

TXR
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The Registrar of Trade Marks
PO Box 200
WODEN ACT 2606

SPRUSON & FERGUSON
Sydney NSW
Speed Dial 509

9 May 1995

Our Ref. : 327/K:PLK:BBE
Telephone Contact : Brian Elkington

Dear Sirs

Re: America's Cup Properties, Inc.
Australian Trade Mark Application No. 557355

We refer to the Examiner's report dated 29 September 1992 and consent to the requested association.

As the cited application has been withdrawn, we assume the citation will be withdrawn.

With regard to the distinctiveness objection, the Hearing Officer's decision in the New York Yacht Club case was based upon an interpretation of the Deed of Gift without benefit of the additional information and documentation which is now available to the Examiner. We refer the Examiner to the Statutory Declaration of G. Wytie Cable, IV, the original of which was submitted as evidence in the opposition by America's Cup Properties, Inc to trade mark application No. 515111. The Hearing Officer was particularly concerned that, unlike the WORLD SERIES CRICKET or DAVIS CUP marks and the Olympic symbols, there did not appear to be a single body which had rights in the AMERICA'S CUP marks and which would retain those rights regardless of which yacht club happened to obtain possession of the trophy. From this, the Hearing Officer concluded the public would be confused as to who actually owned rights in the AMERICA'S CUP marks.

As the above-referenced Declaration clearly establishes, there is indeed a single body with whom the goods or services may be perpetually identified. Therefore, the reasoning in the New York Yacht Club decision is inapplicable to the present case.

It is submitted that the Declaration demonstrates that the applicant is the rightful proprietor of the AMERICA'S CUP and CUP Device trade marks and that no other person can claim proprietorship of those marks.

Reconsideration is requested.

Yours faithfully
SPRUSON & FERGUSON

AUSTRALIAN INDUSTRIAL
11 MAY 1995
PROPERTY ORGANISATION
SYDNEY

PATRICIA KENNEDY
Legal Practitioner

TXR

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The Registrar of Trade Marks
PO Box 200
WODEN ACT 2606

SPRUSON & FERGUSON
Sydney NSW
Speed Dial 509

12 September 1995

Our Ref. : 327/K:PLK:BBE
Telephone Contact : Brian Elkington

Dear Sirs

Re: America's Cup Properties, Inc.
Australian Trade Mark Application No. 557355
AMERICA'S CUP in Class 3



We refer to the Examiner's report dated 18 August 1995 and are surprised and disappointed at the offer of Part B acceptance in the face of overwhelming evidence that Part A acceptance is appropriate. The Examiner's reason for offering only Part B acceptance is that the applicant's similar marks were registered in Part B in the United Kingdom. It is our understanding (and, indeed, we are repeatedly told by Examiners) that each application is examined on its own merits and that acceptance or rejection of an application in another jurisdiction is barely persuasive, let alone dispositive. Additionally, in the present case, the Examiner has concluded that words AMERICA'S CUP are deceptively similar to the AMERICA'S CUP device most of the applications for which have been accepted in Part A (the others are not yet accepted but Part A has been offered). Why is it that one set of deceptively similar marks is registrable in Part A and the other set only in Part B?

The Examiner's refusal to recommend Part A acceptance for this mark is particularly disturbing in light of the acceptance in Part A of (now withdrawn) application A515111, which was a mark consisting only of the words AMERICA'S CUP filed by a party which clearly had no claim whatsoever to proprietorship of the mark. This application was accepted in Part A for all goods in Class 3, (i.e. it was exactly the same mark for exactly the same goods for which the applicant is now offered only Part B acceptance). The merits of the present application establish quite convincingly that Part A acceptance is appropriate.

After reviewing the Statutory Declaration of G. Wytie Cable, IV, the Examiner correctly concludes that the applicant is the rightful proprietor of the mark. However, in spite of this same evidence, the Examiner maintains that the mark is not distinctive of the applicant's goods. Surely, the Examiner is not asserting that other traders have an equal right to use these words as a trade mark? Such notions were laid to rest by Mr Cable's Declaration.

