



LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADE-MARKS

Citation: 2010 TMOB 208
Date of Decision: 2010-11-30

**IN THE MATTER OF AN OPPOSITION
by Executors of the Estate of Francisco Coll
Monge (Estate), Francisco David Coll
Executor, a Puerto Rico Estate, to
application Nos. 1,257,128 for the trade-
mark PEACE COMMUNITY CHURCH
OF CANADA in the name of Peace
Community Church of Canada Limited.**

[1] On May 10, 2005 Peace Community Church of Canada Limited (the Applicant) filed application No. 1,257,128 to register the trade-mark PEACE COMMUNITY CHURCH OF CANADA (the Mark) based on use of the Mark in Canada since at least as early as April 23, 1979, on wares (1); January 1976 on services; and based on proposed use in Canada on wares (2) (see below):

Wares: (1) Printed instructional, educational and teaching materials namely, course materials and instructor notes, work books, group study books, monthly newsletters and magazines, promotional flyers, registration and order forms, brochures, and posters featuring religious teachings, leadership, spiritual guidance, healing, counselling, prayer and meditation;

(2) Pre-recorded CDs, audio tapes and video tapes featuring religious teachings, leadership, spiritual guidance, healing, counselling, prayer and meditation.

Services: Providing religious teachings, leadership, spiritual guidance, healing,

counselling, prayer and meditation; training services namely training in the practices of the church; fellowship and leadership services related to religious teachings, spiritual guidance, healing, counselling, prayer and meditation; church services; live musical performances.

[2] The application was advertised for opposition purposes in the Trade-marks Journal of April 5, 2006. A statement of opposition was filed on September 5, 2006 by Executors of the Estate of Francisco Coll Monge, Francisco David Coll Executor, a Puerto Rico Estate (the Opponent). The Applicant filed and served a counter statement in which it denied the Opponent's allegations.

[3] The Opponent filed the affidavits of Victoria Shrieves, Francisco David Coll and Robert Conrad. The Applicant filed the affidavit of Reta Bunbury. Both parties filed written arguments; an oral hearing was not held.

[4] At the outset it must be noted that the Applicant objected in its written argument to the lack of clarity in the statement of opposition and asserted that no valid ground of opposition was raised, and further that the statement of opposition did not set out the grounds of opposition in sufficient detail to enable the Applicant to reply. I agree with the Applicant that the grounds of opposition are not clearly delineated; however, I would observe that rather than an insufficiency of facts, the factual support for the allegations therein is quite lengthy and confusing and often mixed with opinion, personal comments and conjecture. On balance however, I find that the statement of opposition does raise some valid grounds of opposition, albeit in a somewhat confusing manner. I would add that the written argument stage is not the appropriate stage to first raise the issue that there are no valid grounds of opposition, particularly where evidence has been filed by both parties.

[5] The statement of opposition raises a ground under s.38(2)(a) and s. 30(b) of the *Trade-marks Act*, R.S.C. 1985, c. T-13 (the Act), the essentials of the Opponents' pleading are summarized as follows:

The Applicant did not exist in the 1970s therefore the date of first use is incorrect and misleading; the Applicant was incorporated in August 2000. The Opponent owned,

produced and distributed the wares and services before 1970 or 1978 respectively in the United States and Canada. The Applicant's officers were a licensee of Dr. Francisco Coll and Alley Copyrights, Inc., through Inner Peace Movement of Canada, until about March 13, 2000. Use by the Applicant has been unauthorized since then.

[6] The statement of opposition also raises non-entitlement under to s. 16(1)(a), based on confusion with the trade-mark PEACE COMMUNITY CHURCH used by the Opponent and others in Canada prior to the Applicant's claimed date of first use. The pleading is as follows (as summarized):

Use of the Mark by the Applicant will cause confusion unless the Applicant cooperates with the Opponent and other licensees in Canada. A similar mark PEACE COMMUNITY CHURCH was made known in Canada on or before December 1978 by Dr. Francisco Coll or by instructors, lecturers and ministers trained by him, or under his direction and control. It is common knowledge among the Applicant's directors, current and recent consumers or instructors that the wares and services originated from Dr. Coll or his corporations or are pirated or knock off products for Australia or other countries. The trade-mark PEACE COMMUNITY CHURCH is consistently used to promote Peace Community Church_{sm} Seminary Courses both in Canada and the United States by licensees of the Opponent.

