

TRADUCTION/TRANSLATION

**IN THE MATTER OF AN OPPOSITION by
Gestion Univert Inc. and Les Plantes Univert Inc.
to Application No. 823,413 for the registration of
the trade-mark HORIZON UNI VERT
filed by Horizon Uni Vert Inc.**

On September 17, 1996, Horizon Uni Vert Inc. (“the Applicant”) filed application No. 823,413 for the registration of the trade-mark HORIZON UNI VERT (hereinafter “the Trade-Mark”), used in Canada since at least as early as June 25, 1993, in association with the following services:

[S]preading herbicides, pesticides and fertilizers on lawns. (“the Services”)

The application for registration was advertised in the *Trade-marks Journal* on August 27, 1997. On October 24, 1997, Gestion Univert Inc. and Les Plantes Univert Inc. (“the Opponent”) filed a Statement of Opposition based on the following grounds:

- (a) Under paragraph 38(2)(a) of the *Trade-marks Act*, R.S.C. 1985, c. T-13, (“the Act”) the application for registration does not comply with the requirements of paragraph 30(a) of the Act because the application does not contain a statement in ordinary commercial terms of the specific wares or services in association with which the Trade-Mark has been or is proposed to be used.
- (b) Under paragraph 38(2)(a) of the Act, the application for registration does not comply with the requirements of paragraph 30(i) of the Act because the Applicant and the Opponent carry on the same trade, namely lawn maintenance. Consequently, the Applicant could not, and still cannot, be satisfied that it is entitled to use the Trade-Mark in Canada in association with the Services, in view of the fact that the Applicant, at the time it filed its application, was aware of the Opponent’s use of its trade-mark, given that the trade-mark of the opponent Gestion Univert Inc. was registered on the date that the instant application was filed.

(c) Under paragraph 38(2)(b) of the Act, the Trade-Mark is not registrable by reason of paragraph 12(1)(d) of the Act since the Trade-Mark creates confusion (within the meaning of sections 2 and 6 of the Act) with the following registered trade-mark:



Certificate of Registration No. 419,701 issued November 19, 1993.

(d) Under paragraph 38(2)(c) of the Act, the Applicant is not the person entitled to the Registration of the Trade-Mark in Canada by reason of paragraph 16(1)(a) of the Act, because, at the time the application for registration was filed, the Trade-Mark was confusing with at least one trade-mark that had been previously used by another person, specifically, with the trade-mark of the Opponent, which has been used since at least as early of September 25, 1979.

(e) Under paragraph 38(2)(c) of the Act, the Applicant is not the person entitled to the registration of the Trade-Mark in Canada by reason of paragraph 16(1)(c) of the Act, because, on the date the application for registration was filed, the Trade-Mark was confusing with a trade-name that had been previously used in Canada by another person, specifically Les Plantes Univert Inc., a trade-name that the Opponent has used in Canada since as early as March 6, 1990, after the Inspecteur général des institutions financières issued a certificate of amendment by which the business name Les Plantes Univert Vaugeois & Fortier Inc., which it had been using since May 11, 1984, was amended.

(f) Under paragraph 38(2)(d) of the Act, the Trade-Mark is not distinctive within the meaning of section 2 of the Act, because the Trade-Mark cannot actually distinguish, or be adapted to

distinguish, the Services from the services of other persons, specifically the services of the Opponent in association with which the Opponent has used and continues to use the Trade-Mark LES PLANTES UNIVERT and graphic in Canada.

The Applicant filed a counter-statement essentially denying the allegations contained in the Opponent's statement. The Opponent filed two affidavits of Martin Vaugeois, one on behalf of Gestion Univert Inc. and the other on behalf of Les Plantes Univert Inc. The Applicant filed the affidavit of Royal Grégoire. Mr. Vaugeois was examined on both his affidavits, and the transcript of the examination was entered in the record along with the exhibits tendered at the examination. Each party filed written submissions. None of the parties requested a hearing.