To deny Part A acceptance to the applicant's mark is to ignore the realities of the marketplace, both in Australia and around the world. Mr Cable's Declaration states, in paragraph (g), "My Company now has the legal authority to control all use of "AMERICA'S CUP" trade marks through out the world and it issues licences to use these marks to each Trustee, to each challenger and to each defender of the America's Cup."

The Declaration also states that every participant in the America's Cup competition since at least 1983 has not only signed documents acknowledging the applicant's worldwide rights in all AMERICA'S CUP and AMERICA'S CUP Device trade marks, but all have assigned to the applicant any such applications or registrations not already in the applicant's name. Rights in these marks are exclusive to the applicant and the applicant can protect these rights in virtually every country in the world, including Australia (as it did in its opposition to registration of A515111). Clearly, no other company, individual, racing syndicate or yacht club can use or register any trade mark referring to or containing the words AMERICA'S CUP or a symbol of the America's Cup. Therefore, the marks cannot be less than absolutely distinctive of the applicant's goods and services.

The requirement that the applicant lodge evidence of use is inappropriate in light of the applicant's exclusive rights and the worldwide reputation enjoyed by the applicant's marks. Beyond question, the America's Cup competition is one of the most famous and well publicised sporting events around the world and, particularly over the past 12 years, has certainly become known in every household in Australia. Therefore, the costly and time consuming exercise of presenting formal evidence of use in order to establish what is already known to the Examiner, and everyone else in Australia, should not be required.

It has been established that (1) the applicant is the proprietor of the trade mark, (2) the applicant is the only entity in the world (and, therefore, the only entity in Australia) with rights to use the words AMERICA'S CUP in a trade mark and (3) the words AMERICA'S CUP are, in fact, distinctive of the applicant's goods as the trade marks comprising those words are world famous and exclusive to the applicant. These are the requirements for Part A registration and we submit most strongly that the mark is entitled to such registration.

Reconsideration is requested.

Yours faithfully

SPRUSON&FERGUSON



PATRICIA KENNEDY
Legal Practitioner

SPRUSON & FERGUSON

PATENT AND TRADE MARK ATTORNEYS SINCE 1887
GPO Box 3898
Sydney, NSW 2001
AUSTRALIA

TJK

21 October 1996

FAX : (02) 9261 5486
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TELEPHONE : (02) 9207 0777
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To : The Registrar of Trade Marks
Address : PO Box 200
Woden ACT 2606

URGENT

Fax No.: (06) 293 2278
Pages : 2, including this page.

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Attention: Mr John Chudleigh

AUSTRIA
21 OCT 1996
POSTAL TELEGRAPH TELEVISION

Our Ref: 327/J:PLK:PXL

Sir,

URGENT

Re : America's Cup Properties, Inc.
Australian Trade Mark Application No. 540474

We refer to our letter of 2 October 1996 which referred incorrectly to trade mark application 557355 and ask that you disregard that letter. Our response to the Examiner's fifth report for the above application is now enclosed.

Any inconvenience is regretted.

Yours faithfully
SPRUSON & FERGUSON



PATRICIA KENNEDY

*letter of 2/10/96
on 557355 disregarded - NFA -
now considered on
540474
jc 29/10/96*



The Registrar of Trade Marks

PO Box 200
WODEN ACT 2606

SPRUSON & FERGUSON

Sydney NSW
Speed Dial 509

TYR

2 October 1996

relodged on 5/10/96

Our Ref : 327/J/K:PLK:PXL
Telephone Contact : Pipina Lazaris

Dear Sirs

Re: America's Cup Properties, Inc.
Australian Trade Mark Application No. 557355
AMERICA'S CUP in Classes 3, 9, 12, 14, 16, 18, 21, 25, 28, 33 & 41

We refer to the Examiner's fifth report and request that the specification of goods and services of this application be amended to:

Class 14: Jewellery, precious stones, precious metals and goods in this class constructed of precious metals and precious stones; watches, clocks, horological and chronometric instruments and apparatus in this class and parts and accessories in this class for the aforesaid; coins in this class.

