

**Date: 20071102**

**Docket: A-93-06**

**Citation: 2007 FCA 355**

**CORAM: LÉTOURNEAU J.A.  
PELLETIER J.A.  
RYER J.A.**

**BETWEEN:**

**SADHU SINGH HAMDARD TRUST**

**Appellant**

**and**

**THE REGISTRAR OF TRADE-MARKS**

**Respondent**

**and**

**AJIT NEWSPAPER ADVERTISING, MARKETING AND  
COMMUNICATIONS, INC.**

**Respondent**

Heard at Ottawa, Ontario, on September 5, 2007.

Judgment delivered at Ottawa, Ontario, on November 2, 2007.

**REASONS FOR JUDGMENT BY:**

**PELLETIER J.A.**

**CONCURRED IN BY:**

**LÉTOURNEAU J.A.  
RYER J.A.**

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**AJIT NEWSPAPER ADVERTISING, MARKETING AND  
COMMUNICATIONS, INC.**

**Respondent**

**REASONS FOR JUDGMENT**

**PELLETIER J.A.**

**INTRODUCTION**

[1] The appeal is from the decision of von Finckenstein J. of the Federal Court, reported as *Hamdard v. Canada (Registrar of Trade-Marks)*, 2006 FC 171, [2006] F.C.J. No. 198, dismissing the appellant's motion for an extension of time to file a Notice of Appeal from the decision of the Registrar allowing the registration of the respondent's trade-mark. The fact which makes this case

unique is that the appellant seeks to exercise its right of appeal under section 56 of the *Trade-marks Act*, R.S.C. 1985, c. T-13 (the Act) after the registration of the trade-mark.

### **THE FACTS**

[2] On January 20, 2004, the respondent filed an application for the registration of its trade-mark, AJIT WEEKLY Design, an application which was advertised on November 10, 2004. The time for filing a Statement of Opposition began to run from that date and expired two months later on January 10, 2005: see section 38 of the Act. The appellant learned of the application for registration in the course of other trade-mark litigation between the same parties in the United Kingdom and instructed agents in Canada to oppose it. On December 23, 2004, within the filing period, the appellant's agent wrote to the Registrar seeking a three month extension to file its Statement of Opposition "to enable the opponent to properly consider its grounds of opposition." (A.B., at p. 56).

[3] It is common ground that this letter was received by the office of the Registrar, but it was never acknowledged. Further, whether by inadvertence or for some other reason, the Registrar disposed of the respondent's application for registration without regard to the request for an extension. The appellant's agent did not follow-up to see what had become of its request for an extension.

[4] On January 28, 2005, the Registrar advised the respondent, by Notice of Allowance, that its application had been allowed. On March 3, 2005, the trade-mark was registered.

[5] Unaware that the request for an extension had been overlooked, the appellant's agent filed its Statement of Opposition on March 31, 2005, only to learn that the trade-mark had been registered. Initially, the appellant sought to challenge the registration by means of an application for judicial review on the ground of lack of procedural fairness but it chose to abandon that application. It then brought the motion which is the subject of this appeal, seeking an extension of time to file a Notice of Appeal pursuant to section 56 of the Act. The appellant seeks the following relief in its proposed Notice of Application:

1. An order granting the Trust's appeal from the decision of the Registrar to grant the AJIT WEEKLY Design Registration and declaring that the AJIT WEEKLY Design Registration is null, void, and of no legal effect;
2. An order directing that the opposition against the AJIT WEEKLY Design trade-mark proceed in accordance with the Statement of Opposition filed with the Registrar and dated March 31, 2005;
3. In the alternative, an Order that the AJIT WEEKLY Design Registration be struck out because, at the date it was registered, the AJIT WEEKLY Design Registration does not accurately express or define the existing rights of Ajit Newspaper Advertising, Marketing and Communications, Inc. ("ANAMCI"), the person appearing to be the registered owner of the AJIT WEEKLY Design Registration;
4. The Trust's costs of this application; and
5. Such further and other relief as this Honourable Court deems just.