Mr. Vaugeois, as representative of Gestion Univert Inc., filed a copy of the certificate of incorporation (Exhibit MV-1) attesting to the creation of the company on March 30, 1993. He also filed Exhibit MV-2, a copy of an "*Acte de vente de marque de commerce*" (Agreement for the Sale of a Trade-Mark) dated March 30, 1993, by which it purchased from Les Plantes Univert Inc. the right, title and interest in the above-depicted trade-mark, for which application for registration No. 639,735 had been filed on September 6, 1989. He alleges that he licenced Les Plantes Univert Inc. to use the trade-mark LES PLANTES UNIVERT and design. Under his examination, Mr. Vaugeois admitted that this was an oral licence. He alleges in his affidavit that Gestion Univert Inc. directly controls the characteristics and quality of the services associated with the trade-mark LES PLANTES UNIVERT and design. He produced, as Exhibit MV-3, a certificate of authenticity issued by the Registrar of Trade-Marks attesting to the issuance of registration certificate No. 419,701 for the trade-mark LES PLANTES UNIVERT and graphic in association with the following services:

[TRANSLATION]

operation of a business engaged in the retail sale of plants, trees, shrubs, cut and potted flowers, floral arrangements, flower baskets, vases, flower pots and gardening accessories; the maintenance of indoor plants and of lawns, trees and shrubs; the preparation of plans and specifications by landscape architects; the arrangement and decoration of indoor plants and flowers; and outdoor landscaping.

It should be noted that the right to the exclusive use of the words VERT and PLANTES outside the trade-mark was not granted. The application for registration was based on the use of the said trade-mark since September 25, 1979. According to the affiant, there is no way, given the renown and great visibility of the trade-mark LES PLANTES UNIVERT and design, that the Applicant could have been unaware of its presence in the marketplace. I will comment on this affirmation when I review the evidence submitted in connection with Mr. Vaugeois' second affidavit, which was made on behalf of Les Plantes Univert Inc.

Mr. Vaugeois is convinced that the Applicant's use of the Trade-Mark in association with the Services is likely to cause confusion in the mind of the average consumer because it is not adapted to distinguish the Applicant's services and wares from those sold or offered by Gestion Univert Inc. and Les Plantes Univert Inc. in association with the trade-mark LES PLANTES UNIVERT and design. He adds that the services associated with the trade-mark LES PLANTES UNIVERT and design and the services covered by this application for registration are essentially similar, target similar customers, and are offered in the same regions, which is likely to cause confusion in the mind of an average consumer. In *Cadbury Schweppes Inc. v. Najm*, 41 C.P.R. (3d) 122, this kind of statement was declared inadmissible as it was argumentative and self-serving.

Mr. Vaugeois signed a second affidavit, this time as representative of Les Plantes Univert Inc. He began operating a plant sales business under the business name Les Plantes Univers Enr., in 1979. On September 25, 1980, Mr. Vaugeois filed a business name statement with the office of the prothonotary of the Superior Court for the district of Québec City (Exhibit O-1 of this affidavit). On January 31, 1983, the business name was changed to Les Plantes Univert Enr., as shown in Exhibit O-2. In May 1984, he proceeded to incorporate Les Plantes Univert Vaugeois et Fortier Inc. Under examination, he said the words "Vaugeois" and "Fortier" had to be added in order to distinguish this name from the business name Les Plantes Univert Enr. In this regard, it seems the computer system in use at the time could not associate the newly incorporated company with the people who carried on business under the said business name. As a result, the system refused the business name Les Plantes Univert Inc. On March 6, 1990, with this technical problem

resolved, the company changed its business name to Les Plantes Univert Inc., which it uses to this day. However, from May 1984 to March 6, 1990, it used the trade-name Les Plantes Univert.

On October 1, 1987, Les Plantes Univert Vaugois et Fortier Inc. filed a business name statement with the office of the prothonotary of the Superior Court for the district of Québec in respect of the names SERVICE UNIVERT, PÉPINIÈRE UNIVERT and PAYSAGE FLEURISTE UNIVERT. On February 26, 1988, it filed with that office a business name statement in respect of the names FLEURISTES CÔTÉ JARDIN TERRASSEMENT UNIVERT and ENTRETIEN UNIVERT. During his examination, Mr. Vaugois stated that the company did not really use these business names, and that they were registered to make it easier to cash cheques on which the drawer used one of those business names to identify the payee of the cheque. He claims that the company always used the trade-mark LES PLANTES UNIVERT and design in association with services that consisted of the retail sale of plants, trees, shrubs, cut and potted flowers, floral arrangements, flower baskets, vases, flower pots and gardening accessories; the maintenance of indoor plants and of lawns, trees and shrubs; the preparation of plans and specifications by landscape architects; the arrangement and decoration of indoor plants and flowers; and outdoor landscaping. The commercial activities carried on by Les Plantes Univert Inc. are primarily concentrated in the Québec, Trois-Rivières and Montréal areas.