The Applicant is not the person entitled to registration unless it promptly accounts for, licenses and conforms to the requirements of the Opponent and Alley Copyrights Inc.

[7] Although wares (2), based on proposed use, have not been specifically mentioned in this particular paragraph, much of the somewhat confusing factual content of the statement of opposition relates to contested use of the Mark in respect of program and training materials, including slides, video-tapes etc. Therefore to ignore the issue of entitlement to wares (2) which are a logical extension of such program materials and ancillary to the services could otherwise lead to a rather incongruous result.

[8] The Opponent also pleaded (as summarized herein) that the Mark is not distinctive in that Dr. Coll and others used the trade-mark PEACE COMMUNITY CHURCH in Canada for over 30

years, and that it was used by the Applicant's predecessor Inner Peace Movement of Canada under Dr. Coll's direction and control.

Summary of the Opponent's Evidence

Affidavit of Victoria Shrieves

[9] Ms. Shrieves identifies herself as one of the Directors and the Vice President of Americana Leadership College (Canada). Since 1972 she has been involved in numerous Inner Peace Movement and Peace Community Church sponsored programs, in Canada, the United States and Puerto Rico.

[10] The evidence of Ms. Shrieves relates to the history of the Opponent, the relationships between organizations in the United States all founded and directed by Dr. Coll Monge, the establishment of an organization(s) in Canada, the death of the founder, the division between some of the United States organizations and the Estate of Dr. Coll (the Opponent), and the division between the Opponent and the Applicant.

[11] Much of the evidence provided relating to recent history has not been summarized, as it is irrelevant to the determinations that will be made in view of the fact that the primary grounds of opposition are founded on the state of affairs at the claimed date of first use of the application, namely April 23, 1979 on wares (1) and January 1976 on services.

[12] The Opponent is the Estate of the founder Dr. Coll Monge (also known as Dr. Coll) of a spiritual movement and related group of organizations, including both not-for-profit and business corporations in the United States.

[13] The relevant U.S. not-for-profit organizations are the Inner Peace Movement founded in January 1964 and the Peace Community Church founded in October 1965.

[14] American Leadership College, Inc. (ALC Inc.) is a business corporation founded in 1967 by Dr. Coll, in part to license, distribute and oversee the program materials created by Dr. Coll. ALC also presents courses on various themes or concepts of the spiritual movement that are organized into various "departments"; the "Department of Religion and Philosophy" functions as

the seminary for the Peace Community Church. ALC Inc. was wholly owned by Dr. Coll and is now owned by his estate.

[15] Alley Inc. and later its successor Alley Copyrights Inc. (Alley) is also a business corporation, wholly owned by Dr. Coll (now his estate) to manage and administer the copyrights, brands and trade-marks for all training materials, books, brochures, program materials, slides, etc. (program materials) created by Dr. Coll. These are used by the not-for profit organizations and their affiliated members in the delivery of various courses, workshops as well as ministry training, all of which relate to the spiritual movement founded by Dr. Coll. These corporations (both not-for-profit and business/for profit) were headed or directed by Dr. Coll from the time he founded these corporations until his death in December 1999. The worldwide headquarters of these corporations and spiritual movements was located in Washington D.C.

[16] Ms. Shrieves attests that on January 8, 1976, under the guidance and direction of Dr. Coll, the Inner Peace Movement of Canada (hereafter IPM Canada) was incorporated as a not-for-profit corporation to be an umbrella organization for all of Dr. Coll's programs offered in Canada, including those offered under the mark "Peace Community Church". The affiant states that at that time, IPM Canada was the sole office in Canada, and all materials, training aids, policies, directions, guidance and staffing were received from or directed by the Washington D.C. headquarters. IPM Canada offered specific programs under "Peace Community Church" as a division of IPM Canada.

