

il-para. (d) tas-subinċiż (2) tar-regola 6 tal-L.S. 597.03 jitlob mingħand min ikun qiegħed jippreżenta oppożizzjoni fir-rigward tar-reġistrazzjoni ta' marka minħabba r-reġistrazzjoni ta' marka preċedenti, għandu jindika, dejjem jekk disponibbli, id-data tar-reġistrazzjoni u d-data ta' prijorità tal-marka tiegħu preċedenti, sabiex b'hekk l-appellant ikollu stampa ċara tal-pożizzjoni tiegħu – il-liġi hija ċara u titlob li l-informazzjoni għandha tingħata mill-ewwel sabiex imbagħad jekk l-opponent jonqos, il-Kontrollur huwa marbut li jimxi skont id-dispożizzjonijiet tas-subinċiż (3) tar-regola 8 tal-L.S. 597.03



MALTA

QORTI TAL-APPELL
(Sede Inferjuri)

ONOR. IMĦALLEF
LAWRENCE MINTOFF

Seduta tas-7 ta' Frar, 2024

Appell Inferjuri Numru 137/2022 LM

Rachel Borg (K.I. nru. 0300885(M))
(l-appellanta')

vs.

Kontrollur tal-Proprietà Industrijali u
Andrew Farrugia (K.I. nru. 524689(M)) u Craig Macdonald (l-appellati')

Il-Qorti,

Preliminari

1. Dan huwa appell magħmul minn **Rachel Borg (K.I. nru. 0300885(M))** [minn issa 'l quddiem 'l-appellanta'] minn deċiżjoni [minn issa 'l quddiem 'id-

deċiżjoni appellata'] tal-Kontrollur tal-Proprietà Industrijali [minn issa 'l quddiem 'il-Kontrollur'] datata 3 ta' Ottubru, 2022, li permezz tagħha ddecieda dwar l-oppożizzjoni li kienet saret mill-appellati l-oħra **Craig Macdonald** u **Andrew Farrugia** [minn issa 'l quddiem 'l-appellati'] għall-applikazzjoni tagħha tas-26 ta' Lulju, 2020 nru. 61303 għar-registrazzjoni tal-marka *Tazza Te'* taħt il-klassi nru. 43 '*Coffee shops*' kif ġej:

"After due consideration of submissions made, of the relevant legal provisions and relevant case the Office finds that:

(i) the goods in respect of which the applicants' mark is applied for i.e., Coffee Shops is similar to the goods in respect of which the earlier mark was registered for;

(ii) it has compared the marks and considers that there is an above average degree of visual, aural and conceptual similarity between them;

(iii) the marks with 'Te' and 'Tazza' registered as trademark by the opponent is included in its totality in the applicants mark and forms a significant part of the applicants mark which consists of words 'tazza' and 'te' and the colour of the font is highly similar;

(iv) both the applicant's and opponent's mark bear a similar figurative element (the traditional Maltese glass of tea).

As a result of the global assessment the Office concludes that there is likelihood of confusion. The Office considers that the above elements may lead the public to interpret the applicant's mark as a variant of that earlier mark or as a mark associated with the owner of the earlier mark and, accordingly, as having the same commercial origin or that goods at issue derive, at the very least from companies which are linked economically.

In this regard the Office finds that there is a possibility of likelihood of confusion in the minds of consumers and the opposition to your application to Applicant's Trademark No 61303 is accepted.

Within fifteen (15) days from the date of this letter, you are kindly requested to inform this Office if you have instituted an appeal to this decision before the Court of Appeal as provided in Article 100 of the Trademarks Act, Cap. 597.

If you do not inform this Office that you have instituted an appeal to this decision within the aforementioned time-frame, this Office will record this application as refused in our records."

Fatti

2. Il-fatti ta' dan l-appell jirrigwardaw l-imsemmija applikazzjoni nru. TM61303 li giet pprezentata lill-Kontrollur mill-appellanta fis-26 ta' Lulju, 2020 għar-registrazzjoni tal-marka *Tazza Te'* [minn issa 'l quddiem 'il-marka opposta'] u li tirrappreżenta 'ħanut tal-kafé'. Sussegwentement fit-23 ta' Diċembru, 2020 l-appellanta kienet giet infurmata mill-Kontrollur li wara tfittxija fin-*National Trademark Database* għal marki simili jew identiċi għall-marka opposta, irrizulta li kien hemm diġà applikazzjoni għal marka bin-numru TM57398 fl-isem l-appellati, li kienet saret fis-27 ta' Jannar, 2018 u registrata fl-10 ta' Settembru, 2018.