A series of invoices dated from 1982 to September 1998 was tendered as Exhibit O-9. The invoices show that the trade-mark LES PLANTES UNIVERT and design were used during this period, in association with the services listed above, in the Québec, Trois-Rivières and Montréal areas. Photographs of trucks bearing this mark (Exhibit O-10), as well as stationery and business cards (O-11, O-12 and O-13) used by Les Plantes Univert Inc., were also tendered. Newspaper advertisements were produced as Exhibit O-14; during the examination of Mr. Vaugois, counsel for the Applicant objected to the production of these documents, without, however, providing a reason for the objection. The probative value of this evidence is wanting, for there is no evidence regarding the circulation of those newspapers and the territory covered. As additional evidence of the use of his trade-name Les Plantes Univert Inc., Mr. Vaugois produced a videocassette (O-15) of an advertisement broadcast on the TVA television station in December 1992 and in April and May 1993. Advertising pamphlets were also produced

(Exhibit O-16) bearing the Opponent's trade-mark. There is no information regarding the quantities distributed or the distribution method.

An invoice from radio station CHRC was tendered in support of the allegation that a radio promotion was done in November and December 1981 and in January 1982. But there is no evidence of this advertising or proof of its content. Interestingly, the invoice in question was addressed to Les Plantes Uni Verd.

A copy of an excerpt from the Québec area Yellow Pages for the period of October 1998 to October 1999 (Exhibit O-18) and of an excerpt from the Les Plantes Univert Inc. website homepage (O-19) were placed in the record. Lastly, Les Plantes Univert Inc. spent roughly \$12,000 a year in advertising expenses from 1993 to 1997, and sales varied from \$800,000 to \$1,200,000 during the same period. However, there is no mention that these figures are related to the services offered in association with the trade-mark LES PLANTES UNIVERT and design.

Based on the evidence in the record, it is beyond doubt that the Opponent and its assigns used the trade-mark LES PLANTES UNIVERT and design, and the trade-name Les Plantes Univert Inc., from 1979 to October 1998. However, this evidence does not come close to enabling me to conclude that the trade-mark LES PLANTES UNIVERT and design, and the trade-name Les Plantes Univert Inc., became known to such an extent that I can consider granting them broader protection. It remains to be seen whether the Trade-Mark is likely to create confusion with that trade-mark or the said trade-name.

Royal Grégoire is the president and principal shareholder of Horizon Uni Vert Inc. He tendered a copy of the Applicant's certificate of incorporation (R-1) attesting to its creation on June 25, 1993. The Applicant's primary field of activity is the spreading of herbicides, pesticides and fertilizers on lawns, and a brochure describing the said services was tendered as Exhibit R-2. It should be emphasized that there is no evidence of the number of such brochures distributed, or of the distribution method or area. The cover page contains the Trade-Mark and a design consisting of a green circle with an irregular border in which the Trade-Mark appears. In its submissions, to show that there is no likelihood of confusion, the Applicant invoked the

difference between the logo it uses and the logo of the Opponent. However, it is the Trade-Mark, not the logo used with the Trade-Mark, that must be compared with the Opponent's trade-name and trade-mark to determine whether there is a likelihood of confusion between them.

The Applicant offers the Services in the metropolitan Montréal area and in the suburbs of Longueuil, Repentigny, Laval and St-Laurent. A copy of a franchise contract dated December 6, 1997, between the Applicant and 9056-3883 Québec Inc., was produced as Exhibit R-3. The Applicant grants its franchisee a non-exclusive right to use the Trade-Mark in association with the operation of a business engaged in the maintenance of green spaces. The Applicant also tendered a sample of an invoice (R-4) on which the Applicant's business name appears. Exhibit R-5 to Mr. Grégoire's affidavit is a copy, certified by the Registrar of Trade-Marks, of this application for registration. A bundle of the Applicant's invoices was tendered as Exhibit R-6 to prove the use of the Trade-Mark in association with the Services. The invoices are sorted by region: for Montréal's South Shore, the invoices range from September 1993 to January 2000; for the Montréal area (Ville St-Laurent) they are from 1998 only; for Laval, they range from 1997 to 2000, and for Repentigny, they range from 1995 to 1999, except 1996. The invoices bear the Trade-Mark. For the years 1993 to 2000, the Applicant posted roughly \$5 million in sales from the delivery of the Services associated with the Trade-Mark. However, the affiant does not specify the sales figures for each of those years.