[17] Twenty-four years later, the Peace Community Church division of IPM Canada became a not-for-profit corporation in its own right by Letters Patent issued under the Canada Corporations Act - Part II on August 3, 2000. A copy of the Letters Patent is attached as Exhibit K. A review of this document indicates that the name in English of the corporation is listed as Peace Community Church of Canada; no legal elements such as "Corporation" or "Limited" or their respective abbreviations form part of the legal name.

[18] Ms. Shrieves states that all names, brands and logos, including the name Peace Community Church ever used or continued to be used by Peace Community Church of Canada (hereafter PCC Canada) are trade marks, brands, trade names, registered marks, services or copyrights that were strictly licensed from ALC and/or Alley through a verbal agreement with Dr

Coll. Dr. Coll was the sole owner of ALC and Alley and granted these licenses through verbal agreement; Ms, Shrieves refers to this as the “gentlemen’s agreement”.

[19] Ms. Shrieves states that to her knowledge at no time was the trade-mark Peace Community Church ever given or purported to be given or promised at some future date to be transferred, gifted, sold or assigned to PCC Canada or to any of the officers or members of PCC Canada. She offers the opinion that it was general knowledge among the members of all of the organizations in Canada, United States and around the world that Dr. Coll kept tight control over the use of this and the other trade-marks.

[20] She provides that the Applicant was a distributor of Dr. Coll’s works in Canada from 1976 up to 2000 by way of verbal agreement or gentlemen’s agreement as referred to above or by implied licence combined with well defined published policies and procedure about ownership and use of the marks and goods or by contracts through ALC Inc. to individual independent contractors or professors.

[21] In support of these statements, regarding Dr. Coll’s involvement with the PCC Canada initiative and his verbal licence to use the mark PEACE COMMUNITY CHURCH, Ms. Shrieves provides a detailed history of her involvement in the project to incorporate PCC Canada. I would observe here that it appears that this involvement began under the direction of Dr. Coll, but that after his death it was carried on strictly on the initiative of IPM Canada. Ms. Shrieves states that the project did not start until early 1997 when she was involved in the IPM Canada office in Calgary. By way of example in other countries and as a parallel to what was envisioned for Canada, the affiant attaches documentation from other PCC organizations as incorporated in the United States and in Australia, which includes copies of incorporating documents and sample forms from Peace Community Church (Exhibit C). The By-laws of Peace Community Church Inc. (hereafter PCC U.S.) as incorporated in the U.S. provide that “the Founder Dr. Francisco Coll shall have an absolute and overriding power of veto on any decision made by the Executive Community at all times and in all circumstances”.

[22] In May 1998 Ms. Shrieves arranged for a Nuans search for the name Peace Community Church for a proposed incorporation in Alberta. Attached as Exhibit D is a memo to the affiant, and a copy of the Nuans Search performed for reserving the name Peace Community Church in

Alberta. Based on her experience with the laws of incorporation of not-for-profit corporations in Canada, the affiant offers the observation that the use of “Limited” is not permitted to be part of the name.

[23] Ms. Shrieves states that she prepared the necessary incorporating documents under the supervision of Dr. Coll through IPM Canada. Exhibit E is a memo dated August 7, 1998 from IPM Canada to IPM Alberta confirming the officers of Peace Community Church, one of which was to be President Francisco Coll. Attached as Exhibit G are proposed Memorandum of Association and Articles of Association together with the Notice of Address and Statement of Activities for the proposed incorporation Peace Community Church. The affiant states that these draft documents were prepared and sent to Dr. Coll for his approval and consent, which consent Ms. Shrieves believes was given by him.