Class 41: Educational and information services; television and radio entertainment and production services including production of television and radio programs; organisation of sporting events and exhibitions; gaming and competition; all the aforesaid services being in relation to sailing and yachting.

Class 35: Television advertising; promotional and publicity services; all the aforesaid services being in relation to sailing and yachting.

Favourable reconsideration is requested.

Yours faithfully

SPRUSON & FERGUSON

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PATRICIA KENNEDY
Legal Practitioner

AUSTRALIAN INDUSTRIAL
03 OCT 1996
PROPERTY ORGANISATION
SYDNEY



The Registrar of Trade Marks

PO Box 200
WODEN ACT 2606

SPRUSON & FERGUSON

Sydney NSW
Speed Dial 509

TXR

2 October 1996

relodged on 5/10/96

Our Ref : 327/J/K:PLK:PXL
Telephone Contact : Pipina Lazaris

Dear Sirs

Re: America's Cup Properties, Inc.
Australian Trade Mark Application No. 557355
AMERICA'S CUP in Classes 3, 9, 12, 14, 16, 18, 21, 25, 28, 33 & 41

We refer to the Examiner's fifth report and request that the specification of goods and services of this application be amended to:

Class 14: Jewellery, precious stones, precious metals and goods in this class constructed of precious metals and precious stones; watches, clocks, horological and chronometric instruments and apparatus in this class and parts and accessories in this class for the aforesaid; coins in this class.

Class 41: Educational and information services; television and radio entertainment and production services including production of television and radio programs; organisation of sporting events and exhibitions; gaming and competition; all the aforesaid services being in relation to sailing and yachting.

Class 35: Television advertising; promotional and publicity services; all the aforesaid services being in relation to sailing and yachting.

Favourable reconsideration is requested.

Yours faithfully

SPRUSON & FERGUSON

11

PATRICIA KENNEDY
Legal Practitioner

AUSTRALIAN INDUSTRIAL
03 OCT 1996
PROPERTY ORGANISATION
SYDNEY

The Registrar of Trade Marks
PO Box 200
WODEN ACT 2606

SPRUSON & FERGUSON
Sydney NSW
Speed Dial 509

24 December 1996

Our Ref. : 327/K:PLK:TCS
Telephone Contact : Tracey Savage

Attention: Mr John Chudleigh

AUSTRALIAN INDUSTRIAL
31 DEC 1996
PROPERTY ORGANISATION
SYDNEY

Dear Sirs

Re: America's Cup Properties, Inc.
Australian Trade Mark Application 557355
AMERICA'S CUP in Classes 3, 9, 12, 14, 16, 18, 21, 25, 28, 33 & 41

We refer to your fourth report and request that you amend the Class 3, 16, 21, 25 and 28 statements of goods as requested in our letter to you (copy enclosed) of 5 July 1996.

In relation to Class 9, the applicant requires the broadest possible protection in order to protect the interests of its prospective licensees and a Statutory Declaration that the applicant intends to use or authorise use of the trade mark on all the Class 9 goods covered by the application follows shortly.

Please amend the Class 12 statement of goods to "vehicles; apparatus for locomotion by land, air or water". The applicant's New Zealand trade mark registration was accepted in Part A of the register without evidence of use and a copy of the advertisement of acceptance will follow shortly.

In relation to the objection that the words AMERICA'S CUP are not capable of distinguishing the applicant's services in Class 41, we submit that the words AMERICA'S CUP are not and should not be available for use by sailing boat and yacht builders who construct sail boats and yachts to challenge for the America's Cup unless their goods meet the specifications of the type of boat allowed to enter a particular America's Cup race, set and approved by the defender club under the authority of the applicant. If a boat builder's boats do not meet these specifications the builder is not entitled to use the words AMERICA'S CUP and any use of the trade mark by such builders is therefore under the authority of the applicant.