Mr. Grégoire tendered a sample of stationery (R-7), a photo of a truck (R-8) bearing the Trade-Mark and used by the Applicant when it provides the Services to its customers, and an advertising brochure (R-9) bearing the Trade-Mark. The brochure is apparently given to prospective customers to provide a description of the services offered by the Applicant. The affiant makes no mention of the date of first use of this brochure or the number of copies distributed. A business card was produced as Exhibit R-10. The Applicant allegedly spent about \$850,000 in advertising costs to position the Trade-Mark from 1993 to 2000.

Mr. Grégoire states that he is unaware of any complaint of confusion over the seven (7) years that the Trade-Mark and the trade-mark LES PLANTES UNIVERT and design have coexisted. Mr. Grégoire alleges that the Services covered by the instant application for

registration are different from the services offered by the Opponent in association with its mark LES PLANTES UNIVERT and design and described in greater detail above. He also alleges that the Applicant's target customers, i.e. consumers, are different from the Opponent's corporate customer base. Lastly, he alleges that the Trade-Mark, and the trade-mark LES PLANTES UNIVERT and design, are not suggestive of the same idea, but he does not elaborate on the subject. He states that the words "*plantes*" and "*vert*" are words that are common to the horticultural field. No documentary evidence has been entered in the record on this subject. All of these affirmations are arguments, not facts, and I will deal with them below.

The material date for assessing the various grounds of opposition depends on the specific ground involved. For the grounds of opposition based on section 30 of the Act, the material date is the date the application was filed, namely (September 17, 1996) [see *Dic Dac Holdings (Canada) Ltd v. Yao Tsai Co. (1999)*, 1 C.P.R. (4th) 263]. For the ground of opposition based on paragraph 12(1)(d) of the Act, the material date is the date of the decision [see *Park Avenue Furniture Corp. v. Wickes/Simmons Bedding Ltd. (1991)*, 37 C.P.R. (3d) 413 (F.C.A.)]. When the ground of opposition is based on subsection 16(1) of the Act, the date of first use alleged in the Applicant's application for registration (in this case June 25, 1993) is the reference date, as stated in the provision. Lastly, the relevant date for assessing the ground of opposition based on the lack of distinctiveness of the Trade-Mark is generally recognized as the date the opposition was filed (October 24, 1997) [see *Andres Wines Ltd. and E & J Gallo Winery (1975)*, 25 C.P.R. (2d) 126 (F.C.A.) at 130 and *Park Avenue Furniture Corporation v. Wickes/Simmons Bedding Ltd., supra*].

The burden of proof is on the Applicant to satisfy the Registrar that there is no reasonable likelihood of confusion, within the meaning of section 2 of the Act, between the parties' trade-marks on the material dates set out above [see *Sunshine Biscuits Inc. v. Corporate Foods Ltd. (1982)*, 61 C.P.R. (2d) 53].

Before assessing the issue of confusion, it is helpful to take good note of the following excerpt from *Christian Dior, S.A. and Dion Neckwear Ltd. [2002]*, 3 F.C. 405:

The Registrar must be reasonably satisfied that, on a balance of probabilities, the registration is unlikely to create confusion; he need not be satisfied beyond doubt that confusion is unlikely. The “beyond doubt” standard imposes an insurmountable burden because certainty in matters of likelihood of confusion is rare. At best, it is only where the probabilities are equal that a form of doubt may be said to arise, which is resolved in favour of the opponent. A registrar should avoid resorting to the concept of doubt, which is treacherous and confusing in civil proceedings.

The Opponent’s argument regarding the first ground of the opposition is limited to saying that the description, as provided by the Applicant, of the services covered by the application for registration, is much too sparse having regard to the Applicant company’s fields of activity. Paragraph 30(a) of the Act requires the Applicant to use ordinary commercial terms to describe the wares or services contemplated in the application for registration. The Applicant is the master of its own destiny, and, if it wishes, it may limit its application for registration to certain services it offers in the course of its business and choose not to include the entire panoply of services it offers to its customers. The Opponent has not discharged its initial burden of proof by providing a minimum amount of evidence to support its contention and raising a doubt as to whether the description of the Services complies with paragraph 30(a) of the Act. This ground of opposition is therefore dismissed.