Mertu

3. L-appellati filfatt ipprezentaw l-Avviż tal-Oppożizzjoni tagħhom għar-registrazzjoni tal-marka opposta *ai termini* tal-para. (b) tas-subartikolu 6(1) tal-Kap. 597, u dan għaliex huma jgħidu li għandhom drittijiet anteedenti naxxenti mir-registrazzjoni tal-marka *Te' fit-Tazza* bin-numru TM57398 taħt il-klassi nru. 43 u n-nru. 16 [minn issa 'l quddiem 'il-marka preċedenti']. Jikkontendu li hemm possibiltà qawwija ta' konfużjoni bejn iż-żewġ marki, u anki l-assocjazzjoni tal-pubbliku bejn l-imsemmija marki.

4. L-appellanta pprezentat kontro-dikjarazzjoni datata 21 ta' Ġunju, 2021, u l-appellati pprezentaw Avviż dwar Manteniment tal-Oppożizzjoni fit-28 ta' Lulju, 2021.

Id-deċiżjoni appellata

5. Kif ġie kkonstatat iktar 'il fuq f'din is-sentenza, il-Kontrollur wasal sabiex ċaħad l-applikazzjoni tal-appellanta fit-3 ta' Ottubru, 2022, u dan wara li kien għamel is-segwenti konsiderazzjonijiet rilevanti għal dan l-appell fl-'*Opposition Decision*' tiegħu tal-20 ta' Mejju, 2022:

"2. Findings

The Office has noted the submissions made by the opponent and the applicant and has made the following findings:

2.1 Claim of Inadmissibility of Opposition contained in the Counter statement

A claim of inadmissibility was made by the applicant in the counterstatement, claiming that the opposition filed is 'unfounded by fact and by law'. The counterstatement stated that the opposition:

'...fails to include the registration date and the priority date and is therefore inadmissible and this is in accordance with sub-regulation (3) of Regulation 8 of the Trademark Search and Opposition Regulations, S.L.597.03.'

a) Summary of claim

The opposition was initiated under the claim that the proposed trademark, registration TM61303, would cause a likelihood of confusion between the marks of both parties. The opponent listed multiple scenarios whereby the trademark application would disrupt and propose a likelihood of confusion. The counterstatement denied a likelihood of confusion whatsoever, raising a claim of inadmissibility.

b) Analysis of claim

The predominant element in this opposition should be a thorough analysis of the likelihood of confusion between both marks. In lieu of case law, a likelihood of confusion should be assessed by the overall visual, aural and conceptual elements from the eyes of the general public, 'bearing in mind, in particular, their distinctive and dominant components'. (fn. 1 Sabel V Puma AG) The analysis of such likelihood of confusion will proceed following the usual, aural and conceptual examination of both marks.

c) Office decision reclaim of inadmissibility of Opposition contained in the counter statement

A claim of inadmissibility was raised on a technicality but given that all other requisites contained in the Trademark Search and Opposition Regulations S.L. 597.03 to file an Opposition were fulfilled, such claim of inadmissibility is dismissed.

2.2 Assessment of Grounds for refusal

2.2.1 Legislation under which the grounds cited by the Opponent falls

This opposition is based on Article 6(1)(b) of the Trademarks Act, Chapter 597 of the Laws of Malta.

2.2.2 Goods and/or services covered the the trademarks

As regards the Goods and Services, the applicant is aimed to register the mark under Class 43 with the goods and services of 'Coffee Shops', whilst the opponent's mark is registered under both Class 43 and Class 16. The applicant alleged that the opponent is not making use of his mark in Class 43, as the business of the opponent is mainly based on printing and design, however the opponent claimed that even though the opponent has not provided a service under Class 43, this does not mean that they do not have plans to do so.

3. Comparison of trademarks

3.1 Determination whether Marks are Identical

The Office notes that the applicant's trademark and the opponent's trademark are not identical. Following a thorough examination of the aforementioned marks, the word elements, although can be considered to be verging on being identical, are placed at a differing sequential manner and therefore the Office can conclude that the marks are not identical.

3.2 Similarity Assessment

Given that the goods are similar and the marks are not identical the Office carried out an assessment of the visual, aural and conceptual similarity of the marks in question.

