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**NOTE - EVIDENCE FORWARDED  
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The Registrar of Trade Marks  
PO Box 200  
Woden ACT 2606

**Attention** Meilin Buba

IP Australia  
**RECEIVED**  
1 6 AUG 2010

**13 August 2010**

Dear Madam

**Australia Trade Mark Application No. 1275892**  
**Mark: SITUATIONAL LEADERSHIP**  
**in classes 9 and 35**  
**In the name of Blanchard Training and Development, Inc. (the Applicant)**

**Our reference**  
LMR AIM 02 2002 8022

**Partner**  
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We refer to your letter dated 18 August 2009, enclosing the second examination report.

**1. Section 41 - Trade Marks Likely to be needed by other Traders**

The Examiner has objected to the application on the basis that the trade mark SITUATIONAL LEADERSHIP "*indicates that [the Applicant's] goods/services relate to training in a form of leadership where one's leadership style and actions change depending upon the situation which one is in*".

The Examiner has indicated that the Applicant can address this objection by providing evidence of use under ss 41(5) of the *Trade Marks Act 1995* (Cth).

**2. Evidence of distinctive character through use**

The Applicant is seeking to overcome the Examiner's objections by filing evidence of use showing that the trade mark SITUATIONAL LEADERSHIP is capable of distinguishing and does in fact distinguish the Applicant's goods and services from those of other traders.

We **enclose** the Statutory Declaration of Paul William Stapleton dated 13 August 2010 and Annexures A-L.

**3. Capable of distinguishing**

It is clear from Paul William Stapleton's evidence that the trade mark SITUATIONAL LEADERSHIP has been used by the Applicant and its licensee since the late 1970s worldwide, and since 1984 in Australia.

The Applicant submits that the evidence of extensive and long use in Australia is sufficient to show that the trade mark SITUATIONAL LEADERSHIP is capable of distinguishing and does in fact distinguish the

Applicant's goods and services from those of other traders.

### **3.1 Amount of turnover**

The greater the turnover, the more likely it is that the trade mark is capable of distinguishing the Applicant's designated goods and services. In this case, the Applicant has achieved significant sales of its SITUATIONAL LEADERSHIP branded products and services [REDACTED] in a niche market.

Further, the Applicant's goods and services are very specialised and focus on a particular type of management training and consultation derived from concepts and processes developed in the late 1960s. We submit that these are highly specialised goods and services which are provided to a niche market (those in management and leadership roles). Potential customers are therefore likely to spend a considerable amount of time and effort researching the various training programs available before deciding which one best suits their needs and fits in with their business strategy. The amount of evidence required will therefore not be as great as would be required for cheap, mass marketed items.

### **3.2 Length of use**

The longer a trade mark has been in use, the more likely it is to be capable of distinguishing the Applicant's designated goods. In this case the Applicant has been using the SITUATIONAL LEADERSHIP trade mark for over 25 years in Australia, and has a worldwide reputation due to use of the SITUATIONAL LEADERSHIP mark since the 1970s.

Further, we submit that the Applicant has considerable sales, and has undertaken focussed ongoing marketing of the goods and services available under the SITUATIONAL LEADERSHIP brand. As a result, Australian consumers (in particular those in management and leadership roles, or those involved in management training such as PD or HR professionals) associate the SITUATIONAL LEADERSHIP trade mark with the Applicant.

In light of the above submissions and the evidence provided, we respectfully request that the Examiner reconsiders the registrability objection and allows Application No. 1275892 to proceed to acceptance.

We look forward to hearing from you.

Yours faithfully



**BLAKE DAWSON**

AUSTRALIA

*Trade Marks Act 1995 (Cth)*

**IN THE MATTER OF** Trade Mark

Application No. 1275892

SITUATIONAL LEADERSHIP in classes 9  
and 35 in the name of

Blanchard Training and Development, Inc.  
(Applicant)

**STATUTORY DECLARATION**

I, PAUL WILLIAM STAPLETON, of Blanchard International, Suite 2, 14 Glen Street, Eastwood, NSW 2122, Australia, make this declaration under the *Statutory Declarations Act 1959 (Cth)*:

**History of Declarant and Applicant**

1. I am Managing Director of the Australian office of Blanchard International, Blanchard International Pty Limited. I have occupied my present position for five (5) years. I have been an employee of Blanchard International Pty Limited for twenty two (22) years.
2. I have full access to the records of the Applicant and Blanchard International Pty Limited and I am authorised to give this Declaration on behalf of the Applicant. The following statements are made on the basis of my own personal knowledge, records of the Applicant and Blanchard International and as a result of enquiries which I have made.

