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SECTION 3, SUB-SECTION (i)
MINISTRY OF COMMERCE AND INDUSTRY
(Department Of Industrial Policy And Promotion)

NOTIFICATION

NEW DELHI, THE 5th DECEMBER, 2003

GSR 929(E).- The following rules made by the Intellectual Property Appellate Board to regulate its procedure, in exercise of powers conferred upon it by section 92 of the Trade Marks Act, 1999 (47 of 1999), are hereby published for general information:-

MINISTRY OF COMMERCE AND INDUSTRY
DEPARTMENT OF INDUSTRIAL POLICY AND PROMOTION
INTELLECTUAL PROPERTY APPELLATE BOARD

INTELLECTUAL PROPERTY APPELLATE BOARD (PROCEDURE) RULES, 2003

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In exercise of the powers conferred by section 92 of the Trade Marks Act, 1999 (47 of 1999), the Appellate Board hereby makes the following rules, namely :-

1. Short title and commencement.– (1) These rules may be called The Intellectual Property Appellate Board (Procedure) Rules, 2003.

(2) They shall come into force on the date* of their publication in the Official Gazette.

2. Definitions.- In these rules, unless the context otherwise requires,-

(a) **"Act"** means the Trade Marks Act, 1999 (47 of 1999);

(b) **"address for service"** means the address furnished by an applicant or appellant or respondent or his authorised

agent or his legal practitioner at which service of summons, notices or other processes may be effected;

(c) **"agent"** means a person duly authorised by an applicant or appellant or respondent to present application, appeal, counter statement, reply, rejoinder, evidence or any other document on his behalf before the Appellate Board and shall include an agent referred to in section 145;

(d) **"appeal"** means an appeal under section 91 of the Trade Marks Act,1999 and includes Original Appeal (O.A.) and Transferred Appeal (T.A.);

(e) **"appellant"** means a person making an appeal to the Appellate Board under section 91;

(f) **"application"** means an application for removal of registered trade mark from the register under section 47 or rectifying the register under section 57 or section 125;

(g) **"Deputy Registrar"** means the Deputy Registrar of the Appellate Board and includes any officer to whom the powers and functions of the Deputy Registrar may be delegated;

(h) **"fee"** means the fee prescribed under the Second Schedule of these rules;

(i) **"form"** means a form specified under the First Schedule to these rules;

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* 5.12.2003, see G.S.R. 929(E), Gazette of India, Extraordinary, Part II, 3 (i)

(j) **"legal practitioner"** shall have the same meaning as is assigned to it in the Advocates Act, 1961 (25 of 1961);

(k) **"legal representative"** means a person who in law represents the estate of the deceased person ;

(l) **"pleadings"** includes applications or appeals, counter statements, rejoinders, replies and evidences supplementing them and other documents permitted to be filed before the Appellate Board ;

(m) **"Registry"** means the Registry of the Appellate Board;

(n) **"section"** means a section of the Act;

(o) **"transferred application or appeal"** means an application or an appeal or other proceedings which has been transferred to the Appellate Board under section 100;

(p) words and expressions used and not defined in these rules but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. Form of procedure of application or appeal

(1) An application shall be filed in the Form 1 annexed to the Trade Marks (Applications and appeals to the Intellectual Property Appellate Board) Rules, 2003 by an aggrieved person in the Registry of the Appellate Board;

(2) An appeal from any order or decision of the Registrar of Trade Marks shall be filed in the Forms 2,3 or 4 of the Trade Marks (

Applications and appeals to the Intellectual Property Appellate Board) Rules, 2003;

(3) An application or appeal sent by post shall be deemed to have been presented before the Registry on the day it was received in the Registry.

4. Payment of fee. -

The prescribed fees shall be paid through bank draft payable at Chennai drawn in favour of the Deputy Registrar, Intellectual Property Appellate Board.

5. Language of the Appellate Board. -

(1) The proceedings of the Appellate Board shall be conducted in English or Hindi.

(2) All decisions or orders of the Appellate Board shall be either in English or Hindi.

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6. Application or appeal to be in writing. -

(1) Every application, appeal, counter statement, rejoinder, reply or other document filed before the Appellate Board shall by typed or printed neatly.

