

Trade Mark Number 1718730

In the name of: Bramco

Applicant: Ampcontrol Pty

Opponent: Bramco International Pty Ltd

Submission type: Evidence in Support

For reasons previously provided (and supplied in material here again), we submit our evidence in support to confirm again:

- The Applicant is not the owner of the trademark – Section 58
- The trademark is similar to a trademark that has a reputation in Australia – Section 60
- The trademark is contrary to law – Section 42b
- The trademark is likely to deceive or cause confusion – Section 43
- Application made in bad faith – Section 62A

Further introductory points concerning the opponent's continuous use of the trademark for well over fifty years. And also, the fact the applicant, has no history of selling product using the trademark, in fact it has been for many years, a fierce and aggressive competitor with a similar line of products engaged in identical markets.

FURTHER TIMELINE OF CONTROL OF THE TRADEMARK BRAMCO AND CONTINUOUS USE

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12. A condensed time line of development of product sold as Bramco over the last twenty years comprises:
- o 2015 ICMS introduces password protected remote dial in facilities allowing full set up, control and interrogation of conveyor or system performance, operating parameters and reporting.
 - o 2014 Next generation neutral earth and neutral link monitors.

- 2013 I.S certifications to meet latest industry regulations and standards secured for Key Relays and Protection devises.
- 2011 Next generation ICMS with Touch Screen Menu driven display and performance reporting and fault diagnostics.
- 2010 Next generation earth leakage relays with enhanced filtering to suit latest VVVF drives.
- 2007 Next generation range of Conveyor Safety Trip Switches for operation across long length conveyors and Pre-start Warning devices.
- 2009 Next generation Combined protection module with enhanced operating range.
- 2006 Temperature compensation system for conveyor packages eradicating nuisance tripping due to temperature variations.
- 2004 Voltage Reduction devices for welding sets to provide additional safety protection.
- 2002 Next generation ICMS adding industry first functions including remote isolation, dual redundancy and operating modes and extended operating range.
- 2000 Simple signal line safety and control system covering low cost applications over long distances.
- 1998 Range of compact hand held safety devices covering mandatory testing requirements
- 1996 Next generation Combined protection module specifically developed for export markets eg Southern Africa.
- 1994 Comprehensive Integrated Control and Monitoring System (ICMS) providing unheralded operating features and length of operation for Conveyors, Longwall Face Comms, Remote Fuel stations and others.

13. **TIMELINE SUMMARY/DURATION** comment. It is clear, to the markets and market segments that TMI718730 relates to, that Bramco products and Ampcontrol products are direct competitors. For more than 30years, as an example these markets, have identified these product ranges. It is beyond comprehension, cause for rampant confusion and destruction, that for those clients that use and continue to use Bramco product, this name be provided to the opposition product Ampcontrol.

14. Provided herewith are:

- Detail of clients that regularly use product with the trademark Bramco and designs well known and recognised accordingly as supplied and supported by the Opponent.
 - Information includes historical lists of client orders and shipments capturing client names, order numbers, Bramco product supplied etc.
 - Information includes examples of the Applicant purchasing from the Opponent, Bramco labelled products.
 - Information also includes client contact lists.
 - Information also includes examples of the Applicant requesting from the Opponent, Bramco labelled product.
- Examples of products, well recognised and engaged by these markets, being those applying to TMI718730 and referenced in TMI718730.
 - Information includes
 - Data sheets
 - Instruction manuals
 - Product photos
 - Examples/photos of products installed
- Historical examples of buildings over the years where clients could visit and review Bramco products.
- Examples of the applicant's products that compete directly with Bramco products, the Applicant being known for its brand of product (Ampcontrol) the Opponent being clearly recognised for its brand of product (Bramco).
- Relevant ASIC documents relating to the Bramco entities and the statutory registration and control.
- Samples of government backed or recognised approvals to allow relevant products to be sold into mining market segments, all products labelled Bramco.

TRADEMARK NUMBER: 1718730
IN THE NAME OF: BRAMCO

Applicant: Ampcontrol Pty Ltd
Opponent: Bramco International Pty Ltd

Statement of Grounds Due: 27 May 2016 (in response to Inadequate Statement of Grounds and Particulars correspondence)

Dear IPAustralia Trademark Opposition Team and Tabatha Klippan,

We greatly appreciate your letter received via email, where we have been asked to address points concerning our providing of an inadequate statement of grounds and particulars).

In response we have worked to address the points raised and submit below our revised Statement of Grounds and Particulars which supports the accompanying IPA form, as detailed below.

Specifically we have addressed (added) Sections 42 and 43. We have removed Sections 44 and 58A.

