



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

Citation: 2012 TMOB 185
Date of Decision: 2012-10-04

**IN THE MATTER OF AN OPPOSITION
by Canadian Tire Corporation, Limited
to application No. 1,329,653 for the trade-
mark MASTERCRAFT in the name of
Mastercraft Industries, Inc.**

[1] On December 28, 2006, Mastercraft Industries, Inc. (the Applicant) filed an application to register the trade-mark MASTERCRAFT (the Mark) on the basis of proposed use in Canada. The statement of wares of the application, as revised on September 20, 2007, reads:

Carpet extraction equipment, namely automatic, box and specialty extractors; Floor machines, namely burnishers sanders, baseboard polishers and stone polishers, floor grinding equipment; Powered cleaning equipment, namely, wet dry vacuums, hand vacuums/blowers, upright vacuums, sweepers, automatic scrubbers, and specialty tank vacuums including (HEPA) containment vacuums, electric/air powered vacuums, upright and wide area carpet vacuums, backpack vacuums, and litter vacuums, pressure washers for floors, edge grinding and polishing equipment; Floor dryer/air mover, Carpet dryer/air mover, Accessories and supplies for such products, namely, vacuum tanks, motor heads, dry filter assembly, disposable paper filter bags, wet adaptor with squeegee tool, HV 1¼ tools, D 1½ tools, E 1½ tools, brushes, pad drivers, vacuum cleaner bags; abrasive discs for use on floors, abrasive pads for use on floors, floor brushes; water filtration products; dust filtration products.

[2] The application was advertised for opposition purposes in the *Trade-marks Journal* of December 26, 2007.

[3] Canadian Tire Corporation, Limited (the Opponent) filed a statement of opposition on February 7, 2008. On July 10, 2009, the Opponent was granted leave to file an amended

statement of opposition dated April 17, 2009. The grounds of opposition allege, in summary, that:

- the application does not conform to the requirements of section 30(e) of the *Trade-marks Act*, RSC 1985, c T-13 (the Act);
- the Mark is not registrable pursuant to section 12(1)(d) of the Act since it is confusing with the registered trade-marks of the Opponent consisting of or involving the word MASTERCRAFT identified in Schedule A to my decision;
- the Applicant is not the person entitled to registration of the trade-mark pursuant to section 16(3)(a) of the Act in view of confusion with the registered trade-marks of the Opponent, which have been previously used by the Opponent; and
- the Mark is not distinctive pursuant to section 2 of the Act.

[4] The Applicant filed and served a counter statement on April 30, 2008. On August 19, 2009, the Applicant was granted leave to file an amended counter statement of August 11, 2009 in which it denied the Opponent's allegations.

[5] In support of its opposition, the Opponent filed an affidavit of John Johnston, sworn August 28, 2008, together with Exhibits "A" through "K". Mr. Johnston, the Opponent's Vice President Sourcing Services, Marketing & Business Development, was not cross-examined by the Applicant.

[6] In support of its application, the Applicant filed an affidavit of Howard Z. Goldberg, sworn March 2, 2009, together with Exhibits "A" through "H". Mr. Goldberg, the Applicant's President, was cross-examined by the Opponent. The cross-examination transcript and the reply to undertakings form part of the record.

[7] Both parties filed written arguments and were represented at an oral hearing, at the start of which the Applicant requested leave to file further evidence consisting of Certificates of Authenticity of registration Nos. TMA755, 808 and TMA755, 940 and application No. 1,555,952

owned by the Opponent for the trade-marks MASTERVAC & Design. The Applicant's written argument referenced its intent to file certified copies of the registrations at the oral hearing.

[8] The Applicant's request for leave to file further evidence was made at a very late stage of the proceeding. Further, the Applicant did not explain the serious delay in submitting its request. However, the Opponent submitted that the proposed evidence was of no significance in the present proceeding. In addition, the Opponent did not object to the Applicant's request. Thus, it appeared to me that the Opponent considered that it would not be prejudiced by the grant of leave. I ultimately granted the Applicant's request for leave to file further evidence pursuant to section 44(1) of the *Trade-marks Regulations*, SOR/96-195, which I hereby confirm.

Onus and Material Dates

[9] 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)].

[10] The material dates that apply to the grounds of opposition are as follows:

- sections 38(2)(a)/30(e) - the filing date of the application [see *Georgia-Pacific Corp v Scott Paper Ltd* (1984), 3 CPR (3d) 469 (TMOB) at 475];
- sections 38(2)(b)/12(1)(d) - 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)];
- sections 38(2)(c)/16(3)(a) - the filing date of the application; and
- sections 38(2)(d)/2 - the filing date of the opposition [see *Metro-Goldwyn-Mayer Inc v Stargate Connections Inc* (2004), 34 CPR (4th) 317 (FC)].

Evidence

[11] I am reviewing below the parties' evidence. In my consideration of the evidence, I will not be affording weight to the affiants' opinions that go to the questions of fact and law to be determined by the Registrar in the present proceeding.

Opponent's Evidence

[12] As a first matter, I remark that Mr. Johnston, who files Certificates of Authenticity for the Opponent's alleged registrations [Exhibits "A" to "F"], introduces the evidence by referring to the trade-marks collectively as the MASTERCRAFT Marks. Also, except for a few instances where Mr. Johnston specifically refers to either "tools" or "hand tools", it appears that he uses the term "products" throughout his affidavit in reference to the "great variety and volume of wares" in association with which the MASTERCRAFT Marks have been used by the Opponent since 1940 [para. 6 of the affidavit].

