

**IN THE MATTER OF AN OPPOSITION
by (1) McGregor Industries Inc. and (2) The
John Forsyth Company Inc. and Forsyth
Apparel Inc. carrying on business as Forsyth
Trading Company to application No. 677,772
for the trade-mark MOUNT ROYAL COLLECTION
& Design filed by Park Lane Neckwear Inc.**

On March 18, 1991, the applicant, Park Lane Neckwear Inc., filed an application to register the trade-mark MOUNT ROYAL COLLECTION & Design (illustrated below) for “men’s clothing, namely: neckties, bow ties, scarves, cummerbunds, shirts” based on use in Canada since September of 1988. The application was amended to include a disclaimer to the word COLLECTION and was subsequently advertised for opposition purposes on April 15, 1992.

The opponents, (1) McGregor Industries Inc. and (2) The John Forsyth Company Inc. and Forsyth Apparel Inc. carrying on business as Forsyth Trading Company, filed a statement of opposition on September 14, 1992, a copy of which was forwarded to the applicant on October 28, 1992. The grounds of opposition include, among others, that the applied for trade-mark is not registrable pursuant to Section 12(1)(d) of the Trade-marks Act because it is confusing with the first opponent’s trade-mark ROYAL COLLECTION registered under No. 347,212 for “men’s shirts and sweaters.”

The applicant filed and served a counter statement. As their evidence, the opponents filed an affidavit of Wendell Wilkinson. The applicant did not file evidence. Only the opponents filed a written argument and no oral hearing was conducted.

As for the ground of opposition based on Section 12(1)(d) of the Act, the material time for considering the circumstances respecting the issue of confusion with a registered trademark is the date of my decision: see the decision in Conde Nast Publications Inc. v. Canadian Federation of Independent Grocers (1991), 37 C.P.R.(3d) 538 at 541-542 (T.M.O.B.). Furthermore, the onus or legal burden is on the applicant to show no reasonable likelihood of confusion between the marks at issue. Finally, in applying the test for confusion set forth in Section 6(2) of the Act, consideration is to be given to all of the surrounding circumstances including those specifically set forth in Section 6(5) of the Act.

The applicant's mark is inherently distinctive. However, it is not inherently strong since the word COLLECTION is descriptive and the words MOUNT ROYAL have a geographical connotation. There being no evidence from the applicant, I must conclude that its mark has not become known at all in Canada.

The registered mark ROYAL COLLECTION is also inherently distinctive. However, it, too, is not inherently strong since the words ROYAL COLLECTION have a laudatory connotation. The Wilkinson affidavit evidences fairly significant sales of ROYAL COLLECTION wares by the first opponent's then registered user for the period July, 1992 to June, 1993. Thus, I am able to conclude that the registered mark has become known to some extent.

Given that the applicant did not file evidence, I must conclude that the length of time the marks have been in use favors the opponents. The wares of the parties are either identical or similar. Presumably, the trades of the parties could overlap.

As for Section 6(5)(e) of the Act, there is a fair degree of resemblance between the marks at issue in all respects. In fact, the last two words of the applicant's mark are identical to the registered mark ROYAL COLLECTION.

In applying the test for confusion, I have considered that it is a matter of first impression and imperfect recollection. In view of my conclusions above, and particularly in view of the resemblance between the wares, trades and marks of the parties and the applicant's apparent lack of interest in this proceeding, I find that the applicant has failed to satisfy the onus on it to show that its mark is not confusing with the registered mark ROYAL COLLECTION. Thus, the ground based on Section 12(1)(d) of the Act is successful and the remaining grounds need not be considered.

In view of the above, and pursuant to the authority delegated to me under Section 63(3) of the Act, I refuse the applicant's application.

DATED AT HULL, QUEBEC, THIS 23rd DAY OF JANUARY, 1997.

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