The second ground of opposition, based on paragraph 30(i) of the Act, is that the Applicant could not be satisfied that it was entitled to use the Trade-Mark in Canada in association with the Wares. The ground is intimately tied to the question whether the Trade-Mark is confusing with the Opponent’s trade-mark and trade-name. This is the case because I am unable to find, based on the evidence in the record, that the Applicant is in bad faith based on its knowledge of the Opponent’s trade-mark and trade-name. Consequently, the success of this ground of opposition will depend on the assessment of the reasonable likelihood of confusion between the Trade-Mark on the one hand, and the trade-mark and trade-name of the Opponent on the other [see *Sapodilla Co. v. Bristol-Myers Co. (1974), 15 C.P.R. (2d) 152* at 155].

To determine whether the use of the Trade-Mark is likely to be confusing with the trade-mark and trade-name of the Opponent as identified in its Statement of Opposition, I must follow the process prescribed by section 6 of the Act, which reads as follows:

6. (1) For the purposes of this Act, a trade-mark or trade-name is confusing with another trade-mark or trade-name if the use of the first mentioned trade-mark or trade-name would cause confusion with the last mentioned trade-mark or trade-name in the manner and circumstances described in this section.

(2) The 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.

(3) The use of a trade-mark causes confusion with a trade-name if the use of both the trade-mark and trade-name in the same area would be likely to lead to the inference that the wares or services associated with the trade-mark and those associated with the business carried on under the trade-name are manufactured, sold, leased, hired or performed by the same person, whether or not the wares or services are of the same general class.

(4) The use of a trade-name causes confusion with a trade-mark if the use of both the trade-name and trade-mark in the same area would be likely to lead to the inference that the wares or services associated with the business carried on under the trade-name and those associated with the trade-mark are manufactured, sold, leased, hired or performed by the same person, whether or not the wares or services are of the same general class.

(5) In determining whether trade-marks or trade-names are confusing, the court or the Registrar, as the case may be, shall have regard to all the surrounding circumstances including

- (a) the inherent distinctiveness of the trade-marks or trade-names and the extent to which they have become known;
- (b) the length of time the trade-marks or trade-names have 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 or trade-names in appearance or sound or in the ideas suggested by them.

It is clearly settled that the list of circumstances in section 6(5) of the Act is not exhaustive, and that it is not necessary to give equal weight to each of those factors [by way of

example, see *Clorox Co. v. Sears Canada Inc. (1992)*, 41 C.P.R. (3d) 483 (F.C.T.D.) and *Gainers Inc. v. Marchildon (1996)*, 66 C.P.R. (3d) 308 (F.C.T.D.)].

- inherent distinctiveness

The Opponent's trade-mark and trade-name are suggestive of the services offered by the Opponent in the course of its business activities and of those covered by certificate of registration No. 419,701. In *Man and His Home Ltd. v. Mansoor Electronics Ltd. (1999)*, 87 C.P.R. (3d) 218, Denault J. stated as follows:

It is well established that trade-marks containing words which are suggestive of the wares or services offered by the owner are considered to be weak marks and consequently, are afforded a minimal level of protection. In such cases, even a small difference between the marks will be sufficient to diminish the likelihood of confusion. Furthermore, where a person adopts a word in common use and seeks to prevent competitors from doing the same, the trade-marks will have less inherent distinctiveness and the range of protection granted by the Court will be limited. Finally, where a party chooses to use a suggestive non-distinctive name, regardless of any acquired distinctiveness, it must accept a certain amount of confusion without sanction.

However, the design illustrated above confers it a certain degree of inherent distinctiveness. As for the Trade-Mark, it also possesses some inherent distinctiveness due to the inclusion of the word "horizon."