[24] On August 27, 1998 incorporating documents were sent to the Charities Division of Revenue Canada, together with an application for Income Tax registration for Canada Charities. Exhibit H comprises various correspondences between the proposed officers of PCC and Revenue Canada; it appears that charitable status was never received. I note that at that time the officers listed in the application were Kevin Arens as Treasurer, and Sandra Hamilton as Secretary. Additional correspondence regarding the rejection of charitable status by Revenue Canada reveals that there was ongoing consultation with Dr. Coll on this matter. In addition, I note that some of the documents in this Exhibit identify him as President of PCC Canada. At the time of Dr. Coll’s death in December 1999, attempts were still being made to obtain charitable status.

[25] According to the Shrieves affidavit, after the death of Dr. Coll, on January 14, 2000 the President of PCC U.S. sent a memo to Ms. Sandra Hamilton advising that Ms. Susan Scott was to be the President of PCC Canada and advising that the incorporation documents were to be adjusted accordingly, and further that the incorporation was to be Federal rather than through Alberta; a letter was also included from the proposed new Secretary of PCC of Canada notifying the proposed executive of PCC of Canada.

[26] According to the affidavit, following the death of Dr. Coll in December 1999, ALC Inc. revoked (in May 2000) the licence of IPM Canada to deal with any of the programs founded by Dr. Coll, including the right to use Peace Community Church.

[27] A new national office for Canada (IPM Alberta) located in Calgary was appointed by ALC Inc. and all program materials and program income were directed to be delivered to that office. On June 30, 2000 (IPM Alberta became ALC Canada) and was incorporated under the Canada Business Corporations Act, the sole shareholder being Francisco David Coll, heir to the Estate of Dr. Coll.

[28] Ms. Shrieves provides evidence that ALC Canada was given permission by ALC in the United States, by letter dated June 29, 2000 to use its trade-marks. By letter dated September 30, 2000, from Alley, ALC Canada was given permission to use the copyrighted course materials. It is apparent from this evidence that concurrent use may have begun in Canada of programs and courses based on Dr. Coll's spiritual teachings.

[29] Ms. Shrieves states that IPM Canada, its directors and members were sent numerous cease and desist letters from the Estate of Francisco Coll, ALC and Alley requesting them to cease and desist the use of copyrighted materials including names and logos and program materials, including the use of the name Peace Community Church, PCC and the PCC logo. Examples of such letters are attached as Exhibit M.

[30] On September 26, 2000, IPM Canada filed a Statement of Claim against ALC Canada in the Court of Queen's Bench of Alberta, claiming among other things, that IPM Canada was the rightful owner of certain trade-marks and trade names in Canada, including the subject Mark. It appears that Ms. Shrieves in her capacity as a Director of ALC Canada attended the cross-examination of Ms. Susan Scott, President and a Director of IPM Canada on her affidavit with respect to this court action. Excerpts of the official transcript are attached as Exhibit Q. Ms. Shrieves point out that under cross-examination Ms. Scott stated that the course materials were numbered and created by Alley Incorporated in the United States, and that royalties are paid to Alley when the materials are used. Attached as Exhibit R are financial statements provided by Ms. Scott for IPM Canada as of June 30, 1999, showing that IPM Canada owed Alley \$85, 449.83 for merchandise purchased from Alley and \$93,362.94 for "course royalties". Ms. Shrieves states that she believes that the royalties included royalties for the use of Program Materials using the PCC trade-mark. I note however, that this is not specified on the balance sheet.

Summary of Ms. Shrieves Affidavit

[31] From the facts as set out by Ms. Shrieves, it appears that IPM Canada started in Canada in 1976 as part of Dr. Coll's family of organizations, using trade-marks, trade-names and course materials under a verbal licence from business corporations (ALC and Alley) of which he was the sole shareholder. This included the delivery of programs and related materials under the trade-mark Peace Community Church. The admissions of licence fees owed under oath during cross-examination at which Ms. Shrieves attended supports the contention of the Opponent that use in Canada of the trade-marks related to the IPM Canada programs including those offered under the PEACE COMMUNITY CHURCH division was with permission from the sole shareholder of Alley and ALC, namely Dr. Coll.

