



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

Citation: 2011 TMOB 158
Date of Decision: 2011-09-06

**IN THE MATTER OF AN OPPOSITION
by Nature Science Inc. to application
No. 1,290,127 for the trade-mark M &
Design in the name of Method Products,
Inc.**

[1] On February 15, 2006, Method Products, Inc. (the Applicant) filed an application to register the trade-mark M & Design (the Mark) based upon proposed use of the Mark in Canada in association with the following wares:

fabric protectants for clothing, textiles, furniture or carpet; stain repellants for clothing, textiles, furniture or carpet; all purpose cleaning preparations; cleaning preparations for household purposes; cleaning preparations for bathrooms, kitchens, glass, shower walls, dishes, kitchen utensils, pots and pans, floors and other household and industrial surfaces; laundry detergent; fabric softener; anti-static dryer sheets; fabric freshener; furniture polishes and cleaners; soaps for personal use; skin cleansers; skin lotions; candles; scented candles; room deodorants, air deodorizers, and air fresheners; fragrance diffusers, dispensing units for room deodorants, and household air cleaners; and dusting or cleaning cloths; cleaning pads; cleaning sponges; pre-moistened towelettes for cleaning; mops; brooms.

[2] The Mark is shown below:



[3] The application was advertised for opposition purposes in the *Trade-marks Journal* of January 24, 2007.

[4] On September 24, 2007, Naturale Science Inc. (the Opponent) filed a statement of opposition. The Applicant filed and served a counter statement in which it denied the Opponent's allegations.

[5] The Opponent elected not to file any evidence in support of its opposition.

[6] In support of its application, the Applicant filed the affidavits of Allyson Willoughby and Elizabeth Earon. The Opponent did not cross-examine either affiant.

[7] Only the Applicant filed a written argument. An oral hearing was not held.

[8] 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].

[9] The Opponent has pleaded four grounds of opposition pursuant to s. 38(2) of the *Trade-marks Act*, R.S.C. 1985, c. T-13 (the Act) but it has not met its initial burden with respect to any of its grounds of opposition, as further discussed below.

[10] Pursuant to s. 38(2)(a), the Opponent pleaded that the application does not comply with the requirements of s. 30(e) because, at the time of application, it did not intend to use the Mark or did not intend to use the mark as a trade-mark. However, the Opponent has not filed evidence to support such allegations. Instead, the Applicant has filed evidence that shows that it did, subsequent to the filing of its application, commence use of the Mark as a trade-mark in Canada.

[11] Pursuant to s. 38(2)(a), the Opponent also pleaded that the application does not comply with the requirements of s. 30(i) because the Applicant was, at the time the application was filed, aware of the Opponent's trade-mark M Design, which is the subject of application No. 1,297,380 and which had previously been used in Canada. The Opponent has filed no evidence to support the allegations that the Applicant was aware of the Opponent's M Design mark or that the Opponent's mark had been used in Canada prior to February 15, 2006. In any event, where an applicant has provided the statement required by s. 30(i), a s. 30(i) ground should only succeed in exceptional cases such as where there is evidence of bad faith on the part of the applicant [*Sapodilla Co. Ltd. v. Bristol-Myers Co.* (1974), 15 C.P.R. (2d) 152 (T.M.O.B.) at 155].

[12] Pursuant to s. 38(2)(c), the Opponent pleaded that contrary to s. 16(3)(a) the Applicant is not the person entitled to register the Mark because the Mark, at the date of filing of the application, was confusing with the Opponent's previously used M Design mark. As mentioned above, the Opponent has failed to evidence that it used its M Design mark at anytime, let alone prior to February 15, 2006.

[13] Pursuant to s. 38(2)(d), the Opponent pleaded that the Mark is not distinctive because it is confusing with the Opponent's M Design mark. In order to meet its initial burden under this ground, the Opponent was required to evidence that its mark was known in Canada to some extent at least, which it has not done.

[14] Each of the grounds of opposition is dismissed on the basis that the Opponent has not met its initial burden.

[15] Pursuant to the authority delegated to me under s. 63(3) of the Act, I therefore reject the opposition pursuant to s. 38(8) of the Act.

Jill W. Bradbury
Member
Trade-marks Opposition Board
Canadian Intellectual Property Office