[13] The Opponent sells products, including products bearing the MASTERCRAFT Marks, to its associate stores located in every province of Canada, which in turn sell the products to the public. At the date of the Johnston affidavit, there were 473 associate stores throughout Canada [para. 3 of the affidavit]. Products bearing the MASTERCRAFT Marks, which have been available in associate stores "for many years", are also frequently sold to individuals or companies for commercial use [para. 8 of the affidavit]. They are also offered on the Opponent's website located at *www.canadiantire.ca*; the Opponent "does not offer for sale on its website all of the products it sells" [para. 7 of the affidavit, Exhibit "G"].

[14] The Opponent has spent "millions of advertising dollars" each year to promote products bearing the MASTERCRAFT Marks across Canada [para. 9 of the affidavit]. These products have been advertised as follows:

- in the Opponent's catalogues distributed in every province of Canada. The number of catalogues showing tools bearing the MASTERCRAFT Marks that were distributed between the years 2000 and 2007 totalled in excess of 90 million. The 2008 catalogue was made available on the Opponent's website [paras. 10, 11 and 13 of the affidavit, Exhibit "H"];

- in flyers distributed several times each year on a house to house basis in selected areas. Until the end of 2005, the number of flyers distributed on a given occasion was similar to the number of catalogues distributed for that year. In excess of 11 million flyers were distributed each week during the years 2006, 2007 and 2008 (up to the date of the affidavit) [paras. 12 and 14 of the affidavit, Exhibit “I”];
- in newspaper inserts distributed several times each year with major newspapers in communities served by the associate stores [para. 14 of the affidavit]; and
- in television commercials, i.e. demomercials, for hand tools that have been presented on national television during the years 2004, 2005, 2007 and 2008. The demomercials have also been shown in the associate stores [para. 15 of the affidavit, Exhibit “J”].

[15] The national sales in Canada of products associated with the MASTERCRAFT Marks from January 1, 1995 up to and including August 9, 2008 are estimated to be in excess of \$4.4 billion [para. 16 of the affidavit].

[16] Reports showing representative transactions between the Opponent and its associate stores relating to tools bearing the MASTERCRAFT Marks are appended as Exhibit “K” to the Johnston affidavit [para. 17 of the affidavit].

[17] According to the affiant’s statements, a portion of the wares identified in the application for the Mark are sold by the Opponent and its associate stores in association with the MASTERCRAFT Marks and with other trade-marks. These wares are: powered cleaning equipment, namely, wet dry vacuums, hand vacuums/blowers, upright vacuums, sweepers, automatic scrubbers, and specialty tank vacuums including (HEPA) containment vacuums, electric/air powered vacuums, upright and wide area carpet vacuums, backpack vacuums, and litter vacuums, pressure washers for floors, edge grinding and polishing equipment; floor dryer/air mover, carpet dryer/air mover, disposable paper filter bags, brushes, vacuum cleaner bags; abrasive discs for use on floors, abrasive pads for use on floors, floor brushes; water filtration products; dust filtration products [para. 18 of the affidavit].

Applicant's Evidence

[18] In turning to the review of the affidavit of Mr. Goldberg, I note that I will refer to his cross-examination only insofar as it is relevant to my review of the affidavit when considering the issues and the parties' arguments.

[19] The Goldberg affidavit establishes that the Applicant owns registration No. TMA224,549 for the Mark in association with "vacuum cleaners". The registration issued on December 2, 1977 based on use of the Mark in Canada since at least as early as January 1959 [Exhibit "A"]. The Applicant has been selling vacuum cleaners in Canada in association with the Mark "for over fifty (50) years" [para. 3 of the affidavit].

[20] Mr. Goldberg states the Applicant has been using the Mark in association with many of the floor care products listed in the application prior to its filing date [para. 2 of the affidavit]. The issue of when the Applicant first used the Mark in Canada was explored at some length at cross-examination. In response to an undertaking to confirm whether it had sold each of the wares listed in the application in Canada in association with the Mark prior to December 28, 2006, the Applicant provided the following information:

- | | |
|---|-------------------------------|
| ○ Carpet extraction equipment, namely: | |
| - automatic extractors | Proposed use |
| - box extractors | Not sure, maybe prior to 1988 |
| - specialty extractors | 1995 or earlier |
| ○ Floor machines, namely: | |
| - burnishers | 1993 or earlier |
| - sanders | Not sure |
| - baseboard polishers | 1991 |
| - stone polishers | Sold by USA distributor |
| - floor grinding equipment | Proposed use |
| ○ Powered cleaning equipment, namely: | |
| - sweepers, automatic scrubbers, litter vacuums, pressure washers for floors, edge grinding equipment | Proposed use |
| - wet dry vacuums, electric/air powered vacuums | 1988 |
| - hand/vacuum/blowers | 1994 |
| - upright vacuums | 1989 |
| - specialty tank vacuums including (HEPA) containment vacuums | 1990 |
| - wide area carpet vacuums | 1993 |

