

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

Citation: 2013 TMOB 210
Date of Decision: 2013-12-04

**IN THE MATTER OF AN OPPOSITION
by Home Hardware Stores Limited to
application No. 1,494,108 for the trade-
mark Home Team & Design in the name
of 1104559 Ontario Ltd.**

[1] On August 31, 2010, Van Dolder's Home Team Inc. filed an application to register the trade-mark Home Team & Design (the Mark), shown below, on the basis of use in Canada since February 1, 2004. The application was subsequently assigned to 1104559 Ontario Ltd. (the Applicant).



[2] The Mark has been applied for in association with the following services:

“Services, namely, sales and installation of exterior residential and commercial products, namely, windows, doors, patio doors, storm doors, eavestroughs, siding, garage doors, awnings, sunrooms, screen rooms, skylights, decks and railings” (the Services).

[3] The application was advertised for opposition purposes in the *Trade-marks Journal* of March 2, 2011.

[4] Home Hardware Stores Limited (the Opponent) has opposed the application under section 38 of the *Trade-marks Act*, RSC 1985, c T-13 (the Act) on the grounds that: (i) it does not conform to the requirements of section 30(b) of the Act because the Mark was not used in Canada by the Applicant in association with the services set out in the application since the February 1, 2004 claimed date of first use; (ii) it does not conform to the requirements of section 30(i) of the Act; (iii) the Applicant is not the person entitled to registration of the Mark under sections 16(1)(a), (b) and (c) of the Act; (iv) the Mark is not registrable under section 12(1)(d) of the Act; and (v) the Mark is not distinctive within the meaning of section 2 of the Act.

[5] With the exception of the section 30(b) ground, each of the grounds is based upon confusion with the Opponent's family of HOME trade-marks as set out in Schedule "A" attached hereto or its trade names which it alleges had been previously used in Canada.

[6] In support of its opposition, the Opponent filed the affidavits of: Generosa Castiglione, sworn November 2, 2011; Samantha Som, sworn November 3, 2011; Jessica Iveson, sworn November 7, 2011 and Jane Buckingham, sworn November 7, 2011. None of the affiants were cross-examined. In addition, the Opponent filed a certified copy of its Registration No. TMA381, 072 for the trade-mark Home & Design.

[7] As its evidence, the Applicant filed the affidavits of Sina Giugno, sworn March 4, 2012 and May 14, 2012. Ms. Giugno was not cross-examined on either of her affidavits.

[8] Both of the parties filed a written argument.

[9] A hearing was conducted at which both parties were represented.

Onus and Material Dates

[10] The Applicant bears the legal onus of establishing, on a balance of probabilities, that its application complies with the requirements of the Act. There is, however, an initial 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 Ltd v Molson Companies Ltd* (1990), 30 CPR (3d) 293 (FCTD) at 298 and *Dion Neckwear Ltd v Christian Dior, SA* (2002), 20 CPR (4th) 155 (FCA)].

Grounds of Opposition Summarily Dismissed

Non-Conformity- Section 30(i) of the Act

[11] The Opponent has alleged that the Applicant could not have been satisfied that it was entitled to use the Mark in Canada at the time of filing of the application as the Applicant must be deemed to have been aware of the Opponent's prior rights in its family of HOME trade-marks.

[12] Section 30(i) of the Act merely requires that an Applicant declare in its application that it is satisfied that it is entitled to registration of its trade-mark. Where an applicant has provided the requisite statement, a section 30(i) ground should only succeed in exceptional cases, such as where there is evidence of bad faith on the part of the applicant [see *Sapodilla Co Ltd v Bristol-Myers Co* (1974), 15 CPR (2d) 152 (TMOB) at 155]. Mere knowledge of the existence of the Opponent's trade-marks does not in and of itself support an allegation that the Applicant could not have been satisfied of its entitlement to use the Mark [see *Woot, Inc v WootRestaruants Inc Les Restaurants Woot Inc* 2012 TMOB 197 (CanLII)].

[13] The Opponent has also alleged that the Applicant could not have been satisfied that it was entitled to use the Mark in Canada as such use would have the effect of depreciating the value attached to the Opponent's trade-marks, which would be contrary to section 22 of the Act.

[14] Neither the Registrar, nor the Federal Court has ruled on whether a section 30(i) ground of opposition based on the violation of section 22 is a valid ground of opposition [see *Parmalat Canada Inc v Sysco Corp* (2008), 69 CPR (4th) 349 (FCTD) at paras 38-42]. Even if I found this

to be a valid ground of opposition, the Opponent has failed to adduce sufficient evidence supporting a likelihood of depreciation of goodwill which would support a violation of section 22 [see *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée* (2006), 49 CPR (4th) 401 (SCC) at paras 46 and 63-68]. It would therefore have no chance of success.

[15] For the reasons set out above, the section 30(i) ground of opposition is summarily dismissed.

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

[16] With respect to these grounds of opposition, there is an initial burden on the Opponent to evidence use of its trade-mark or trade-names prior to the Applicant's claimed date of first use and that it had not abandoned its mark or trade-names as of the date of advertisement of the Applicant's application [section 16(5)]. The Opponent has not provided any evidence of use of its trade-marks or trade-names and it conceded this point at the oral hearing. These grounds are therefore also dismissed on the basis that the Opponent has not met its initial evidential burden.

Non-Distinctiveness

[17] In order to satisfy its initial burden with respect to the distinctiveness ground of opposition, the Opponent's evidence must show that its marks had become known sufficiently as of the commencement of the opposition to negate the distinctiveness of the applied-for mark [see *Metro-Goldwyn-Mayer Inc v Stargate Connections Inc* (2004), 34 CPR (4th) 317 (FC) and *Motel 6, Inc v No. 6 Motel Ltd* (1981), 56 CPR (2d) 44 at 58 (FCTD)].

[18] As mentioned above, the Opponent has not filed any evidence of use of its trade-marks. Moreover, I note that the mere filing of a certificate of registration of a trade-mark is not sufficient to meet the initial onus on an opponent under a distinctiveness ground [see *Roxxs, Inc v Edit-SRL* (2002), 23 CPR (4th) 265 (TMOB)].

[19] The Opponent has therefore failed to meet its initial burden in respect of this ground. Accordingly, this ground of opposition is also dismissed.

Analysis of Remaining Grounds of Opposition

[20] I will now turn to the analysis of the remaining grounds of opposition.

Non-compliance with Section 30(b) of the Act

[21] The Opponent has pleaded that the application does not conform to the requirements of section 30(b) of the Act in that the Applicant has not used the Mark in association with the services in the application since the February 1, 2004 claimed date of first use.

[22] The material date to consider this ground of opposition is the filing date of the Applicant's application [see *Georgia-Pacific Corporation v Scott Paper Ltd* (1984), 3 CPR (3d) 469 at 475 (TMOB)]. To the extent that the relevant facts pertaining to a ground of opposition based on section 30(b) of the Act are more readily available to the Applicant, the evidential burden on the Opponent with respect to such a ground of opposition is less onerous [see *Tune Master v Mr P's Mastertune Ignition Services Ltd* (1986), 10 CPR (3d) 84 (TMOB)].