[6] The motion for an extension of time was heard by von Finckenstein J. who dismissed it, having concluded that the appellant had misconceived its remedy. He found that there was no decision of the Registrar for the appellant to challenge. While the appellant had asked for an extension, that request had not been refused; it had simply gone unanswered. Since the Registrar was not bound to grant an extension, the filing period had run out so that the appellant was left in

the position of having missed the filing deadline. The motions judge was critical of the appellant's failure to follow up on its request for an extension, the latter taking the position that a request for an extension was "a routine request of the sort that is invariably granted by the Registrar."

[7] The motions judge found that, having missed the filing deadline for a Statement of Opposition, the appellant's remedy was to challenge the registration by means of expungement proceeding pursuant to section 57 of the Act. Given that there was no decision of the Registrar, the right of appeal in section 56, which applies to "any decision of the Registrar under this Act", was not triggered. The appellant was bound to proceed by way of expungement proceedings pursuant to section 57.

### **APPELLANT'S SUBMISSIONS**

[8] Prior to the hearing of the appeal, the Court issued a direction to the parties asking them to address the Court on the following question at the hearing of the appeal:

Parliament has seen fit to provide a remedy in subsection 39(3) of the *Trade-marks Act*, for those cases where a trade-mark registration is allowed without consideration of a request for an adjournment. Having failed to take advantage of the remedy provided by Parliament, is the appellant not limited to challenging the registration by way of expungement proceedings?

[9] Counsel for the appellant sought to answer this question by referring to *Ault Foods Ltd. v. Canada (Registrar of Trade Marks)* (1992), 48 F.T.R. 1 (F.C.T.D.), aff'd [1993] 1 F.C. 319 (F.C.A.) (*Ault Foods*). According to the appellant, *Ault Foods* stands for the proposition that the Court has the jurisdiction to intervene in its favour even after the registration of the trade-mark. The facts in *Ault Foods* were similar to the facts of this case in that the Registrar gave notice of allowance of a

trade-mark without taking into account a request for an extension of time to file a Statement of Opposition. When the opponent sought to have the allowance set aside, the Registrar took the position that he was powerless to intervene in light of subsection 39(2) which, at that time, read as follows:

39. (1) When an application for the registration of a trade mark either has not been opposed and the time for the filing of a statement of opposition has expired or it has been opposed and the opposition has been decided finally in favour of the applicant, the Registrar thereupon shall allow it.

(2) The Registrar shall not extend the time for filing a statement of opposition with respect to any application that has been allowed.

39. (1) Lorsqu'une demande n'a pas été l'objet d'une opposition et que le délai prévu pour la production d'une déclaration d'opposition est expiré, ou lorsqu'une demande a fait l'objet d'une opposition et que celle-ci a été définitivement décidée en faveur du requérant, le registraire l'admet aussitôt.

(2) Le registraire ne peut proroger le délai accordé pour la production d'une déclaration d'opposition à l'égard d'une demande admise.

[10] Prior to the registration of the trade-mark, the opponent brought an application for judicial review seeking to have the allowance set aside. The Federal Court held that while subsection 39(2) prevented the Registrar from acting upon the request for an extension after an application had been allowed, section 18 of the *Federal Court Act* allowed the Court, in appropriate circumstances to quash the allowance and to direct the Registrar to consider the request for an extension of time to file an opposition. The failure of the Registrar to consider relevant facts, namely the request for an extension of time, constituted appropriate circumstances. In the result, the Court quashed the allowance and directed the Registrar to consider the request for an extension.

[11] On appeal to this Court, the Federal Court's decision was affirmed. The Court found that "it is an essential precondition of the Registrar's allowing an application for registration that there has been no opposition (or, of course, alternatively, that an opposition has been decided in favour of the applicant)." (at para. 18). In the Court's view, there was no distinction to be drawn between "a completed opposition and a notice of intention to oppose coupled with a request for an extension." The appellant was entitled to have its application for an extension dealt with before the Registrar disposed of the application for registration. The Court rejected expungement proceedings as a viable alternative remedy on the basis that these were to be brought in the Federal Court rather than by way of summary proceedings before the Registrar.