Please amend the Class 14 statement of goods to;

✓

"Jewellery, precious stones, precious metals and goods in this class consisting of or containing precious metals and precious stones; watches; clocks; horological and chronometric instruments and apparatus in this class; parts and fittings in this class for all the aforesaid goods; coins in this class"

This statement of goods was acceptable to the Trade Marks Office for application 540474.

The Examiner has queried the items "chilli bags", "sports bags" and "toilet bags" in Class 18. These items were accepted in Class 18 by the New Zealand Trade Marks Office and a copy of the Notice of Acceptance of New Zealand application 249061 is enclosed.

We are instructed that a "chilli bag" is a bag which keeps items cool, it is in fact a bag rather than an insulated container. Similarly, a "toilet bag" is a bag rather than a toilet/vanity case.

The "sports bags" intended to be covered by the application are bags for general use for sporting items rather than restricted to any specific sport. As the bags are not designed for any particular sport and could in fact serve other purposes we respectfully submit that these items belong in Class 18.

The objection to the phrases "all other bags in this class" and "goods made of leather and imitation leather not included in other classes" are not understood. They are not particularly broad descriptions and cover a finite number of items. As we have previously advised, this trade mark is used or intended to be used by the applicant and/or its authorised users in relation to a wide range of goods and it should not be necessary to specify every item intended to be covered. The phrases "all other bags in this class" and "goods made of leather and imitation leather not included in other classes" are not prohibited by Registration 4.4(2) and are quite clear in their meaning.

Please amend the Class 33 statement of goods to:

✓ "alcoholic beverages (except beer); wines, including sparkling wines, spirits and liqueurs"

Please amend the Class 41 statement of services to:

"television and radio entertainment and production services including production of television and radio programs; organisation of sporting events and exhibitions; gaming and competition; all of the aforesaid services being in relation to sailing and yachting"

This statement of services was acceptable in relation to application 540474 in the name of the applicant.

Favourable reconsideration is requested.

Yours faithfully

SPRUSON & FERGUSON



for PATRICIA KENNEDY
Legal Practitioner

BLACK MAGIC

*Advertised before acceptance, Section 27(1) (proviso)
Proposed to be used by the proprietor*

249061. 12 May 1995. Class 18: trunks and travelling bags including suitcases, wallets, attache cases, purses, handbags, roll bags, chilli bags, backpacks, document cases, bum bags, sports bags, toilet bags; umbrellas; all being goods in this class. TEAM NEW ZEALAND LIMITED, a New Zealand company of Level 5, Tower 2, The Shortland Centre, 55-65 Shortland Street, Auckland, New Zealand, merchant. Address for service, c/- Russell McVeagh McKenzie Bartleet & Co, The Shortland Centre, 61-63 Shortland Street, Auckland, NZ. Associated with 249060, 249062, 249063.

The Registrar of Trade Marks

PO Box 200
WODEN ACT 2606

SPRUSON & FERGUSON

Sydney NSW
Speed Dial 509

5 July 1996

Our Ref. 327/K-U:PLK:PXL

Telephone Contact : Pip Lazaris

Dear Sir

Re: America's Cup Properties, Inc.
Australian Trade Mark Application 557355, 557357-557366
AMERICA'S CUP in Classes 3, 9, 12, 14, 16, 18, 21, 25, 28, 33 and 41

Pursuant to subsection 243(3) of the Trade Marks Act 1995, we request that the above eleven trade mark applications be amalgamated.