The Affidavit of Robert Conrad

[32] The first affidavit of Mr. Conrad, sworn June 23, 2007, states that he has been involved with the Inner Peace Movement, Peace Community Church and Americana Leadership College (ALC) since 1973. He provides further that he is a Management and Marketing consultant and frequently works with brand, trade-mark and copyright issues. He outlines his career with the Opponent, having worked his way up to the "position of President of the Inner Peace Movement-Non profit, now Inner Peace Movement Inc. in the United States." He supports Ms. Shrieves' statements that the Peace Community Church and its related branded and copyrighted goods and services were created by Dr. Coll, who also founded the Americana Leadership College.

[33] Mr. Conrad provides several statements regarding the integrity of Dr. Coll, and disparaging personal remarks concerning the former followers that can only be meant to include the Applicant. These statements are inappropriate in opposition proceedings, and irrelevant to the determination at hand.

[34] Attached as Exhibit AE-1 are samples of materials relating to Peace Community Church programs provided by ALC; it is unclear what dates these were distributed and where they were distributed; however I accept this as support for the general assertion that ALC acted as the source of the program curriculum and materials.

[35] Exhibit AE-2 is a 1977 ALC Camp catalogue showing promotion of multiple Inner Peace Movement camps and retreats in the United States and including two in Canada. A nine-day Peace Community Church retreat in the United States is also listed.

[36] Exhibit AE-4 includes a brochure for a conference held in Kelowna & Vernon presented by the Inner Peace Movement of Canada in January and February 2002. Also included is a brochure for a “Peace Community Church Weekend” presented by the Inner Peace Movement of Canada, in Vernon B.C. May 24-26, 2002. In note that nowhere on the brochure does the Applicant as named in the subject application - Peace Community Church of Canada *Limited*, appear.

[37] Exhibit AE-5 is identified as an undated “prospectus” regarding the PCC, setting out its goals, as well as types and levels of affiliations available. It appears to relate to the training and development of teachers and ministers who follow Dr. Coll’s spiritual leadership and who have taken prerequisite courses with the ALC, (the seminary for the PCC). I note that included in the contact information section is the words “for more information about Canada contact the Inner Peace Movement of Canada” with address and phone number in Ottawa. I note that the Applicant Inner Peace Movement of Canada *Limited* does not appear on this prospectus.

[38] Mr. Conrad’s affidavit also contains information regarding the breakdown of relationships between the United States organizations and the Estate of Dr. Coll; while many of the allegations are of an emotional, derogatory nature, inappropriate in these proceedings, the core of the situation seems to be that there has been litigation between the Inner Peace Movement and Peace Community Church in the United States and the Estate of Dr. Coll, over the ownership of intellectual property rights in the trade-marks among other intellectual property rights in the program materials.

[39] Mr. Conrad points out in his affidavit that the Canadian application for the Mark is in the name of Peace Community Church of Canada Limited, an alleged non-profit organization, yet bearing corporate identification as if incorporated as a business corporation.

The Second Affidavit of Robert Conrad

[40] The second affidavit of Mr. Conrad is largely commentary and includes opinions and judgments of the actions of others, making personal observations that are irrelevant to the issues at hand.

The Affidavit of Francisco David Coll

[41] Mr. Francisco David Coll (D. Coll) states that his father passed away on December 15, 1999 in San Juan, Puerto Rico, and that he is the legal Executor and Administrator and sole heir of the Estate of Dr. Francisco Coll. Attached as exhibits in this regard are documents from Puerto Rico, which appear to be government rulings to this effect. No information is provided as to Mr. D. Coll's status in other jurisdictions. Although there is some suggestion that the estate of Dr. Coll was disputed by IPM and PCC organizations in the United States and/or in Puerto Rico, I note that in this proceeding, the Opponent's status is not in issue.

[42] Mr. D. Coll states that his father was a leader in personal development and spiritual awareness and growth. In his 50 plus years of service he created and founded, worldwide, over 10 spiritual movements, 8 non profit corporations, 11 or more profit corporations, 17 registered trademarks (USPTO), over 60 common law trade-marks, over 700 registered copyrights and many conference centers around the world, including the one in Pugwash, Nova Scotia.