(2) The application or appeal under sub-rule (1) shall be presented in three sets in a paper-book form alongwith an empty file size envelope bearing full address of the respondent and, in case the respondents are more than one, then, sufficient number of extra paper-books together with empty file size envelopes

bearing full addresses of each respondent shall be furnished by the applicant or appellant.

7. Presentation and scrutiny of application or appeal. -

(1) The Deputy Registrar shall endorse on every application or appeal the date on which it is presented.

(2) If, on scrutiny, the application or appeal is in order, it shall be duly registered and given a serial number.

(3) If an application or appeal is found to be defective and the defect noticed is formal in nature, the Deputy Registrar may allow the applicant or appellant to rectify the same in his presence and if the said defect is not formal in nature, the Deputy Registrar may allow the applicant or appellant fifteen days time to rectify the defect as he may deem fit. If the application or appeal has been sent by post and found to be defective, the Deputy Registrar may communicate the defects to the applicant or appellant and allow the applicant or appellant fifteen days time from the date of receipt of the communication from the Deputy Registrar to rectify the defects.

(4) If the applicant or appellant fails to rectify the defects within the time allowed in sub-rule (3), the application or appeal shall be deemed to have been abandoned.

8. Documents to accompany application or appeal. -

(1) Every application shall be in triplicate in paper-book form and all evidences shall be in the form of affidavits, if any.

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(2) Every appeal shall be in triplicate in paper-book form and shall be accompanied by the copies of the order, at least one of which shall be a certified copy against which the appeal is filed, alongwith evidences in the form of affidavits.

(3) Where a party is represented by authorized representative, a copy of the authorization to act as the authorized representative shall be appended to the application or appeal.

9. Notices of application or appeal to the respondent. -

A copy of the application or appeal in paper-book form shall be served by the Deputy Registrar on the respondent as soon as the same is registered in the Registry.

10. Filing of counter statement to the application or appeal and other documents by the respondent. -

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(1) After receipt of the application or appeal filed in the prescribed Form 1, 2, or 3 of the Trade Marks (Applications and appeals to the Intellectual Property Appellate Board) Rules, 2003, the respondent may file three complete sets of counter statement in the prescribed Form 1 under these rules containing the reply to the application or appeal along with documents including evidences in the form of affidavits, if any, in paper-book form before the Registry within two months of the service of the notice on him of the filing of the application or appeal. A copy of the counter statement shall be served to the applicant or appellant by the respondent directly under intimation to the Registry.

(2) After receipt of the appeal filed in the prescribed Form 4 of the Trade Marks (Applications and appeals to the Intellectual Property Appellate Board) Rules, 2003, the respondent may file three complete sets of counter statement in the prescribed Form 2 under these rules containing the reply to the appeal in paper-book form before the Registry within two months of the service of the notice on him of the filing of appeal. A copy of the counter statement shall be served to the appellant by the respondent directly under intimation to the Registry. The case would then proceed for hearing.

11. Filing of reply by the applicant or appellant . -

After receipt of counter statement, the applicant or appellant, may file his reply within two months of the service of the counter statement along with evidence in the form of affidavits, if any, in

triplicate in the Registry. A copy of the reply shall be served on the respondent directly under intimation to the Registry.

12. Exhibits. -

Where there are exhibits to affidavits, a copy each of such exhibits shall be sent to the other party. The originals shall be left in the Appellate Board for inspection of the other party. These shall be produced at the hearing unless the Appellate Board otherwise directs.

13. Translation of documents. -

Where a document in a language other than Hindi or English is referred to in any proceedings, an attested translation thereof in Hindi or English shall be furnished in triplicate to the Appellate Board and a copy thereof shall be served upon the other party or parties directly under intimation to the Registry.

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14. Extension of time. -

(1) If the Appellate Board is satisfied, on an application made to it in the prescribed Form 3 under these rules, that there is sufficient cause for extending the time for doing any act prescribed under these rules (not being a time expressly provided for in the Trade Marks Act, 1999) , whether the time so specified has expired or not, it may subject to such conditions as it may think fit to impose, extend the time and inform the parties accordingly.

(2) Nothing in sub-rule (1) shall be deemed to require the Appellate Board to hear the parties before disposing off an

application for extension of time and no appeal shall lie from any order of the Appellate Board under this rule.