[12] Subsequent to the decision in *Ault Foods*, the Act was amended to add subsection 39(3) which provides as follows:

39. (1) When an application for the registration of a trade-mark either has not been opposed and the time for the filing of a statement of opposition has expired or it has been opposed and the opposition has been decided in favour of the applicant, the Registrar shall allow the application or, if an appeal is taken, shall act in accordance with the final judgment given in the appeal.

(2) Subject to subsection (3), the Registrar shall not extend the time for filing a statement of opposition with respect to any application that has been allowed.

(3) Where the Registrar has allowed an application without considering a previously filed request for an extension of time to file a statement of opposition, the Registrar may withdraw the application

39. (1) Lorsqu'une demande n'a pas fait l'objet d'une opposition et que le délai prévu pour la production d'une déclaration d'opposition est expiré, ou lorsqu'il y a eu opposition et que celle-ci a été décidée en faveur du requérant, le registraire l'admet ou, en cas d'appel, il se conforme au jugement définitif rendu en l'espèce.

(2) Sous réserve du paragraphe (3), le registraire ne peut proroger le délai accordé pour la production d'une déclaration d'opposition à l'égard d'une demande admise.

3) Lorsqu'il a admis une demande sans avoir tenu compte d'une demande de prorogation de délai préalablement déposée, le registraire peut, avant de délivrer un certificat d'enregistrement,

from allowance at any time before issuing a certificate of registration and, in accordance with section 47, extend the time for filing a statement of opposition.      retirer l'admission et, conformément à l'article 47, proroger le délai d'opposition.

[13] In response to the question put to it by the Court, the appellant argued that while subsection 39(3) empowered the Registrar, it did not change the position of the appellant relative to a flawed decision. Just as the Federal Court intervened in *Ault Foods* where the Registrar could not, the appellant argued that the Court could, once again, intervene where the Registrar could not, this time by setting aside the registration and directing the Registrar to consider its request for an extension. Putting it another way, the remedy provided in subsection 39(3) did not limit the appellant because the problem it faced was not the allowance of the trade-mark but its registration. To that extent, there existed a legislative gap similar to that which existed prior to the adoption of subsection 39(3), to which the Federal Court could respond as it had in *Ault Foods*.

[14] The appellant also relied upon *Ault Foods* to meet the argument advanced by the respondent according to which the appellant lacked the standing to appeal the Registrar's decision because it was neither a party nor an intervener: see *Ontario Assn. of Architects v. Assn. of Architectural Technologists of Ontario (C.A.)*, 2002 FCA 218, [2003] 1 F.C. 331, at paragraph 42. According to the appellant, *Ault Foods* was authority for the proposition that a request for an extension of time was equivalent to a Statement of Opposition so that the appellant was, in effect, a party until such time as its request was dealt with. The Registrar having failed to respond to its request, the appellant was a party for the purposes of dealing with the request for an extension.



[15] Finally, the appellant defended itself from the suggestion that it was somehow responsible for the course of events which had befallen it. Counsel took the position that it was the practice in the trade-mark bar to make requests for extensions of time on the eve of the expiry of the filing periods and that such requests were granted as a matter of course. Counsel rejected the suggestion that the appellant was bound to monitor its request for an extension so as to be able to exercise its rights under subsection 39(3) in the event that the Registrar failed in his duty to consider the request for an extension. According to counsel, the onus was on the Registrar to do his duty according to law; the appellant was under no obligation to do anything.

[16] On the assumption that the Court was satisfied that it had a right of appeal under section 56, the appellant then argued that it satisfied the requirements for the grant of an extension of time, as set out in *Sim v. Canada* (1996), 67 C.P.R. (3d) 334.