We request that the specifications of goods in Classes 3, 9, 12, 14, 16, 18, 21, 25, 28, 33 and 41 be amended to:

- ✓ Class 3: Cosmetics; perfumes; non-medicated toilet preparations; non-medicated suntan preparations and sun creams; non-medicated preparations for the care, treatment and conditioning of the skin, hair and scalp; antiperspirants; deodorants for personal use; essential oils; shampoos; soaps.
- Class 9: Scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), lifesaving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers including magnetic and encoded cards, recording discs, data processing equipment and computers.
- ✓ Class 12: Vehicles, apparatus for locomotion by land, air or water.
- ✓ Class 14: Jewellery, precious stones, precious metals and goods constructed of precious metals and precious stones in this class; watches, clocks, horological and chronometric instruments and apparatus in this class; parts and accessories in this class; coins in this class.
- ✓ Class 16: Paper and paper articles, cardboard and cardboard articles, stationery and office requisites, pens, ink pens, pencils, ballpoint pens, paper weights, blotters, newspapers and periodicals, books, comics, cartoon strips, sign art reproductions, non photo images, photographs, mail baskets, diaries, binders, envelopes, cards, printed matter and playing cards.
- Class 18: Travelling bags, wallets, attache cases, purses, handbags, rollbags, chilly bags, backpacks, bum bags, sports bags, toilet bags, trunks and suitcases, all other bags in this class; umbrellas; goods made of leather and imitation leather not included in other classes.
- Class 21: Domestic containers (not of precious metal or coated with precious metal); glassware, porcelain and earthenware not included in other classes, brushes in this class.

✓ Class 25: Clothing, footwear and headgear

✓ Class 28: Games, toys and playthings; sporting goods

✓ Class 33: Alcoholic beverages (except beer); wines, including champagnes, spirits and liqueurs.

Class 41: Educational and information services; television entertainment and production services including production of television and radio programs; services in relation to organisation of sporting events and exhibitions; gaming and competition all being related to sailing and yachting.

With respect to the objection in Class 12, we submit that the specification for the type of boat allowed to enter a particular AMERICA'S CUP race is set and approved by the defender club (under the authority of the applicant). Therefore, given this connection between the race, authorised entrance and the applicant, we submit that the applicant is entitled to registration in this Class.

In support of this contention, we advise an application for AMERICA'S CUP in Class 12 has recently been accepted for registration in Part A in New Zealand "vehicles; apparatus for locomotion by land, air or water". We submit that the eventual registration in New Zealand should be persuasive as indicating capability of distinguishing. We refer the Examiner to the decision of the Court of Appeal in Taylor Bros. Limited v Taylor's Group Ltd (1988) 14 IPR 353, where Cooke P. stated at page 395 :

"consistency in the application of registration in the CER countries should clearly be aimed for so far as reasonably practicable".

In all the circumstances, registration of this mark would not interfere with the rights of other traders, nor deprive others of words needed to describe their goods.

In response to the Examiner's request to restrict the Class 41 specification, please add Class 35 to the application for:

"television advertising; promotional and publicity services".

Favourable reconsideration is requested following the amalgamation of these applications.

Yours faithfully
SPRUSON & FERGUSON

PATRICIA KENNEDY
Legal Practitioner

FEES:
T850 - Official Fee - Amalgamation = \$100.00
T990 - Official Fee - Adding a Class = \$150.00

TXR 49

The Registrar of Trade Marks

PO Box 200
WODEN ACT 2606

SPRUSON & FERGUSON

Sydney NSW
Speed Dial 509

19 June 1997

Our Ref. : 327/K:PLK:TCS
Telephone Contact : Tracey Savage

Attention: John Chudleigh



Dear Sirs

Re: America's Cup Properties, Inc.
Australian Trade Mark Application No. 557355

We refer to the Examiner's third report and enclose an executed Statutory Declaration from Mr Scott Chapman, director of America's Cup Properties, Inc attesting that the applicant intends to use the trade mark or authorise its licensees to use the trade mark on all the goods covered by this application in Class 9.

Please amend the Statement of Goods in Class 18 to:

"Travelling bags, wallets, attache cases, purses, handbags, roll bags, backpacks, bumbags, sports bags, toilet bags, trunks and suitcases, bags in this class; umbrellas; goods made of leather and imitation leather not included in other classes".

Please amend the Class 21 Statement of Goods to:

"Domestic containers (not of precious metal or coated with a precious metal); glassware, porcelain and earthenware not included in other classes, brushes in this class; chilly bags".