[23] In support of its section 30(b) ground, the Opponent primarily relies upon the Castiglione, Som and Iveson affidavits. I will discuss each one in turn below.

Castiglione Affidavit

[24] Ms. Castiglione is a trade-mark searcher employed by the agent for the Opponent's law firm. Her affidavit puts into evidence a copy of the file history for the Applicant's application [see paras 1-4 and Exhibit "A"]. At the oral hearing, the Opponent indicated that the purpose of Ms. Castiglione's affidavit was to confirm that the application for the Mark was filed on August 31, 2010, in the name of Van Dolder's Home Team Inc. (the Applicant's predecessor-in-title) based upon use in Canada since at least as early as February 1, 2004 and that no predecessors-in-title had been named in the application.

Som Affidavit

[25] Ms. Som is employed as a legal administrative assistant with the agent for the Opponent's law firm. Her affidavit puts into evidence the results of a corporate search for

entities having the term Van Dolder or some variation thereof in their company name. Her search revealed five such entities, namely, a first entity called VAN DOLDER ENTERPRISES LIMITED, a second entity called VAN DOLDER ENTERPRISES LIMITED, VAN DOLDER'S HOME TEAM INC, VAN DOLDER'S KITCHEN & BATH LTD and WIETSE AND CORRIE VAN DOLDER AND FAMILY CHARITABLE FOUNDATION [see paras 1-12 and Exhibits "B" to "E"].

[26] In addition, Ms. Som also conducted a corporate search for the Applicant, namely, 1104559 Ontario Ltd. Attached as Exhibit "F" to her affidavit is a copy of the search report which indicates that the Applicant was incorporated in 1995. According to the corporation profile which is attached as Exhibit "D" to Ms. Som's affidavit, the Applicant's predecessor-in-title (Van Dolder's Home Team Inc.) was created by way of amalgamation of two entities on February 1, 2004.

Iveson Affidavit

[27] Ms. Iveson is a student-at-law employed by the agent for the Opponent's law firm. Ms. Iveson states in paragraph 3 of her affidavit that she was instructed by an associate in her firm to visit and print the front page of the "Van Dolder's Home Team" website located at *www.vandolders.com*, as well as pages from various other sections of the website.

[28] There was some discussion at the hearing regarding the fact that no evidence has been filed to show that the Applicant is in fact the owner of the website. However, I note that the contact information which appears on the various website print-outs attached as exhibits to Ms. Iveson's affidavit shows the same address which appears as the Applicant's registered corporate address in the corporate search results which were attached as Exhibits "D" and "F" of the Som affidavit. In view of this, I find it reasonable to conclude that the website which was visited by Ms. Iveson was that of the Applicant.

[29] In addition, the Applicant objected to the admissibility of Ms. Iveson's affidavit on the basis that it was sworn by an employee of the agent for the Opponent and relates to a point of substance and controversy in these proceedings. The Applicant submits that the agent for the Opponent cannot be both a "counsel machine" and an "evidence machine". By contrast, the

Opponent submits that the Iveson affidavit is admissible as it does not comprise any contentious opinion type evidence.

[30] The Federal Court of Appeal has made it clear that “it is not good practice for a law firm to cause its employees to act as investigators for the purpose of having them later give opinion evidence on the most crucial issues in the case” [see *Cross-Canada Auto Body Supply (Windsor) Ltd v Hyundai Auto Canada* 206 FCA 133 (CanLII) at para 4, (2006), 53 CPR (4th) 286 (FCA)].

[31] The Court is less clear on how solely non-opinion evidence furnished by a firm’s employee should be treated. However, it does state that “it is improper for a solicitor to compromise his independence by acting in a proceeding in which a member of his firm has given affidavit evidence on a point of substance” [*Cross-Canada, supra*, at para 7].

[32] In the present case, I agree with the Applicant that the Iveson affidavit relates to a contentious issue (i.e. whether or not the Applicant has used the Mark as alleged in its application). However, I also agree with the Opponent that Ms. Iveson has not provided what may be considered to be opinion type evidence of the sort that was adduced in *Cross-Canada*.

[33] Ms. Iveson has essentially visited the Applicant’s website and located and printed instances of the Mark or variations thereof as they would have appeared at the time of swearing of her affidavit and historically. The parameters of the searches which she conducted are very clearly set out in paragraphs 3(i)-3(vi) and 4 of her affidavit. In view of this, I am prepared to consider her affidavit and I will therefore now go on to consider whether it is sufficient for the Opponent to meet its burden in relation to the section 30(b) ground of opposition, either alone or in combination with the other evidence which the Opponent has put forward.

[34] In paragraphs 3(i)-3(vi) of her affidavit, Ms. Iveson states that she was instructed to:

- i. visit and print the front page of the Applicant’s website;
- ii. visit and print the front pages of the “Custom Exteriors” and “Kitchen and Bath” sections of the Applicant’s website;

- iii. find and print the contact information pages for all physical places of business listed on the aforementioned sections of the Applicant's website;
- iv. find, print and attempt to date every instance of the Mark that appears on the Applicant's website including all accessible sub-pages, as well as any linked-to Facebook® and YouTube® pages, conducting as exhaustive a search as possible;
- v. find and print representative examples of any other versions of the Mark on the aforementioned sections of the website , as well as on any linked-to YouTube® channels or Facebook® pages; and
- vi. find and print three specifically identified web pages on the Applicant's website.

[see paragraphs 3(i)-3(vi) of the Iveson affidavit]

[35] In paragraph 5, Ms. Iveson confirms that she visited the Applicant's website and collected the front pages and contact pages, as instructed. The pages are attached as Exhibit "A" (Tabs 1 to 5) of her affidavit.

[36] In paragraphs 6 to 9, Ms. Iveson provides details pertaining to the search which she conducted of the Applicant's website to locate all instances of the Mark. Ms. Iveson states in paragraph 7, that the only instances of the Mark which she was able to locate were videos (13 in total), which could be viewed on the Applicant's website, but which were hosted on YouTube.

[37] Attached as Exhibit "B" (Tabs 1 to 13) are screenshots from each video showing all instances of the Mark. In paragraph 8, Ms. Iveson provides details pertaining to the date of upload for the videos. The dates of upload range from May-August of 2011. Thus, they clearly post-date the Applicant's filing date. In paragraph 9, Ms. Iveson states that she did not find any other instances of the Mark on the Applicant's website apart from the instances set out in Exhibit "B" (Tabs 1 to 13).

[38] In paragraphs 10 and 11, Ms. Iveson provides details pertaining to the search which she conducted on the Applicant's website for examples of other versions of the Mark. Attached as Exhibits "C" and "D" are printouts showing representative examples of the other versions which Ms. Iveson was able to locate in her search.