[17] The respondent pointed out that the appellant allowed its right to file a Statement of Opposition to lapse on the assumption that it would be granted a discretionary adjournment. Section 47 of the Act makes it clear (as does the Practice Note issued by the Canadian Intellectual Property Office) that an extension will only be granted where the opponent justifies the need for an extension:

47. (1) If, in any case, the Registrar is satisfied that the circumstances justify an extension of the time fixed by this Act or prescribed by the regulations for the doing of any act, he may, except as in this Act otherwise provided, extend the time after such notice to other persons and on such terms as he may direct.

47. (1) Si, dans un cas donné, le registraire est convaincu que les circonstances justifient une prolongation du délai fixé par la présente loi ou prescrit par les règlements pour l'accomplissement d'un acte, il peut, sauf disposition contraire de la présente loi, prolonger le délai après l'avis aux autres personnes et selon les termes qu'il lui est loisible d'ordonner.

(2) An extension applied for after the expiration of the time fixed for the doing of an act or the time extended by the Registrar under subsection (1) shall not be granted unless the prescribed fee is paid and the Registrar is satisfied that the failure to do the act or apply for the extension within that time or the extended time was not reasonably avoidable.

(2) Une prorogation demandée après l'expiration de pareil délai ou du délai prolongé par le registraire en vertu du paragraphe (1) ne peut être accordée que si le droit prescrit est acquitté et si le registraire est convaincu que l'omission d'accomplir l'acte ou de demander la prorogation dans ce délai ou au cours de cette prorogation n'était pas raisonnablement évitable.

[18] The respondent concludes that the appellant cannot assume that a request for an extension invariably results in the grant of an extension. To that extent, it would appear that a request for an extension cannot be equated with a Statement of Opposition as was suggested in *Ault Foods*.

[19] In response to the question put to the parties by the Court, the respondent agrees that the appellant, having failed to take advantage of the remedy provided for in subsection 39(3), is limited to proceeding by way of an action for expungement. The respondent points out that a registered trade-mark is a valuable asset which may be the subject of various commercial transactions. As a result, once a trade-mark appears on the register, it can only be removed in a limited number of ways, such as section 57 dealing with expungement or section 45, the "deadwood" provision. Consequently, the appellant's recourse to the right of appeal under section 56 with respect to a registered trade-mark is inappropriate. Section 56 applies to any decision of the Registrar including a decision to allow the registration of a trade-mark but once the trade-mark is registered, the respondent says, the appropriate procedure to have it removed from the register is an action for expungement.

## ANALYSIS

[20] The appellant seeks to exercise the right of appeal found at section 56 of the Act, which provides as follows:

56. (1) An appeal lies to the Federal Court from any decision of the Registrar under this Act within two months from the date on which notice of the decision was dispatched by the Registrar or within such further time as the Court may allow, either before or after the expiration of the two months.

...

(5) On an appeal under subsection (1), evidence in addition to that adduced before the Registrar may be adduced and the Federal Court may exercise any discretion vested in the Registrar.

56. (1) Appel de toute décision rendue par le registraire, sous le régime de la présente loi, peut être interjeté à la Cour fédérale dans les deux mois qui suivent la date où le registraire a expédié l'avis de la décision ou dans tel délai supplémentaire accordé par le tribunal, soit avant, soit après l'expiration des deux mois.

...

(5) Lors de l'appel, il peut être apporté une preuve en plus de celle qui a été fournie devant le registraire, et le tribunal peut exercer toute discrétion dont le registraire est investi.