3.2.1 Visual Similarity

The Office notes an above-average to high level of visual similarity, for a number of reasons. The dominant word elements of both marks are 'TAZZA' and 'TE'. The sequence of these word elements are placed in a different manner in both marks, with the inclusion of 'fit-' in the opponent's mark. The applicant's mark also features an apostrophe after the letter 'e' in the word 'te'.

With regards to colour and design, both marks feature a rendition of a typical glass of tea, a Maltese tradition. The opponent's mark represents the glass in a minimalistic streamlined design, and the applicant features the tea glass with more detail, and the inclusion of a teaspoon. Nevertheless, it is relevant to include that it is evident that both designs are graphically representing a Maltese Traditional Tea Glass.

The stylised font of both marks is fairly similar, with the font colour also being fairly similar to one another. The background of both marks is different, with the opponent's background being white and the applicant's background being a shade of dark brown.

Without prejudice to the above, the similarity stemming from the design, stylised font, representation of the graphical element and the word elements, the Office can conclude that an above average to high similarity is evidently predominant.

3.2.2 Aural Similarity

As outlined in the visual examination of both marks, the words and spoken elements of both marks are highly similar.

Opponent Mark	Applicant Mark
T-E-F-I-T-T-A-Z-Z-A	T-A-Z-Z-A-T-E-'

One can notice that the dominant phonetic components of both marks is 'TE' and 'TAZZA'. The sequential manner is different in both marks, therefore the phonetic sequence is slightly different.

The phonetic language of both marks is the Maltese language, and therefore there is no difference in interpretation, as both are phonetically represented in the same language.

As previously remarked, the applicant mark has an apostrophe after the letter 'E'. Phonetically, the apostrophe is silent and therefore should not affect the phonetic examination into the similarity of both marks.

In view of the above, the Office considers that an above average aural similarity can be observed.

3.2.3 Conceptual Similarity

Before examining the conceptual similarity of both marks, it is paramount to understand the notion of a 'concept', before attempting to identify a conceptual similarity. In the case in question, the concept in question of both marks is a Maltese tradition of a TAZZA TE/TE FIT-TAZZA, which is a literal translation of a glass of tea, or tea in a glass. So, it is very evident that both marks are representing the same concept, and the representation of such concept is similar in a number of ways, and therefore the Office find that the conceptual similarity is above average.

4 Global assessment of the likelihood confusion

*The opponent argued on numerous occasions regarding a likelihood of confusion when comparing both marks in question. A confusion pertaining to both marks originating from the same undertaking was also flagged by the opponent, exhibiting a screenshot of an incident whereby an average consumer confused both marks by tagging one mark with the intention of referencing the other. When examining the likelihood of confusion, such examination must be examined globally, taking into account all the factors pertaining to the case in question. Such examination must be judged from the eyes of the average consumer, who is presumed to be reasonably well informed, as per *Sabel v Puma AG*. A degree of attention on the part of the relevant public is also paramount in the assessment of a likelihood of confusion or otherwise. The relevant public rarely has the opportunity to make direct comparisons between the marks and would generally rely on imperfect recollection to compare both signs. (*Lloyd Schufabrik Meyer and Co. GmbH v. Klijsen Handel BV*). Following a thorough analysis of the visual, aural as well as the conceptual opponents, the Office can notice that the probability of a likelihood of confusion is very high.*

4.1 Opposition citing Article 6(1)(b) – the requirement of identical or similar marks

Although both marks are deemed not to be identical, the Office notices an above average to high level of similarity in both marks.

The opponent presents sufficient proof in the opposition that TM Application 61303 would cause a significant detriment on the part of the opponent. The ‘Te fit-Tazza’ mark and the ‘Tazza Te’ would likely lead the consumers to conclude that they originate from the same undertaking and therefore the distinctive character of the earlier trademark may be taken unfair advantage with the registration of TM61303. A number of visual elements are highly similar and therefore the distinctive character of the earlier mark would be in detriment. Moreover, the opponent presented a number of local newspaper articles, as well as being winners of various local awards. The opponent also presented sufficient proof that the average consumer is already causing a detriment to the repute of the earlier mark, with the consumer confusing both marks on social media platforms. On the other hand, the applicant has not presented any evidence in this regard. Therefore, the requirement of similarity as promulgated in Article 6(1)(b) is fulfilled in this regard.”