PART 3 Grounds and Particulars

APPLICANT NOT THE OWNER OF THE TRADE MARK – Section 58

The trademark Bramco, was introduced in 1945. Originally, the name represented Balcombe Radio and Manufacturing Company.

The trade mark became synonymous with electrical and electronic equipment (TM class 9) and installation, maintenance and repair of electrical and electronic products (TM class 37) between the years 1954 and 1984.

The trademark and company Bramco Electronics was then acquired in 1984 by Rynand Pty Ltd, which was controlled by the Gil Leishman and his family.

Between 1984 and 2013, the trademark (**Bramco**) was clearly established and recognised world-wide for an expansive range of products. In addition Bramco was recognised for design, manufacture, supply and service of Bramco labelled electrical and electronic equipment, for mining and general industry, and also for the installation, maintenance and repair of electrical and electronic products.

In late 2013, the trademark and all products associated with it were acquired by Gil Leishman and Kathleen Leishman, who from 29 March 2016 licenced the use of the trademark for the continuing design, manufacture, supply and service of the same Bramco labelled range of products to Bramco International.

Therefore the trademark has remained uninterrupted for over 50 years. The Leishman family and its staff have controlled the trademark uninterrupted since 1984.

TRADEMARK IS SIMILAR TO A TRADE MARK THAT HAS A REPUTATION IN AUSTRALIA – Section 60

The applicant Ampcontrol, as detailed above, is the main competitor to the Company named Bramco that provides products and services that have used the trademark Bramco for many decades. Again, these are products and services as captured in classes 9 and 37.

There are therefore many markets and clients across Australia and internationally, that recognise the trademark Bramco as being clearly synonymous with the products and services provided by Bramco the Company.

These clients know therefore, these products and services, using the trademark Bramco for over half a century. These clients also know the trademark Ampcontrol for a completely different set of products and services and as a completely different (competitor) Company.

In Ampcontrol applying for the trademark Bramco, Ampcontrol is applying for the trademark of its main competitor in TM classes 9 and 37.

TRADEMARK IS SCANDALOUS – Section 42a

~~We believe, the use of this Trademark by Ampcontrol is indeed scandalous. By its nature, use of the Trademark Bramco, by an opposition Company, in this case Ampcontrol, causes grave offence to the stakeholders, staff of Bramco and regular users of Bramco product.~~

Ground not made out -
deleted. Reg 5.8 CMV
24/6/2016

The stakeholders and staff of Bramco have built the goodwill and standing of products labelled with the same trademark over many years and across many clients in Australia and worldwide. Regular users, recognise that Ampecontrol is a fierce and direct competitor to the company Bramco. The use of this trademark by an opponent is offensive to the stakeholder, staff and regular users. We believe it is shameful a competitor would engage in such an action to secure this trademark Bramco.

For the two TM classes referred to (class 9 and class 37), there are few competitors in Australia providing electronic control and protection products. It is obviously indecent to allow Ampecontrol the sole rights to the trademark of one its few competitors (Bramco). Markets that subsist in class 9 and class 37, often see only two or three main options, these being for example products labelled Ampecontrol and products labelled Bramco. For the mining community, it would be a shock for Ampecontrol to be awarded the rights to exploit the trademark of its key competitor.

TRADEMARK IS CONTRARY TO LAW – Section 42b

We believe the issuing of the Trademark to Ampecontrol, is contrary to Intellectual Property Laws relating specifically to the tort of passing off.

Section 42(b) Rectified. Reg 5.8 CMV 24/6/2016

Should Ampecontrol be allowed to exploit the trademark Bramco, it will in effect be allowed to pass off to relevant markets and clients that it is offering products and services labelled Bramco. Wherein, such markets are well aware, familiar and even conditioned that Bramco has a long standing goodwill linked to the Opponent (Bramco International).

Further, the mere use of the clearly recognised label Bramco, will mean the Applicant is mispresenting to the market, that it is providing the products and services that are so well known as being provided by the Opponent and the entities historically linked to the Opponent.

Such will create grounds for damages, where the trading of the opponent Bramco International, will suffer loss of business due to this misleading and deceptive conduct by the known competitor Ampecontrol.

TRADE MARK LIKELY TO DECEIVE OR CAUSE CONFUSION – Section 43

For over five decades, relevant markets in Australia and internationally have clearly known the trademark Bramco as representing a specific range of products servicing (in particular) TM classes 9 and 37. To award this trademark Bramco, to the main competitor (the applicant Ampecontrol) would create tremendous confusion.

These clients are spread throughout many industry types, encompassing (for example) Mining Companies, Switchboard and Panel manufacturers, Distribution centre manufacturers, Industrial Wholesalers, Engineering Design Houses etc.