[43] Mr. Coll further states that PEACE COMMUNITY CHURCH was used worldwide and in Canada prior to any use by the Applicant.

[44] Attached as Exhibit E-4 is a 1990 summer camp catalogue listing programs presented by the ALC. IPM Inner Peace Movement also appears on the front page. The brochure advertises a summer camp program to be delivered at 5 conference centers, including one in Canada in Pugwash, Nova Scotia. Inside the brochure there are a number of programs or "camps" listed as taking place in Pugwash, including one seven day camp entitled the Peace Community Church Camp. I note that this brochure predates the incorporation of Peace Community Church of Canada as a separate legal entity and not-for-profit corporation.

Summary of the Applicant's Evidence

The Affidavit of Reta Bunbury

[45] The affidavit of Ms. Bunbury sets out the organizational history of organizations she identifies as the Inner Peace Movement of Canada Limited (IPM Canada), since its incorporation in 1976, and the Peace Community Church of Canada Limited (PCC Canada) since its incorporation in 2000. She states that IPM Canada and PCC Canada have always operated from the same office, and she has been Office Administrator for both entities. The affiant refers to the Applicant initially as the Peace Community Church of Canada Limited and subsequently as PCC Canada. This is the only reference in the evidence to the Applicant as named in the application; no explanation is provided regarding the relationship between the Applicant as named and Peace Community Church of Canada.

[46] Ms. Bunbury attaches records of income received for Peace Community Church programs and materials delivered in Canada, which were deposited to the bank account of IPM Canada (Exhibit B). I note the income journals in Exhibit B are dated from July 1997 to June 1998, prior to incorporation of PCC Canada as a separate legal entity. The affiant states that these funds were entered on the ledger as income derived from PCC programs and materials; Exhibit C consists of copies of the relevant ledgers. I note that the PCC ledgers provided appear to span the years 1979 to 1982, but appear to confirm this practice in principle.

[47] The affiant provides that Peace Community Church Programs were advertised in IPM Canada's camp flyers, sent out to Canadians on IPM Canada's mailing list at least twice a year. Exhibit D is a brochure from 1993 showing the availability of a Peace Community Church program through IPM Canada. I note the brochure is marked with the Mark and Inner Peace Movement of Canada consistent with the affiant's information that IPM Canada was sponsoring Peace Community Church programs. I also observe that these flyers relate to programs provided prior to the death of Dr. Coll and the breach between the Canadian and U.S. organizations.

[48] The affiant states that the trade-mark Peace Community Church was first adopted and used in Canada in January, 1976 by IPM Canada in association with church services and programs in Canada in the form of teaching and guidance in the areas of religion, spirituality and leadership.

The Mark was also used in association with materials to supplement such services and programs. Exhibit E is a copy of an entry on the Corporations Canada database, demonstrating that the Inner Peace Movement of Canada was incorporated on January 8, 1976, under the Canada Corporations Act – Part II. I observe that as in the Letters Patent provided in the evidence for the Opponent (Affidavit of Ms. Shrieves) the corporation is identified in English (and in French) without any legal element such as “Limited or “Ltd.” The Applicant’s affidavit offers no explanation or any evidence to refute the Opponent’s allegation that use of the legal element “Limited” or “Ltd.” is not permitted in the names of not-for-profit corporations in Canada. I also note that this issue was addressed in the Opponent’s written submissions; however, the Applicant’s submissions were silent in this respect.

[49] After the incorporation of PCC Canada all of the Peace Community Church programs and materials were, from that time on, delivered through PCC Canada, while keeping the same office and office administrator as IPM Canada. Ms. Bunbury goes on to assert that subsequent to the incorporation IPM Canada transferred its interest, control and use of the Mark in Canada to PCC Canada.

