

IN THE MATTER OF AN OPPOSITION by Parade Publications Inc.  
to application No. 615,291 for the trade-mark CAMA PARADE filed  
by Association des Manufacturiers de Mode Enfantine, whose  
English version is Children's Apparel Manufacturers' Association

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On September 20, 1988, Association des Manufacturiers de Mode Enfantine, whose English version is Children's Apparel Manufacturers' Association, filed an application to register the trade-mark CAMA PARADE based upon proposed use of the trade-mark in Canada in association with "publications, namely, a magazine".

The opponent, Parade Publications Inc., filed a statement of opposition on August 14, 1989 in which it alleged that the applicant's trade-mark is not registrable and not distinctive, and that the applicant is not the person entitled to its registration, in view of the registration and prior user by the opponent of its registered trade-mark PARADE, registration No. UCA 23381, for a weekly magazine. Additionally, the opponent alleged that the applicant's application is not in compliance with Section 30(i) of the Trade-marks Act as the applicant was aware of the opponent's prior and continued use or making known of the registered trade-mark PARADE in Canada for a weekly magazine since November 12, 1934.

The applicant filed a counter statement in which it effectively denied the allegations of confusion set forth in the statement of opposition. However, in its counter statement, the applicant asserted the following:

"f) The Applicant states that to its knowledge, the Opponent's magazine entitled "PARADE" deals with news articles of family appeal and is included as an insert in Sunday editions of some American newspapers which are only sold in Canada at news stands."

The opponent filed as its evidence the affidavits of Larry Smith and Cecilia Toro while the applicant submitted the affidavit of Henk Boshouwers.

Neither party filed a written argument and the opponent alone was represented an oral hearing.

The opponent's grounds of opposition all turn on the issue of confusion between the applicant's trade-mark CAMA PARADE and the opponent's registered trade-mark PARADE. I will therefore consider initially the ground of opposition based on Section 12(1)(d) of the Trade-marks Act. With respect to the Section 12(1)(d) ground, the material date would appear to be as of the date of my decision (see Park Avenue Furniture Corporation v. Wickes/Simmons Bedding Ltd. and The

Registrar of Trade Marks, 37 C.P.R. (3d) 413 (FCA) and Conde Nast Publications, Inc. v. The Canadian Federation of Independent Grocers, 37 C.P.R. (3d) 538 (TMOB)).

In determining whether there would be a reasonable likelihood of confusion between the trade-marks at issue, the Registrar must have regard to all the surrounding circumstances, including those specifically enumerated in Section 6(5) of the Trade-marks Act. Further, the Registrar must bear in mind that the legal burden is on the applicant to establish that there would be no reasonable likelihood of confusion between the trade-marks at issue as of the date of my decision.

While the opponent has not filed a copy of its registration as evidence, the Toro affidavit introduces into evidence the results of a search conducted by the affiant of the DYNIS data base which contains official records of the Trade-marks Office. Annexed to the Toro affidavit is the record obtained by the affiant on June 20, 1990 relating to the trade-mark PARADE, registration No. UCA 23381, covering "a weekly magazine". The Toro affidavit thus confirms the existence of the registration relied upon by the opponent.

With respect to the inherent distinctiveness of the trade-marks at issue, both the opponent's trade-mark PARADE as applied to a weekly magazine and the applicant's trade-mark CAMA PARADE as applied to "publications, namely, a magazine" are inherently distinctive.

The Smith affidavit establishes that the opponent's trade-mark PARADE has become known in Canada in association with a weekly magazine which is inserted in newspapers published in the United States which are circulated in Canada. In this regard, and as noted above, the applicant in its counter statement concedes that the opponent's PARADE magazine is circulated in Canada. The Boshouwers affidavit attests to the fact that the applicant commenced use of its trade-mark CAMA PARADE in association with a magazine in December 1988 and, having regard to the circulation figures provided by Mr. Boshouwers, I have concluded that the applicant's trade-mark CAMA PARADE has become known to some extent in this country. Thus, the extent to which the trade-marks at issue have become known weighs in the opponent's favour in this opposition. Likewise, the length of time that the trade-marks PARADE and CAMA PARADE have been in use favours the opponent in this opposition as the Smith affidavit asserts that the opponent's PARADE magazine has circulated in Canada since 1945.

In assessing the issue of confusion in respect of the Section 12(1)(d) ground, regard must be had to the wares described in the applicant's application and the opponent's registration. Likewise,

the Registrar must have regard to the channels of trade which would normally be associated with the wares set forth in the applicant's application since it is the statement of wares covered in the present application, rather than the applicant's actual trade to date, which determines the scope of the monopoly to be accorded to the applicant should its trade-mark proceed to registration (see Mr. Submarine Ltd. v. Amandista Investments Ltd., 19 C.P.R. (3d) 3, at pages 10-12 (FCA)). Thus, the applicant's "publications, namely, a magazine" are essentially identical to the wares covered in the opponent's registration, that is, "a weekly magazine" and the channels of trade associated with these wares must therefore be considered as potentially overlapping.

The only remaining criterion for consideration under Section 6(5) is the degree of resemblance between the trade-marks at issue in appearance, sounding and ideas suggested. In this regard, the trade-marks CAMA PARADE and PARADE are very similar in appearance and sounding, as well as in the ideas suggested by them. Further, I would note that the applicant has adopted the entirety of the opponent's registered trade-mark PARADE as an element of its mark CAMA PARADE. In this regard, Cattnach, J. in Conde Nast Publications Inc. v. Union des Editions Modernes, 46 C.P.R. (2d) 183, at page 188, commented as follows:

Considering the degree of resemblance between the trade-marks CAMA PARADE and PARADE as applied to essentially identical wares which could travel through the same channels of trade, I have concluded that the applicant has failed to meet the legal burden upon it of establishing that there would be no reasonable likelihood of confusion between its trade-mark CAMA PARADE and the opponent's registered trade-mark PARADE. The applicant's trade-mark CAMA PARADE is therefore not registrable in view of the provisions of Section 12(1)(d) of the Trade-marks Act.

In view of the above, I refuse the applicant's application pursuant to Section 38(8) of the Trade-marks Act.

DATED AT HULL, QUEBEC THIS 29th DAY OF December, 1993.

G.W.Partington,  
Chairman,  
Trade Marks Opposition Board.