We submit that the objection that the applicant's trade mark is not capable of distinguishing its Class 12 goods should be withdrawn on the basis that the applicant is the proprietor of the trade mark AMERICA'S CUP and no other traders need to use the words AMERICA'S CUP as a trade mark to in relation to their similar goods.

In November 1986, the Royal Perth Yacht Club Inc, the New York Yacht Club and Yacht Club Costa Smerelda entered into an agreement on behalf of all America's Cup challengers which led to the establishment of America's Cup Properties, Inc, the current applicant. All rights to the AMERICA'S CUP trade mark were transferred to ACPI by virtue of this agreement.

It was to avoid the problem of different yacht clubs seeking to claim rights in AMERICA'S CUP trade marks that all parties to the agreement established the applicant company to be a permanent entity to hold the AMERICA'S CUP trade marks for the benefit of the event and the participants in each event. The current applicant is the overriding single authority having

exclusive rights to use the AMERICA'S CUP trade mark. Although America's Cup Properties, Inc may licence others to use the trade marks, it maintains control of any use of the mark, and is authorised by the participants to protect against any unauthorised use.

The America's Cup is the oldest trophy in international sport and the AMERICA'S CUP trade marks are associated with the event in the same way as the Olympic Games marks are associated with the Olympics. With the ever increasing costs of staging the AMERICA'S CUP event it is essential that the merchandising revenues from use of the AMERICA'S CUP trade marks be maximised. Without these revenues it would be difficult to stage the event. It is therefore critical to the event that the trade marks be properly protected.

The applicant has built up considerable goodwill in the AMERICA'S CUP trade mark and relies on its trade mark rights to fund the AMERICA'S CUP event. Any unauthorised commercial use of its trade marks has the effect of diluting the exclusivity which it can offer to sponsors/licensees across the range of trade mark categories and it is vital to the ongoing holding of the event that protection by trade mark registration be provided.

An AMERICA's CLASS of yacht was established by the applicant and the specifications for this class of yacht are set by the applicant and are such that any yacht in this class would also meet the specifications for the AMERICA's CUP event. No trader or yacht owner whose yacht meets these specifications would need to, nor would that trader be entitled to, use the words AMERICA'S CUP as a trade mark.

In view of the above information, we request that the Examiner reconsider his objection that other traders may need to use the words AMERICA'S CUP to refer to yachts meeting a certain formula or specification. We see no reason for any other trader to use the mark AMERICA'S CUP as a trade mark to indicate that their goods meet the specifications set by the applicant.

Favourable reconsideration is requested.

Yours faithfully

SPRUSON&FERGUSON



Tracey Savage
Legal Practitioner

IN THE MATTER of the Trade Marks Act 1953

A N D

IN THE MATTER of the Australian Trade Mark
Application No. 557355 -
AMERICA'S CUP in class 9

STATUTORY DECLARATION

I, **SCOTT CHAPMAN** of 132 Halsey Street, Freemans Bay, Auckland, New Zealand do solemnly and sincerely declare as follows:

1. I am a director of America's Cup Properties Inc ("**Applicant**"). I am duly authorised to make this Declaration on behalf of the Applicant.
2. I am aware that the Applicant has applied to register the trade mark AMERICA'S CUP in classes 3, 9, 12, 14, 16, 18, 21, 25, 28, 33 and 41.
3. I am aware that the Applicant intends to use or authorise its licensees to use the trade mark in relation to the following goods in class 9:

"scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), lifesaving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction or sound of images; magnetic data carriers including magnetic and encoded cards, recording discs, data processing equipment and computers".