- backpack vacuums	1991
- polishing equipment	1992
○ Floor dryer/air mover, carpet dryer/air mover	Not sure
○ Accessories and supplies for such products, namely:	
- vacuum tanks, brushes, pad drivers, vacuum cleaner bags	1988
- dry filter assembly	1989
- disposable paper filter bags	1991
- motor heads, wet adaptor with squeegee tool, HV 1¼ tools, D 1½ tools, E 1½ tools	Part of vacs
○ Abrasive discs for use on floors, abrasive pads for use on floors, floor brushes; water filtration products	Part of floor machinery
○ Dust filtration products	Part of vacuum [unreadable word]

[21] When asked on cross-examination whether he agrees that the ultimate consumers of the Applicant's products are individuals or businesses with a need for cleaning equipment, Mr. Goldberg answers: "The majority of it is that, yes." [Q284]. On re-examination, Mr. Goldberg testifies that the principal markets for the Applicant's commercial industrial floor care equipment are "the janitorial supply, industrial, and rental markets" [Q317]. He also testifies that the equipment is "[h]eavier duty than the normal household type of products that [one] would find, the normal shop vac type of products that [one] would find" [Q318].

[22] The Applicant "manufactures and markets its floor care products under the [Mark] through a network of distributors in many countries [...] including Canada. This network is a collection of world-class independent distributors that display, stock, demonstrate, sell and service" floor care products associated with the Mark [para. 4 of the affidavit]. Canadian sales of vacuums and floor care products associated with the Mark have totaled in excess of \$1.2 million for the years 2000 to 2008 [para. 6 of the affidavit]. Copies of invoices issued by the Applicant to distributors between January 27, 2003 and February 20, 2009 are appended as Exhibit "B" to the affidavit [para. 7 of the affidavit].

[23] The Applicant has operated a website located at *www.mastercraftusa.com* since August 2002; the website has a section wherein it is possible to request or download an electronic version of a catalogue [para. 8 of the affidavit, Exhibit "C"]. On cross-examination,

Mr. Goldberg indicates not having any information as to whether Canadians have downloaded catalogues from the website [Q259].

[24] In order to show the different kinds of professional vacuums and floor care products sold in Canada in association with the Mark, Mr. Goldberg files samples of catalogues and price lists that it has sent to Canadian distributors and has made available to all of its distributors, namely: two catalogues and price lists “effective 2007” [paras. 9 and 10 of the affidavit, Exhibits “D” and “E”]; one catalogue distributed starting in 1997 [para. 11 of the affidavit, Exhibit “F”, Q19]; and one price list effective 2004 [para. 12 of the affidavit, Exhibit “G”]. On cross-examination, Mr. Goldberg undertook to check if the Applicant had any information as to the number of catalogues and price lists that were sent to Canadians [Q263, Q265 to Q267]. However, the Applicant did not provide any information in reply to the undertaking.

[25] In his affidavit, Mr. Goldberg refers the Opponent having unsuccessfully attempted to purchase the Applicant’s rights into the Mark prior to 2005 as well as to challenge the Applicant’s rights. He files a copy of a notice dated September 29, 2006 sent to the Opponent’s trade-marks agent by the Registrar terminating section 45 proceedings against registration No. TMA224,549 [Exhibit “H”]. Mr. Goldberg opines that the present proceeding is the result of the aforementioned unsuccessful attempts of the Opponent [paras. 13, 14 and 16 of the affidavit]. I note that this written testimony of Mr. Goldberg was brought up on cross-examination, but mostly through an exchange between counsels for the parties [pages 51 to 56 of the transcript]. As regards to the confidentiality of any discussions between the parties, Mr. Goldberg testifies “not recalling any papers or anything that might have been signed on confidentiality or anything like that” [Q279]. He also testifies as follows [Q280]:

Q. So your understanding was that there was no confidentiality contained with the fact that you had discussions or the specific contents of any discussions?

A. Conversations took place with others also within the organization, so I am not in a position to answer that question.

[26] In his affidavit, Mr. Goldberg states there has been no evidence of confusion among customers between the Mark in association with vacuum and floor care products and the Opponent’s trade-mark MASTERCRAFT in association with sporting goods and hardware

products [para. 18 of the affidavit]. On cross-examination, Mr. Goldberg states that he is unaware of any instances of confusion between the parties [Q285-Q286]. He acknowledges that he did not ask the Applicant's distributors whether there have been any instances of confusion, but he says that he had no reasons to do so since if there were instances of confusion, "the distributors would be all over [him]" [Q287-Q289].

[27] The Applicant's evidence also includes Certificates of Authenticity of the Opponent's registrations and application for the trade-marks MASTERVAC & Design, shown below, for "wet/dry vacuums" or "wet and dry vacuums", as the case may be.



No. TMA755,808



No. TMA755,940



No. 1,555,952

Preliminary Remarks

[28] Before analyzing the grounds of opposition, I wish to make preliminary remarks to address some of the parties' submissions.

The Goldberg Affidavit and Cross-Examination

[29] The Opponent contends that the Applicant failed to fulfill the undertakings provided on cross-examination and therefore it requests that the Goldberg affidavit be struck or, in the alternative, that negative inferences be drawn. I am not prepared to strike the Goldberg affidavit as requested by the Opponent, if only because I find that the Applicant has replied satisfactorily to its undertakings as regards to when it had first used the Mark in association with each of the wares identified in the application, as the case may be. However, I accept to draw a negative inference from the Applicant's failure to reply to its undertakings as regards to the distribution of the catalogues and price lists.