[50] Once PCC Canada began operations it created its business stationery; Exhibit F is an example of envelopes and letterheads bearing the Mark that were used and which continue to be used by PCC Canada. Since its incorporation, PCC Canada has delivered and continues to deliver Peace Community Church programs and materials in Canada. Exhibit G is a document entitled “Guidelines for Fellowship Meetings of Peace Community Church”. Exhibit H is a document entitled “Opportunities for Affiliates of Peace Community Church”. Exhibit I is an Application for Affiliation for the Peace Community Church of Canada. Exhibit J is a brochure for Peace Community Church of Canada Fellowships. Exhibits G to J are examples of current materials used by PCC Canada. The Mark PEACE COMMUNITY CHURCH OF CANADA appears to be used both as a trade-mark and also in some instances to identify the organization that is source of the services. However, nowhere in the exhibits is it indicated that these programs and materials emanate from the Peace Community Church of Canada *Limited*.

[51] The affiant provides background information regarding events since Dr. Coll’s death. The affiant provides that since his death the Opponent has been asserting trade-mark rights against the

United States organizations - Inner Peace Movement, Inc. and Peace Community Church, Inc. Ms Bunbury provides that these attempts have failed as the U.S. Courts have determined that neither Dr. Coll nor the Opponent have rights in these matters. The Opponent asserts that on appeal this decision has been partially overturned. I am of the view that a lengthy discussion of the court case in the United States is not relevant to the issue at hand in this proceeding. Whether or not the Estate (the Opponent), the business corporations (ALC and Alley), or the United States non-profit organizations (IPM, Inc. and PCC, Inc.) are determined to be the ultimate owners of the Mark at issue, the primary determination to be made in this proceeding is whether or not the Applicant as named in the subject application is the entity that commenced use of the Mark in Canada and/or whether such use accrued to the Applicant's benefit.

Analysis of the Grounds of Opposition

Section 30(b) of the Act

[52] It is clear that the evidence of both the Opponent and the Applicant establishes that the Applicant, Peace Community Church of Canada (with or without the legal element "Limited"), did not exist as at the date of first use claimed in the application; a not-for-profit corporation with the name Peace Community Church of Canada (without the legal element "Limited") did come into existence on August 3, 2000 some twenty-four years after the earliest claimed date of first use.

[53] Further, I am satisfied that the evidence reveals that use of the Mark at the claimed dates of first use was by the Inner Peace Movement of Canada (before and after its incorporation), prior to the incorporation of the Applicant as a not-for profit corporation under the Canada Corporations Act. It seems clear that such use was likely under licence from Dr. Coll through his United States business corporations. Since use by a named predecessor in title has not been claimed by the Applicant as required pursuant to s. 30(b), use by IPM Canada or any other entity cannot be considered to support the date of first use claimed in the application. In any event it is arguable, as noted above, in view of the evidence of a verbal license and the involvement and control of Dr. Coll, that use of the Mark by IPM that commenced in 1976 and 1979, could not be considered to have accrued to the Applicant in any event pursuant to s.50(1) of the Act.

[54] The Applicant bears the legal onus of establishing on a balance of probabilities that its application complies with the requirements of the Act. However, there is an initial evidential burden on the Opponent to adduce sufficient admissible evidence from which it could reasonably be concluded that the facts alleged to support each ground of opposition exist [see *John Labatt Limited v. The Molson Companies Limited*, (1990), 30 C.P.R. (3d) 293 (F.C.T.D.) at 298]. Although the Opponent may rely on Applicant's evidence to meet its evidential burden in relation to this ground, the Opponent must show that the Applicant's evidence is "clearly" inconsistent with its claims as set forth in its application (*Ivey Lea Shirt Co. v. 1227624 Ontario Ltd.* (1999), 2 C.P.R. (4th) 562 (T.M.O.B.) at 565-566, affirmed 11 C.P.R. (4th) 489 (F.C.T.D.)).

[55] I am satisfied the evidence establishes that the Opponent has met this burden with respect to its allegation that the Applicant did not use the Mark as at the claimed date of first use, namely April 23, 1979 on wares (1) and January 1976 on the services. In view of the foregoing, I find that the ground of opposition pursuant to s. 38(2)(a) and s. 30(b) of the Act succeeds.