- time in use

In its submissions, the Applicant claims that the Opponent did not use the trade-mark LES PLANTES UNIVERT and design and its trade-name in association with outdoor maintenance services. This contention of the Applicant relies on the examination of Mr. Vaugeois, and on Exhibits R-1 and R-3 tendered therein, which consist of the Strategis database company search report and of excerpts from pages on the Les Plantes Univert Inc. website. I am unable to make such a finding based on the preponderance of the evidence. Indeed, during his examination, Mr. Vaugeois mentioned numerous times that the Opponent offered

outdoor lawn maintenance services, and that this service was seasonal, in contrast to the interior maintenance service. Even if I accepted the Applicant's allegations, this would not change the fact that there is evidence in the record regarding the use of the trade-mark LES PLANTES UNIVERT and design since at least as early as 1982 (ref. Exhibit O-9) in connection with indoor plant maintenance service and regarding the use of the trade-name Les Plantes Univert Inc. since as early as March 6, 1990. The application for the registration of the Trade-Mark is based on use since June 25, 1993.

- nature of services

Both parties offer similar services. Exhibit O-9, and by way of more specific example, Contract #0146, refers, under the heading "DESCRIPTION," to four (4) treatments. During his examination, Mr. Vaugeois explained that these were lawn treatments. The heading "AUTRES SERVICES DE PELOUSE" (other lawn services) is found in the contract as well.

- nature of trade

The Applicant claims that the nature of the Opponent's trade is different from its own. It alleges that the evidence in the record shows that the Opponent does business with corporate, commercial and institutional customers. In support of its allegations, the Applicant refers to the registration application file concerning the trade-mark LES PLANTES UNIVERT and design, which file was produced as Exhibit R-4 during the examination of Mr. Vaugeois. Specifically, the Applicant refers to a letter written by the Opponent's agents in response to an examination report related to the filing of the application for the registration of that trade-mark (letter of February 11, 1990). In the missive, the Opponent emphasizes to the examiner that the services associated with the trade-mark LES PLANTES UNIVERT and design were targeted to corporate, commercial and institutional clients. Assuming this evidence is admissible against the Opponent, the fact remains that the description of the nature of the services listed in registration certificate No. 419,701 contains no restrictions to such effect. Based on the evidence in the record, it appears to me that the nature of the opponent's trade encompasses the nature of the Applicant's trade.

- degree of resemblance

With regard to this factor, it is useful to recall the comments of Cattanach J. in *Beverly Bedding & Upholstery Co. v. Regal Bedding & Upholstery Ltd. (1980)*, 47 C.P.R. (2d) 145, aff'd 60 C.P.R. (2d) 70:

Realistically appraised it is the degree of resemblance between the trade-marks in appearance, sound or in ideas suggested by them that is the most crucial factor, in most instances, and is the dominant factor and other factors play a subservient role in the over-all surrounding circumstances.

The marks must be analyzed in their entirety and not broken into constituent elements to find similarities or differences. The test remains the imperfect recollection of the average consumer [*Canadian Schenley Distilleries Ltd. v. Canada's Manitoba Distillery Ltd. (1975)*, 25 C.P.R. (2d) 1]. The Trade-Mark, considered in its entirety, is phonetically different from the Opponent's trade-mark and trade-name.

While it is not necessary to prove instances of confusion in order to conclude that there is a reasonable likelihood of confusion, I can take account, as an additional factor, of the fact that there has been no confusion despite more than six years of concurrent use [*Cornell Trading Ltd. v. Saan Stores Ltd.*, 8 C.P.R. (4th) 233 and *Compulife Software Inc. v. CompuOffice Software Inc. (2001)*, 13 C.P.R. (4th) 117].

Applying the principles established in *Canadian Schenley Distilleries Ltd* and *Man and His Home Ltd.*, *supra*, I find that the Applicant has discharged its burden to prove that the Trade-Mark is not likely to be confusing with the Opponent's trade-mark or trade-name. Thus, I must also dismiss grounds (b), (c), (d), (e) and (f) of the opposition, set out above. Indeed, the difference between the material dates for each of these grounds of opposition has no bearing on the assessment of the factors in section 6(5) of the Act.

By virtue of the powers delegated to me by the Registrar of Trade-Marks pursuant to section 63(3) of the Act, I dismiss the Opponent's Opposition and therefore allow the application for the registration of the trade-mark HORIZON UNIVERT in association with the herbicide, pesticide and fertilizer spreading services on lawns, in accordance with section 38(8) of the Act.

MONTRÉAL, QUEBEC, THIS 8TH DAY OF AUGUST 2003.

Jean Carrière
Hearing Officer
Trade-marks Opposition Board