

**O-475-17**

TRADE MARKS ACT 1994

IN THE MATTER OF A JOINT HEARING  
IN RELATION TO UK TRADE MARK APPLICATION No. 3227884  
IN THE NAME OF CITY HARVEST  
AND  
THE OPPOSITION THERETO BY CITY HARVEST, INC

## **Introduction**

1. A hearing took place before me by telephone on 27 September 2017 to consider whether or not the Registry, in view of various errors in the process in this case, should accept into proceedings an opposition filed against the UK trade mark application under No. 3227884. The Applicant was represented by Dr Jade MacIntyre of Allen & Overy LLP; Ruth Hoy of DLA Piper attended for the Opponent. Both sides provided submissions and skeleton arguments on this matter ahead of the oral hearing, which I refer to as I consider appropriate in this decision.

## **Background**

2. UK trade mark application No. 3227884 is for the word mark “City Harvest”. The Applicant is a UK company and registered charity, which operates as City Harvest.<sup>1</sup> The Applicant applied on 28 April 2017 to register the City Harvest mark for services in classes 36, 39 and 43, covering its work to redistribute surplus food to vulnerable people in the Greater London area, thereby reducing food waste and feeding the hungry. The application was published for opposition purposes in the *Trade Marks Journal* on 12 May 2017.
3. The application faces opposition by another charitable organisation, City Harvest, Inc, (“the Opponent”) which for several decades has operated in New York City under the City Harvest brand, similarly recovering excess food from farms, restaurants, grocers and manufacturers to distribute to those in need.
4. The key issue in the dispute giving rise to this hearing is the admissibility of the Notice of Threatened Opposition Form TM7A, which was filed by DLA Piper on behalf of the Opponent, but which provided inaccurate details as to the name and address of the Opponent.
5. The process is that the opposition period begins with the date of the publication of a trade mark application, and allows two months for anybody to oppose a published application (by filing notice on Form TM7). However, the process allows that the

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<sup>1</sup> City Harvest is exempt from using the word “Limited” as part of its name under s60 Companies Act 2006.

opposition period may be extended to 3 months if, within the two month period, someone files an electronic Form TM7A Notice of Threatened Opposition.

6. In the present case, the two month opposition period was to end on 12 July 2017, and on 10 July 2017 a Form TM7A was filed requesting an extension of time for filing the Form TM7. The Form TM7A was communicated to the Applicant by an email from the Registry that same day. The Form TM7A stated the name of the Opponent to be "City Harvest" (without the word "Inc") and instead of the Opponent's correct address (in New York City) it gave the address of the Applicant (in London).
7. On 17 July 2017 the Applicant's legal representatives wrote to the Registry, stating that the TM7A filed by DLA Piper "*purports to have been filed by our client City Harvest ... against its own application. Our client does not wish to oppose its own application. Nor is our client represented by DLA Piper. We request that the Form TM7A be refused and that our client's application proceeds to registration.*"
8. On 19 July 2017 the Registry wrote to the Applicant informing it that it was unable to retract the TM7A, but that it "*could be ignored as it is merely a notification of threatened opposition which will not be taken any further.*"
9. On 31 July 2017 the Applicant received a letter from DLA Piper informing it that DLA Piper represented City Harvest (the Opponent). That letter stated that the Opponent would be filing an opposition to the application and requested the Applicant to withdraw its objection to the Form TM7A. The Applicant responded on 8 August 2017, declining to withdraw its objection.
10. On 11 August 2017 the Opponent filed Form TM7 (Notice of Opposition), including its statement of grounds. It also included submissions setting out why the Opponent considered that the Registry should admit the opposition.
11. On 22 August 2017 the Registry wrote to the Applicant informing it that the opposition had been filed and that the Registry's preliminary view was to allow the opposition to be admitted. The Applicant replied setting out written submissions as to why it disagrees with the preliminary view and requested this hearing.