[30] The Opponent also requests that paragraphs 13, 14 and 16 of the Goldberg affidavit be struck or, in the alternative, be given no weight because the affiant is merely stating his opinion. The Opponent need not be concerned that I would afford any weight to Mr. Goldberg's

opinion that this proceeding is a result of the Opponent's unsuccessful attempts to purchase and challenge the Applicant's rights into the Mark.

[31] I turn next to the Opponent's submissions that Mr. Goldberg's statements concerning the prior discussions are inadmissible because these discussions were on a without prejudice basis and that a negative inference should be drawn from his refusal to answer questions as to the without prejudice basis of the discussions.

[32] Based on a fair reading of the cross-examination transcript, I am of the view that Mr. Goldberg ultimately answered the questions in regard to the prior discussions, albeit apparently not to the satisfaction of the Opponent. I would add that there is some merit to the Applicant's submissions that the Opponent filed no reply evidence establishing the confidential nature of any discussions between the parties. That said I am not affording any significance to the discussions referenced by Mr. Goldberg. Besides the fact that I am disregarding his opinion evidence, it appears from Mr. Goldberg's cross-examination that his testimony is partly based on conversations to which he was not privy and so is inadmissible hearsay evidence. Given my ruling on the inadmissibility of the evidence in regard to the prior discussions between the parties, it is unnecessary to consider their relevancy in the opposition proceeding.

Applicant's Registration No. TMA224,549 for the Mark

[33] With due respect, I consider the Applicant's contention that it "recently overcame a notice issued under Section 45" against its registration No. TMA224,549 to be a mischaracterization of the outcome of the proceeding since no final decision was issued pursuant to section 45(6) of the Act; the Section 45 notice was withdrawn and the proceeding terminated. In addition, its ownership of registration No. TMA224,549 does not give the Applicant the automatic right to registration of the Mark in association with the wares listed in the application [see *Groupe Lavo Inc v Proctor & Gamble Inc* (1990), 32 CPR (3d) 533 at 538 (TMOB)].

Opponent's Trade-marks MASTERVAC & Design

[34] At the oral hearing, the Applicant reiterated its written submissions that the Opponent's "filing and registration for the use of the formative trade-mark MASTERVAC in the same

general class of wares as the Applicant is an implicit acknowledgement by the Opponent of the Applicant's prior and continuing rights to use the [Mark] in association with vacuums and, accordingly, in the general class of floor care products" to which all of the wares identified in the application belong. The Applicant's contention is both speculative and irrelevant. Moreover, as I remarked at the oral hearing, it is the Applicant's right to register the Mark, not the Applicant's right to use the Mark, that is at issue in the present proceeding.

Analysis of the Grounds of Opposition

[35] I now turn to the analysis of the grounds of opposition, although not in order of pleading.

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

[36] Having exercised the Registrar's discretion, I confirm that each registration alleged in support of the ground of opposition is extant and so the Opponent's initial burden under section 12(1)(d) of the Act has been met. The question becomes whether the Applicant has met its legal onus to show that, as of today's date, the Mark is not reasonably likely to cause confusion with any of the Opponent's registered trade-marks.

[37] 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.

[38] In applying the test for confusion, I 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 the trade-marks 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 in appearance or sound or in the ideas suggested by them. These enumerated factors need not be attributed equal weight. [See *Mattel, Inc v 3894207 Canada Inc* (2006), 49 CPR (4th) 321 (SCC); *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée et al* (2006), 49 CPR (4th) 401

(SCC); and *Masterpiece Inc v Alavida Lifestyles Inc* (2011), 92 CPR (4th) 361 (SCC) for a thorough discussion of the general principles that govern the test for confusion.]

[39] I find that comparing the Mark with the Opponent's word mark MASTERCRAFT of registration Nos. UCA14694 and TMA268,846 will effectively decide the outcome of the ground of opposition, especially since any relevant evidence of use of the Opponent's trade-marks MASTERCRAFT & Design (Nos. TMA534,749 and TMA540,840) may serve as evidence of use of the word mark MASTERCRAFT (the Opponent's Mark). Thus, I now turn to the assessment of the likelihood of confusion between the Mark and the Opponent's Mark having regard to the evidence of record.

Consideration of the Section 6(5) factors

[40] In *Masterpiece* the Supreme Court of Canada stated that the degree of resemblance between the marks is often likely to have the greatest effect on the confusion analysis and it chose to begin its confusion analysis by considering that factor. Since the Mark and the Opponent's Mark are identical, the Opponent is considerably favoured by the section 6(5)(e) factor.

