



TRADE MARKS ACT 1955

DECISION OF A DELEGATE OF THE REGISTRAR OF TRADE MARKS WITH REASONS

**Re: Opposition by DISTILLERS UNION OF MYTILENE LIMITED to Application No
597459 in the Name of DERKO LIQUOR IMPORTERS PTY LIMITED**

Application no. 597459 was lodged on 5 March 1993 in the name of DERKO LIQUOR IMPORTERS PTY LIMITED. ("the applicant"). It sought the registration of a trade mark consisting of the words OUZO MINI together with a device of a dancing girl wearing a short pleated skirt, the pleats forming the word MINI. The goods in respect of which registration was sought were "alcoholic beverages (except beers), including wines and spirits". The application was accepted for registration, subject to a claim to vary in respect of the word OUZO and a disclaimer of the word MINI, and was advertised as such in the *Official Journal* of 10 March 1994. Notice of opposition to the registration of the trade mark was lodged in accordance with s49 of the Act on 23 May 1994 by DISTILLERS UNION OF MYTILENE LIMITED ("the opponent"). Evidence in support of the opposition therefore became due for service on the applicant on 23 August 1994 in accordance with reg 43. In the absence of such evidence being served the matter of the opposition was set down for hearing in Sydney on 3 March 1995. Mr Tim Gaspar of Mallesons Stephen Jaques, solicitors, appeared for the opponent and Ms Sandra Gibbons of Baker & McKenzie, solicitors, for the applicant.

At the hearing I informed both parties that in the absence of any evidence to support any of the grounds set out in the notice of opposition I had no option but to dismiss the opposition. At the request of the parties, however, I agreed to defer the issue of my decision for a period of ten

days, and further if both agreed. Following subsequent representations I have reserved my decision until further notice.

The solicitors for the opponent have now lodged an application for the assignment of the trade mark from the applicant to the opponent supported by a properly executed deed of assignment. This documentation has been examined and found to be in order.

My decision in the matter therefore is that the opposition is dismissed. I direct that the trade mark is to proceed to registration in the name of the applicant DERKO LIQUOR IMPORTERS PTY LIMITED but that on registration the trade mark be immediately assigned to the opponent DISTILLERS UNION OF MYTILENE LIMITED.

I make no award as to costs.

Michael Homann
Hearing Officer

30 May 1995