## **The law**

12. Opposition to registration of an application is provided for by Section 38 of the Trade Marks Act 1994 (“the Act”). Section 38(2) states:

*“Any person may, within the prescribed time from the date of the publication of the application, give notice to the registrar of opposition the registration.*

*The notice shall be given in writing in the prescribed manner, and shall include a statement of the grounds of opposition.”*

13. It is rule 17(2) of the Trade Marks Rules 2008 (“the Rules”) that gives the prescribed time under s38(2) as *“the period of two months beginning with the date on which the application was published.”*

14. It is rule 17(3) that provides that where, before the expiry of the period referred to in rule 17(2) *“a request for an extension of time for the filing of Form TM7 has been made on Form TM7A ... the time prescribed for the purposes of section 38(2) in relation to any person having filed a Form TM7A ... shall be the period of three months beginning with the date on which the application was published.”*

15. It is also relevant to note that rule 74(1) allows that *“the registrar may authorise the rectification of any irregularity in procedure (including the rectification of any document filed) connected with any proceedings or other matter before the registrar or the Office.”*

## **The parties’ submissions**

16. The Opponent submits that the Form TM7A was completed incorrectly as a result of *“an administrative error ... such that the Applicant’s address was inserted in response to question three of the form in place of that of the Opponent.”* The Opponent submits that Registry should (i) exercise its discretion under rule 74(1) to authorise the rectification of the Form TM7A and (ii) allow the Opponent’s opposition to proceed.

17. The Opponent refers to a previous decision by the tribunal - *Unilever PLC and Saga Leisure Limited*, published as BL-O-237-09. In that case the Registry exercised its discretion to rectify the Form TM7A because it was satisfied that:

- (a) no party is going to threaten to oppose its own application, so the error was an obvious one and one capable of rectification by the Registry under rule 74(1);
- (b) in all the circumstances the Applicant was aware of the Opponent's identity;
- (c) acceptance of the Form TM7A would not lead to unfairness against the Applicant, because if the matter was not determined via an opposition, it would still be open to the Opponent to challenge the mark applied for should the application achieve registration (for example by means of an invalidity action).

18. The Opponent has submitted that the decision in Unilever involved “*identical circumstances*” and that the above reasons apply with equal force in this case. The Opponent provided further submissions and evidence to support the points (b) and (c) above and I shall refer to those later in this decision.

19. For its part, the Applicant submits that the Form TM7A was “*filed incorrectly, is inadmissible and must be refused. Because of this, the purported opposition filed by the Opponent on 11 August 2017 was not filed on time, and the Application should proceed to registration. If the Opponent is then advised to challenge it, it can.*” The Applicant’s submissions include:

- (i) a response to the Opponent’s reliance on the decision in Unilever, which it argued was distinguishable on its facts and should be considered exceptional;
- (ii) that the opponent’s name is in any event wrong both in the Form TM7A and Form TM7. The Applicant refers to three previous decisions by the tribunal that bore on the omission of a corporate signifier in an Opponent’s name;
- (iii) that the Opponent’s failure to file the Form TM7A correctly must be looked at in the context of its poor conduct more broadly in these proceedings.

20. I consider each of those three fronts in turn below. As I seek to determine whether the Opponent has complied with section 38(2) of the Act and with rule 17, and / or whether to exercise a discretion under rule 74(1) to authorise the rectification of any irregularity in any document filed, I make the following general point. While there will properly be some consistency in the approach of the tribunal, tribunal decisions do not serve as legal precedent to bind other hearing officers; clearly each case must be decided according to its facts.

**(i) Unilever is distinguishable on its fact and should be considered exceptional**

*(a) No party would threaten to oppose its own application, so the error was an obvious one and capable of rectification.*

21. The Applicant submits that the Form TM7A is a simple online form designed to be completed by a lay person; the Opponent is represented by a band 2 legal firm, which ought to have taken sufficient care when completing the box requiring the name of the Opponent. The Applicant contends that especial care was required given the similarity of the names of the Opponent and Applicant. The system generates a confirmatory copy email and it would have been possible to check and review the matters in the two days after filing the Form TM7A, before the deadline expired.

22. The Applicant points to the fact that in *Unilever*, there was an interval of nine weeks before the Applicant highlighted the incorrect name of the Opponent on the Form TM7A in that case. That delay appeared to weigh against the Applicant in that case. By contrast, in the present case the Applicant acted promptly to highlight the error both to the Registry and to the Applicant. The Applicant submits that it should not be penalised for acting properly.

23. I note too error on the part of the Registry in the ill-founded reassurance given in its letter of 19 July 2017, which appears to have arisen from a misapprehension of the situation by the trade mark examiner.

24. The Opponent acknowledges that its error in providing its details is regrettable, but submits that it would have been obvious to the Applicant that the Opponent was the organisation with the same name as it. The Opponent and the Applicant know each

other well and the Applicant's Chairman had previously worked for the Opponent. Moreover, since February 2017 the parties had been engaged in ongoing dialogue concerning the Opponent's resistance to the Applicant's use of the City Harvest brand. The Opponent highlights various emails showing discussions to that effect, which I refer to at point (b) below.

