



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2024 TMOB 83

Date of Decision: 2024-04-11

INTERLOCUTORY RULING

Opponent: Indigo Books & Music Inc.

Applicant: Viet Trung Tran

Application: 2,180,274 for ouiwear

[1] On November 28, 2023, a statement of opposition was forwarded to the applicant. On January 23, 2024, the applicant requested an interlocutory ruling striking each of the grounds of opposition. On February 20, 2024, the opponent submitted an amended statement of opposition and responded.

AMENDED STATEMENT OF OPPOSITION IS ACCEPTED

[2] I am satisfied that it is in the interests of justice to grant leave to the opponent pursuant to section 48 of the Trademarks Regulations to amend its statement of opposition given the lack of prejudice to the applicant due to the early stage of the proceedings. Accordingly, the amended statement of opposition submitted on February 20, 2024 is made of record and will be considered in assessing the interlocutory ruling request.

THE SCOPE OF INTERLOCUTORY RULINGS

[3] The sufficiency of a statement of opposition is governed by section 38 of the Trademarks Act (the Act). Section 38(2) of the Act details an exhaustive list of the grounds upon which an opposition may be based. Section 38(3) of the Act requires a statement of opposition be set out in sufficient detail to enable the applicant to reply. Pursuant to section 38(6) of the Act, the Registrar may strike all or part of a statement of opposition if it does not raise a valid ground of opposition within the scope of section 38(2) or does not set out a ground in sufficient detail to enable the applicant to reply to it. A proper pleading alleges the material facts but not the evidence which the party intends to adduce to establish those facts [see *Pepsico Inc and Pepsi-Cola Canada Ltd v Registrar of Trade-marks* (1975), 22 CPR (2d) 62 (FCTD)].

INTERLOCUTORY RULINGS ARE NOT AKIN TO SUMMARY JUDGMENT

[4] An interlocutory ruling does not consider whether a particular ground has any chance of succeeding and there is no process for summary dismissal set out in the Act or Trademarks Regulations.

INTERLOCUTORY RULING REQUEST IS REJECTED

[5] The applicant has not submitted that any of the grounds of opposition lack sufficient detail to enable him to reply, nor that they are invalid. Rather, the applicant argues the merits of the opposition, for example, submitting that the information provided in its application is accurate and that the applied-for trademark is not confusing with the opponent's trademarks. Finally, the applicant argues that two of the opponent's pleadings are contradictory. Even if I accepted the applicant's submissions that two of the grounds of opposition are contradictory, this does not render the applicant unable to reply or result in invalid grounds of opposition. Accordingly, the applicant's interlocutory ruling request is rejected.

DEADLINE TO FILE THE COUNTERSTATEMENT

[6] In accordance with its request of January 23, 2024, the applicant is granted **one month** from the date of this letter to file and serve its counter statement.

[7] In closing, the applicant is reminded that as a trademark opposition proceeding is a complex adversarial process, the Registrar cannot assist either of the parties to the opposition, even if one party is not represented by a qualified trademark agent. It is therefore strongly recommended that you seek representation by a qualified trademark agent. Additional information about opposition proceedings may also be found on the Trademarks Opposition Board website at <https://ised-isde.canada.ca/site/canadian-intellectual-property-office/en/trademarks/trademarks-opposition-board>.

Natalie de Paulsen
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

Agents of Record

For the Opponent: BERESKIN & PARR LLP/S.E.N.C.R.L., S.R.L.

For the Applicant: No agent appointed