

IP Australia Service Request

Trade Mark Number
891183

Request Date & Time
28-Jul-2015 14:08:27

Submitting Party

Party Identifier	RZH8213540832
Name	
Customer's Reference	DT:0344
Email	david@tdclegal.com.au

General Correspondence Relating to a Trade Mark Application/Registration

Fees

FANG Batch Identifier	8132599
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Fee # 1	Fee Code	TMGC
	Fee Type	OTHER
	Fee Description	General Correspondence Relating to a Trade Mark Application/Registration
	Number of Goods and Services Classes	3
	Fee Unit Count	1
	Fee Amount	\$0.00
	Calculation Date & Time	28-Jul-2015 14:07:37

Fee Total Amount	\$0.00
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Service Request Details

Channel	WEB
Batch Identifier	STBM-0000672757
Batch Reference	
Service Request Identifier	STEO-0001294473
Service Request Code	TCZAR
Request Date & Time	28-Jul-2015 14:08:27
Customer's Reference	DT:0344
Application numbers	Customer's IP Right Reference
891183	DT:0344
Contact Details	
Phone	+610893257755

Customer Supplied Documents

Document Sequence	Document Type	Document File Name	Physical Media
1	Other	0344 2015-07-28 DT LT IP Australia.pdf	No

Our ref: 0344
Your ref:



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28 July 2015

IP Australia
PO Box 200
WODEN ACT 2606

By e-Service

Dear Sir or Madam

Australian trade mark 891183 in name of Mijotabuki (Aust) Pty Ltd: application to remove for non-use made by IP Hospitality Group Australia Pty Ltd

Application for extension of time in which to file notice of intention to oppose application for removal for non-use

I act for Mijotabuki (Aust) Pty Ltd.

I have today filed by eService a notice of intention to oppose an application for removal of the above-mentioned mark for non-use, along with an application for an extension of time in which to file that notice. I now enclose a declaration in support of my client's application for extension of time.

Please contact me if you require any further information.

Yours faithfully


David Thompson
Principal

Enc. (1)



Declaration



Declaration

Designs - Under the Designs Act 2003 and Regulation 11.26 of the Designs Regulations 2004

Patents - Under the Patents Act 1990 and Regulation 22.13 of the Patents Regulations 1991

Trade Marks - Under the Trade Marks Act 1995 and Regulation 21.6 of the Trade Marks Regulations 1995

Declaration

(* denotes mandatory fields)

*Title

(of the matter in respect of which the declaration is made)

IP Right No(s) in relation to which the declaration is made.

<input type="text" value="891183"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

*I,

(insert name of the person making the declaration)

*Of

Country (if not Australia) State WA Postcode 6000

(insert the address of person making declaration)

do declare as follows:-

If you are making the declaration for the purposes of a business complete the following.

I am making this declaration in my capacity as

State your position or Office held:

Address of the place of business

Country (if not Australia) State Postcode

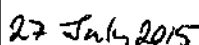
Declaration: (Each paragraph must be numbered consecutively and as far as practical, be confined to one subject.)


Please see attached sheets.

If you require more space please attach as many A4 sheets of paper as required. All exhibits must be referred to within the body of the declaration and the last page of the declaration must be dated and signed by the declarant.

I make this declaration conscientiously believing the statements contained in this declaration to be true and correct.


*(Signature of person making declaration)


*Date


*Place where declaration is made

**ADDITIONAL SHEETS TO
DECLARATION OF DAVID WILLIAM THOMPSON MADE 27 JULY 2015**

1. I am a legal practitioner and a direction of TDC Legal Pty Ltd, an incorporated legal practice trading under the name Thompson Downey Cooper.
2. Between 1 July 2010 and 12 October 2012 I practiced as a sole practitioner under the name David Thompson, Barrister and Solicitor.
3. During that period, I acted for Mijotabuki (Aust) Pty Ltd ('Mijotabuki') in respect of Australian registered trade mark 891183 ('the Mark'), of which it is the registered proprietor. More particularly, I acted in opposing an earlier application for removal of the Mark from the Register for non-use, which was compromised after evidence of use was filed, and in respect of a Freedom of Information application made in respect of the Mark.
4. In the course of representing Mijotabuki, I was instructed to provide my address to IP Australia as the address for service in respect of the Mark.
5. I accordingly provided my address, which was PO Box 585, Fremantle, WA 6959, to IP Australia as the address for service in respect of the Mark in or about early October 2010.
6. On 7 October 2012 I ceased practicing as David Thompson, Barrister and Solicitor, and transferred my practice to Thompson Downey Cooper.
7. By oversight, I forgot to seek instructions to alter the address for service in respect of the Mark at that time, and did not alter that address for service.
8. As a result, I did not receive notice of the application made by IP Hospitality Group Australia Pty Ltd to have the Mark removed from the Register of Trade Marks for non-use pursuant to section 92 of the *Trade Marks Act 1995*.
9. In or about late 2013, I received further instructions from Mijotabuki to represent it in negotiations it was then carrying on with Mr Rocky Lesic in respect of the Mark.
10. Those negotiations have continued intermittently up to the date of this declaration.
11. On Friday, 24 July 2015 I spoke with Mr Lesic for the first time in several months.



David William Thompson
27 July 2015

12. In the course of our conversation, Mr Lesic said to me words to the effect:
- "I see on the internet that someone has applied to have trade mark 891183 removed from the Register of Trade Marks for non-use."*
13. I immediately looked up the Mark on the ATMOSS search facility provided online by IP Australia and noted, on the history page, a record of the filing of a non-use application.
14. I then found the relevant entry in the Official Journal, which showed me that the non-use application had been advertised on 7 May 2015.
15. I immediately contacted Mijotabuki's director Mr Malik Mascarhenas, from whom I receive instructions, and explained that a non-use application had been made and advertised on 7 May 2015.
16. Mr Mascarhenas said to me words to the effect:
- "I haven't heard of any such application. Certainly, I haven't received any notices or correspondence about it."*
17. Mr Mascarenhas then instructed me to file a notice of intention to oppose the non-use application on Mijotabuki's behalf, and an application for extension of time in which to file that notice of intention to oppose, if necessary.
18. As at the date of making this declaration I have not seen a copy of the application made by IP Hospitality Group Australia Pty Ltd to have the Mark removed from the Register of Trade Marks for non-use pursuant to section 92 of the *Trade Marks Act* 1995. However, on the basis of my knowledge of Mijotabuki's activities I expect that Mijotabuki will rely on use of the Mark in good faith in the course of conducting a restaurant business in Subiaco, Western Australia, during the three year period ending on 7 April 2015, and indeed at earlier times as well, and will seek to lodge evidence verifying that use.
19. Mijotabuki relies on my error or omission in failing to update the address for service in respect of the Mark as its ground for seeking an extension of time in which to file its notice of intention to oppose, and relies on its lack of notice of the application made by IP Hospitality Group Australia Pty Ltd to have the Mark removed from the Register of Trade Marks for non-use pursuant to section 92 of the *Trade Marks Act* 1995, flowing



David William Thompson
27 July 2015

from that error or omission, until 24 July 2015, as its ground for seeking that extension of time after the last date for filing any notice of intention to oppose.

18. I make this declaration in support of Mijotabuki's application for an extension of time in which to file a notice of intention to oppose the application made by IP Hospitality Group Australia Pty Ltd to have the Mark removed from the Register of Trade Marks for non-use pursuant to section 92 of the *Trade Marks Act 1995*, advertised in the Official Journal on 7 May 2015.



David William Thompson
27 July 2015