[41] I am of the view that the section 6(5)(a) factor, which is a combination of the inherent and acquired distinctiveness of the marks, also favours the Opponent. Obviously, the marks possess the same degree of inherent distinctiveness. Considering the extent to which the Mark has become known in Canada, I do not necessarily agree with the Opponent that the sales figures provided by the Applicant are "modest"; but these sales figures are clearly not as significant as the sales figures provided by the Opponent. Furthermore, in addition to the negative inference drawn from the Applicant's failure to fulfill its undertaking in regard to the distribution of its catalogues, the Goldberg affidavit by itself does not enable one to conclude on the extent of the distribution or circulation of the catalogues. Also, the invoices filed by the Applicant show sales solely to distributors in Ontario. In any case, it is certainly fair to conclude that whatever the extent to which the Mark may have become known in Canada, it has become known to a lesser extent than the Opponent's Mark. As for the Opponent's Mark, the evidence satisfies me that it has become significantly known, if not well known, throughout Canada.

[42] Turning to the length of time the trade-marks have been in use, the cross-examination of Mr. Goldberg reveals that the Mark would have been used in association with a significant portion of the applied-for wares prior to the filing of the proposed use application. In that regard, I recall that the reply to undertaking references various years of first use of the Mark depending on the wares concerned, the earliest year referenced being 1988. I would remark that a significant portion of the wares identified in the application in the category of “powered cleaning equipment” appear to correspond to vacuum cleaners for which the Goldberg affidavit references use of the Mark since 1959. As for the Opponent’s Mark, the Johnston affidavit references use since 1940. The Opponent’s registration No. UCA14694 and TMA268,846 claim various dates of first use depending on the wares concerned. Registration No. UCA14694 claims the earliest date of first use of the Opponent’s Mark, namely January 1, 1940, in association with sporting goods; the year 1946 is claimed in that registration as the date of first use in association with tools.

[43] Although I am satisfied that both the Applicant and the Opponent have evidenced use of their respective marks within the meaning of section 4(1) of the Act, the evidence is not sufficient to establish continuous use since the earliest date claimed by each party. Nevertheless, if one accepts that each party has used its mark since the earliest referenced date, the Opponent is favoured by the section 6(5)(b) factor.

[44] When considering the section 6(5)(c) and (d) factors, it is the statement of wares in the application for the Mark and the statement of wares in the Opponent’s registrations that govern the assessment of the likelihood of confusion under section 12(1)(d) of the Act [see *Henkel Kommanditgesellschaft auf Aktien v Super Dragon Import Export Inc* (1986), 12 CPR (3d) 110 (FCA); and *Mr Submarine Ltd v Amandista Investments Ltd* (1987), 19 CPR (3d) 3 (FCA)].

[45] The Applicant’s submissions as to differences between the nature of the wares and of the trade can be summarized as follows: (i) the wares identified in the application do not overlap with the Opponent’s wares and are “simply an extension” of its existing rights in the Mark for the general class of floor care products; (ii) the evidence does not show use of the Opponent’s Mark with the general class of floor care products; (iii) the Opponent’s evidence rather shows that the few overlapping wares sold by the Opponent are associated with other trade-marks;

(iv) the ultimate consumers of its wares are professional cleaners in the “janitorial supply, industrial, rental markets” whereas the ultimate consumers of the Opponent’s wares are members of the general public; (v) professional cleaners, who are aware of the tools of their trade, would not be confused as to the source of the wares offered by the parties, even if said professionals were customers of both the Applicant and the Opponent; and (vi) the fact that the Opponent’s wares are sold only through the associate stores further limits the potential for confusion.

[46] The Opponent’s submissions as to resemblance between the nature of wares and of the trade can be summarized as follows: (i) the wares identified in its registrations overlap with the Applicant’s wares; (ii) both parties advertise their wares to the public via the Internet and through catalogues; (iii) Mr. Goldberg testifies that the consumers of the Applicant’s wares are individuals and businesses; and (iv) given the limited evidence on the nature of the Applicant’s business, it is reasonable to assume that its distributors market the wares to individuals and/or companies for personal and/or commercial use as does the Opponent. I should add that the Opponent’s agent devoted part of her oral submission to comparing the statement of wares of the application to the statement of wares of the Opponent’s registrations; however the Opponent’s agent eventually recognized that not all of the registered wares overlap with the applied-for wares. In the end, a fair reading of the Opponent’s written argument combined with the representations made at the oral hearing leads me to conclude that the Opponent’s contention as to overlap is restricted to the power tools, hand tools, household appliances, parts and accessories identified in its registrations.

[47] I recall that section 6(2) of the Act specifically provides that there may be confusion as to the source of wares or services *whether or not they are of the same general class*. Also, to the extent that the statement of wares of registration No. UCA11496 covers “...(7) Hardware, tools, building construction equipment and supplies namely:...*domestic cleaning supplies*...” (my emphasis), I disagree with the Applicant’s contention that the Opponent’s Mark is not associated with cleaning products. Furthermore, I note that wares falling into the category of household appliances are listed in registration No. UCA11496 (as well as in other of the pleaded registrations). Household appliances are usually electrical/mechanical machines used to accomplish, among others, cleaning functions. Thus, with due respect, I find one may not reasonably argue that there is no overlap or relationship between household appliances and the

wares identified in the application as falling into the category of powered cleaning equipment. Finally, I tend to agree with the Opponent's view as to overlap between some of the tools, be it powered or hand tools, in respect of which the Opponent's Mark is registered and has been used. For instances, when one considers registration No. TMA268,646, one may reasonably argue that there is an overlap between the registered wares "... (8) Portable power tools, namely... grinding disks, sandpaper... (9)... dust collection system, namely electric dust collectors. (10) Grinding wheels, sanding papers and sanding belts..." and the applied-for wares "... floor grinding equipment [...] abrasive discs for use on floors, abrasive pads for use on floors... dust filtration products".

