

Legal Issues in 'IP Rights and Liabilities'

Issue: Whether failure to file evidence within the prescribed time limit leads to
Opposition being deemed abandoned?

Relevant Legal Provisions

❖ **Section 21 (4) of the Trade Marks Act, 1999**

“(4) Any evidence upon which the opponent and the applicant may rely shall be submitted in the prescribed manner and within the prescribed time to the Registrar, and the Registrar shall give an opportunity to them to be heard, if they so desire.”

❖ **Rule 45 of the Trade Marks Rules, 2017**

“(1) Within two months from service of a copy of the counterstatement, the opponent shall either leave with the Registrar, such evidence by way of affidavit as he may desire to adduce in support of his opposition or shall intimate to the Registrar and to the applicant in writing that he does not desire to adduce evidence in support of his opposition but intends to rely on the facts stated in the notice of opposition...”

If an opponent takes no action under sub-rule (1) within the time mentioned therein, he shall be deemed to have abandoned his opposition.”

Relevant Legal Provisions (Contd.)

❖ *Rule 46 of the Trade Marks Rules, 2017*

“(1) Within two months on the receipt by the applicant of the copies of affidavits in support of opposition or of the intimation that the opponent does not desire to adduce any evidence in support of his opposition, the applicant shall leave with the Registrar such evidence by way of affidavit as he desires to adduce in support of his application and shall deliver to the opponent copies thereof or shall intimate to the Registrar and the opponent that he does not desire to adduce any evidence but intends to rely on the facts stated in the counterstatement and or on the evidence already left by him in connection with the application in question...

If an applicant takes no action under sub-rule (1) within the time mentioned therein, he shall be deemed to have abandoned his application.”

Relevant Judicial Decisions

❖ ***V-Guard Industries v. Registrar of Trademarks & Anr., on January 06, 2023, C.A. (COMM.IPD-TM) 39/2022, High Court of Delhi***

*“23. Even otherwise, it is well settled that, while procedural provisions are required to be accorded their due deference, they cannot be interpreted so rigidly as to result in evisceration of substantive rights vested in the citizens. The right to oppose registration of a trade mark is just as sacrosanct as the right to seek registration. In the peculiar facts of the present case once the application for opposition had actually been filed by the appellant, **it would be entirely unfair for this Court to uphold the decision of the learned Deputy Registrar to treat the opposition as having been abandoned only because the evidence in support of the opposition was received three days late,** especially as prima facie, the appellant did make efforts to “leave” the evidence in support of the opposition with the office of the learned Registrar within the time stipulated in that regard in Rule 45(1) of the Trade Mark Rules.”*

(Emphasis Supplied)

Relevant Judicial Decisions

- ❖ ***Mahesh Gupta v. Registrar of Trademarks and Anr. on March 02, 2023, C.A. (COMM.IPD-TM) - 130/2021, High Court of Delhi]***

“16....Deemed abandonment, therefore, occurs by operation of the statute. Even sans any judicial or quasi judicial order, therefore, if the opponent opposing the application seeking grant of the trade mark fails to file its evidence in support of the opposition within a maximum of three months from the receipt, by it, of the counter-statement of the trade mark applicant, the opposition would ipso facto be deemed to be abandoned irrespective of whether any order to that effect is, or is not, passed by any judicial or quasi judicial forum.”

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Relevant Judicial Decisions

- ❖ *Sun Pharma Laboratories Ltd. v. Dabur India Ltd. and Anr. on February 09, 2024, C.A.(COMM.IPD-TM) 146/2022, High Court of Delhi]*

“47. ...If the evidence is not filed within the two months’ period, the opposition would be deemed to have been abandoned as the Registrar has no discretion either under Rule 50 of the 2002 Rules or Rule 45 of the 2017 Rules or Rules 101 and 109 of the 2002 Rules and the 2017 Rules respectively, to extend the time period.