**Trade Mark Application**

3. On 5 December 2008, the Applicant filed an Australian application to register the trade mark SITUATIONAL LEADERSHIP (the **Trade Mark**) in respect of the following goods and services:

**Class: 9** Prerecorded audio and video tapes, DVD's and CD-ROM's featuring instructional material; downloadable webcasts and downloadable learning sessions in the fields of employee development, business management and leadership in international class 9

**Class: 35** Business consultation and needs assessment services in the fields of



organizational and individual change, management practices and leadership skills in  
international class 35

4. The Trade Mark was the subject of an adverse Examiner's Report, in which the Examiner considered that the Trade Mark was likely to be needed by other traders because the words SITUATIONAL LEADERSHIP indicate that the Applicant's goods and services "*relate to training in a form of leadership where one's leadership style and actions change depending on the situation which one is in*".
5. The original due date for acceptance was 18 May 2010. The Applicant requested, and was granted, an extension of time until 18 August 2010.

**Background to the Applicant and Blanchard International**

6. The Applicant is a US company which is part of The Ken Blanchard Companies. The Ken Blanchard Companies is an international management training and consulting firm which was founded by Ken and Marjorie Blanchard in San Diego, USA in 1978 (previously named Blanchard Training and Development, Inc). Ken Blanchard remains the Chief Spiritual Officer of The Ken Blanchard Companies and is regarded as a prominent management expert.
7. The Ken Blanchard Companies is a global leader in workplace learning, productivity, performance and leadership effectiveness solutions. The concepts and processes developed by The Ken Blanchard Companies have been translated into more than 20 languages and have been used by individuals and organisations around the world. Now produced to me and marked **Annexure A** is an extract from [www.kenblanchard.com](http://www.kenblanchard.com), the website for The Ken Blanchard Companies, which details the history and work carried out by the business.
8. Blanchard International Pty Limited is an Australian company which has exclusively represented the work of Ken Blanchard and The Ken Blanchard Companies for the past 26 years.

**Coinage of the Trade Mark**

9. SITUATIONAL LEADERSHIP is a leadership theory which was developed by Ken Blanchard and Paul Hersey in the late 1960s. The theory was originally named "LIFE CYCLE THEORY OF LEADERSHIP" but was changed to SITUATIONAL LEADERSHIP in the 1970s. I note that the timeline for The Ken Blanchard Group of Companies at Annex A indicates that the first use of SITUATIONAL LEADERSHIP was in 1979.
10. The SITUATIONAL LEADERSHIP theory is based on the notion that there is no single "best" style of leadership. The two aspects of the theory are:

(a) leadership style; and

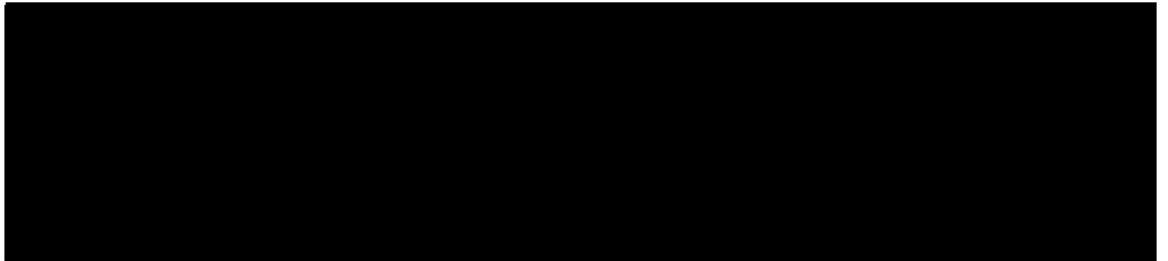
(b) the individual or group's maturity level.