[48] Insofar as the nature of the trade is concerned, I first note that the application does not contain any restrictions with respect to the markets for the distribution of the Applicant's wares. In the present state of affairs, it appears unlikely that the Applicant's wares would be carried in the Opponent's associate stores. Still, as acknowledged by the Applicant, the Opponent's associate stores carry products overlapping with wares associated with the Mark. As for the Applicant's argument that the Opponent's wares are sold only through the associate stores, suffice it to say that there is no such restriction in the Opponent's registered statement of wares [see *T Eaton Co v Viking GmbH & Co* (1998), 86 CPR (3d) 382 (TMOB) at p 389]. I would add that in attempting to establish confusion, it is not necessary to prove that the parties' wares are sold in the same outlets, as long as the parties are entitled to do so [see *Cartier Men's Shops Ltd v Cartier Inc* (1981), 58 CPR (2d) 68 (FCTD)].

[49] The Applicant did not convince me that there are significant distinctions between the ultimate consumers of the parties' respective wares. Not only does Mr. Johnston state that the Opponent's wares are frequently sold to individuals or companies for commercial use, but it is quite apparent that tools and accessories registered and sold in association with the Opponent's Mark are suitable for commercial use. Finally, the Applicant's argument about professionals being aware of the tools of their trade is of no consequence since professionals are not the only potential purchasers of the wares.

[50] Having regard to the foregoing, the Applicant did not convince me that it is favoured by the overall consideration of the section 6(5)(c) and (d) factors.

[51] Given its position that the Mark has coexisted with the Opponent's Mark on the marketplace for over 50 years, the Applicant submits that the absence of evidence showing instances of confusion is a significant surrounding circumstance supporting a finding of no likelihood of confusion. In support of its contention, the Applicant submits that in *Alticor Inc v Nutravite Pharmaceuticals Inc* (2004), 31 CPR (4th) 12 (FC), the Court found over ten years of co-existence to be a major contributing factor in determining that there was no likelihood of confusion between the marks. In my opinion, the *Alticor* decision is distinguishable from the present case in several ways. First, *Alticor* involves a passing-off and infringement action, not an opposition proceeding. Second, the parties' marks in *Alticor* were not identical; they were NUTRIVITE and NUTRALITE. Third, in *Alticor* there was evidence of widespread use of NUTR in the relevant marketplace; there is no evidence before me of widespread or common use in the marketplace of the word "mastercraft" or of an element thereof by third parties. As interesting as the *Alticor* decision may be, the issue of confusion between the Mark and the Opponent's Mark is a question of probabilities and surrounding circumstances based on the particular facts of this case.

[52] It has often been said that an opponent does not need to prove instances of confusion. The burden is on an applicant to demonstrate the absence of likelihood of confusion. Absence of evidence of confusion does not relieve an applicant from its burden of proof. Nevertheless, an adverse inference may be drawn from the lack of evidence of actual confusion where the marks have coexisted for a long period of time [see *Mattel, supra* at p 347]. Although I am not satisfied that the Applicant's evidence, as introduced by the Goldberg affidavit, supports the Applicant's assertion that the Mark has coexisted with the Opponent's Mark for over 50 years, one may fairly conclude that the marks have coexisted in the marketplace for several years. Thus, the absence of evidence of instances of confusion is a surrounding circumstance favouring the Applicant.

[53] The Opponent advances its family of MASTERCRAFT Marks as a surrounding circumstance enhancing the likelihood of confusion between the trade-marks. However, I deem it not necessary to consider that additional circumstance in order to find in the Opponent's favour.

Conclusion on the likelihood of confusion

[54] The legal onus rests on the Applicant to show that, as of today's date, the Mark is not reasonably likely to cause confusion with the Opponent's Mark. This means that the Applicant must prove that the absence of confusion is more probable than its existence.

[55] In applying the test for confusion, I have considered it as a matter of first impression and imperfect recollection. In weighing all of the factors enumerated at section 6(5) of the Act and their relative importance together, I arrive at the conclusion that the Applicant has not discharged the legal onus resting upon it to establish that the Mark is not reasonably likely to cause confusion with the Opponent's Mark. In the circumstance of this case, the absence of evidence of instances of confusion by itself does not outweigh the overall consideration of the factors enumerated in section 6(5)(a) to (e) of the Act. In other words, when all the circumstances enumerated at section 6(5) are factored in, the absence of evidence of instances of confusion is not by itself sufficient to shift the balance of probabilities in favour of the Applicant.

[56] Having regard to the foregoing, the registrability ground of opposition based upon registration Nos. UCA14694 and TMA268,846 is successful and so I will not address the remaining registered trade-marks.

Non-Distinctiveness

[57] The pleaded ground of opposition revolves around the likelihood of confusion between the Mark and the trade-marks alleged by the Opponent in the statement of opposition. In order to meet its initial burden, the Opponent has to show that one or more of its alleged trade-marks had become known sufficiently as of the filing date of the statement of opposition to negate the distinctiveness of Mark [see *Motel 6, Inc v No 6 Motel Ltd* (1981), 56 CPR (2d) 44 (FCTD); *Bojangles' International, LLC and Bojangles Restaurants, Inc v Bojangles Café Ltd* (2006), 48 CPR (4th) 427 (FC)].

