



T-2811-96

**BETWEEN:**

**PRESIDENT ASIAN ENTERPRISES INC.**

Applicant

- AND -

**PRESIDENT GROUP REALTY, LTD.**

Respondent

**REASONS FOR ORDER**

(Delivered orally on the Bench  
at Vancouver, B.C. on April 28, 1997, as edited)

**McKEOWN J.**

This is a motion on behalf of the respondent for an Order setting aside the Order of Prothonotary John A. Hargrave dated March 26, 1997, and granting leave to the respondent to file a Reply under subsection 59(2) of the *Trade-marks Act*, R.S.C. 1985, c. T-13 (the Act), together with affidavits that the respondent proposes to put before the Court for the hearing and determination of the proceedings pursuant to Rule 704(7) of the *Federal Court Rules* (the Rules).

In my view, Prothonotary Hargrave exercised his discretion in accordance with the case law and I would have exercised my discretion in the same way. There was no reasonable explanation for the delay provided to the prothonotary. There was no evidence provided to me with respect to the reason for the delay. The affidavit of the respondent's legal assistant does not offer any reason for the delay. It simply cites two letters, one, during the period within which time the

reply was to be made and a second letter that was sent subsequent to the time for reply. The reason for delay is required, even by the case of *Golden Happiness Bakery Ltd. v. Goldstone Bakery & Restaurant Ltd.* (1994), 53 C.P.R. (3d) 195 (F.C.T.D.).

I accept there is a distinction between the application for extension of time to file a reply, and to file the affidavits in support of a reply, however, without some explanation for the delay and even though the application for expungement will proceed *ex parte*, the extension of time cannot be granted without reason.

The applicant still has to prove the case for expungement at the *ex parte* hearing. I also point out that the respondent's client was informed of the need to respond to their lawyers by the end of February. There is nothing on the record to show their intention to file or apply within the period provided by the Rules.

"William McKeown"

Judge

TORONTO, ONTARIO  
May 15, 1997

**FEDERAL COURT OF CANADA**

**Names of Counsel and Solicitors of Record**

COURT NO: T-2811-96

STYLE OF CAUSE: PRESIDENT ASIAN ENTERPRISES INC.  
- and -  
PRESIDENT GROUP REALTY, LTD.

DATE OF HEARING: APRIL 28, 1997

PLACE OF HEARING: VANCOUVER, B. C.

REASONS FOR ORDER BY: McKEOWN, J.

DATED: MAY 15, 1997

**APPEARANCES:**

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For the Applicant

Mr. Robert Margolis

For the Respondent

**SOLICITORS OF RECORD:**

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