Now produced to me and marked **Annexure B** is a Wikipedia extract regarding Blanchard and Hersey's SITUATIONAL LEADERSHIP theory.

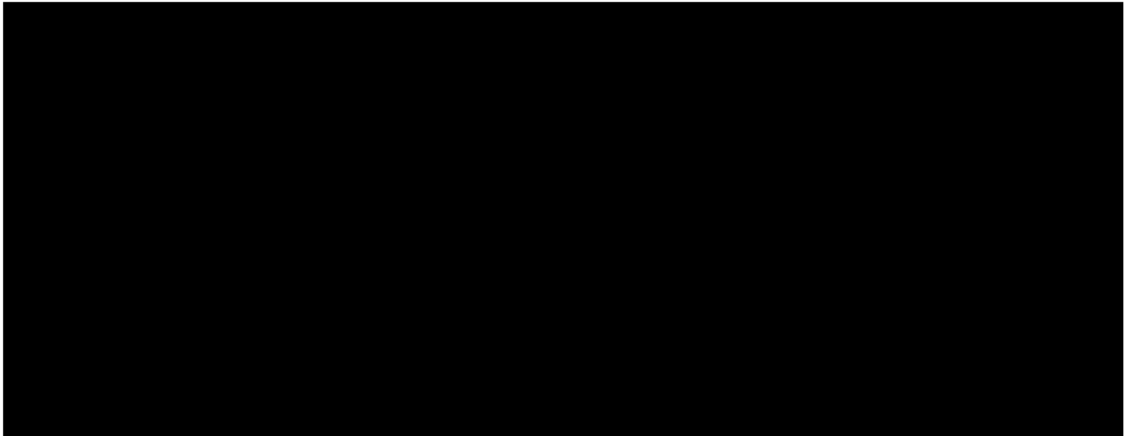
**Extensive Use of the Trade Mark**

11. SITUATIONAL LEADERSHIP has been used continuously by The Ken Blanchard Companies since the late 1970s, and is still in use today. Now produced to me and marked **Annexure C** is an extract from [www.kenblanchard.com](http://www.kenblanchard.com), setting out the range of SITUATIONAL LEADERSHIP training workshops which are currently offered by The Ken Blanchard Companies. The SITUATIONAL LEADERSHIP II Workshop, is the most comprehensive and up to date model, and the most widely taught leadership model in the world.

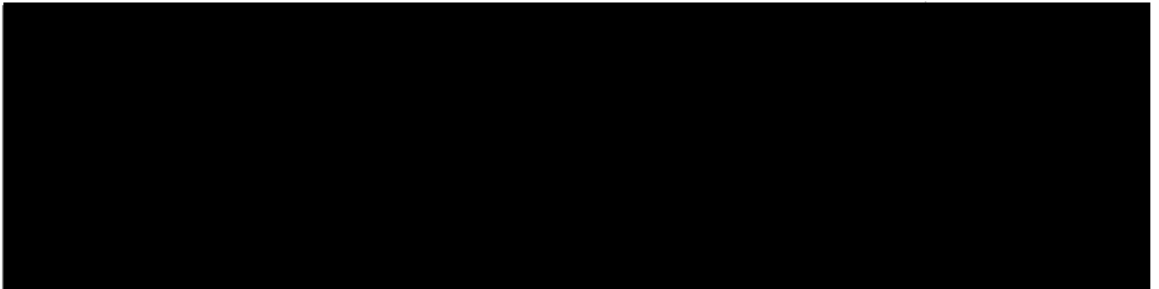
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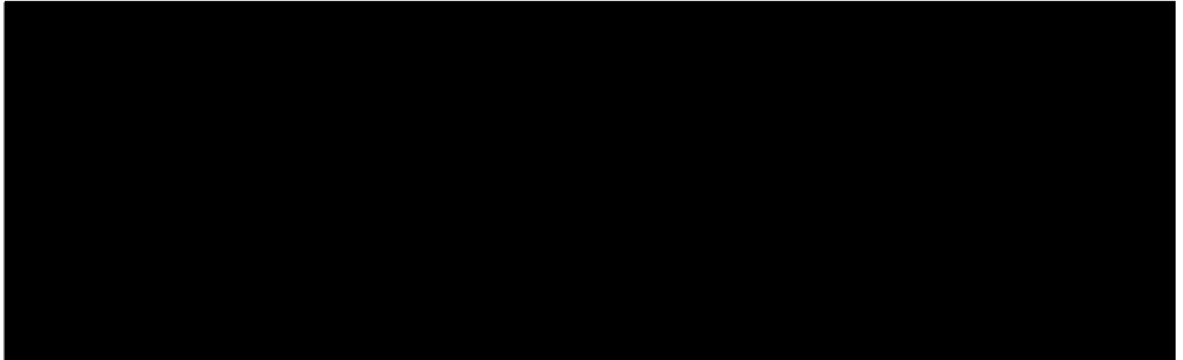