AND I MAKE this solemn declaration by virtue of the Statutory Declarations Act 1959, and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

SWORN at Auckland this
6th day of ~~May~~ June 1997
before me:



Solicitor of the High Court of New Zealand



IN THE MATTER of the Trade Marks Act 1995

A N D

IN THE MATTER of the Australian Trade Mark
Application No. 557355 -
AMERICA'S CUP in class 9

STATUTORY DECLARATION

RUSSELL McVEAGH McKENZIE BARTLEET & CO
BARRISTERS AND SOLICITORS
AUCKLAND 1
TELEPHONE NO: (09) 309 8839
FACSIMILE NO: (09) 377 1849
PO BOX 8
DX CX 10085
REF: C M JONES

TXR

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The Registrar of Trade Marks

PO Box 200
WODEN ACT 2606

SPRUSON & FERGUSON

Sydney NSW
Speed Dial 509

4 September 1997

Our Ref. : 327/K:PLK:TCS

Telephone Contact : Tracey Savage

Attention: Examiner John Chudleigh

Dear Sir

Re: America's Cup Properties, Inc.
Australian Trade Mark Application No. 557355

We refer to the Examiner's sixth report and request that the objection that the trade mark is not capable of distinguishing the applicant's Class 12 be withdrawn.

Although the applicant's use of the trade mark has been restricted to "vehicles and apparatus for water", we respectfully disagree that other American sporting racing events using vehicles should be entitled to use the trade mark AMERICA'S CUP in relation to those vehicles.

As we have previously advised, the AMERICA'S CUP is the oldest trophy in International sport and other sporting events do not need to describe their trophy or event as the AMERICA'S CUP. Indeed other proprietors who refer to their sporting events as AMERICA'S CUP are suggesting an association with the applicant and its AMERICA'S CUP event/trophy. The applicant's AMERICA'S CUP is so well-known in respect of its events that if another sport were to conduct an "America's Cup" event, the public would assume some licence, sponsorship or approval of the applicant.

Furthermore, the trade mark has clearly become distinctive of the applicant's vehicles and apparatus for water and is capable of becoming distinctive of the applicant for other vehicles should it wish to use or licence use of its mark in relation to land and other vehicles. It is not unforeseeable that the applicant will licence use of its trade mark for vehicles used to transport water vehicles to/from its event or other similar uses.

The applicant's corresponding New Zealand trade mark application also proceeded to registration for the present statement of goods and a copy of the certificate of registration is enclosed. In view of the Closer Economic Relations Agreement between Australia and New Zealand, we respectfully submit that this registration should be given some weight by the Examiner.

Favourable re-consideration is requested.

Yours faithfully
SPRUSON & FERGUSON

Tracey Savage
Tracey Savage
Legal Practitioner

AUSTRALIAN INDUSTRIAL
- 4 SEP 1997
PROPERTY ORGANISATION
SYDNEY



The Trade Marks Act 1953
Certificate of Registration

AMERICA'S CUP

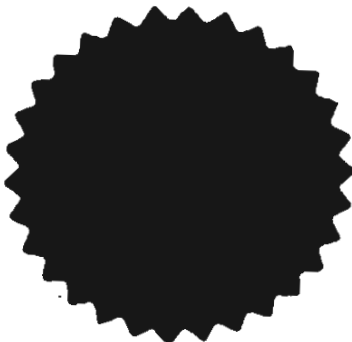
Advertised before acceptance, Section 27(1) (proviso)

Proposed to be used by the proprietor

253106. 1 September 1995. Class 12: vehicles; apparatus for locomotion by land, air or water. AMERICA'S CUP PROPERTIES, INC, a New York corporation of c/- Corporation Service Company, 600 Central Avenue, New York 12206-2290, United States of America, merchants. Address for service, c/- Russell McVeagh McKenzie Bartleet & Co, The Shortland Centre, 51-53 Shortland Street, Auckland, NZ. Associated with 253099, 253100, 253101 & others.

I HEREBY CERTIFY, pursuant to the above-mentioned Act and to the Trade Marks Regulations 1954, that the trade mark in the application bearing the above-mentioned No. 253106 was duly advertised in the *Patent Office Journal* No. 1414 of 24 March 1997 and has been registered, as set forth above, in Part A of the register in the name of the applicant in the class and in respect of the goods specified in the said application and as of the date and under the number of the said application.

SEALED at my direction this fourteenth day of August 1997



K B POPPLEWELL
Commissioner of Trade Marks