15. Intervention by third parties. -

Any person other than the registered proprietor of a trade mark alleging interest in a registered trade mark in respect of which an appeal has been filed under section 91 against the order or decision of the Registrar for the removal of a trade mark or to cancel or vary the registration and to rectify the Register may apply in the prescribed Form 4 under these rules for leave to intervene, stating the nature of his interest and the Deputy Registrar may refuse or grant such leave after hearing, if so required, the parties concerned upon such terms and conditions as he deems fit.

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16. Date of hearing to be notified. -

The Appellate Board shall notify the parties the date and place of hearing of the application or appeal in such manner as the Chairman may by general or special order direct.

17. Hearing of application or appeal. -

(1) On the day fixed or on any other day to which the hearing may be adjourned, the parties shall be heard by a Bench of the Appellate Board.

(2) In case where the applicant or appellant does not appear at the hearing, the case will be treated as abandoned.

18. Adjournment of hearing. -

A party to the hearing may make an application in triplicate for adjournment of the hearing in Form 5 under these rules with the prescribed fee fifteen days before the date of hearing alongwith the concurrence for the adjournment from the other party. The Appellate Board may consider the application and pass such orders as it deems fit.

19. Award of costs by the Appellate Board. -

The Appellate Board may award such costs as it deems fit to the parties having regard to all the circumstances of the case.

20. Order to be signed and dated. -

(1) Every order of the Appellate Board shall be signed and dated by the Members of the Bench.

(2) The order shall be pronounced in the sitting of the Bench.

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21. Communication of orders. -

A certified copy of every order passed by the Bench shall be communicated to the parties to the proceedings.

22. Publication of the orders . -

The orders of the Bench as are deemed fit for publication in any authoritative report or the press may be released for such publication on such terms and conditions as the Chairman may lay down.

23. Review petitions. -

(1) A petition in triplicate for review of an order of the Appellate Board may be made to the Registry in the

prescribed Form 6 under these rules within two months from the date on which the order is communicated accompanied by a statement setting forth the grounds on which the review is sought. Where the order in question concerns more than one respondent, sufficient extra copies of such petition and statement shall be filed.

(2) The Registry shall forward the petition and statement to the respondents to the review petition.

(3) The respondents may file counter statement in Form 1 under these rules within two months from the date of receipt of the review petition and shall forward a copy of the counter statement to the petitioner directly under intimation to the Registry.

(4) The review petition shall be posted for hearing before a Bench by the Chairman.

24. Continuation of proceedings after the death of a party, merger, assignment, acquisition or transmission. -

On the death of a party or by merger, assignment, acquisition or transmission if a new party becomes entitled for continuation of the proceedings, the proceeding would be continued subject to filing a request with evidence in support therefor.

25. Fee for inspection of records and obtaining copies thereof. -

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(1) A fee of Rs.150/- for every hour or part thereof shall be charged for inspecting the records of a pending application or appeal or decided case.

(2) A fee of Rs.5/- shall be charged for providing xerox copies of each page of the record.

26. Functions of the Deputy Registrar. -

(1) The Deputy Registrar shall discharge the functions under the general superintendence of the Chairman. He shall discharge such other functions as are assigned to him under these rules or by the Chairman by a separate order in writing.

(2) He shall have the custody of the records of the Appellate Board.

(3) The official seal of the Appellate Board shall be kept in the custody of the Deputy Registrar.

(4) Subject to any general or special directions of the Chairman, the official seal of the Appellate Board shall not be affixed to any order, summons or other process save under the authority in writing from the Deputy Registrar.

(5) The official seal of the Appellate Board shall not be affixed to any certified copy issued by the Appellate Board save under the authority in writing of the Deputy Registrar.

27. Additional functions and duties of the Deputy Registrar. -

In addition to the functions and duties assigned under rule 26, the Deputy Registrar shall have the following functions

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and duties subject to any general or special orders of the Chairman, namely:–

(i) to receive all applications, appeals, counter statements, replies and other documents;

(ii) to decide all questions arising out of the scrutiny of the appeals and applications before they are registered;

(iii) to require any application, appeal, counter statement, replies presented to the Appellate Board to be amended in accordance with the rules;

(iv) subject to the directions of the Chairman, to fix date of hearing of the applications or appeals or other proceedings and issue notices therefor;

(v) direct any formal amendment of records;

(vi) to order supply of copies of documents to parties to proceedings;

(vii) to grant leave to inspect the record of the Appellate Board;

(viii) to requisition records from the custody of any court, Registrar of Trade Marks or other authority ;

(ix) to decide questions relating to extension of time in respect of filing of counter statement, reply, rejoinder, etc.