*(b) In all the circumstances the Applicant was aware of the Opponent's identity*

25. The Applicant distinguishes the present case from *Unilever* as in the latter case the Applicant knew the identity of the Opponent as there had been pre-action correspondence between the parties and the identity of the opponent's counsel was known to the applicant. In the present case the Applicant submits that it had "*absolutely no knowledge of who DLA Piper represented at the time that the Form TM7A was filed*", explaining as follows:

- neither the Applicant nor its representatives had had any contact with DLA Piper prior to the filing of the Form TM7A;
- the Applicant's motivation for filing the Application was driven by an unrelated dispute with a third party. It was possible that DLA Piper represented that third party (or indeed, another third party) and not the Opponent, at the time the Form TM7A was filed;
- DLA Piper did not inform the Applicant or its representatives that it acted for the Opponent until it sent its letter of 31 July 2017, some three weeks after filing the Form TM7A and two weeks after raised this issue with the Registry; and
- whilst there had been some discussions directly between the Opponent and the Applicant via their respective officers, the Opponent had provided absolutely no indication that it was represented by DLA Piper.

26. Submissions on behalf of the Applicant in this case referred to the view expressed by the Hearing Officer in the *Unilever* decision that it is a "*fundamental right of an applicant to know the identity of a party who seeks to challenge him.*" The Applicant

submits that knowing the identity of an opponent is part of securing a right to fair trial, which right is safeguarded by Article 6 of the European Convention on Human Rights. The Applicant submits that since the Registry is a public authority, and thus bound by the Human Rights Act 1998, it must act in a way that is compatible with the Convention. Moreover, primary and subordinate legislation must, so far as is possible, be read and given effect in a way that is compatible with the Convention rights.<sup>2</sup> The Applicant submits that to admit the Form TM7A in circumstances where the Applicant had no idea who the Opponent was, amounts to a breach of a fundamental right and of Article 6 of the Convention.

27. Submissions from the Opponent include the following points.

- It denies that the Form TM7A did not inform the Applicant who was seeking to oppose its Application, submitting that “*the Opponent is the entity named on the form - City Harvest.*”
- It contests the submission by the Applicant that it was not until the Applicant received the Opponent's letter of 31 July 2017 that it became aware that DLA Piper represented the Opponent. The Opponent submits that it was known to the Applicant that DLA Piper represented the Opponent from “*at least some point after 2 June 2017*”, which is the date on which the Opponent filed for an EU trade mark. In support of that assertion, the Applicant submits that “*certainly, by 11 July 2017 (prior to the deadline to oppose the UK mark on 12 July 2017), the Applicant was aware that DLA Piper represented the Opponent as [the Applicant's Chairman] wrote to the Opponent and made reference to the EUTM application ... The Opponent's EU trade mark application included the same reference number given on the form TM7A (RPH/AM/389584/1), and DLA Piper was clearly listed as the Opponent's representatives for the purpose of that application.*”
- Although the Applicant notified both the Registry and DLA Piper of the mistake one week after receiving the form TM7A on 10 July 2017, the Applicant highlights

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<sup>2</sup> Section 3(1) Human Rights Act 1998.



various emails between the parties that clearly show the Opponent's resistance to the Applicant's use of the City Harvest brand. Those documents include:

- (i) an email dated 21 May 2017 from the Applicant's Chairman to the Chairman of Opponent, following up on a meeting between those two on 15 May 2017 and recording that the Chairman of Opponent had insisted that the Applicant "*change [its] name*";
- (ii) an email on 26 June 2017 from the Chairman of Opponent, informing the Applicant's Chairman that "*City Harvest and our board take deep exception to City Harvest (London)'s appropriation of our trademark*" and that the Opponent "*believes its trademark is an important corporate asset*" and that it would "*be contesting your UK trademark application on the use of our name*";
- (iii) an email on 13 July 2017 from the Chairman of Opponent to the Applicant's Chairman that included the statement "*as you are undoubtedly aware, City Harvest has filed notice of its intention to oppose your trade mark filing and intends to vigorously defend our trademark.*"

(c) *Acceptance of the Form TM7A would not lead to unfairness against the Applicant*

