



TRADE MARKS ACT 1995

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

Re: Opposition by Q-ZAR Technology Limited to the registration of trade mark applications 643921, 643922 and 643923 in the name of Scee Nominees Pty Ltd, Ber Nominees Pty Ltd and Raleana Investments Pty Ltd

Under the transitional provisions of the *Trade Marks Act 1995*, the provisions of, and regulations under, the *Trade Marks Act 1955* continue to govern the matter.

The above mentioned trade mark applications were lodged on 25 October 1994 by Scee Nominees Pty Ltd, Ber Nominees Pty Ltd and Raleana Investments Pty Ltd (the applicants). Application 643921(41) is for the registration of the trade mark QUASAR, and applications 643922(28) and 643923(41) seek registration of the trade mark Q-ZAR. The goods and services in respect of which registration is sought are:

Class: 28

All goods in this class, particularly toy guns and pistols of all descriptions including accessories for the same

Class: 41

Entertainment, amusement and recreational services provided in relation to the operation and provision of amusement centres offering live action gaming and video games together with education services relating to the operation of such a live action game or games and such an amusement centre or centres

Following examination the applications were accepted and advertised as such on 9 November 1996 (643921) and 14 December 1995. On 8 May 1996 (643921) and 13 June 1996, after seeking and receiving extensions of time in which to do so, Q-Zar Technology Limited lodged notices of opposition to the applications.

Evidence in support of the opposition consisting of a statutory declaration by John Andrew Waters of Philips Ormonde & Fitzpatrick, patent and trade mark attorneys, and evidence in answer comprising a statutory declaration by Scott Harold Robinson, Director of Scee Nominees Pty Ltd, was duly lodged and served.

The Hearing was before me, as delegate of the Registrar, in Canberra on 22 April 1999. The opponent was not represented. I understand from correspondence on the file that the opponent is now uncontactable by its attorneys who have advised that they now no longer act for the opponent. The applicants were represented by its attorney, Mr Peter Caporn of the firm Wray & Associates of Perth, who made submissions on behalf of his clients by telephone.

The submissions

In short, Mr Caporn argued strongly that the evidence lodged in support of the opposition does not support the proposition, under section 40 of the Act, that his clients are not the owners of the trade marks. He submitted that, in fact, the evidence lodged in support of the opposition lends strength to his clients' position that they are the proprietors of the trade marks.

Discussion

I agree with Mr Caporn. I must state that I find that the evidence lodged in support of the opposition is ambiguous, unsatisfactory and not capable of supporting a finding. The statutory declaration on which the opponent relies mentions amusement centres and games equipment but does not tie the trade marks in question to such goods or services. The statutory declaration alleges the existence of various assignments and agreements in relation to the goods and services themselves but these are not in evidence. It is not specifically mentioned in the statutory declaration whether these purported agreements transferred the trade marks in question.

There are various unexecuted deeds of assignment between a party other than the applicants and the opponent in evidence; there is also evidence of assignment of trade marks that are allegedly connected with the trade marks in suit, but these concern quite different trade marks.

Finally, there is an unexecuted deed of assignment of the trade marks in suit which was presented by the opponent to the applicants for execution. The inference that I draw from this is that the opponent, certainly at that time, believed that the applicants could, (as proprietors of the trade marks in question), legally assign the trade marks. If the applicants were not the true proprietors of the trade marks, the assignments could not have been validly made.

Decision

I dismiss the oppositions and allow that the applications, subject to any appeal from my decision, may proceed to registration.

Costs

The applicant, having been successful in these proceedings is entitled to its costs.

Ian Thompson
A/Hearing Officer

27 April 1999