The list of client names that purchase products labelled and known with the trademark Bramco, stretches into hundreds of buyers. These lists are available to IPAustralia. We ask though, as the applicant Ampecontrol is a competitor, that these lists be treated in confidence. To award this trademark Bramco, to the main competitor (the applicant Ampecontrol) would create tremendous confusion.

Further, these same clients, engage the Company known as Bramco, where they clearly have purchased, have serviced and repaired and received support by Bramco for Bramco solutions.

An example therefore of confusion, could be as follows:

- Client X, who has for 10 years purchased product labelled with the Trademark Bramco.
- Client X is familiar with all training and support material, re-ordering information, where to secure support for the Bramco product etc.
- Client X needs to then, knowing the correct ordering information, procure a replacement product from the Company Bramco for the product labelled Bramco with a specific part number.
- Repeat purchase orders are raised and sent to the historically known/engaged supplier Bramco for the product which is supplied using the IP and designs.
- Client X is supplied the correct product, including all installation and support materials from the legal owner of the IP and trademark Bramco, that is applied to the IP/design.
- Client X, then ships existing units in service of the same Bramco recognised part number, to the Company Bramco for repair and overhaul.
- The owner of the IP/design with trademark Bramco, with trained and competent staff etc, then repairs the returned product and releases it back to Client X.
- CONFUSION will arise, if the trademark Bramco is provided to the applicant (competitor Ampecontrol) who does not have the ownership/rights/knowledge etc to sell and service the product the client is familiar with for many years as a Bramco trademark/labelled product, supplied by the Company Bramco.

The applicant Ampecontrol details and is one of the main competitor companies for these Bramco product types. Thus Ampecontrol has products that compete with Bramco products.

Ampecontrol demonstrated no interest in the trademark Bramco prior to their application.

Ampcontrol have also not designed or manufactured any product with the trademark Bramco prior to their application.

Ampcontrol historically have not marketed any product that is labelled with the trademark Bramco.

There is an abundant amount of material and evidence available to demonstrate the detail above, including (but not limited to):

1. Trademark timeline (use of the brand name over many years).
2. Product timeline engaging the trademark Bramco stretching over 50years.
3. Use of Trademark on signage of buildings, vehicles etc.
4. Opponent usage of product using the trademark in the field throughout the world. Including lists of hundreds of product types spanning many decades and clearly engaging the trademark Bramco.
5. Intellectual Property files covering many decades for products that clearly are recognised and branded with the trademark Bramco.
6. Employment contracts spanning many years where the trademark is engaged as the employing entity, for staff that designed, manufactured, supplied, repaired etc Bramco product.
7. Various industry awards for products that use and therefore recognise the trademark Bramco.
8. Web site and email addresses that are clearly recognised and controlled by the Leishman Family and its partners. Such as bramco.com.au.
9. Relevant industry certifications, approvals, quality assurance systems etc that have for many decades used and been registered using the trademark Bramco.

APPLICATION MADE IN BAD FAITH – Section 62A

In identifying the trademark Bramco left unregistered for the briefest period of time, the main competitor to Bramco, Ampcontrol a company in direct competition, seized an opportunity to register the name Bramco.

The trademark Bramco, was left unregistered due to unfortunate internal dealings which have now been rectified.

The Leishman family were unaware at the time however have now sought to rectify this issue immediately upon becoming aware of the lapsing of the restoration for the trademark “Bramco” and subsequent application by Ampcontrol.

FURTHER MATTERS

There is a wealth of additional documents and other evidence in support of our Statement of Grounds.

This includes amongst others:

1. Historical examples of product advert sheets. These products are heavily in use with many clients Australia wide. Client lists are available on request as this is sensitive information and the Applicant Ampcontrol is a competitor.
2. Examples of product operational manuals as used throughout relevant industries and many clients, where the trademark Bramco is always used.
3. Historical examples of Company and product catalogue covering advert material for a range of Bramco labelled and well known designs.
4. Example of reference document of specific Bramco trademarked products in use in client operations around the world.
5. Examples of client contract details, being specific agreements with clients where the trademark Bramco is referenced on invoices, purchase orders, repair and overhaul requests.

Email addresses in use for current staff:

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- (c) kim@bramco.com.au
- (d) mark@bramco.com.au
- (e) michael@bramco.com.au
- (f) les@bramco.com.au
- (g) layden@bramco.com.au

- (h) sales@bramco.com.au
- (i) carol@bramco.com.au
- (j) leigh@bramco.com.au

Our website is currently:
www.bramco.com.au

We ask therefore, that in all good faith and fairness, given the weight of evidence and long history of the opponent using the trademark Bramco, that this application by Ampcontrol to register Bramco be rejected.

Should you have any queries in relation to the above, please contact the writer.