



## **TRADE MARKS ACT 1955**

### **STATEMENT OF GROUNDS FOR A DECISION OF A DELEGATE OF THE REGISTRAR**

Opposition by THE ROYAL AUSTRALIAN COLLEGE OF OBSTETRICIANS AND GYNAECOLOGISTS to Application No 654050 in the Name of COGUS PTY LTD

On 21 February 1997 I issued a decision refusing application 654050 in the name of Cogus Pty Ltd. By letter dated 27 May 1997 I have now been requested by the agents for the applicant, Kennetan, Solicitors & Consultants, to furnish a statement of the grounds upon which the decision was made pursuant to the provisions of the *Trade Marks Act 1955*.

Although the *Trade Marks Act 1995* commenced on 1 January 1996, as provided in the transitional provisions of Part 22 of that Act the provisions of the repealed *Trade Marks Act 1955* continue to govern this opposition. Accordingly, unless otherwise specified, any reference to the Act in this decision is a reference to the *Trade Marks Act 1955*.

The application concerned, seeking the registration of the word or acronym COGUS, was lodged on 24 February 1995 and accepted for registration on 13 December 1995 in respect of “clinical obstetrical and gynaecological ultrasound services”. The acceptance was advertised on 4 January 1996 and in accordance with s49 of the Act notice of opposition was given to the registration of the trade mark by The Royal Australian College of Obstetricians and Gynaecologists (RACOG) on 4 April 1996.

Evidence in support of the opposition was served on the applicant by the opponent on 3 July 1996 in accordance with reg 43. As no evidence in answer to the opposition was served by the applicant within the time prescribed by reg 44, by letter dated 15 January 1997 both parties were informed that if neither party requested a hearing of the matter within one month from that date the Registrar proposed to decide the opposition on the basis of the material on file. As no request was received within that time I proceeded to issue my decision which was to refuse the application.

The opponent's evidence consists of a declaration made 28 June 1996 by Dr Hugh Peter Robinson MD (GLAS) FRCOG FRACOG DDU COGUS, together with Exhibits HPR-1 to HPR-12, a fellow and sometime member of the State and Federal committees of RACOG. Dr Robinson states that he is a specialist in diagnostic and clinical obstetrical and gynaecological ultrasound, that he has been a medical practitioner for 29 years and concerned in the use of ultrasound in the clinical field of obstetrics and gynaecology since 1970. He is Head of the Ultrasound Department at the Royal Women's Hospital, Melbourne. As a member of the Federal Council of RACOG he became involved in a sub-specialisation committee which was responsible for overseeing the development of all aspects of formal sub-specialist training to be offered by RACOG to its members in order to obtain sub-specialist qualifications. One of the established sub-specialties was obstetrical and gynaecological ultrasound. The committee went on to establish a syllabus and training course to allow members of RACOG to obtain formal accreditation and qualifications in the field. In 1987 it was determined by the committee that the sub-specialisation qualification to be offered by RACOG would be known as COGUS, an acronym for "Certification in Obstetrical and Gynaecological Ultra-Sound". The documents notifying members of RACOG that the new sub-specialty was to be offered contained numerous references to it by its acronym COGUS. These documents are exhibited to the declaration at HPR-3. Dr Robinson notes that both directors of the applicant company were members of RACOG. One of them was approached by RACOG in 1989 in relation to obtaining the COGUS qualification. A total of 26 members of RACOG were accepted under "grandfathering" provisions by which a practitioner sufficiently experienced in the field of diagnostic ultrasound could obtain the COGUS qualification without having to participate in the formal course. In 1992 the first person to complete formal training was awarded the qualification.

Dr Robinson goes on to note that while any College can confer any qualification it wishes, it is customary for such bodies to apply to the National Specialist Qualification Advisory Committee (NSQAC) to have the qualification formally recognised. Recognition allows holders of recognised qualifications (and their patients) to claim payments by insurance organisations as a specialist. On 22 September 1992 NSQAC notified RACOG that it had accepted RACOG'S application for recognition of COGUS as an appropriate sub-specialty.

RACOG has, declares Dr Robinson, since the inception of the sub-specialty course referred to it by the acronym COGUS. Exhibited to the declaration are samples of various documents attesting to such use. At the time of the examiner's search of relevant indexes in the course of examination of the applicant's application the examiner would not have been able to determine that the acronym was already being used by RACOG.

By the uncontradicted evidence of Dr Robinson, therefore, as early as 1989 the acronym COGUS was in use by members of RACOG to indicate a qualification in a sub-specialisation in the very field of me<sup>l</sup>dical services for which the applicant sought to register its trade mark. Quite clearly then, as at the date of application, 24 February 1995, the acronym COGUS was not distinctive or capable of becoming distinctive of the applicant's services in terms of ss24 and 25 of the Act nor could the applicant, as of the same date, claim to be the proprietor of the mark in terms of s40 of the Act. The acronym COGUS was not therefore a registrable trade mark as at the date of application and was thus refused registration.

Michael Homann  
Hearing Officer

5 June 1997