[39] Each of the representative examples shown in Exhibits "C" and "D", feature the words "Van Dolder's" inside the house design of the Mark, along with the words "custom exteriors" or "kitchen and bath", inside an additional banner design, as an integral part of the Mark.

[40] In paragraph 12, Ms. Iveson confirms that she accessed the three specific webpages which she was instructed to visit on the Applicant's website and printed them. The print-outs are attached as Exhibit "E" (Tabs 1 to 3). Tab 1 is a copy of the testimonials section of the Applicant's website. Tab 2 is a print-out of a historical snapshot of the Applicant's website from 2005 which was obtained using the Wayback Machine. The words "Van Dolder's" appear in the version of the Mark which is shown in the print-out. Tab 3 is a copy of the "Our Story" section of the Applicant's website.

[41] I note that with the exception of Exhibit "E" – Tab 2, all of the information contained within paragraphs 1 to 12 and Exhibits "A" to "E" of Ms. Iveson's affidavit post-dates the August 31, 2010 material date, since Ms. Iveson's searches were conducted in October of 2011.

[42] However, in paragraph 13, Ms. Iveson states that she was instructed to conduct a supplemental search of older versions of the Applicant's website to identify instances of the Mark. Specifically, she was instructed to access and print one copy of the front page of the Applicant's website, as well as a copy of the front pages of its "Custom Exteriors" and "Kitchen and Bath" sections, for every year since and including 2004. To do so, Ms. Iveson used the Wayback Machine. The aforementioned print-outs are attached as Exhibit "F" (Tabs 1 to 3).

[43] In paragraphs 14 and 15 of her affidavit, Ms. Iveson confirms that she was unable to locate any instances of the Mark in any historical version of the Applicant's website [see paras 14 and 15]. A review of Exhibit "F" shows variations of the Mark, all of which feature the words "Van Dolder's" as an integral part of the Mark, sometimes in combination with other elements such as the words "kitchen and bath" or "custom exteriors" below in a banner design.

[44] In paragraph 16, Ms. Iveson states that she was also instructed to access and print the front page of the Applicant's website dating back to 2001. A print-out of the front page is attached as Exhibit "G". Another version of the Mark is displayed. In particular, the Mark is enclosed in an oval design and the words "Van Dolder's" appear as an integral part of the Mark.

[45] The information contained within paragraphs 13 to 16 and Exhibits "F" and "G" is historical in nature and is dated prior to the material date. I am therefore prepared to consider this evidence.

[46] During the hearing, the Opponent argued that the versions of the Mark shown in the Iveson affidavit differ substantially from the version of the Mark which has been applied for and therefore cannot be considered to be permissible variations. I have reproduced some examples of how the Mark appears on the Applicant's website below:



[47] I agree with the Opponent that the versions of the Mark as used on the Applicant's website do not constitute use of the Mark. The use of a trade-mark in combination with additional words or features can constitute use of a mark if the public as a matter of first impression would perceive the trade-mark as being used. This is a question of fact which is dependent on whether the trade-mark stands out from the additional material and whether the trade-mark remains recognizable [see *Nightingale Interloc Ltd v Prodesign Ltd* (1984), 2 CPR (3d) 535 at 538 and *Promafil Canada Ltée v Munsingwear Inc* (1992), 44 CPR (3d) 59 (FCA)].

[48] In the present case, I am of the view that the trade-mark does not stand out from the additional matter in such a way that it remains recognizable. The words “Van Dolder’s” form a relatively distinctive and integral part of Mark, which in my view changes the identity of the Mark.

[49] I am aware of the fact that Internet searches are generally considered to be hearsay and cannot be relied upon for the truth of their contents. However, evidence of this nature has been accepted in situations where the affiant him or herself conducts the searches, where it is difficult for the opponent to find any other evidence to meet its burden, and where the applicant has the opportunity to reply to the evidence, as is the case in the present proceedings [see *Effigi Inc v HBI Branded Apparel Limited, Inc* 2010 TMOB 160]. Moreover, I note that evidence produced by the Wayback Machine indicating the state of websites in the past has been found to be generally reliable [see *Candrug Health Solutions Inc v Thorkelson* (2007), 60 CPR (4th) 35 (FC); reversed on other grounds 64 CPR (4th) 431 (FCA)].

[50] Although the absence of any use of the Mark on the Applicant’s website at the relevant date does not support a categorical conclusion that the Mark was not in use, in my view, it is sufficient to cast doubt on the Applicant’s statement in its application that it had used the Mark in association with its services since the claimed date. I therefore find that the Opponent has met the light initial burden upon it in respect of the issue of non-conformance with section 30 (b) of the Act.

[51] I note that at the hearing, the Opponent submitted that even if the versions of the Mark as shown in the Iveson affidavit were acceptable and considered to constitute use of the Mark, the evidence also suggests that the Mark was in use by an entity other than the Applicant and that use of the Mark commenced prior to the claimed date of first use in the application. The Opponent takes that position that this is problematic in view of the fact that the Applicant’s predecessor only came into existence on the claimed date of first use and no predecessors-in-title have been named in the application. In view of my finding with respect to the Opponent’s initial burden, I do not consider it necessary to consider these other issues.

[52] Since I have found that the Opponent has met its initial burden the onus shifts to the Applicant to demonstrate on a balance of probabilities that it has complied with the requirements

of section 30(b) of the Act. The Applicant has not filed any evidence which can positively establish its claimed date of first use. I must therefore conclude that the onus on the part of the Applicant has not been met.

[53] Accordingly, the section 30(b) ground of opposition is successful.

Registrability Pursuant to Section 12(1)(d) of the Act

[54] The Opponent has pleaded that the Mark is not registrable under section 12(1)(d) of the Act as it is confusing with the Opponent's registered trade-marks as set out in Schedule "A" attached hereto. I find that the most pertinent of these is the Opponent's trade-mark HOME and Design (registration No. TMA381,072), as shown below. The statement of wares and services for registration No. TMA381,072 is attached hereto as Schedule "B". A consideration of the issue of confusion between that mark and the Mark will effectively decide the outcome of this opposition.



[55] The material date for assessing a ground of opposition under section 12(1)(d) of the Act is the date of my decision [see *Park Avenue Furniture Corporation v Wickes/Simmons Bedding Ltd and The Registrar of Trade Marks* (1991), 37 CPR (3d) 413 (FCA)].

[56] The Opponent's initial burden has been satisfied with respect to this ground because it has filed a certified copy of registration no. TMA381,072 and the registration is in good standing.

[57] I must therefore go on to consider whether the Applicant has met the burden upon it to show, on a balance of probabilities, that there is no likelihood of confusion between its Mark and the Opponent's mark.