Non- Entitlement and Section 16(1)(a) of the Act

[56] The material date for a determination under s. 38(2)(c) and s. 16(1)(a) is the claimed date(s) of first use [see s. 16(1)]. In accordance with s. 16(1), as a preliminary matter, the applicant must establish that he or his predecessor in title has used the Mark (or made it known) in Canada at the claimed date of first use; if so, the applicant is entitled to secure registration if it is not confusing with, (in this case) a trade-mark that had been previously used or made known in Canada [s. 16(1)(a)].

[57] Clearly the Applicant was not using the Mark as of the claimed dates of first use; in view of the facts of this case, and the finding under s. 30(b), Opponent has met its burden under this section of the Act. It is evident that use of the Mark by the Applicant or a named predecessor in title, was not commenced at the claimed dates of first use; it is therefore unnecessary to consider the issue of confusion with the Opponent's trade-mark or that of any other.

Non- Entitlement and Section 16(3)(a) of the Act

[58] The material date for a determination under s. 38(2)(c) and s. 16(3)(a) is the filing date of the application, namely May 10, 2005 [see s. 16(3)].

[59] There is some authority for the principle that when the Opponent successfully negates the Applicant's date of first use (as above), the material date for the determination of entitlement may become the filing date under s. 16(3) [see *American Cyanamid Co. v. Record Chemical Co. Inc.* (1972), 6 C.P.R. (2d) 278 (T.M.O.B.); *Everything for a Dollar Store (Canada) Inc. v. Dollar Plus Bargain Centre Ltd.* (1998), 86 C.P.R. (3d) 269 (T.M.O.B.)].

[60] Even if one proceeds to an analysis of all the wares and services under s. 16(3)(a) (pursuant to the principle set out above), the Applicant named in the application is not entitled to registration of the Mark since it is evident that use of the identical Mark on identical services and related wares was commenced in Canada, was ongoing at the date of filing and the date of advertisement, by a person (or persons) that was not the Applicant as identified in the application. As noted above in the evidence, none of the services or related materials provided under the Mark, as shown in Program/Camp brochures, publicity brochures, or described by the affiants, are shown to be provided by the named Applicant. Nor does any correspondence with Corporations Canada refer to the Applicant – Peace Community Church of Canada *Limited*. Therefore it must be concluded that the Applicant as named in the application is not entitled to registration of the Mark at the date of filing of the application since it was confusing under s. 6(5) with the same Mark already in use by others on identical wares and services.

[61] In this regard I have taken judicial notice of the *Canada Corporations Act, Part 11* (1970, c. C-32) and s. 8.1.4 of the related *Name Granting Compendium* which regulates the use of legal elements by not-for-profit corporations. This provision states that the only legal elements permitted for not-for-profit corporations are “Incorporated” or “Inc.” or “Corporation” or “Corp.” [See *Kightley v. Canada (Registrar of Trade-marks)* (1982), 65 C.P.R. (2d) (F.C.T.D.); *Marks & Clerk V. Sparkles Photo Ltd.* (2005), 41 C.P.R. (4th) 236 (F.C.T.D.); and *Crush International Ltd. v. Canada Dry Ltd.* (1979), 59 C.P.R. (2d) 82 (T.M.O.B.), where judicial notice was taken of provincial and federal regulations by the Federal Court and the T.M.O.B.]. In the absence of any explanation or evidence of the existence of the legal entity named in the application – Peace

Community Church of Canada Limited, I must conclude, for the reasons set out above, that the Applicant cannot be the person entitled to registration of the Mark under the provisions of s. 16(1)(a) or (3)(a) of the Act. The Opponent succeeds under these grounds of opposition.

Additional Grounds of Opposition

[62] In view of the foregoing, it is unnecessary to make a determination with respect to the remaining grounds of opposition.

Disposition

[63] Pursuant to the authority delegated to me under s. 63(3) of the Act, I refuse the application with respect to the wares and services pursuant to s. 38(8) of the Act.

P. Heidi Sprung
Member
Trade-marks Opposition Board
Canadian Intellectual Property Office