28. Dress regulations for the Chairman, Vice-Chairman, Technical Member of the Appellate Board and for the representatives of the parties. -

(i) The dress for the Chairman, Vice-Chairman and other Members shall be white pant with black coat and black tie or

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a buttoned-up black coat. If the officials are from the High Court Bench, then they shall be in their official robes.

(ii) The dress for the professionals who appear before the Appellate Board shall be the professional dress, if any, and in case of other authorised representatives of the parties, it shall be the following :-

(a) In the case of male, a black coat with a black tie or buttoned-up black coat over a white pant.

(b) In the case of female, a black coat over white or any other sober coloured saree.

(c) All other persons appearing before the Appellate Board shall be properly dressed.

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29. Seal and emblem. -

The official seal and emblem of the Appellate Board shall be such as the Central Government may specify.

THE FIRST SCHEDULE

FORMS

Serial No.	Rule of the Intellectual Property Appellate Board, 2003	Title	Form Number
1.	Rule 10 (1) / 23(3)	Filing of counter statement	Form 1
2.	Rule 10(2)	Filing of counter statement	Form 2
3.	Rule 14	Application for extension of time	Form 3
4.	Rule 15	Application for leave to intervene in proceedings relating to rectification of the register or the removal of trade mark from the register of trade mark .	Form 4
5.	Rule 18	Application for adjournment of hearing	Form 5
6.	Rule 23	Petition for review of the order of the Appellate Board	Form 6

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BEFORE THE INTELLECTUAL PROPERTY APPELLATE BOARD

Fee Rs.2,000

FORM 1

Form of Counter Statement
(Rule 10(1) / 23(3)of the Intellectual Property Appellate Board Rules,2003)
(To be filed in triplicate and accompanied by as many copies as there are registered users / authorized users under the registration)

In the matter of Application / Registered Trade Mark No..…… in class

I / we[1] ……..the respondent or the registered proprietor/ authorized user of registered trade mark No……. hereby give notice that the following are the grounds on which I / we rely for my / our application / registered trade mark:-

…….

…….

I / we admit the following allegations in the application/ appeal:-

……..

……..

All communications relating to these proceedings may be sent to the following address in India:-

…….

…….

1. State the name and address of the registered proprietor or registered user of trade mark.

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VERIFICATION

I…… **(**name of the respondent / registered proprietor / registered user of registered trade mark age…… of……. nationality, resident of ……do hereby verify that the contents of paras……. to……. are true to my personal knowledge and paras …… to …….. are believed to be true on legal advice and that I have not suppressed any material fact.

Dated this …….day of ……

Place:

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Signature of the Respondent/
Registered proprietor/ registered user of registered trade mark
(FULL NAME OF THE SIGNATORY)

To,

The Deputy Registrar,
Intellectual Property Appellate Board,
Annexe 1, Guna Complex, II Floor
443, Anna Salai, Teynampet
Chennai- 600018

BEFORE THE INTELLECTUAL PROPERTY APPELLATE BOARD

No Fee

FORM 2

Form of Counter Statement
(Rule 10(2) of the Intellectual Property Appellate Board Rules,2003)
(To be filed in triplicate)

In the matter of …….

We ……..the Registrar of Trade Marks hereby give notice that the following are the grounds on which we rely for in support of our order / decision dated…….

……

We admit the following allegations in the appeal:-

……

……

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All communications relating to these proceedings may be sent to the following address in India:-

……

……..

VERIFICATION

We**……(**name of the respondent / of……. nationality, resident of ……do hereby verify that the contents of paras……. to……. are true to our personal knowledge and paras …… to …….. are believed to be true on legal advice and that I have not suppressed any material fact.

Dated, this ……day of ……

Place:

Signature of the Respondent
(FULL NAME OF THE SIGNATORY)

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To

The Deputy Registrar,
Intellectual Property Appellate Board,
Annexe 1, Guna Complex, II Floor
443, Anna Salai, Teynampet
Chennai- 600018

Fee Rs.1,000 per month

Or part thereof

FORM 3

Application for extension of time

(Rule 14(1) Of the Intellectual Property Appellate Board Rules,2003)

(To be filed in triplicate)

In the matter of ……..