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15. The SITUATIONAL LEADERSHIP trade mark is used on training and course materials to teach the SITUATIONAL LEADERSHIP concept to corporate facilitators and managers who attend the training programs. The SITUATIONAL LEADERSHIP trade mark appears on a variety of program materials including workbooks behavioural assessments and post course application tools. SITUATIONAL LEADERSHIP branded DVDs are also available for purchase or hire from Blanchard International Pty Limited. Now produced to me and marked **Annexure F** are samples of the course materials provided for the SITUATIONAL LEADERSHIP program, including pre-course work, the Participant Workbook, and various other materials.
16. Now produced to me and marked **Annexure G** is an example of an earlier edition of the SITUATIONAL LEADERSHIP Participant Workbook, which was published in 1994 and was used by Blanchard International Pty Limited in providing training in Australia.
17. Blanchard International Pty Limited also offers an accreditation service whereby it trains key individuals in organisations and accredits them to teach the SITUATIONAL LEADERSHIP program to other staff members. Accredited individuals purchase the course materials from Blanchard International Pty Limited, and each course pack costs [REDACTED]

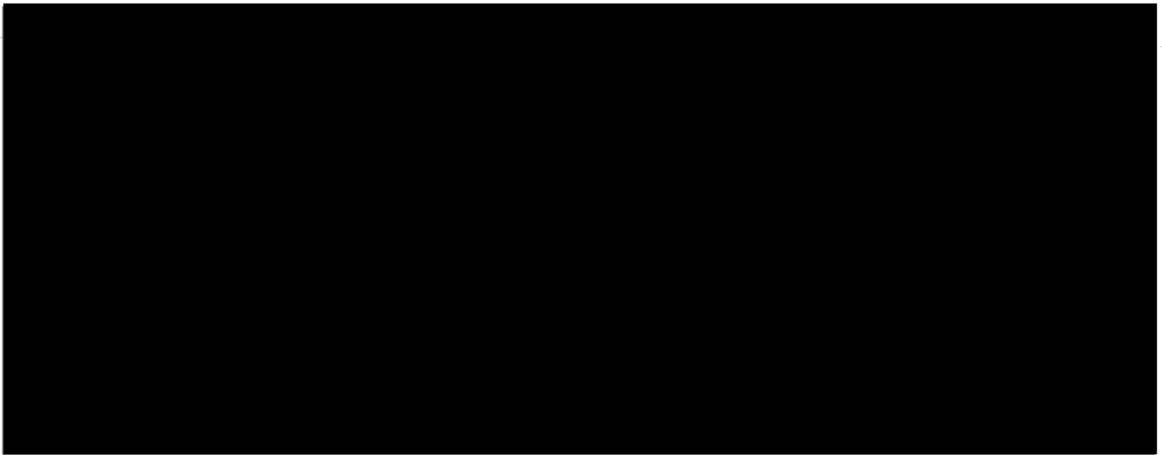
#### Reputation in relation to the Trade Mark

18.

