

## WHAT HAPPENS AT THE HEARING?

- Before the hearing, the Hearing Officer will introduce himself/herself to the parties involved and briefly explain the procedures to be followed.
- At the hearing, the Hearing Officer ensures that all parties to the proceedings have adequate opportunity to present their case.
- The hearing will be recorded on audiotape and the Hearing Officer will take notes.
- The Hearing Officer may adjourn the hearing at the request of the parties involved or to consider matters raised at the hearing.

You can read more about Trade Mark Oppositions and review the Trade Marks Regulations referred to in this brochure by visiting IP Australia's Internet site at [www.ipaustralia.gov.au](http://www.ipaustralia.gov.au).

### FOR MORE INFORMATION

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**phone** (02) 6283 2999

**email** [Tmhelpline@ipaustralia.gov.au](mailto:Tmhelpline@ipaustralia.gov.au)

\* prescribed under the *Trade Marks Act 1995* and Regulations, Schedule 9, Regulation 21.21

\*\* you can review the powers of the Registrar in Regulation 21.15 of the *Trade Marks Act 1995*.



# ARE YOU REPRESENTING YOURSELF AT A TRADE MARK HEARING?

**IF SO,  
READ THIS IMPORTANT INFORMATION...**

**IP**Australia  
PATENTS - TRADE MARKS - DESIGNS

**This brochure provides important information you need if you decide to represent yourself at a trade mark hearing.**

**Since trade mark hearings can be lengthy, complex and costly, you are advised to seek qualified legal advice before making the final decision to represent yourself.**

**Should you still choose to present your own case, it is important that you take the time to understand the following details. A contact number is provided at the end of this brochure so you can discuss your questions with IP Australia.**

## DO I NEED LEGAL ADVICE?

You are strongly advised to seek qualified legal advice before the hearing and before you make the final decision to represent yourself. Trade mark opposition hearings can be lengthy and complex. If you lose your case, you will be liable to pay both your legal costs and the costs of the other party. This can be expensive so it is best to be well advised and prepared should you wish to continue to represent yourself.

## HOW DO I KNOW WHEN THE HEARING WILL BE?

You will be sent a formal hearing notice which tells you when and where the hearing will take place.

## DO I HAVE TO PAY FOR THE HEARING?

Yes. The hearing notice tells you how much it costs to attend a hearing.\* You must pay this fee *before* the hearing takes place. If you do not, you will not be allowed to attend the hearing and matters will proceed without you.

The party that is unsuccessful at the hearing, will be liable to pay their own costs and the costs of the other party.

## HOW DO I FILE MY EVIDENCE?

You must file your evidence in a declaratory form.

If the hearing is in relation to opposition, then the evidence the parties wish to present in the proceedings must be served and filed before the hearing. No new material can be admitted at the hearing which the other party to the opposition has not been notified of. This is because the other party has the right to prepare a response to any evidence relating to the opposition. The steps in the process of serving and filing evidence are provided in Part 5 of the Trade Marks Regulations.

## WHAT HAPPENS IF I WANT TO FILE FURTHER EVIDENCE?

- There may be times when a party to an opposition wants to serve additional evidence after the formal evidence is complete. The procedure for doing so is set out under Regulation 5.15 of the Trade Marks Regulations.
- If you apply to file further evidence at the hearing, and if you follow the correct process for doing so, the Hearing Officer may accept your request to serve additional evidence. You should consider this step carefully, however, since introducing fresh evidence at this stage can lead to strenuous objections from the other party. You may also be liable for additional costs to that party.

## WHO IS IN CHARGE OF THE HEARING?

Hearings on trade marks are conducted by delegates of the Registrar of Trade Marks (usually Hearing Officers or Senior Examiners). These officers will take submissions and make decisions on trade mark matters at hearings. At the hearing, you may address the delegate as 'Hearing Officer'.

A hearing is not a court of law. The Hearing Officer controls the procedures and has full authority for, the hearing.\*\*