[58] The test for confusion is one of first impression and imperfect recollection. Section 6(2) of the Act indicates that use of a trade-mark causes confusion with another trade-mark if the use of both trade-marks in the same area would be likely to lead to the inference that the wares or services associated with those trade-marks are manufactured, sold, leased, hired or performed by the same person, whether or not the wares or services are of the same general class.

[59] In applying the test for confusion, the Registrar must have regard to all the surrounding circumstances, including those specifically enumerated in section 6(5) of the Act, namely: (a) the inherent distinctiveness of the trade-marks and the extent to which they have become known; (b) the length of time each has been in use; (c) the nature of the wares, services or business; (d) the nature of the trade; and (e) the degree of resemblance between the trade-marks in appearance or sound or in the ideas suggested by them. These enumerated factors need not be attributed equal weight [see, in general, *Mattel, Inc v 3894207 Canada Inc* (2006), 49 CPR (4th) 321 (SCC) and *Masterpiece Inc v Alavida Lifestyles Inc* (2011), 92 CPR (4th) 361 (SCC)].

Section 6(5)(a) – inherent distinctiveness and the extent to which the marks have become known

[60] Neither of the parties' marks is inherently strong. The word "HOME" is an ordinary word in the English language and as the Applicant has noted, neither the word HOME, nor a roof/house design are particularly distinctive within the context of the wares and services which are associated with the marks.

[61] A trade-mark may also acquire distinctiveness through use or promotion. However, neither party has filed any evidence of use. While the Opponent's registrations are based on use, this only entitles me to assume de minimis use [see *Entre Computer Centers Inc v Global Upholstery Co* (1991), 40 CPR (3d) 427 (TMOB) at 430]. De minimis use does not support a conclusion that its marks have become known to any significant extent, nor that the marks have necessarily been used continuously since the date stated.

Section 6(5)(b) – length of time in use

[62] As noted previously, since the Opponent has a registration upon which to rely, I am able to infer that it has *de minimus* use of its trade-mark. However, there is no evidence before me of use of the Applicant's trade-mark.

Sections 6(5)(c) and (d) – the nature of the wares, services or business and trade

[63] It is the Applicant's statement of services as defined in its application versus the Opponent's registered wares and services that governs my determination of this factor [see *Henkel Kommanditgesellschaft auf Aktien v Super Dragon Import Export Inc* (1986), 12 CPR (3d) 110 (FCA); *Mr. Submarine Ltd v Amandista Investments Ltd* (1987), 19 CPR (3d) 3 (FCA); *Miss Universe Inc v Bohna* (1994), 58 CPR (3d) 381 (FCA)].

[64] To the extent that they both relate to the supply of various home building products, such as windows, doors, siding, decks, etc., there is overlap in the wares and services which are associated with the parties' marks. Neither party filed any evidence regarding the nature of its business or normal course of trade. However, in view of the fact that the parties' wares and services are similar, it is reasonable to conclude that their channels of trade would also overlap.

Section 6(5)(e) – degree of resemblance between the trade-marks

[65] In most instances, the dominant factor in determining the issue of confusion is the degree of resemblance between the trade-marks in their appearance or sound or in the ideas suggested by them, and other factors play a subservient role in the overall surrounding circumstances [see *Beverly Bedding & Upholstery Co v Regal Bedding & Upholstery Ltd* (1980), 47 CPR (2d) 145, conf. 60 CPR (2d) 70 (FCTD)].

[66] In *Masterpiece* the Supreme Court of Canada considered the importance of s. 6(5)(e) in conducting an analysis of the likelihood of confusion (see para 49):

...the degree of resemblance, although the last factor listed in s. 6(5) is the statutory factor that is often likely to have the greatest effect on the confusion analysis ... if the marks or names do not resemble one another, it is unlikely that even a strong finding on the remaining factors would lead to a likelihood of confusion. The other factors become significant only once the marks are found to be identical or very similar... As a result, it has been suggested that a consideration of resemblance is where most confusion analyses should start.

[67] I do not consider there to be a particularly high degree of resemblance between the Opponent's trade-mark and the Mark. The only common component is the word HOME, which as discussed previously, is not particularly distinctive, given that it is an ordinary dictionary term. Otherwise, the marks are quite different, as the design components of the marks bear little resemblance to one another and the addition of the word TEAM gives the Applicant's Mark a somewhat different connotation (i.e. it suggests that the Applicant's "home" related services are provided by a "team").

[68] When the marks are considered in their entirety, I find that they are more different than alike in appearance, sound and connotation. This certainly favours the Applicant.

Surrounding Circumstances

The Opponent's Family of HOME Trade-marks

[69] At the hearing, the Opponent attempted to argue that it owns a family of HOME marks which would entitle it to a broader scope of protection. In support of this argument, the Opponent relies upon the Buckingham affidavit. Ms. Buckingham is employed as a trade-mark searcher with the agent for the Opponent's law firm. Her affidavit consists of trade-mark search results for all active trade-mark applications and registrations in the name of the Opponent which encompass the element HOME. A copy of the search results is attached as Exhibit "A" to her affidavit. Ms. Buckingham located approximately 91 applications and registrations in her search.

[70] I note that an opponent must evidence use of the members of an alleged family of marks in order for the benefits of a family to apply [see *Ultramar Ltd v Gold Eagle Co* 2011 TMOB 149 at para 26]. As the Opponent has not done so, it cannot rely on any cumulative effect of its HOME trade-marks.

The HOMEOWNER Decision

[71] At the hearing, the Opponent brought to my attention the decision in *Home Hardware Stores Limited v Ames True Temper Properties, Inc* 2010 TMOB 213 involving its successful opposition to the registration of the trade-mark HOMEOWNER filed by an unrelated party. This decision is distinguishable from the present case, based upon the evidence which was filed. In any event, it is trite law that each case must be decided based upon its own merit.

State of the Register

[72] In support of its application, the Applicant filed state of the register evidence in the form of the affidavits of Sina Giugno, sworn March 4, 2012 and May 14, 2012. The Giugno affidavits put forward state of the Register search results for trade-marks which feature the word HOME and/or a home or roof design. At the outset, I wish to note that the wares and services associated with some of the trade-marks which Ms. Giugno located during her search differ somewhat from those which are associated with the parties' trade-marks. However, I still find there to be a reasonable number of relevant registrations, such that I can conclude that consumers would be accustomed to seeing trade-marks incorporating the word "home" and or a roof or house design in association with the same or similar wares and services to those of the parties at issue.

Conclusion re likelihood of confusion

[73] Considering the factors in s.6(5) as discussed above, including the relevant surrounding circumstances, and taking into account in particular the inherent weakness of the Opponent's mark, the absence of any substantial degree of resemblance between the marks and the fact that the word HOME and/or roof/home designs are not uncommon in the parties' general fields, I am satisfied that the Applicant has met the legal onus on it to show, on a balance of probabilities, that there is no likelihood of confusion between the trade-marks.

[74] Accordingly, the section 12(1)(d) ground of opposition is unsuccessful.