28. The Applicant further distinguishes the Unilever case, submitting as follows. "*The Unilever application was itself subject to more than one opposition. To refuse the rectification of the form TM7A in Unilever would have led to unnecessary delays and uncertainty as the Opponent would have been required to wait for the corresponding opposition to end before having the opportunity to invalidate any resultant registration. That is not the case here as no other forms TM7 A or TM7 have been filed against the Application. There will be no prejudice to the Opponent: it simply has to file an invalidation action after registration. The costs and procedures being essentially the same for an opposition and an invalidity application at the Registry, the Opponent will not be materially affected by its mistake.*"

29. The Applicant submits that "*each day the registration of the Application is delayed, the greater the Applicant is being penalised by not having a registration to use and enforce in the UK. It is the Applicant, not the Opponent, who will be disproportionately*

*penalised by any delay in the registration of Application. This delay is contrary to the established principles of justice. Refusing the NTO would mean that the Opposition is inadmissible. This would allow the Opponent to get its house in order before filing an invalidity application, should it wish."*

30. For its part, the Opponent submits as follows: "*The Applicant has accepted that if the Opponent's challenge to the application by the Applicant is not dealt with via opposition, it will still be open to the Opponent to challenge the registration should the application achieve such status (e.g. by way of invalidation). The Opponent submits that this actually supports its own position in the Registry allowing its application to succeed. The Opponent maintains that allowing the opposition to proceed is less likely to lead to delay, will be fairer to both parties and represent a better use of the parties' and the Registry's resources than for the Opponent's challenge to be dealt with by invalidation or other proceedings in the future."*

**(ii) The opponent's name is in any event wrong in Form TM7A and TM7**

31. The Applicant submits "*further and in the alternative*" that by the Opponent's referring to itself not as "City Harvest, Inc" (as it is recorded in the New York Department of State Division of Corporations) but simply as "City Harvest", the Opponent has failed to specify its correct legal name in the TM7 filed on 11 August 2017. The Opponent uses the same description in both Forms TM7A and TM7 and in correspondence to the Registry and to the Applicant's representatives.

32. The Applicant cited Article 2 of the Trade Marks (Relative Grounds) Order 2007 (the Order), which states:

*"The registrar shall not refuse to register a trade mark on a ground mentioned in section 5 of the Trade Marks Act 1994 (relative grounds for refusal) unless objection on that ground is raised in opposition proceedings **by the proprietor of the earlier trade mark or other earlier right.**"<sup>3</sup>*

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<sup>3</sup> (emphasis as added by the Applicant)

33. The Applicant highlighted three previous decisions by the Registry as follows:

- *“In Living Ventures Restaurants Limited v Gusto Inns Ltd (BL-O-228-08), the Hearing Officer had to consider the meaning of “proprietor” in Article 2 of the Order in circumstances where an opponent had filed a statement of grounds in the name of a registered company which did not own the relevant trade marks.*

*The Hearing Officer referred to the Collins English Dictionary (5th Edition) and found that a proprietor is “a person that enjoys exclusive ownership to some property”. He concluded that a person could be “an individual human being (a natural person) or, alternatively, a “legal person” such as an incorporated company”. This is a binary position. However, in the present case, the Opponent is neither of these. What has been used is merely a brand name from New York City, USA. Therefore, the Opponent cannot be a proprietor within the meaning of Article 2 of the Order, and the TM7 cannot be admitted in any event.*

- *The Applicant refers to Staywell Hospitality Pty Limited v Sheraton International Inc. (BL-O-328-17), where the Hearing Officer declined to admit an opposition where it had been brought in the name of the wrong entity.”*
- At the hearing the Applicant’s representative also referred to the decision in Vape & Co (BL-328-17). In that decision the Opponent’s name on the Form TM7F was given as “The London Vape Company”, whereas the proprietor of the earlier trade mark is recorded on the Trade Marks Register as “The London Vape Company Ltd”. The Hearing Officer stated that *“this may appear a trivial difference”* but noted its significance in relation to Article 2 of the Order cited above. In that case the Hearing Officer chose to regard the failure to include the word “Ltd” on the Form TM7F as *“simply a slip on the part of the person completing the Form on the opponent’s behalf.”* The Hearing Officer therefore proceeded on the basis that the opponent (as recorded on the Form TM7F) and the proprietor were one and the same. However, it is noted that unlike the present decision, Vape & Co included the following factors: that the Opponent was without professional representation in

the proceedings, and that the slip was not picked up by the tribunal and or commented on by the applicant.