[21] For ease of reference, I repeat here the relief which the appellant seeks in its proposed notice of application:

1. An order granting the Trust's appeal from the decision of the Registrar to grant the AJIT WEEKLY Design Registration and declaring that the AJIT WEEKLY Design Registration is null, void, and of no legal effect;
2. An order directing that the opposition against the AJIT WEEKLY Design trade-mark proceed in accordance with the Statement of Opposition filed with the Registrar and dated March 31, 2005;
3. In the alternative, an Order that the AJIT WEEKLY Design Registration be struck out because, at the date it was registered, the AJIT WEEKLY Design Registration does not accurately express or define the existing rights of Ajit Newspaper Advertising, Marketing and Communications, Inc. ("ANAMCI"), the person appearing to be the registered owner of the AJIT WEEKLY Design Registration;
4. The Trust's costs of this application; and

5. Such further and other relief as this Honourable Court deems just.

[22] It appears from paragraphs 1 and 2 above that the appellant seeks to have the registration of the respondent's trade-mark set aside as a means of permitting its opposition to be heard. In the alternative, paragraph 3 seeks an order striking out the registration of the respondent's trade-mark on the ground that the registration does not accurately express or define the existing rights of the registered owner, the respondent. It can fairly be said that the appellant seeks to have the Court expunge the respondent's trade-mark from the register by means of an appeal under section 56 on either procedural or substantive grounds.

[23] The difficulty facing the appellant is that an application to set aside registration of a trade-mark, i.e. expungement, stands on a different footing than does an appeal from a decision of the registrar. While an appeal may be taken under section 56 from a decision of the registrar allowing a trade-mark, that is, rejecting an opposition, once the trade-mark is registered, it can only be challenged on substantive grounds under section 57. The registrar may set aside a registration on the basis of the failure to comply with certain formal requirements (see sections 43, 45 and 46 of the Act), but only the Federal Court can set aside a registration on the ground that "the register does not express or define the existing rights of the person appearing to be the owner of the mark." Even the registrar must apply to the Federal Court to expunge a trade-mark on substantive grounds:

57. (1) The Federal Court has exclusive original jurisdiction, on the application of the Registrar or of any person interested, to order that any entry in the register be struck out or amended on the ground that at the date of the application the entry as it appears on the register does not accurately

57. (1) La Cour fédérale a une compétence initiale exclusive, sur demande du registraire ou de toute personne intéressée, pour ordonner qu'une inscription dans le registre soit biffée ou modifiée, parce que, à la date de cette demande, l'inscription figurant au registre n'exprime ou ne définit

express or define the existing rights of the person appearing to be the registered owner of the mark.

pas exactement les droits existants de la personne paraissant être le propriétaire inscrit de la marque.

(2) No person is entitled to institute under this section any proceeding calling into question any decision given by the Registrar of which that person had express notice and from which he had a right to appeal.

(2) Personne n'a le droit d'intenter, en vertu du présent article, des procédures mettant en question une décision rendue par le registraire, de laquelle cette personne avait reçu un avis formel et dont elle avait le droit d'interjeter appel.

[24] In this case, rightly or wrongly, the trade-mark has been registered. Unlike a proceeding under section 56, an expungement action is not an appeal. It can be commenced by any person with an interest, even if not a party to the opposition proceedings. There is no time limit within which it must be commenced. The result is binding against the world in the sense that once a trade-mark is removed from the register, it is removed for all purposes: see *Compulife Software Inc. v. Compuoffice Software Inc.* (1997), 77 C.P.R. (3d) 451. The differences between an appeal under section 56 and an action for expungement under section 57 are real and substantial.

[25] The appellant concedes that, on the facts of this case, the registrar cannot interfere with registration but argues, relying upon *Ault Foods*, that the Court is not bound by the registrar's jurisdiction. In other words, the Court is not limited to providing only the relief that the registrar could provide. As noted above, at the time *Ault Foods* was decided, the registrar was prohibited from granting an extension of time after a trade-mark had been allowed. This did not prevent the Federal Court from setting aside the allowance so as to permit the registrar to exercise his jurisdiction to grant the extension. In this case, the appellant says that while the registrar cannot deal with the registration, nothing prevents the Federal Court from setting aside the registration (even

though the registrar could not do so) so as to permit the registrar to exercise his discretion to grant the appellant's request for an extension of time to file its opposition.