Non-entitlement – Section 16(1)(b) of the Act

[75] The remaining ground of opposition turns on a determination of the issue of the likelihood of confusion between the Mark and the Opponent's previously applied-for trade-marks. Since the Opponent has succeeded under its section 30(b) ground of opposition, the material date for assessing the likelihood of confusion in respect of this non-entitlement ground is the Applicant's filing date [*American Cyanamid Co v Record Chemical Co Inc* (1972), 6 CPR (2d) 278 at 280 (TMOB)]. In my view, the difference in material dates does not have any significant impact on the determination of the issue of confusion between the trade-marks of the parties.

[76] Only a handful of the marks which are included within Schedule "A" of the Statement of Opposition are relevant to the Opponent's section 16(1)(b) ground and in my view, those marks bear even less resemblance to the Applicant's Mark than registration No. TMA381,072, which was the subject of my section 12(1)(d) analysis above. My finding above that the trade-marks are not likely to be confused therefore applies to this ground as well.

[77] Accordingly, this ground of opposition is also unsuccessful.




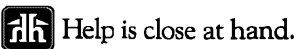
Disposition



[78] Pursuant to the authority delegated to me under section 63(3) of the Act, I refuse the application pursuant to section 38(8) of the Act.







Lisa Reynolds
Member
Trade-marks Opposition Board
Canadian Intellectual Property Office




SCHEDULE "A"






TRADE-MARK	APPLICATION/REGISTRATION NO.
	1376497 / TMA 750688
	1397771 / TMA 746474
	1294071 / TMA 703,710
	1,488,504
	796552 / TMA 500,988
	617428 / TMA 381,072
	698520 / TMA 417,026
HELP IS CLOSE TO HOME	814691 / TMA 481,663
 Help is close to home.	814692 / TMA 481,665








TRADE-MARK	APPLICATION/REGISTRATION NO.
	1065713 / TMA 567,667
HOME AUTO CLUB	597721 / TMA349,805
HOME AUTO CLUB	597721 / TMA 349,805
	528128 / TMA 310,728
HEMECARD	559135 / TMA 326,237
A CANADIAN HOME BUILDING TRADITION	1290628 / TMA 689,370
ALL ROADS LEAD TO HOME	1122974 / TMA 582,442
	1004962 / TMA 558,258
	1118224 / TMA 589,642
	814690 / TMA 481,661






TRADE-MARK	APPLICATION/REGISTRATION NO.
	1285863 / TMA 709356
HOME OWNERS HELPING HOMEOWNERS	1386347 / TMA 758040
HOME THERMAL GLOVE	1398701 / TMA 746878
HOME SCISSORS PLUS	1427332 / TMA 762734
	1053681 / TMA 638,451
	1213323 / TMA 647,819
 E•Z•ROLL STUCCO	1124168 / TMA 591,162
	1233623 / TMA 647,170
	1330458 / TMA 713624


TRADE-MARK	APPLICATION/REGISTRATION NO.
 EARTH MOVER	1300513 / TMA 710,412
 Lawn-food	1122975 / TMA 613,408
	282138 / TMA 141,988
	1098443 / TMA 581,466
	1098444 / TMA 575,145
	1127681 / TMA 590,053

TRADE-MARK	APPLICATION/REGISTRATION NO.
 DRAIN HOOK	1190603 / TMA 625,416
HOMECRETE	346542 / TMA 184,655
HOMEHARDWARE.CA	1107710 / TMA 697,811
HOMEHARDWARE.COM	1121928 / TMA 698,195
HOMELAND FURNITURE	435192 / TMA 248,030
	448559 / TMA 251,551
HomeWares	766192 / TMA 510,668
homextra.ca	1144931 / TMA 713,457
	1009466 / TMA 538,254
 <i>Natura</i>	1186556 / TMA 661,115

TRADE-MARK	APPLICATION/REGISTRATION NO.
THE HOME OF GREAT INTERIORS	1205824 / TMA 696,330
	448761 / TMA 272,239
	794096 / TMA 487,398
HOME ASSEMBLY	543359 / TMA 331,057
	565169 / TMA 335,307
HOME BUILDER	513153 / TMA 309,152
HOME BUILDING CENTRE	671866 / TMA 420,924
	671870 / TMA 425,959
HOME FOR CHRISTMAS	713839 / TMA 515,512
	698521 / TMA 424,586

TRADE-MARK	APPLICATION/REGISTRATION NO.
	547684 / TMA 363,967
	564997 / TMA 335,948
HOME HARDWARE	456783 / TMA 276,387
	580593 / TMA 348,817
	580370 / TMA 384,063
	507501 / TMA 294,304
HOME OF THE HANDY MAN	475265 / TMA 286,011
HOME PAINTER	529817 / TMA 331,212
	511489 / TMA 301,874
	559217 / TMA 327,549

TRADE-MARK	APPLICATION/REGISTRATION NO.
	511480 / TMA 295,550
	492793 / TMA 300,488
	522477 / TMA 317,390
HOME·SOL	513417 / TMA 296,652
HOMEALL	448986 / TMA 306,965
	454087 / TMA 306,966
HOMELINE	481027 / TMA 286,453
HOMEPAK	513500 / TMA 297,566
I'M PROUD OF MY HOME	655815 / TMA 384,360
LINK WITH HOME TRAVEL	505007 / TMA 295,655
	794097 / TMA 487,397

TRADE-MARK	APPLICATION/REGISTRATION NO.
THERE'S NO PLACE LIKE HOME	569126 / TMA 329,231
	424413 / TMA 272,564

SCHEDULE "B"

Wares and Services - Registration No. TMA381,072

WARES:

(1) Covering products and applicators therefore and accessories incidental thereto, namely, paints, aerosol spray bombs, containing paints, varnishes, enamels and shellacs; turpentine, paint thinners, methalhydrate, acetone, lacquer thinners, brush cleaners, paint and varnish removers, muriatic acid, wood preservers, creosote oils, white and orange shellacs, driveway sealers, driveway crack fillers, paint brushes and paint rollers, masking tape, putty, utility sheets, aerosol urethane stripper, caulking; coatings namely non-fiberated, fiberated, mobile home, aluminum roof and foundation; cements, namely all weather and plastic roofs; wet patch, N.I.S. (namely, a double material of which the complete name is "nineteen inch salvage" which said roofing is formed by overlaying a nineteen inch roll of felt with a seventeen inch roll of slate, the whole making a double layer roof,) cement, adhesive floor covering, cleaning compounds and utensils therefore, namely sweeping compounds, toilet cleaners, drain openers, cleaners for small appliances, disinfectants, deodorizers, detergents, linseed soap, sanitary fluids for all portable toilets and holding tanks; brooms, chamois and brushes, car care products, namely antifreeze, windshield antifreeze, lock de-icer, gas line antifreeze, window ice scrapers, ABS ice scrapers and lubricating oils, household products, namely bread boxes, step on cans, cannister sets, wax paper dispensers, electric toasters, electric hand mixers, electric irons, electric blankets, electric knife sharpeners, electric tooth brushes, electric percolators, ironing boards, ironing board pads and covers, electric frying pans, electric heaters, electric kettles, electric can openers, electric hair dryers, electric vacuum, electric hair conditioners, electric fans, electric floor polishers, electric hot plates, electric radios, electric record players, cook pots, sauce pans, kettles, double boilers, dutch ovens and percolators, rubber for household and garden purposes, aluminum pots and pans, clothes hanger sets, hanger sets, cups, namely beer, foam and plastic foam namely multicellular expanded synthetic resinous material in granular masses of the same; plastic eating utensils, namely bowls, knives, spoons, forks and plates; garbage bags, kitchen bags, lawn and garden bags; fly swatters bottle openers, barbeque aprons, golf towels, tennis visors, metric converters, vinyl dress maker tapes, charcoal briquettes, charcoal lighter and fluid, coal kerosene oil, and fireplace logs, housewares, namely pails, basins, bowls and plastic or metal garbage cans, gloves of rubber for household and garden purposes, aluminum pots and pans and stainless steel pots and pans, flatware and paring knives, butcher knives and cutlery, kitchen tools, step-on cans, mops and brooms, kitchen utility brushes, kitchen gadgets, kitchen linen, dust pans, appliances, namely fridges, stoves, washers, dryers, dishwashers, freezers, air conditioners, air purifiers, microwave ovens, vacuum cleaners, dehumidifiers and humidifiers, lighting products namely batteries for fences, namely carbon batteries used to provide electric shock for fences, lanterns, transistors, flash light and light bulbs, lawn and garden care products and tools therefore namely bone meal, agricultural lime, 7-7-7 fertilizer, soil conditioner, grass seed garden sprayers, potting soil, bird feed namely bird seed and sunflower seed, rakes, rake handles, hoes, hoe handles, shovels, shovel handles, forks, fork handles, spades, spade handles, axes, axe handles, sledges, sledge handles, picks, pick handles, weeders, pruners, grass sheers, cement and cement mixtures containing aggregates, sand and the like whether sold in bags or other containers, mortar and sand mixes, household hardware products, namely nails and bolts, furniture legs, handrail brackets, hat and coat hooks, cabinet hinges, cabinet pulls, sash lifts, sash locks, cabinet

knobs, door stops, hacksaw blades, aprons for carpentry work, hammers and hammer handles, toys namely trucks and delivery vans, dog food, hardware, namely builders' hardware; cabinet hardware and various other hardware items namely, latch bolts, latch sets and latches, butts, gate, refrigerator, and screen door catches; mortice and rim cylinders; grilles; thumb grips, grommets and bolts; door handles and knobs; hasplocks; hinges; screw hooks for hinges; reverse bevel night latch keepers; hook extension links, locks and lock sets and escutcheons for locks, electric door openers; padlocks; door lock re-inforcers; backset rods; screen door sets; door knob spindles; aluminum door strikes; dummy trim; door reinforcing units; casement and storm sash adjusters; cupboard knob backplates; spiral sash balances; push bars; door buttons, cupboard and other types of catches; box corners; casement and sash fasteners, casement chest, and suitcase handles; storm sash hangers, gravity sash holders, pull down hooks; breadboard, cupboard, and plastic sliding window knobs; bar sash lifts; casement operators; kick and push sliding window knobs; bar sash lifts; casement operators; kick and push plates; pull down poles; sash pulleys; breadboard, door and drawer pulls; dee rings; cupboard turns; exit alarms; towel bars; bifold door hardware; barn door hardware; door binders; sign boards; bolts of various kinds; letter box borders; mail boxes; corner and table legs and braces; brackets; rubber bumpers; lighted door bell buttons; casters; safety door chain; sliding door channel; spring chain check; door closers; closet rods; clothes hangers; caster cups; soap dishes; household appliance dollies and movers; drawer slides; hooks and eyes; bed, door, sign board and table top fasteners; marker figures; garage door hardware; flag pole kits; furniture glides; door guards; door guides; drawer, retractable top and sliding door guides; joist, shelf and doorhangers; glass cabinet and lazy susan shelf hardware; hasps; shutter holdbacks; card, door, hat, label, toilet paper and tumbler and toothbrush holders; clothes hooks, lavatory hooks and bumpers; corner iron; door knockers; touch bar latches; ventilator louvres; numbers and letters; pan racks; letter box, mending, table leg and tee plates; jack posts; carpet and floor protectors; sliding cup, pan, towel and tie racks; shelf and clip on book rests; towel rings; door stay, drawer and extension rod rollers; base stop and door holder rubbers; floor and carpet savers; showcase sheaves; glass furniture shoes; directional signs; letter box sleeves; showcase track sliders; drawers and record player sliders; caster and pole sockets; door springs; folding stairways; staples medicine cabinet door stays; door stops and guides; door, wall and floor stops; drop-leaf, lid, leg and closet rod supports; table top fasteners; telescoping steel posts; wall ties; furniture tips; sliding towel racks; showcase and door track; weather vanes; ventilators; wardrobe loops; door holder wedges; nuts and bolts; threaded metal rods; screws; washers; anchors; metal burns; wall grips; rivet kits; leads for cinch anchors; piston loads; cotter, drive, piston and taper steel pins; expansion plugs; rivets; expansion shields; piston studs and piston tools; hexagonal keys and key kits; check blocks and block and tackle; eye ring and U bolts; wire moulding brads; chain; wire rope clamps; line cleats; clothesline; cord; clothesline elevators; clothesline fasteners; mirror, picture and flushmount hangers; hooks; repair links for chain; escutcheon pins; pulleys; hitching rings; rope; mirror rosettes; anchor shackles; snaps; spikes; staples; clothesline supports; tacks; wire rope thimbles; turnbuckles; twine; wire, electrical apparatus, materials and supplies, namely, lighting fixtures; electric lamps and lights; cable, wire and cords; socket adapters; outlet box bars; screw bases; door bells; outlet boxes; electric light bulbs; conduit bushings; electric push buttons; electric buzzers; attachment caps; beaded extension, decorative link and swag lamp chains; door chimes; clamps; clips, hot plate element and range element coils; connectors; outlet box covers; stove, iron and toaster elements; fuses; cord grips; outlet safety guards; trouble lamp handles and lamp shade harps; lantern heads; heating cables; lamp holders; insulators; socket interiors; flood light