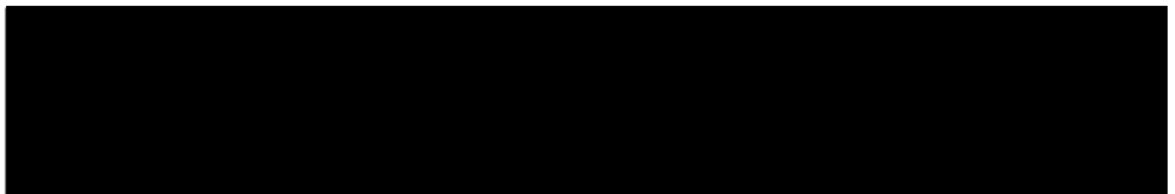


19. Blanchard International Pty Limited and The Ken Blanchard Companies have developed and produced an extensive range of brochure ware to show the range and content of the SITUATIONAL LEADERSHIP training programs. Now produced to me and marked **Annexure H** are examples of current marketing material and a publication produced by The Ken Blanchard Companies for Australian use in 2001.
20. Blanchard International Pty Limited has also undertaken focussed marketing to increase its profile. Now produced to me and marked **Annexure I** is a copy of the article "Leadership and the One Minute Manager" which was published in *Australian Business Solutions* magazine and refers to the SITUATIONAL LEADERSHIP model.

21.



22.

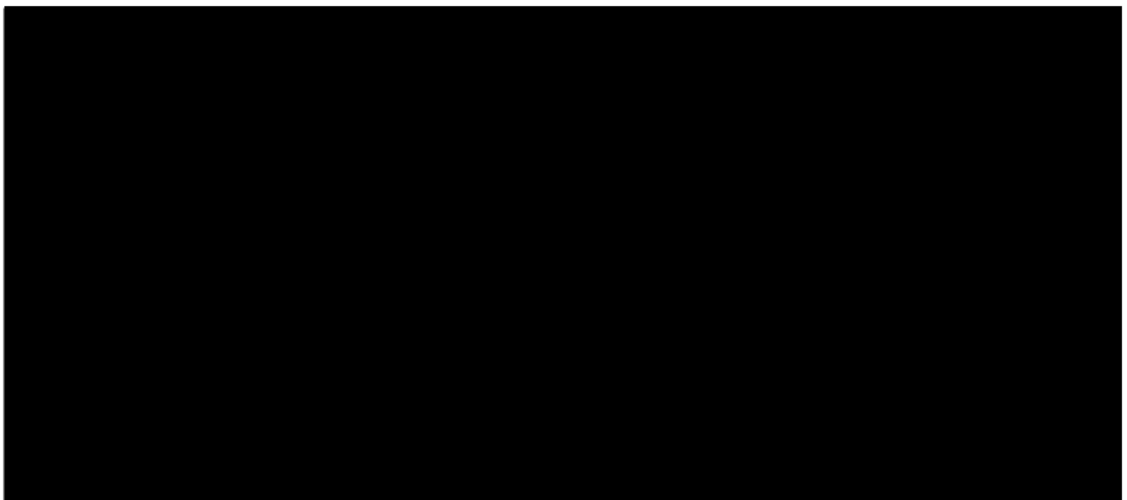


23. The SITUATIONAL LEADERSHIP trade mark has been registered in a number of countries throughout the world. Now produced to me and marked **Annexure L** are status reports for these various registrations.

24. In light of the Applicant's and The Ken Blanchard Companies' use, and Blanchard International Pty Limited's use under licence, of the SITUATIONAL LEADERSHIP trade mark, I am of the view that consumers (and particularly those employed in the management field or management positions) would associate the SITUATIONAL LEADERSHIP trade mark with the Applicant and The Ken Blanchard Companies, and with Blanchard International Pty Limited as a licensee.

**Confidential information**

25.




A handwritten signature in black ink, appearing to be 'A. M. S.', located in the bottom right corner of the page.

I understand that a person who intentionally makes a false statement in a Statutory Declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this Statutory Declaration are true in every particular.

DECLARED at <sup>SYDNEY</sup>~~13~~ on this 13 day of AUGUST 2010

  
.....  
PAUL WILLIAM STAPLETON

before

AMY DENISE REYNOLDS   
.....  
Solicitor Justice of the Peace

