

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application No. 76/476969
Published May 18, 2004

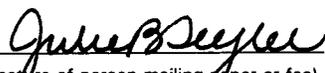
Palmerston Limited	:	
Opposer,	:	
	:	
v.	:	Opposition No.
	:	
Celestial Pictures Limited	:	161 458
Applicant.	:	

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

OPPOSER'S RESPONSE TO BOARD ORDER DATED JULY 27, 2004.

This responds to the order of the Trademark Trial and Appeal Board dated July 27, 2004.

The opposition was filed in the name of Palmerston Limited, a corporation organized and existing under the laws of the Isle of Man, with an office at 2nd Floor, Sixty Circular Road, Douglas, Isle of Man (hereinafter "Palmerston"). The Board has noted that the Extensions of Time were filed in the name of Hutchison Whampoa Enterprises Limited, (hereinafter "HWEL"). The Board has requested that Opposer provide an explanation as to the relationship between the parties.

CERTIFICATE OF MAILING
Date of Deposit : August 25, 2004
I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.
JULIE B. SEYLER

(signature of person mailing paper or fee)



08-30-2004
U.S. Patent & TMOtc/TM Mail Rcpt Dt. #77

Opposer is the owner of Application No. 78/103684 for the trademark



, (“The Soft Triangle Device”). The trademark has been used and registered throughout the world in connection with third generation mobile phone services. With respect thereto, Opposer and HWEL are in privity and have a mutual interest in protection of the The Soft Triangle Device.

Specifically, Opposer is a wholly-owned subsidiary of Hutchison International Limited, (hereinafter “HIL”). Use of the mark by Opposer inures to the benefit of HIL. Concomitantly, HIL is the parent company of HWEL. Because of the corporate relationship between HIL, Opposer and HWEL, Opposer maintains that it and HWEL have mutual rights in the pleaded trademark. HIL, as the parent company of both Opposer and HWEL exercises control over The Soft Triangle device and has the ability to grant HWEL the right to use The Soft Triangle Device. HWEL, as a child of HIL, and sister of Opposer believed in good faith that it would be damaged by the registration of Applicant’s mark on the Principal Register and therefore filed the Extension on its behalf.

The term privity is defined as:

Mutual or successive relationship to the same rights of property. In its broadest sense, “privity” is defined as mutual or successive relationships to the same right of property, or such an identification of interest of one person with another as to represent the same legal right.

As noted above, the corporate relationship between HIL, Opposer and HWEL, supports the fact that and HWEL have mutual rights in the pleaded trademark and thus Opposer should be permitted to challenge the use and registration of Applicant’s mark. To the extent that the concept of “privity” includes the mutual identification of an interest of one person with another so as to represent the same legal right, HWEL is in privity with Palmerston and had a legal and commercial interest to protect The Soft Triangle Device. It was a proper party to extend the opposition term and act on behalf of Opposer.

WHEREFORE, it is requested that the opposition be instituted.

Respectfully submitted,


JULIE B. SEYLER

Attorney for Opposer

ABELMAN, FRAYNE & SCHWAB
150 East 42nd Street
New York, New York 10017
(212) 949-9022