⁶*48. This interpretation is also in line with the stand of the Trade Marks Registry i.e., to have strict timelines for opposition proceedings so that the Opponents cannot unduly and infinitely delay the processing of trade mark applications towards registration. .” (Emphasis Supplied)*

Relevant Judicial Decisions

- ❖ ***Tablets (India) Limited v. Spey Medicals Private Limited & The Registrar of Trademarks on July 31, 2025, C.A.(COMM.IPD-TM) 76/2022, High Court of Delhi***

“37. A conjoint reading of Section 21(4) of the Act and Rule 45 of the Rules shows that the manner prescribed for submission of evidence as contemplated under Section 21(4) of the Act is provided in Rule 45(1) of the Rules. The Rule 45(1) prescribes two options for the Appellant. First, if the Appellant wishes to submit evidence in support of its Opposition, it may do so within two months from the service of copy of the Counter Statement. Secondly, if the Appellant does not desire to adduce evidence in support of its Opposition, the Appellant has to intimate the Respondents in writing that the Appellant intends to rely on the facts stated in the notice of Opposition without adducing the Evidence in support of its Opposition. Further, Rule 45(2) provides that if the Appellant fails to take any action i.e., adducing the Evidence or intimating that it shall rely on the facts stated in the notice of Opposition, the Opposition shall be deemed to have been abandoned.”

Relevant Judicial Decisions

- ❖ *Tablets (India) Limited v. Spey Medicals Private Limited & The Registrar of Trademarks on July 31, 2025, C.A.(COMM.IPD-TM) 76/2022, High Court of Delhi*

“38. It is clear from the above that it is not compulsory for the Appellant to adduce Evidence in support of its Opposition. However, if the Appellant chooses not to adduce Evidence, it is incumbent upon the Appellant to intimate the Respondents that it does not desire to adduce Evidence and, instead, rely upon the facts stated in the notice of Opposition. As the Appellant has not taken either of the actions as contemplated under Rule 45(1) of the Rules, the deemed abandonment of the Opposition as provided in Rule 45(2) shall be effected in absence of any intimation to the Respondents by the Appellant. Hence, even though Section 21(4) of the Act mentions that the Appellant “may” rely upon any Evidence, the same has to be in the prescribed manner and within the prescribed time as stipulated in Rule 45(1) of the Rules.” (Emphasis Supplied)

Relevant Judicial Decisions

- ❖ *ACE Foods Private Limited v. Registrar of Trade Marks & Anr. on January 08, 2026, (C.M.A.(TM) Nos.23 and 24 of 2025, High Court of Madras*

“31. Sub Clause (4) of Section 21 of the Act talks about the evidence relied upon by the opponent and the applicant and the manner it has to be given within the time prescribed. The legislature did not think it fit to provide for deemed abandonment for failure to file affidavit of evidence in the prescribed manner within the prescribed time limit. **This is obviously due to the fact that it is a procedural requirement and such non-filing of the affidavit of evidence should not result in defeating the substantive right available to the parties.** Therefore, if the opposition and the counter statement for the opposition are filed on time, it gives an indication that the parties are interested in proceeding further with the application and opposition. **If ultimately, there is failure on the part of the parties in filing the affidavit of evidence in the prescribed manner within the prescribed time, at the best they will lose their right to adduce evidence and that can never result in a deemed abandonment of the application or opposition as the case may be..**” (Emphasis Supplied)

Relevant Judicial Decisions

- ❖ *ACE Foods Private Limited v. Registrar of Trade Marks & Anr. on January 08, 2026, (C.M.A.(TM) Nos.23 and 24 of 2025, High Court of Madras (Contd.)*

“37. On a plain reading of Sub Rule (2) of Rule 46, it is evident that it goes beyond the scope of Section 21 of the Act. Sub Section (2) of Section 21 of the Act, alone prescribes as to when an application will be deemed to have been abandoned. However, when it comes to evidence, Sub Rule (4) consciously does not provide for a consequence of deemed abandonment. If such an adverse consequence is provided under Sub Rule (2) of Rule 46, obviously it overrides the Act and to that extent, it is ultra vires the Act.” (Emphasis Supplied)

Conclusion

- ❖ Majority of decisions of the Delhi High Court have emphasized strict adherence to procedural timelines, holding that failure to file evidence within the prescribed period results in abandonment by the of the opposition.
- ❖ Conversely, the Madras High Court has taken a more liberal approach, observing that procedural requirements should not defeat substantive rights and that non-filing of evidence should merely restrict the party's ability to rely on additional evidence rather than extinguish the opposition itself. Accordingly, the judgements reflect a question between procedural discipline in trademark opposition proceedings and the protection of substantive rights of parties.
- ❖ Until the issue is authoritatively settled by a larger bench or the Supreme Court, the interpretation of deemed abandonment in such circumstances is likely to remain open to judicial interpretation with the recent judgement of Madras High Court.

THANK YOU!
Questions?

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