[58] I am satisfied that the evidence establishes that the Opponent's trade-mark MASTERCRAFT had become sufficiently known as of February 7, 2008 to negate the distinctiveness of the Mark. Further in view of the evidence of record, assessing each of the

section 6(5) factors as of the filing date of the statement of opposition rather than as of today's date does not significantly impact my previous analysis of the surrounding circumstances of this case.

[59] To the extent that the non-distinctiveness ground of opposition is based upon the likelihood of confusion between the Mark and the Opponent's word mark MASTERCRAFT, I find it successful for reasons similar to those expressed in regard to the section 12(1)(d) ground of opposition.

Remaining Grounds of Opposition

[60] As I have already accepted the opposition under two grounds, I will not address the grounds of opposition based upon non-conformity to section 30(e) and non-entitlement pursuant to section 16(3)(a) the Act.

Disposition

[61] 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.


Céline Tremblay
Member
Trade-marks Opposition Board
Canadian Intellectual Property Office

Schedule A

<u>Trade-mark</u> <u>Registration No.</u> <u>Registration Date</u>	<u>Wares/Services</u>
<p>MASTERCRAFT UCA14694 July 20, 1940</p>	<p><u>Wares</u>: (1) Skis, ski harness, ski poles, ski boots, skates, skating boots, hockey skates and hockey boots. (2) Tools, namely, bench type power tools and hand tools; (3) Sporting equipment namely, baseballs, fishing tackle, toboggans, sleighs and shot guns; (4) Camping equipment namely, sleeping bags, tents, and cartop carriers and parts. (5) Garden, patio and lawn equipment, tools and power tillers, lawn mowers, grass seed, fertilizer, garden chemicals, insecticides, shovels, rakes, seed, cultivators, shears, tables and table umbrellas, chairs, chaise lounges, kits for the repair of chairs and chaise lounges. (6) Household appliances and accessories, namely: air conditioners, humidifiers, dehumidifiers, baseboard heaters, portable heaters, smoke detectors, timing devices, deodorizers, cassette tapes. (7) Hardware, tools, building construction equipment and supplies namely: fencing material and fencing hardware, glass-fibre repair supplies, welding and soldering equipment, night latches, door guards, doorstops, sash fastners, padlocks, door lock sets, cable locks, drawer locks, casters, drapery hardware, domestic cleaning supplies, garbage bags, tapes and sealants, tiles, fluroescent lights, heating cables, wood repair supplies, namely: wood sealers and preservatives, putty, wood fillers, caulking compounds, repair tapes, glues, adhesives, wood preservatives, rope preservatives, fabric preservatives, chain saws, tool boxes, chests and cabinets, power tool accessories, mechanic's hand tools, marine hardware and electrical hardware, namely: fixtures, fuse panels, circuit breakers, wire and cable, cords and plugs, extension lamps and cords, switches, receptacles, switch and receptacle boxes, wall plates and fuses. (8) Plumbing supplies, fixtures, tools and accessories, namely: water faucets, water systems, utility pumps, fittings, hot water heaters. (9) Snow removing equipment and accessories, namely: snowblowers and shovels. (10) Camping, sports and hunting equipment, supplies and accessories, namely: eating utensils, cooking utensils, fire logs, charcoal, briquettes, rifles, shotguns, air rifles, pistols and revolvers, gun cases, firearm cleaning and maintenance supplies, cartridges, shotgun shells, BB pellets and cartridges, shooting targets and traps, bird and animal calls, decoys, footwear repair kits, rubber boots, waders, boots, insoles, socks and booties, pants, vests and shells, coats and jackets, suits and overalls, fishing parkas, rainsuits, gloves and mits, headwear, pocket knives, hunting knives, hand warmers, pocket compasses, matchboxes and sports shoes. (11) Painting supplies and</p>