kits; flashlights, flashlight batteries, lenses and lamps; nipples for lock nuts; fixture nipples; decorative, receptacle, switch and weatherproof wall plates, appliance and fuse plugs; electric receptacles; socket reducers; trouble lamp reflectors; lamp shades; plastic wall shields; sockets; television splitters; TV masts; fluorescent light starters; cable straps; wire strippers; swag kits; switches; tape current taps; wire terminals; current testers; chime and bell transformers, furniture finishing, material, tools and substances used in connection therewith, namely, antique kits; caulking and caulking guns, linseed oil; paint brushes and rollers; creosote; foundation coating; lap cement; roof cement; roof coating; paint additives; machine colorant; tinting colours; Danish oil finish; paint thinner; wood fillers; masonry fillers; wood preservatives; wood sealers; muriatic acid; wood alcohol; wood bleach; empty cans; brush cleaners; abrasive cloths; coal oil; stop slip dressing; Japan driers; drop sheets; paint edgers; bath tub edging; crack fillers; floor finishes; picture frames; porcelain glaze; gasket goo; tar brush handles; sandpaper holders; pot hooks; sprayers; knives; metal lacquer; white and red lead; hydrated lime, decal markers; sandpaper; wallpaper paste; patching materials; powdered pumice; putty; rags; scratch repairs; wall size; shellac; cement spreaders; liquid solder; cellulose, plasterboard, masking, carpet, double sided, duct sealing and linoleum tape; penetrating oil; plastic wood and steel wool; pictures, prints and posters; touch-up crayon; paint and wallpaper tools; vinyl coverings, adhesives and adhesive products, namely, adhesives for asphalt tile, gaskets, linoleum, paper, rugs, rubber, chinaware, wood as well as general purpose, hand and power tools, parts and attachments therefor and materials and supplies for use in connection therewith, namely, carpenter aprons; books; safety cans; chalk; money changers; crayons; hardwood dwelling; labelers; coal oil lanterns; magnetic horseshoe pockets; pencils; leather tool pouches; drill containers; hand counters; tool boxes and chests; grinding and gardening compounds; belt dressing; graphite flake; graphite spray lubricators; cutting, lubricating, neats foot, penetrating, silicone lubricating sprays; sharpening stone oils and oilers; hand trucks and hand carts and wheelbarrows; workshop vacuum cleaners; workshop lamps; power tool lubricants; electric motors; polishing rouge; ladders and ladder storage brackets; drafting tools and instruments; measuring instruments, safety equipment and materials, namely, safety hats; safety goggles; gloves; first aid kits; fire extinguishers and refills therefor, automotive products, namely, liquid aluminium; aluminium putty; fender repair kits; muffler sealer; plastic mender and plastic rubber; plastic steel, glues and adhesives; radiator cans; windshield washer antifreeze; car cleaners, polishers, plastic seam binding; moulding; plywood and wallboard ceiling panels; shelving; tileboard; pegboard panels; synthetic laminated building materials in sheet form, building products, namely, bed boards; ceiling tile; cement; lime and plaster; cork boards; doors; driveway sealer and blacktop patch; eavestroughing; fencing material; panels made from glass fibres; hardwood dwelling; insulating materials, namely aluminium foil and mouldings; patio stones and concrete slabs; sheets of solid, transparent, resinous material namely, to be used as a glass substitutes, work benches; wrought iron railings; roofing and siding; concrete mixes; driveway caulking driveway sealers, mortar mixes; screening, plasterboard; shutters, soffit and fascia; softboards, window glass; aluminium door grilles, gutter guard; driveway markers, poultry netting; glazier and window points; draining devices for use with eavestrough down spouts; screen spline; stucco wood trim; weatherstripping; door thresholds and sweeps; threshold replacement vinyl door bottoms, door bottom vinyl inserts; floor flanges, home decorating materials and supplies, namely, bars and bar stools; books; brackets; imitation bricks; burlap; cork tiles; hooks; heat circulators and fireplaces, fireplace andirons and bellows; unfinished furniture; mirrors, polystyrene panels; decorative plaques; room divider kits; shelving shutters, spindles; stools, plastic track for sliding doors;

perforated metal; adhesive for cork brick; silent butlers; pillaster strip clips; picnic table frames, coal and wood grates; wood holders, detachable screen hoods, beds, table and furniture legs; furniture leg plates, showcase bracket rests; fireplace screens; fireplace tool sets; showcase brackets; sundials; pegboard trays, floor and wall coverings and material for use in connection therewith, namely, carpets, ceramic floor and wall tiles; carpet tiles; rugs, hardwood flooring; vinyl runners, mats; stair nosing and base; undercushion, stair rods, stair treads, carpet door and edge trim; boot butlers, plumbing material and supplies, namely, plumbing fixtures, faucets, hot water heaters; pipe and pipe fittings; replacement toilet seats; chemicals for use in septic tanks; sinks; tub and shower enclosures; water pumps, hose clamps, and insert fittings; oil and molasses gates; shower heads; grabbler and trip iron; toilet tank liners; water mixers; pipe nipples, coupling, valve, lock and joint nuts; water purifiers; drip dry, shower rod sets, hand and curtain rail showers, faucet spindles; sprays, water purifying preparation; compression stops and wastes; strainers, straps; tailpieces, faucet tails; water tanks; tees; toilet units; traps; toilet drip trays; float valve tubes, pipe unions, valves, washers, waste pipe, lift wires; bathroom fittings, including, towel bars, soap dishes, toilet paper holders, towel poles, towel racks, towel rings, toilet paper holder rollers, glass shelves, and mirrors; lights for medicine cabinets, solder flux; pump gasket and gears; clothes hooks; pumps and valve leathers; soldering paste; solder; water pressure systems, tank and parts therefor; pipe wrap; roof vent flashing; pump fitter bowls; heating and ventilating equipment, material and supplies, namely, furnaces, ductwork, ventilating equipment, material and supplies, namely furnaces, ductwork, ventilating fans, range hoods and fans, air filters; chimneys; humidifiers and humidifier plates; sheet aluminium, wall anchors; asbestos board, paper and fibre; floor diffusers; end duct caps, roof jack caps and wall caps; stove cement; drive cleats, campers; air register deflectors; dryer pipe kits; soot doors; ash dumps; pipe elbows; ventilating fans; intake grilles; vent and range hoods; galvanized sheet metal; stove lining; fusible links; humidifier evaporator pads; vent and stove pipe; sidewall registers; drill rods; brass and steel shim stock; wall duct stacks; chimney insert thimbles; rubber tubing; dryer and attic ventilators; humidifier wicks; housewares, namely, garbage and vacuum cleaners bags; laundry baskets; insulated beverage bottles; mixing bowls; lunch kits; cafe rod, closet rod, drapery track, extension, flat rod, shade and tubing brackets; basting and pastry brushes; bowl brushes; nail brushes and vegetable brushes; cake saver; garbage, gas and utility cans; yard and garden carts; cheese, dish and pastry cloths; cookware and parts therefor; earthenware crocks and covers therefor; curtain fittings; dinnerware sets; butter and soap dishes; curtain rod extensions; funnels; broom and garbage holders; curtain rod, drapery, heading and pleater hooks, vacuum hose; candy and cookie jars; tea kettles; coffee makers and parts therefore; coffee mugs; juice pitchers; dinner plates; plasticware, namely, plates, bowls, coffee cups, creamers, sugar bowls, pitchers, tumblers and seals thereon, butter dishes, vacuum mixers, bread servers, canisters and seals thereon, funnels, soap and tooth brush cases, cigarette cases, salt and condiment shakers, stirrers, hair massager, refrigerator receptacles and covers, spoons, forks, paddles, ice crackers, match cases, poker chips and racks, place and card holders, construction toys and snap assembly mosaic toys; tea and stock pots; drapery, shower curtain rings, curtain fling, traverse and closet and shower rods; drapery track runners; containers for saving food; salt and pepper shakers; drapery track end stops; pleater tape; drapery track; brass tubing, glass tumblers; turntables for lazy susans; ash and waste baskets; food beaters; pastry and chopping blocks; mixing bowls; bread boxes, utility and filing cabinets; canisters; bottle cappers; caps and crowns; food chopper; apple corers; vacuum bottle corks; corkscrews; jelly moulds; garbage can covers; nut crackers; ice crushers; cullenders; measuring cups; cookie cutters; paper dispenser; forks; vegetable graters and slicers

