2. Within the period of 28 days prescribed by Rule 63 of the Trade Marks Rules 2000, Olympus KK gave notice of appeal to an Appointed Person under Section 76 of the Trade Marks Act 1994.
3. Subsequently, on 18 October 2006, an Appellants Notice was filed on behalf of Olympus KK in the High Court in London. This was duplicative of the appeal to the Appointed Person filed at the Trade Marks Registry on 28 September 2006.
4. The Appellants Notice was filed out of time. However, in Section 8 of the Notice Olympus KK requested an extension of time for filing its appeal to the High Court. The

request was supported by a Second Witness Statement of Jennifer Maddox dated 17 October 2006.

5. In that Witness Statement Ms. Maddox explained how 2 appeals came to be filed:

2. The Registrar's decision in the opposition proceedings issued on 31st August 2006. The decision was reported to the Appellant and it was asked whether it wished to file an appeal, bearing in mind that the deadline for filing an appeal was 28th September 2006.
3. I was due to leave the country on vacation on 23rd September 2006 but was still without instructions from Olympus by 3.00 p.m. on Friday 22nd September 2006. I drafted Instructions to Counsel to prepare a Notice of Appeal in case the Appellant's instructions were to appeal and left instructions in the office to file the appeal if the Appellant instructed us so to do.
4. The Appellant emailed instructions on 26th September 2006 that an appeal be filed. Counsel was instructed to prepare the grounds of appeal and a Notice of Appeal was filed to the Appointed Person at the Trade Marks Registry on 28th September 2006 by my firm, within the prescribed period.
5. Upon my return from holiday on 9th October 2006, I reviewed the file and discovered that the Appellant's instruction was in fact to file the appeal in the High Court. I filed a request at the Trade Marks Registry for the Appointed Person to refer the appeal to the court under Section 76(3)(c) of the Trade Marks Act, 1994.
6. The Trade Marks Registry advised that the proper course would be for an appeal to be filed in the High Court with an application for an extension of time and that in the meantime the Registrar would notify the Appointed Person of the appeal in the Trade Marks Registry but would hold it in abeyance pending the

judge's decision in the Hearing on the extension of time.

7. Section 76(2) of the Trade Marks Act 1994 gives the parties to the proceedings the right to choose the tribunal for the appeal. It would appear to be in the interests of justice that the appeal be heard in the tribunal that the Appellant chose.
8. The appeal was mistakenly filed in the Trade Marks Registry instead of the court but in all other respects the appeal was correctly filed (i.e. the proper time limits were observed and the forms and grounds were properly filed).
9. The appeal is not being progressed before the Trade Mark Registry. There has been no misuse of the Registrar's time and resources and there would be no prejudice to the Applicant/Respondent if the case were to be heard in the court.

6. The request for an extension of time was granted by Lawrence Collins J. on 25 October 2006. His order extending time was entered on 2 November 2006. The parties were then given a listing appointment to fix a date for the appeal. I gather that the appointment took place on 9 November 2006. It thus appears that Olympus KK is now proceeding with a fully fledged appeal to the High Court against the decision issued by Mr. Landau on 31 August 2006.

7. As a corollary of that and consistently with the evidence given by Ms. Maddox to the effect that Olympus KK's appeal was '*mistakenly filed in the Trade Marks Registry instead of the Court*' I would have expected the company to formally withdraw its appeal to the Appointed Person. However, that has not happened.

8. In order to ascertain whether any further action on my part is required in order to resolve the status of the appeal filed at the Registry on 28 September 2006, I now direct Olympus KK to state in writing within 7 days of the date of this notice whether and, if so, when its appeal to the Appointed Person will be voluntarily withdrawn so as to correct the error referred to in Ms. Maddox's Witness Statement.

9. The above direction is given under Rules 57 and 65(4) of the Trade Marks Rules 2000.

10. This Notice is being copied to: (1) the Treasury Solicitor's Department (reference MT6/AGP/4E); (2) the Trade Marks Registry (Mrs. Sally Howls); (3) Messrs HGF Law (ref GES/Q115701) as agents for Ajit Kumar; (4) Chancery Listing Office, Royal Courts of Justice (reference Ch/2006/APP/0742).

11. The response on behalf of Olympus KK should be sent directly to me and at the same time copied to the interests identified in the preceding paragraph.

Geoffrey Hobbs Q.C.

14 November 2006.