L-Appell

6. L-appellanta pprezentat ir-rikors tal-appell tagħha fit-18 ta’ Ottubru, 2022 fejn qiegħda titlob lil din il-Qorti sabiex tiddikjara:

- “(i) n-nota ta’ oppożizzjoni mhux ammissibbli;*
- (ii) tornda lill-Appellant ikompli bir-registrazzjoni tat-Trademark tal-Appellanti skont applikazzjoni filing number TM 61303;*
- (iii) alternattivament, f’każ illi din l-Onorabbli Qorti ma’ jogħgobhiex tilqa’ t-talbiet fuq imsemmija numerati (i) sa (ii), prevja kwalsiasi dikjarazzjoni oħra talvolta meħtieġa u neċessarja, tiddikjara illi l-applikazzjoni tal-Appellanti ma tissodisfax ir-rekwiżiti stabbiliti fl-Artikolu 6(1)(b) tal-Att dwar it-Trademarks, Kapitolu 597 tal-Liġijiet ta’ Malta, u għaldaqstant tornda lill-Appellant ikompli bir-registrazzjoni tat-Trademark tal-Appellanti skont applikazzjoni filing number TM61303.*

Bl-ispejjeż kollha kontra l-Appellat.”

Tgħid li l-aggravji tagħha huma dawn: (a) in-nota ta' oppożizzjoni ma kien fiha l-ebda data, u ma kinitx tindika d-data tar-registrazzjoni u d-data ta' prijorità tal-marka preċedenti; (b) m'hemm l-ebda probabbiltà ta' konfużjoni bejn il-marka opposta u l-marka preċedenti.

7. Il-Kontrollur wieġeb fit-8 ta' Novembru, 2022, fejn talab lill-Qorti sabiex tiċhad l-appell tal-appellanta għal dawk ir-raġunijiet li huwa jfisser fit-twegiba tiegħu.

8. L-appellati wieġbu fid-19 ta' April, 2023 fejn huma wkoll talbu lil din il-Qorti sabiex tiċhad l-appell odjern, filwaqt li fessru r-raġunijiet tagħhom għal dan.

Konsiderazzjonijiet ta' din il-Qorti

9. Din il-Qorti ser tgħaddi sabiex tikkunsidra l-aggravji rispettivi tal-appellanta, u dan fid-dawl ta' dak kollu li qal il-Kontrollur fid-deċiżjoni appellata u fir-risposta tal-appell tiegħu.

L-ewwel aggravju: [in-nota ta' oppożizzjoni m'għandha l-ebda data u ma fiha l-ebda indikazzjoni tad-data tar-registrazzjoni u tad-data ta' prijorità tal-marka preċedenti]

10. L-appellanta tikkontendi li n-nota ta' oppożizzjoni li saret mill-appellati ma fiha l-ebda data. Tgħid ukoll li din ma fiha l-ebda ndikazzjoni tad-data tar-registrazzjoni tal-marka preċedenti u d-data ta' prijorità tagħha. L-appellanta tissottometti li fin-nuqqas ta' dawn ir-rekwiżiti indikati fil-para. (d) tas-

subregolament 6(2) tal-L.S. 597.03, l-imsemmija nota mhijiex ammissibbli *ai termini* tas-subregolament 8(3) tal-istess regolamenti.

11. Il-Kontrollur jirrileva li d-data ta' registrazzjoni jew ta' prijorità rilevanti hija biss għall-finijiet tal-kwistjoni ta' preċedenza, iżda fil-każ odjern ma kien hemm l-ebda kontestazzjoni dwar il-preċedenza tal-marka preċedenti. Jissottometti li sakemm wasal sabiex jieħu deċiżjoni *ai termini* tas-subregolament 10(1) tar-Regoli dwar Tiftix u Oppożizzjoni, l-informazzjoni dwar id-data kienet giet ikkomunikata lilu mill-appellati permezz tad-dokumentazzjoni addizzjonali, fejn ġew imfissrin ir-raġunijiet li għalihom huma kienu qegħdin jipprezentaw l-oppożizzjoni tagħhom, u dan skont il-para. (ii) tas-subregolament 9(4) tal-imsemmija regoli L.S. 597.03, sussegwenti għall-kontro-dikjarazzjoni pprezentata mill-appellanta. Isostni li b'hekk l-appellanta ma sofriet l-ebda preġudizzju, u huwa kontra l-ispirtu tar-regoli li n-nota ta' oppożizzjoni tiġi kkunsidrata inammissibbli fuq punt irrilevanti għall-mertu. Jissottometti li nota ta' oppożizzjoni ma titqiesx nulla *ope legis*, iżda biss fuq deċiżjoni tiegħu wara li huwa jkun ta' ż-żmien sabiex kull nuqqas jiġi rimedjat *ai termini* tar-regola 8(3). Il-Kontrollur jammetti li l-uffiċċju tiegħu ma kienx talab lill-appellati sabiex jindikaw id-data tar-registrazzjoni tal-marka preċedenti, u għalhekk ma kkunsidrax li l-oppożizzjoni kellha tiġi miċħuda, anki għaliex id-data ngħatat permezz ta' dokumentazzjoni addizzjonali, wara n-notifika tal-kontro-dikjarazzjoni pprezentata mill-appellanta. Għalhekk jikkontendi li l-aggravju għandu jiġi miċħud.