and bowls therefor; paper towel holders; juicers; knives; ladles; meat lifters; potato mashers; food mincers; oven mitts; bottle and can openers; burner pads; galvanized pails; fruit and vegetable peelers; ice picks; rolling pins; corn poppers; garlic presses; bag, kitchen utensil, potato baker, roast and spice racks; egg rings; plastic bag rolls, lint pick-up rollers; kitchen, diet, sportsman and bathroom scales; kitchen scoops; plate scrapers; knife sharpeners; flour sifters; skewers; spatulas; spigots; spoons; spouts; spreaders; utility stools; bottle stoppers; food strainers; tray tables; meat tenderizers; cooking timers; serving tongs; food turners; jar cap wrenches; sink basins; vegetable bins; drawer organizer dividers; dish drainers; appliance, bathtub, drainboard, floor, sink, stove and table mats; liquid measures; dish and dust pans; sink stoppers; boot, cutlery, drainboard and ice cube trays; stainless steel flatware; table forks; porch gates; hydrometers; weather instruments; jars; straight razors; ice scrapers; scissors and shears; spoons; knife sharpening steel; thermometers; candles, candle holders; cleaning and laundry supplies, equipment and preparation, namely, wax applicators; brooms and brushes; chamois, rug and window cleaner; broom clippers; dust and polishing cloths; broom, mop, brush and window cleaner handles; upholstery shampoo kits; mops; pails; rug cleaning powder; rain and stain protector, rug and upholstery shampoo; sponges; squeegees and rubbers therefor; sweepers, car brush washers; mop buckets; metal, fry pan and kettle cleaner; ironing boards, ironing board pads, covers and fasteners therefor; clothespins; polish; stain remover; clothes sprinklers; laundry tubs; mop wringers; household, industrial and marine cleaning preparations; sweeping compound, degreasers, lye, furniture, linseed and saddle soap; deodorizers; air fresheners; insecticides, rodenticides, insect repellent; solidified alcohol; fly swatters, mouse and rat traps; household disinfectant; hand cream; lighter fluid and lighter flints; hand cleansers; pet supplies, namely, pet feeding dishes; dog harnesses; dog leads; ground clay used for litters for small animals; household appliances and parts and attachments therefor, namely, air conditioners, bacon grills; blankets, blenders, broilers, brooms, bun warmers, vacuum cleaners; hair clippers; clocks, photo electric light controls; combs, ice crushers; deep fry cookers, dehumidifiers, hair dryers, fans, fondue cooking sets; heaters, hotplates; humidifiers, curling and clothes irons, kettles, knives, popcorn and coffee makers, coffee mills, mirrors, electric food mixers, can openers, chord organs, heating pads; fry pans; floor polishers, radios, tape and cassette records, refrigerators, hair setters; knife sharpeners, shavers; stereo systems, appliance timers; toasters, tooth brushes, warming trays; humidifier vaporizers; waffle toasters, walkie-talkies; sporting equipment, namely, nets, birds, shoes and; baseball namely, bats, balls, gloves, cleats and suits; basketball namely, nets, backboards, balls, shoes, and suits; football namely, balls, shoes, helmets, pads, sweaters, pants, kicking tees; golf namely, bags, clubs, balls, carts, tees; soccer namely, shoes, balls, and suits; hockey namely, sticks, pucks, skates, pants, pads, sweaters, skateguards and nets, tennis namely, nets, balls, rackets, shoes, clothing namely visors, shorts, and shirts, volleyball namely nets, balls, shoes, clothing namely, shorts and shirts, pool and snooker namely, tables, chalk, balls, racks, cues, cueholders, table tennis namely, nets, tables, balls; hunting namely, jackets, boots, knapsacks, clothing namely, hats, caps, vests, jackets, and trousers; tents, ground sheets; bicycles and bicycle accessories; binoculars, toy throwing discs, inflatable toys; life jackets, air mattresses, wading pools; above ground swimming pool chemicals for use therewith and pumps, filters, ladders, floats and repair kits for use with such pools; swimming pool accessories, namely covers and liners; ice skating rinks; snow saucers; scooters; sleighs; swing sets; tobaggans; tricycles; toy wagons; utility wheels, whistles, camping and picnicing equipment and supplies, namely barbecues and barbecue accessories, charcoal, gas stoves, heaters, lanterns and fuel for use therewith, compasses, cooler chests; fire starter,

insulated jugs; lanterns; life jackets, air mattresses, folding tables, telescopes; coolers, and surfboards, and boxes, saunas and heaters for saunas; toys namely, educational toys, mechanical toys, plastic toys, plush toys and inflatable toys; lawn and garden equipment, furniture and supplies namely gardening tools, agricultural or lawn and garden chemicals, garden hose, attachments therefor and couplings and connectors therefor, patio blocks, air dryer crystals, wild bird feeders, lawn furniture and repair kits for use therewith, garden trellisses; garden umbrellas, garden planters, chair pads, snow blowers, snow shovels, ice scrapers, snow and ice removing preparations, rock salt; lawn ornaments, peat moss, peat pots; grass seeds; potting soil; plant ties; screen houses, winter spread for destroying ice; pre-fabricated garages, homes, cottages, decks and screened in porches, trusses and gable ends and arch ribs, kitchen and bathroom cabinets and counters.

SERVICES:

(1) Operation of building supply centres; services in connection with the operation of hardware merchants of providing facilities for quantity and economic purchase of merchandise; of providing advice and material in connection with the promotion of merchandise and providing advice and assistance with respect to merchandise in general; the operation of variety stores and service in connection with the operation of variety stores, of providing facilities for quantity and economic purchase of merchandise; of providing advice and material in connection with the promotion of merchandise, and of providing assistance with respect to merchandise generally; the operation of a retail furniture store.