[26] The appellant cannot succeed for two reasons. The first is that the amendment of the Act following the decision in *Ault Foods* provides the appellant with an adequate alternate remedy which justifies the Federal Court in refusing to exercise its jurisdiction under section 18. The second is that this Court has held, most recently in *Bacardi & Co. v. Havana Club Holdings S.A.*, 2004 FCA 220, [2004] F.C.J. No. 1001, (*Bacardi*), that registration is not to be put into question in the course of opposition proceedings. This is consistent with the scheme of the Act which provides a specific forum and specific grounds for challenging an existing registration. Either of these grounds would justify the dismissal of the appeal.

[27] Dealing first with the *Ault Foods* case, it is useful to recall the basis upon which the Court intervened. In setting aside the registrar's decision to allow registration of the trade-mark, the Court resorted to its jurisdiction under section 18 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, to set aside the decision so as to allow the registrar to exercise his discretion to extend the time for filing a notice of opposition. In the same way, says the appellant, the Federal Court could exercise its discretion under section 18 to set aside registration on the basis of a denial of natural justice, so as to allow the registrar to exercise his discretion to extend the time to allow the appellant to file its statement of opposition.

[28] The difficulty with this argument, and the reason that the Court raised the issue of subsection 39(3) with the parties, is that since *Ault Foods* was decided, the Act was amended to provide a remedy which was not available to the opponent at that time. That remedy is an adequate alternate remedy which justifies the Court in declining to exercise its jurisdiction under section 18 of the Federal Courts Act.

[29] In *Harelkin v. University of Regina*, [1979] 2 S.C.R. 561, the Supreme Court, after noting that certiorari was a discretionary remedy, held that the availability of an adequate alternative remedy militates against the exercise of the discretion to grant a discretionary remedy. Judicial review now stands in the place of the prerogative writs (see sections 18 and 18.1 of the Federal Courts Act) and is subject to the same limitation.

[30] In *Ault Foods*, the Court exercised its jurisdiction under section 18 after finding that an action in expungement was not an adequate alternate remedy for the registrar's failure to consider the proposed opponent's request for an extension of time: see paragraph 21 of the decision of the Court of Appeal. Subsequently, Parliament provided an adequate alternate remedy when it amended the Act to permit the registrar to set an allowance aside where he has proceeded with regard to a request for an extension of time. With the exercise of a little diligence, a party whose request for an extension has not been considered can bring the matter to the registrar's attention prior to the issuance of a registration and have its request for an extension considered on its merits. The appellant cannot fail to take advantage of a summary remedy under the Act and then argue that the registrar's oversight has caused it to be put to the trouble and expense of a more onerous proceeding.

[31] The appellant's way is also blocked by the decision in *Bacardi* in which this Court held that "Regardless of how the request is framed, an opposition proceeding is not the appropriate forum for tacit or manifest amendments to the register.": see *Bacardi*, at paragraph 38.

[32] The facts of that case, briefly stated, are as follows. Havana Club Holdings S.A. (the applicant) sought to register certain trade-marks which were admittedly confusing with the registered trade-mark "Havana Club". The applicant relied upon section 15 of the Act which permits the registration of confusing trade-marks if they are all owned by the same person. The original registrant of the mark "Havana Club" in connection with rum was Jose Arechabala S.A., a Cuban company which was nationalized by the Castro regime. At the request of the nationalized company, Jose Arechabala S.A. Nacionalizada, (Nacionalizada), the registrar amended the register to show it as the registered owner of the mark. The applicant was the successor in interest to Nacionalizada.

[33] Bacardi opposed the proposed registration on the ground that the applicant was not the true owner of the mark "Havana Club", and thus could not take the benefit of section 15 of the Act. Bacardi argued that the registrar had erred when he amended the register to reflect Nacionalizada's claim to ownership of the mark because, in doing so, he gave effect to confiscatory legislation. The registrar agreed that the register had been amended in error but held that he was, nonetheless, without jurisdiction to amend the register, a function which he held was reserved to the Federal Court.