12. L-appellati jikkontestaw dan l-aggravju wkoll billi jirrilevaw qabel xejn li d-data ta' prijorità għandha tiġi ndikata biss fejn il-marka tkun giet irregistrata

f'pajjiż ieħor li jkun issieħeb fit-Trattat ta' Pariġi, sabiex jekk imbagħad tiġi ppreżentata applikazzjoni f'pajjiż ieħor fi żmien sitt xhur mill-ewwel waħda, tkun tgħodd id-data ta' din tal-aħħar. L-appellati jiċċitaw dak li tgħid il-WIPO dwar id-data ta' prijorità u t-Trattat ta' Pariġi, filwaqt li jsostnu li fil-każ odjern l-applikazzjoni kienet l-ewwel waħda tagħhom u għalhekk ma kienx hemm data ta' prijorità. Għalhekk ma kien hemm l-ebda nuqqas min-naħa tagħhom. Jinsistu wkoll li d-data ta' prijorità kienet tkun ta' rilevanza fl-eventwalità li l-appellanti tkun ippreżentat applikazzjoni f'pajjiż terz qabel l-applikazzjoni tagħhom, iżda hawnhekk ma kienet qiegħda ssir l-ebda kontestazzjoni dwar il-preċedenza tal-marka preċedenti. Għal dak li jirrigwarda d-data ta' reġistrazzjoni, jgħidu li din hija informazzjoni pubblika li tirriżulta mid-*database* tal-Kontrollur aċċessibbli *online*. L-appellati jissottomettu li hija d-data ta' applikazzjoni li hija l-aktar importanti għaliex id-drittijiet marbuta mal-marka japplikaw minn dik id-data, u din l-informazzjoni kienet ingħatat minnhom meta ppreżentaw is-sottomissjonijiet tagħhom lill-Kontrollur. Ikomplu jgħidu li fil-każ odjern il-Kontrollur ma kien talab l-ebda kjarifika/rettifika, u dan stante l-informazzjoni l-oħra li ngħatat. L-appellati jirrilevaw li minn imkien ma jirriżulta mid-dispożizzjonijiet tal-Kap. 597 u tal-liġi sussidjarja, li n-nuqqas iwassal għall-invalidità tal-oppożizzjoni, u fi kwalunkwe każ l-appellanta ma kienet sofriet l-ebda preġudizzju.

13. Il-Qorti tqis li l-appellanta għandha raġun. Tibda billi tagħmel riferiment għall-para. (d) tas-subinċiż (2) tar-regola 6 tal-L.S. 597.03, li fuqu qiegħda tistrieħ l-appellanta għall-fini tal-ewwel aggravju tagħha:

“(d) fil-każ ta’ applikazzjoni għal, jew reġistrazzjoni ta’ *trademark* preċedenti, id-data tad-domanda u, meta tkun disponibbli, id-data tar-reġistrazzjoni u d-data ta’ prijorità tat-*trademark* preċedenti;”