34. For its part, the Opponent denies an error in the fact that the Form TM7 refers to City Harvest. The Opponent submits that *“the form itself was completed this way to maintain consistency with the (incorrect) TM7A. However, it is submitted that it is clear from the TM7 and accompanying Statement of Grounds that it is City Harvest, Inc. which is the full corporate name of the Opponent, which trades as and is known as “City Harvest”. If the Registry is minded to allow the TM7A to be rectified, it should also allow the TM7 form to be rectified on the same basis. It is submitted that this case is different to the case of PARK REGIS (O-356-10) given that in that case there were two potential corporate entities that could have been bringing the opposition, and the one wrong was referred to in the forms. In this case, there is only one corporate entity, City Harvest Inc.”*

**(iii) The opponent’s conduct**

35. The Applicant submits that *“the Opponent’s failure to file the Form TM7A correctly must be looked at in the context of its poor conduct more broadly.”* The Applicant points to mistakes by the Opponent, additional to the error in the Form TM7A, that its claims are *“indicative of a sloppiness that suggests a lack of due care and attention.”* For example, it points to a discrepancy in the “opposition notification date” given on the Form TM7 and to a failure to specify the number of pages included in the Form TM7, *“such that considerable time had to be wasted to determine which pages were missing.”*

36. The Opponent denies that such errors were made and explains matters in the context of difficulties in fax transmission of the Form TM7 form as it was too large to go through in a single transmission, and that in subsequent telephone conversations with DLA Piper the Registry acknowledged satisfactory resolution of such difficulties. The Opponent therefore submits that the Applicant's submissions in this regard are ill-founded and should be disregarded.

## Decision

37. The Applicant's representative, working on a *pro bono* basis, has made vigorous and thorough submissions in this matter. It has highlighted points that distinguish the present circumstances from those in *Unilever*, the previous decision of the tribunal to which the Opponent refers in support of its position. The circumstances are plainly not identical, although *Unilever* did deal with a broadly comparable issue – whether to admit a flawed TM7A where the Opponent mistakenly gave details of the Applicant as those of the Opponent.
38. I agree that the form is not complicated and that care must be taken in filing legal forms. I also agree that it may be reasonable to expect a higher standard of diligence and accuracy where forms are submitted by professional representatives with experience and reputations in the field. The essence of my task is to determine the significance of human errors in this case and their fair and proper consequences.
39. The erroneous advice contained in the Registry's letter to the Applicant dated 19 July 2017 is regrettable. However, it is also the case that since the Applicant would have not been under the apparent misconception of the examiner, and would have known that it was in receipt of a threatened opposition from someone, apparently in the name of City Harvest, it is unlikely that the Applicant could have reason to rely on the assurance offered in the letter from the examiner.
40. The Opponent submits that the error is obvious and capable of rectification under rule 74(1). I agree that the error is obvious as the Applicant would have known that it was not its own opponent. The error is also capable of being rectified by the Registry. The Opponent argues for rectification based on its assertion that the identity of the Opponent was known to the Applicant.
41. That assertion is in part based on the possibility that the Applicant could have noted the unique reference number and the name of the legal representatives that appeared in the Opponent's EU trade mark application, of which the Applicant was apparently aware (based on the Applicant's mention of the EUTM in its email of 11 July 2017, within the initial opposition period). Assuming the Applicant had taken note of those

details within the EUTM application, it could have noted too that those details were the same as in the Form TM7A.

42. At the hearing, the Applicant objected that to expect such cross-referencing in order to establish the identity of the Opponent submitting the Form TM7A should be considered onerous and unrealistic of professional trade mark practice. I agree. In this case, unlike *Unilever*, there has been no pre-action correspondence involving the parties' respective legal representatives and I do not consider it reasonable to find that the Applicant knew that DLA Piper represented the Opponent at the time it filed the Form TM7A.
43. The Applicant submits that other considerations would have meant that the Applicant would have known the identity of the Opponent, despite the error within the Form TM7A.
44. Firstly, the name of the Opponent is given as City Harvest, which is the name used by the Opponent. Given that it omitted the "Inc", the name appears to be that of the Applicant, but I agree that it may also be reasonably taken to identify the Opponent.
45. Secondly, although the Applicant has indicated that it had reason to fear opposition to its trade mark from a particular UK-based third party, no detail on that point has been submitted or evidenced. By contrast, there is clear evidence from the email dated 26 June 2017 between the respective Chairpersons of the parties in this case that the Applicant was aware of a strong and explicit intention of the City Harvest, Inc to oppose the Applicant's UK trade mark application. Likewise the email dated 13 July 2017, sent one day after the end of the initial two month opposition period, clearly reports that City Harvest Inc had filed notice of its intention to oppose the Applicant's application.
46. No other party in fact filed a Form TM7A or TM7, so whilst the Opponent filing the Form TM7A might theoretically have been another party describing itself as City Harvest and wrongly providing the Applicant's address, I find that taking the above factors as a whole, any mystery as to the Opponent's identity could scarcely have

been deep. I find it likely that the Applicant in fact knew the Opponent to be City Harvest Inc.

