

**IN THE MATTER OF AN OPPOSITION by
3088-3920 Quebec Inc. to application No. 879,639
for the trade-mark KITSLINK filed by Kitsilano Industries Inc.**

On May 27, 1998, the applicant, Kitsilano Industries Inc., filed an application to register the trade-mark KITSLINK. The application is based upon proposed use of the trade-mark in Canada in association with toy construction blocks.

The application was advertised for opposition purposes in the Trade-marks Journal of January 13, 1999. On March 15, 1999, the opponent, 3088-3920 Quebec Inc., filed a statement of opposition. The applicant filed and served a counter statement.

The opponent filed evidence, namely the affidavit of Ramzi Soueida. Mr. Soueida is the President of the opponent. He attests that “the opponent has carried out a business registered under the name ‘KIDLINK’ (the ‘Kidlink Trade-mark’)” since its incorporation in April 1993. He provides as Exhibit “A” “a copy of the CIDREQ printout of the Inspecteur Général des Institutions Financières du Québec showing the trade name registration”; however, that document lists February 16, 1995 as the “date début” of KIDLINK.

Paragraph 5 of Mr. Soueida’s affidavit reads: The Kidlink Trade-mark has been used and made known in Canada as a trade name and trade-mark in association with various services including, without limitation, services of a retail store specializing in the sale of toys and gift items, including,

without limitation, construction blocks and building sets, books, children's toys and products, box games, educational products, art supplies, musical cassettes and CD's, computer games, jewelry and greeting cards since the date of incorporation of the Opponent. I enclose as exhibit 'B' to this my affidavit a photograph of the sign affixed to the business premises showing the use of the Kidlink Trade-mark."

Mr. Soueida also provides a business card, a give-away bookmark, a gift certificate, stickers used on gift wraps and packaging, and a typical newspaper ad, all of which bear the word KIDLINK, which he says, have been "used in the Province of Quebec regarding the services associated with the Kidlink Trade-mark over the years since commencement of use of the Kidlink Trade-mark."

The applicant filed the affidavit of Bruce D. Redekop, as its evidence. Mr. Redekop, a solicitor, is the applicant's vice-president. He explains that the trade-mark KITSLINK was created as a contraction of the words KITSILANO, from the applicant's name, and LINK, referring to the linking feature of the toy blocks. He provides a copy of a promotional brochure distributed by the applicant at trade shows since about January 2000 and a copy of promotional pages from the applicant's website. He also provides a specimen label showing the KITSLINK trade-mark as used on product packaging. The applicant has marketed its KITSLINK toy construction blocks across Canada since about June 2001, but no sales figures have been provided. The product is sold to retail toy stores and the applicant does not use its KITSLINK trade-mark in association with any services. It has already obtained one Canadian trade-mark registration for KITSLINK in 1996 for "educational toys, plastic toys, mechanical toys and construction block toys" based on use

since May 4, 1995 and “industrial construction blocks, decorative construction blocks and landscaping design blocks” based on use since May 12, 1995.

Neither party filed a written argument and an oral hearing was not requested.

In its statement of opposition, the opponent claims prior use and making known of the trade-mark KIDLINK in Canada since 1993 in association with “various services including, without limitation, services of a retail store specializing in the sale of toys, including, without limitation, construction blocks and building sets, books, children’s products, educational products, art supplies, jewellery and greeting cards.” Based on a likelihood of confusion between KITS LINK and KIDLINK, the opponent pleads that the applicant is not the person entitled to registration of KITS LINK pursuant to subsection 16(3) of the *Trade-marks Act*, that the applicant’s mark is not distinctive and that the application does not comply with subsection 30(i) of the Act.

With respect to the section 16 ground of opposition, there is an initial burden on the opponent to evidence use of its trade-mark prior to the applicant’s filing date. The opponent has failed to do so. Although Mr. Soueida states that KIDLINK has been used since before May 27, 1998 and shows examples of how the opponent’s mark has been used, none of the examples are dated and there are no unequivocal statements that tie the examples of use to a date that predates the filing of the present application. Nor are there any invoices or any sales figures. The mere registration of the trade-mark as a business name is not proof that it was being used as of the date of the registration. Accordingly, I must dismiss the section 16 ground of opposition.

Similarly, the opponent has not met its initial burden to show that its KIDLINK trademark had acquired sufficient reputation as of March 15, 1999 to negate the distinctiveness of the applied-for mark [*Motel 6, Inc. v. No. 6 Motel Ltd.* (1981), 56 C.P.R. (2d) 44 at 58 (F.C.T.D.)]. Accordingly, the distinctiveness ground of opposition fails.

The subsection 30(i) ground of opposition also fails because the opponent has not alleged that the applicant was aware of the opponent's use. In the absence of such knowledge, the applicant could have been satisfied that it was entitled to use KITSLINK in Canada, whether or not KITSLINK is confusing with KIDLINK.

The opponent has also pleaded that KIDLINK is not registrable but, because there is no basis for such a claim, I have disregarded that ground of opposition.

Having been delegated by the Registrar of Trade-marks by virtue of subsection 63(3) of the *Trade-marks Act*, pursuant to the provisions of subsection 38(8) of the Act, I reject the opposition.

DATED AT TORONTO, ONTARIO THIS 20th DAY OF JULY 2004.

Jill W. Bradbury
Member
Trade-marks Opposition Board