I / we ……being the

……. in the above matter hereby apply for an extension of time for……. …….. on the following grounds.

……

……

All communications relating to these proceedings may be sent to the following address in India:-

……..

…….

Date:

Place:

Signature of

Appellant / applicant / respondent

(FULL NAME OF THE SIGNATORY)

To

The Deputy Registrar,
Intellectual Property Appellate Board,
Annexe 1, Guna Complex, II Floor
443, Anna Salai, Teynampet
Chennai- 600018

BEFORE THE INTELLECTUAL PROPERTY APPELLATE BOARD

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Fee Rs.2,000

FORM 4

Application for leave to intervene in proceedings relating to the rectification of the register or the removal of trade mark from the register of trade marks.
(Rule 15 of the Intellectual Property Appellate Board Rules, 2003
(To be filed in triplicate together with a statement of case in triplicate)

In the matter of the Trade Mark No.……registered in the name of …… in class……...

I / we…… hereby apply for leave to intervene in the proceedings relating to the rectification or removal of the entry in the register in respect of the above mentioned trade mark

My / our interest in the trade mark……..

……..

All communications relating to this application may be sent to the following address in India:

……..

……..

Dated, this……. of……..

Signature of applicant

(FULL NAME OF THE SIGNATORY)

To

The Deputy Registrar,
Intellectual Property Appellate Board,
Annexe 1, Guna Complex, II Floor
443, Anna Salai, Teynampet
Chennai- 600018

BEFORE THE INTELLECTUAL PROPERTY APPELLATE BOARD

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Fee Rs.1000 per month
Or part thereof

FORM 5

Application for adjournment of hearing
(Rule 18 of the Intellectual Property Appellate Board Rules, 2003)

(To be filed in triplicate)

In the matter of …… I / We…….being the ……..in the above matter hereby apply for adjournment of the hearing fixed for …… for …….month on the following grounds:-

……..
……
……..

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All communication relating to these proceedings may be sent to the following address in India:

……..
……..

Dated, this…….of……

Place:

Signature of
Appellant / Applicant / Respondent

(FULL NAME OF THE SIGNATORY)

To
The Deputy Registrar,
Intellectual Property Appellate Board,
Annexe 1, Guna Complex, II Floor
443, Anna Salai, Teynampet
Chennai- 600018

BEFORE THE INTELLECTUAL PROPERTY APPELLATE BOARD

Fee Rs.3,000

FORM 6

Petition for review of the order of the Appellate Board

(Rule 23(1) of the Intellectual Property Appellate Board Rules,2003)

(To be filed in triplicate together with a statement of case in triplicate)

In the matter of …….. I / we…….. being the ……in the above matter hereby apply to the Appellate Board for the review of their order dated the …….day of ……..200 in the above matter.

The grounds for making this application are set forth in the accompanying statement.

VERIFICATION

I…… (Name of the applicant) age…… of……. nationality, resident of ……do hereby verify that the contents of paras……. to…….. are true to my personal knowledge and paras …… to ……..are believed to be true on legal advice and that I have not suppressed any material fact.

Dated, this …….day of ……

Place:

Signature of the Applicant

(FULL NAME OF THE SIGNATORY)

To,
The Deputy Registrar,
Intellectual Property Appellate Board,
Annexe 1, Guna Complex, II Floor
443, Anna Salai, Teynampet, Chennai- 600018

THE SECOND SCHEDULE
FEES
RULE

Entry	On What Payable	Amount	Corresponding Form Number

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No.		Rs.	
1	On filing counter statement	2,000	Form 1
2	On filing of counter statement	No fee	Form 2
3	On application for extension of time	1,000 per month or part thereof	Form 3
4.	On application for leave to intervene in proceedings relating to rectification of the register or the removal of trade mark from the register of Trade Mark .	2,000	Form 4
5	On application for adjournment of hearing	1000 per month or part thereof	Form 5
6.	On petition for review of the order of the Appellate Board	3,000	Form 6

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Sd/-
Deputy Registrar
Intellectual Property Appellate Board

(F. No. 8/25/2003-IRS)

(A E AHMAD)
Jt.Secy