47. I do not find that the administrative error in the Opponent's details breaches a right under Article 6 of the European Convention of Human Rights. At any stage during the two month opposition period it is open to anyone to oppose or make observations on an application. An applicant would have no advance notice of that before the same was relayed by the Registry. An applicant has no fundamental right to forewarning of the identity of any such prospective opponent during the opposition period. Given that the effect of submitting a Form TM7A is essentially to request an extension to the opposition period, I do not see that such a right then arises in respect of that extra one month period.
48. Having said that a notice of threatened opposition serves primarily as a request to extend the period of opposition,<sup>4</sup> it does also have the effect of giving notice to an applicant that there is a party who may oppose within the prescribed period – specifically within 3 months from the date that the application was published for opposition. An applicant must be able to contact the opponent, not least to establish the grounds of the opposition and to be able to decide whether to continue with the application or to abandon it without putting the opponent (or the applicant) to the expense and time of filing a notice of opposition. If an opponent does not file a Form TM7A, the opponent will not be able to claim back the TM7 fees or any costs of filing an opposition if the applicant decides not to defend an opposition / its application.
49. Clearly the details of the opponent given in a Form TM7A are important and any mistakes therein are far from desirable. However, where an opponent is legally represented, also important are the details of such legal representative. In the present case, the Form TM7A gave the contact details of the Opponent's representative as DLA Piper, with a unique reference number, and contact details in the form of a direct employee email address and telephone number to be used "*in case of query*". Although under no obligation to have done so, the Applicant's representatives might

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<sup>4</sup> see rule 17(3)

reasonably and easily have contacted DLA Piper to resolve any uncertainty as to the identity of the Opponent.

50. As to the fact that both the Form TM7A and Form TM7 gives the Opponent's name as City Harvest, rather than City Harvest, Inc, I note the submissions from the Opponent that that maintained consistency between the forms. That point makes sense on some level, although the matter might reasonably have been made clearer by other means.
51. In any case I find that there is no doubt as to the identity of the Opponent entity in this case, and the same party<sup>5</sup> who filed the Form TM7A filed the Form TM7. I note that the Opponent's Statement of Grounds and its related Annex in the Form TM7 both include within their headings "IN THE MATTER of an Opposition .. by City Harvest, Inc." Moreover, the Applicant's Chair served for five years as a Board Director with the Opponent.
52. I have considered the submissions as to what course of action would best serve fairness and the interests of the parties (and the Registry). The Applicant has secured its filing date for priority, and I can see little advantage to the Applicant were its mark permitted to be immediately registered. The Applicant could scarcely rest with a sense of security in the protection of its mark as it seems certain that the Opponent would pursue an invalidity action on the same grounds. The evidence to be collected and the arguments to be presented would be the same as for an opposition.
53. The situation is that despite the numerous issues that have presented thus far in this opposition, the Registry and Applicant are now in receipt of a notice of opposition. The opposition paperwork, now in order, sets out the grounds, identifies the Opponent and claimed prior rights. Having now weathered the bumps en route, errors amended, all paperwork successfully relayed, it seems to me that it would not be the best use of resources to set a new course. Rather it seems preferable to avoid a multiplicity of proceedings and to allow the opposition to proceed.

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<sup>5</sup> As required by rule 17(3).



54. In all the circumstances I uphold the Registry's preliminary view of 22 August 2017 that there was a clear intention by the Opponent's representative to file a Form TM7A on behalf of its client, the Opponent. Therefore the deadline for opposing the application was duly extended and the resulting Form TM7 will be permitted into the proceedings. I *de facto* authorise rectification of the irregularities in both TM7A and Form TM7. If appropriate, any matters of costs may be considered as part of the any final decision in this case.

**Dated this 4th day of October 2017**

**Matthew Williams**  
**For the Registrar,**  
**The Comptroller-General**