

From: Michele Ballagh <michele@blaze-ip.ca>
Sent: August 9, 2022 4:05 PM
To: Goyette, Iyana (ISED/ISDE)
Subject: Consultation re: Draft – Request to give public notice under subsection 9(4) of the Trademarks Act

Iyana:

My comments on the draft practice notice:

1. The primary concern for requesting parties is likely that they will not be entitled to participate in the decision-making process by filing written argument or participating in an oral hearing. Where the evidence submitted by the registrant raises some doubt, the requesting party may be in a position to provide valuable assistance to the examiner in making their final determination through written and/or oral argument.

At minimum, I think the requesting party should be provided with a copy of the information or evidence filed by the registrant and be given an opportunity to file written comments/argument. If their comments/argument and those of the registrant are filed simultaneously, I don't think an oral hearing should be required. If the registrant is able to "reply" to the comments/written argument filed by the requesting party, an oral hearing would be prudent to allow some sort of opportunity for the requesting party to reply.

2. There is also reason to doubt the wisdom of exempting municipal, provincial and federal governments, including crown corporations and agencies, without evidence that they continue to exist. Municipalities sometimes merge and dissolve. There may also be reason to doubt that certain entities identified as a "crown corporation", "department" or "agency" qualify as such or continue to exist. I don't think there is any principled reason to exempt them from the summary expungement procedure.
3. For applicants facing objections to their pending trademark application based on an official mark, it would be beneficial to be able to also challenge official marks for non-use. I recognize that the legislative amendments don't provide CIPO with that authority, but an official mark that is not being actively used is deadwood as much as an official mark improperly recorded by a party who does not qualify as a public authority. I would like to see CIPO advocate the gov't for a future amendment to section 9 to allow summary expungement on this additional ground.

I hope that this is helpful.

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