

IN THE MATTER OF AN OPPOSITION
by Day, Wilson, Campbell to
application No. 571,296 for the
trade-mark INTERLAW LEGAL CENTRE
filed by 683897 Ontario Limited

On October 20, 1986, the applicant, 683897 Ontario Limited, filed an application to register the trade-mark INTERLAW LEGAL CENTRE based on proposed use in Canada for the following services:

provision of legal services, law office
management services, real estate services,
family counselling services, arbitration
services, small business counselling services,
insurance advisory services.

The application as filed contained a disclaimer to the words LEGAL and CENTRE. The application was advertised for opposition purposes on April 1, 1987.

The opponent, the law firm of Day, Wilson, Campbell, filed a statement of opposition on April 21, 1987, a copy of which was forwarded to the applicant on May 20, 1987. On August 7, 1987, the opponent was granted leave to amend its statement of opposition.

The first ground of opposition is that the applicant is not the person entitled to registration pursuant to Section 16(3) of the Trade-marks Act because, as of the applicant's filing date, the applied for trade-mark was confusing with the trade-marks INTERLAW and INTERLAW & Design (shown below) previously used by the opponent in Canada with the following wares:

directory of international law firms showing
areas of expertise and fields of concentration
of legal services

and with the following services:

provision of and referral of legal services,
provision of office and secretarial services
for clients, educational conferences and seminars,
provision of advisory services with respect to
international trade, accounting, banking, arbi-
tration, financial contacts and business and
professional resources.

The second ground is that the applicant is not the person entitled to registration pursuant to Section 16(3) of the Act because, as of the applicant's filing date, the applied for trade-mark was confusing with the trade-name Interlaw previously used in Canada by the opponent in association with the above-noted wares and services. The third ground is that the applied for trade-mark is not distinctive in view of the opponent's use of its two trade-marks and its trade-name. The fourth ground is that the application does not comply with the provisions of Section 30(i) of the Act because the applied for trade-mark was confusing with the opponent's trade-marks and trade-name.

The applicant filed and served a counter statement. It also filed and served a revised counter statement subsequent to the opponent having been granted leave to amend its statement of opposition. As its evidence, the opponent filed the affidavit of Ralph S. McCreath. The applicant did not file evidence. Both parties filed written arguments but no oral hearing was conducted.

As for the opponent's first ground of opposition, there was a burden on the opponent to evidence use of its two trade-marks prior to the applicant's filing date. The opponent has failed to satisfy that burden. Mr. McCreath, a senior partner with the opponent, states that his firm has used the two trade-marks relied on since January of 1985. However, it is clear that such a bald assertion is insufficient to establish use within the meaning of Section 4 of the Act: see Plough (Canada) Ltd. v. Aerosol Fillers Inc. (1980), 53 C.P.R.(2d) 62 (F.C.A.). The balance of his affidavit deals with the distribution of brochures to potential customers in Canada. There is, however, no evidence of any sales of directories in association with the two marks relied on nor is there any evidence of the performance of any of the services claimed in the statement of opposition. Thus, the first ground is unsuccessful.

The second ground of opposition is based on prior use of the opponent's trade-name in association with the same wares and services relied on in association with the two trade-marks. There is no evidence that any of the claimed wares and services were sold or carried out in association with the trade-name Interlaw. Thus, the second ground is also unsuccessful.

The third ground is restricted to allegations of use of the opponent's trade-marks and trade-name for the specific wares and services listed in the statement of opposition. Since the opponent has failed to evidence any such use, the ground of non-distinctiveness is also unsuccessful. Even if the third ground had not been so restricted, the evidence fails to point to any acquired reputation of note for the opponent's marks and name. Mr. McCreath makes reference to the distribution of two brochures featuring the marks but he gives no indication as to how many brochures were sent out. He does indicate that 600 copies of a one page announcement featuring the mark INTERLAW were distributed in February of 1985 but that alone would have little effect on the distinctiveness of the applicant's mark as of the filing of the present opposition.

As for the fourth ground of opposition, the onus or legal burden is on the applicant to show its compliance with the provisions of Section 30(i) of the Act. However, there is an evidential burden on the opponent to adduce sufficient credible evidence from which it could be concluded that the allegations of fact underlying this ground are true. Since the opponent has failed to support those allegations of fact with evidence, the fourth ground is also unsuccessful.

In view of the above, I reject the opponent's opposition.

DATED AT HULL, QUEBEC, THIS 28th DAY OF February, 1991.

David J. Martin,
Member,
Trade Marks Opposition Board.