14. Tikkunsidra li dak li titlob il-liġi mingħand min ikun qiegħed jippreżenta oppożizzjoni fir-rigward tar-reġistrazzjoni ta’ marka minħabba r-reġistrazzjoni ta’ marka preċedenti, huwa tassew ċar. Il-para. (d) jitlob li min ikun qiegħed jopponi l-imsemmija reġistrazzjoni, għandu jindika, dejjem jekk disponibbli, id-data tar-reġistrazzjoni u d-data ta’ prijorità tal-marka tiegħu preċedenti. Fil-każ odjern ma jirrizultax li hemm xi kwistjoni dwar id-disponibbiltà o meno ta’ din l-informazzjoni rikjesta mil-liġi, u għalhekk il-Qorti tqis li d-dati rikjesti kellhom jiġu ndikati sabiex b’hekk l-appellanta kien ikollha stampa ċara tal-pożizzjoni tagħha. Il-Qorti ma taqbilx mal-argument tal-Kontrollur li d-data tar-reġistrazzjoni jew id-data ta’ prijorità hija biss rilevanti fejn hemm kwistjoni ta’ preċedenza, kif qegħdin ukoll jissuġġerixxu l-appellati, u dan għaliex il-liġi ma torbotx ir-rekwiżit ma’ kwistjoni bħal din, u tapplika b’mod ġenerali fejn jiġi ppreżentat avviż ta’ oppożizzjoni għar-reġistrazzjoni ta’ marka. Lanqas ma taqbel mal-argument l-ieħor tal-Kontrollur li l-informazzjoni mitluba dwar id-data ta’ reġistrazzjoni u d-data ta’ prijorità kienet ingħatat mill-appellati qabel ma ttieħdet id-deċiżjoni appellata, u dan għall-istess raġuni li l-liġi hija ċara u titlob li l-informazzjoni għandha tingħata mill-ewwel sabiex imbagħad jekk l-opponent jonqos, il-Kontrollur huwa marbut li jimxi skont id-dispożizzjonijiet tas-subinċiż (3) tar-regola 8 tal-L.S. 597.03, li jipprovdi kif ġej:

“(3) Meta l-avviż ta’ oppożizzjoni ma jkunx konformi mad-dispożizzjonijiet tar-regola 6(2)(d) sa (g), l-Uffiċċju għandu jgħarraf lill-parti li tkun qiegħda toponi kif meħtieġ u għandu jagħtiha opportunità li tirrimedja n-nuqqasijiet avzati fi żmien għaxart (10) ijiem tax-xogħol mid-data meta l-Uffiċċju jagħti l-avviż. Jekk dawk in-nuqqasijiet

ma jiġux rimedjati qabel ma jiskadi ż-żmien stipulat, l-Uffiċċju għandu jirrofta l-oppożizzjoni.”.

15. Il-Qorti tagħraf li l-Kontrollur stess jammetti li b’hekk l-avviż ta’ oppożizzjoni difettuż jista’ jiġi sanat, u dan filwaqt li jammetti wkoll li huwa kien naqas li jsegwi dak li jipprovdi għalih is-subinċiż (3) billi jikteb lil dik il-parti li tkun qiegħda topponi, u jagħtiha l-opportunità li tirrimedja n-nuqqasijiet f’terminu perentorju ta’ għaxart ijiem mid-data tal-avviż tiegħu. Għalhekk il-Qorti tikkunsidra li l-avviż ta’ oppożizzjoni baqa’ wieħed difettuż u b’hekk ma jiswiex skont il-liġi. Tgħid li l-argument li l-appellanta, u dan skont kif qegħdin jikkontendu l-Kontrollur u l-appellati rispettivament, allegatament ma sofriet l-ebda preġudizzju għal darb’oħra l-informazzjoni ngħatat f’stadju ulterjuri u stante li l-oppożizzjoni kienet msejsa fuq l-allegata konfużjoni bejn il-marki, ma jistax jirnexxi sabiex b’hekk jiġi aċċettat bħala ammissibbli l-avviż ta’ oppożizzjoni. Dan għaliex kif itteni għal darb’oħra l-Qorti, il-liġi hija ċara u ma tħalli l-ebda dubju dwar dak li għandu jkun fih l-imsemmi avviż sabiex jiġi ammess bħala wieħed validu fil-konfront ta’ applikazzjoni għar-registrazzjoni ta’ marka.

16. Għaldaqstant, il-Qorti ssib dan l-ewwel aggravju tal-appellanta ġustifikat u tilqgħu, filwaqt li tastjeni milli tiegħu konjizzjoni tal-aggravji l-oħra tagħha fil-konfront tad-deċiżjoni appellata għal darb’oħra l-avviż ta’ oppożizzjoni huwa null.

Decide

Għar-raġunijiet premessi, il-Qorti taqta’ u tiddeciedi dwar l-appell tal-appellanta billi tilqgħu, tiddikjara li n-nota ta’ oppożizzjoni tal-appellati hija inammissibbli *ai termini* tal-liġi, tħassar u tirrevoka d-deċiżjoni appellata u

tordna lill-Kontrollur sabiex ikompli bil-proċedura tar-registrazzjoni tal-marka taħt l-applikazzjoni numru TM61303.

Bl-ispejjeż tal-appell odjern a karigu tal-appellati.

Moqrija.

**Onor. Dr Lawrence Mintoff LL.D.
Imħallef**

**Rosemarie Calleja
Deputat Registratur**