[34] Bacardi appealed the registrar's decision dismissing its opposition to the Federal Court under section 56 of the Act. The Federal Court dismissed the appeal, finding that the registrar's appreciation of the limits of his jurisdiction was correct: see *Bacardi & Co. v. Havana Club Holdings S.A.*, 2003 FC 938, [2003] F.C.J. No. 1195 (*Bacardi*). The matter proceeded to this Court which dismissed the appeal as well. The substance of this Court's decision is found in the following passages:

38. The current situation is analogous to that before Mr. Justice Cattanach in *Sunshine Biscuits Inc. v. Corporate Foods Ltd.* (1982), 61 C.P.R. (2d) 53 (F.C.T.D.). In that case, also in the context of an opposition proceeding, the applicant urged the Registrar to disregard the applicant's trade-mark. Cattanach J. refused, recognizing that the appellant was asking for a de facto expungement of an extant trade-mark. There, as here, the appropriate avenue for the appellants to pursue would have been expungement proceedings before the Federal Court. *Regardless of how the request is framed, an opposition proceeding is not the appropriate forum for tacit or manifest amendments to the register.*

39. I would note further in this regard that I cannot accept the appellant's unduly restrictive interpretation of the Sunshine Biscuits case. Although that case did not touch on subsection 15(1) of the Act, Justice Cattanach's determination (at page 62) that "the validity of the registered trade-mark cannot be raised in opposition proceedings" and that the proper recourse for the applicant was expungement proceeding is equally applicable in the present matter.

[My emphasis.]

[*Bacardi*, at paragraphs 38-39.]

[35] Bacardi confirms that the registrar cannot purport to ignore or to set aside the registration of a trade-mark on substantive grounds in the course of opposition proceedings, which are the forum for dealing with disputes as to *proposed* trade-marks. That forum includes an appeal, pursuant to section 56, from the registrar's decision with respect to the opposition. To that extent, the reasoning in *Bacardi* applies to such an appeal.

[36] If the appellant claims that a registered trade-mark "does not accurately express or define the existing rights of the person appearing to be the registered owner of the mark", then it must challenge that registration in expungement proceedings.

[37] As a result, the appellant's opposition proceedings have been overtaken by the registration of the respondent's trade-mark. Since the appellant has no remedy under section 56, it has no need for and no right to an extension of the time for bringing an appeal under that section.

[38] For these reasons, the appeal should be dismissed.

"J.D. Denis Pelletier"

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J.A.

"I agree  
Gilles Létourneau J.A."

"I agree  
C. Michael Ryer J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-93-06

**APPEAL FROM THE ORDER OF THE FEDERAL COURT (VON FINCKENSTEIN J.) DATED FEBRUARY 9, 2006 IN DOCKET NUMBER 06-T-65.**

**STYLE OF CAUSE:** *Sadhu Singh Hamdard Trust v. The Registrar of Trade-Marks and Ajit Newspaper Advertising, Marketing and Communications, Inc.*

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** September 5, 2007

**REASONS FOR JUDGMENT BY:** PELLETIER J.A.

**CONCURRED IN BY:** LÉTOURNEAU J.A.  
RYER J.A.

**DATED:** November 2, 2007

**APPEARANCES:**

Scott Miller  
Sharon Griffin

FOR THE APPELLANT

Brian D. Edmonds

FOR THE RESPONDENT  
Ajit Newspaper Advertising,  
Marketing and Communications, Inc.

**SOLICITORS OF RECORD:**

Marusyk Miller & Swain, LLP  
Ottawa, Ontario

FOR THE APPELLANT

McCarthy Tétrault, LLP  
Ottawa, Ontario

FOR THE RESPONDENT  
Ajit Newspaper Advertising,  
Marketing and Communications, Inc.