

Deadlines in proceedings before the Intellectual Property Office of New Zealand

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Following the High Court decision in *The Muir Electrical Company Pty Limited v The Good Guys Group Limited* (CIV-2009-404-4965, High Court Wellington, 18 December 2009, Lang J), the Intellectual Property Office of New Zealand has issued new guidelines for extensions of time for filing a notice of opposition.

In *The Muir Electrical Company Pty Limited v The Good Guys Group Limited*, The Good Guys filed several extension of time applications for filing evidence in a trade mark revocation action. The Good Guys Group then inadvertently missed its deadline and belatedly applied for an extension of time. Regulation 98 of the Trade Marks Regulations 2003 provides that an applicant for revocation must either file evidence, notify the Commissioner that it does not intend to file evidence or notify the Commissioner that it withdraws the application or the application is discontinued.

The High Court ruled that at the expiry of the extension of time, The Good Guys Group's applications for revocation had been discontinued and it was not possible to "turn back the clock" and grant a retrospective extension of time. Neither The Good Guys Group nor the Commissioner could take any further step to revive the applications.

Even though the High Court was not required to do so, because it was asked to consider an extension of time for filing a notice of opposition in a revocation action, it considered the provision governing the filing of a notice of opposition. The High Court noted that the Commissioner has no power to extend the date for filing a notice of opposition unless the extension is both requested and granted before the expiry of the opposition deadline.

The Intellectual Property Office of New Zealand has adopted this statement. What this means for parties involved in an opposition is that extensions of time must be applied for early in order to give the Intellectual Property Office of New Zealand time to consider and grant the extension before the expiry of the deadline. It also means that once a deadline is missed, it is likely to result in the loss of that parties' position.