	<p>accessories, namely: house paints, stains, brushes, rollers, trays, pads, solvents, paint and varnish remover, lacquer, liquid sander, brush cleaner. (12) Glass shelving, vinyl-covered shelving, finished shelving, unfinished shelving, decorative wall standards and decorative brackets. (13) Tires. (14) Garden tractors, garden hose, tank sprayers, portable toilets, water purifiers, water filters, sump pumps, sewage pumps, laundry tub pumps, fire extinguishers, painter's tools, namely putty knives, scrapers, drop sheets, roof patch, and roof and foundation coating. (15) Carpenter's hand tools, namely; axes, axe handles, bow-hacksaw combo, hacksaws, utility knives, planes, clamps, vices, vice clamps, staple guns, hammers, screwdrivers, ratcheting tool sets, ratchet screw drivers, tap and die sets, hex key sets, ratchet screw drivers; mechanic's hand tools namely; socket sets; bench type power tools, namely; disc sanders, scroll saws, bandsaws, drill press, chop saw, wood lathe; power tool accessories, namely; high speed drill bits, masonry drill bits, circular saw blades, jigsaw blades, wood drilling bits, metal drilling bits; portable power tools namely, cordless drills, drill kits, corded drills, palm sanders, jigsaws, circular saws, angle grinders; builder's hardware, namely; cut off blades for hobby tools; handsaws, anvils, wrench holders, wire cutters; wet saws; router bits; tool storage systems, namely; tool cabinets; soldering equipment, namely torches and soldering guns, welding rods; woodworker sets for hobby and routers, chuck keys, keyless chucks.</p>
<p>MASTERCRAFT TMA268,846 May 17, 1982</p>	<p><u>Wares:</u> (1) Wood burning stoves; fireplace and wood burning stove accessories, namely: insulated chimney systems and pipes, grates, grills, fireplace sets. (2) Fertilizers, wheelbarrows. (3) Herbicides. (4) Insecticides. (5) Lawn and garden spreaders. (6) Electric fans. (7) Carpenters' and mechanics tools, namely: pliers, wrenches, mirrors, metal snips, bolt cutters, saw horses, worktables, worktable pegs and sawhorse brackets, measuring squares and specialty measuring devices, namely tape measures, levels, lazer levels, wood mark gauges, lazer measuring gauges and stud sensors; mitre boxes; specialty cutting devices, namely glass cutters, linoleum cutters, plastic laminate cutters and tubing cutters; woodworking tools, chisels, aprons and pouches, mallets, wrecking bars, nail pullers, nail sets, staplers, hacksaw blades, utility knife blades, plane blades, replacement handles for hammers. (8) Portable power tools, namely cordless power tools, batteries, battery chargers and accessories therefor, namely drill bits, screwdriver bits, grinding disks, sandpaper, saw blades and power tool attachments; drywall guns, impact wrenches, belt sanders, routers, electric planers; hobby tools, namely routers, rotary tools, detail sanders, router and rotary tool conversion attachments; reciprocating saws, jointers. (9) Stationary bench-type power tools, namely bench grinders, mitre saws, table saws, planers,</p>

	<p>jointers and dust collection systems, namely electric dust collectors. (10) Grinding wheels, sanding paper and sanding belts. (11) Hole saw blade accessories, namely hole saw mandrels. (12) Chain saw accessories, namely sharpening stones, files and sharpening kits and grease guns. (13) Safety products, namely ear plugs, ear protectors, safety glasses, safety goggles and face masks. (14) Shafting and accessories for electric motors, namely v-belts, pulleys and mandrels. (15) Hot-melt glue guns, hot-melt glue, glue sticks and glue pads.</p>
<p>Mastercraft TMA534,749 October 17, 2000</p>	<p><u>Wares:</u> (1) Hand tools, namely, axes, bow-hacksaw combo, handsaws, hacksaws, utility knives, planes, levels, clamps, anvils, vices, hammers, screwdrivers, ratcheting sets, tap and die sets, hex key sets; portable power tools, namely, cordless drills, drills kits, corded drills, palm sanders, jigsaws, circular saws, angle grinders; stationary bench type power tools, namely, belt/disc sander, wet sharpener, scroll saw, bandsaws, drill press, chop saw, wood lathe. (2) Power tillers, lawn mowers, garden tractors, garden hose, tank sprayers, grass seed, fertilizer, garden chemicals, insecticides, wheelbarrows, herbicides, lawn and garden spreaders, shovels, rakes, cultivators, shears, tables and table umbrellas, chairs, chaise lounges, kits for repair of chairs and chaise lounges. (3) Household appliances and accessories, namely wood burning stoves, fireplace and wood burning stove accessories, namely pipes, grates, grills, fireplace sets, air conditioners, humidifiers, dehumidifiers, electric fans, baseboard heaters, portable heaters, smoke detectors, devices controlling the operation of electric appliances and lighting, namely timers, portable toilets, water purifiers, water filters, sump pumps, sewage pumps, laundry tub pumps, fire extinguishers. (4) High speed steel drill bits, masonry drill bits, router bits, hole saw blades, power tools, hand tools, building construction equipment and supplies namely: fencing material and fencing hardware, welding rods, soldering equipment, namely torches and soldering guns, night latches, door guards, doorstops, sash fasteners, padlocks, door lock sets, cable locks, drawer locks, casters, drapery hardware, builder's hardware, namely cabinet hardware, garage door accessories and openers; door hardware, namely lock sets, hinges, domestic cleaning supplies, namely, liquid drain cleaner, toilet bowl cleaner, granular drain cleaner; garbage bags, measuring tapes and masking tape and silicone sealants, tiles, fluorescent lights, heating cables, wood repair supplies, namely: wood sealers and preservatives, putty, wood fillers, caulking compounds, repair tapes, glues, adhesives, wood preservatives, rope preservatives, fabric preservatives, chain saws, tool boxes, chests and cabinets, power tool accessories, namely precision abrasive sets for hobby tools and routers, woodworker sets for hobby and routers, cut-off blades for hobby tools and routers, earplugs, chuck keys, keyless chucks, screwdriver bits, wood drilling bits, metal drilling bits, magnetic bit</p>

	<p>holders, magnet nut setters; jigsaw blades, circular saw blades, carpenter's and mechanic's hand tools, marine hardware and electrical hardware, namely: fixtures, fuse panels, circuit breakers, wire and cable, cords and plugs, extension lamps and cords, switches, receptacles, switch and receptacle boxes, wall plates and fuses. (5) Plumbing supplies, fixtures, tools and accessories, namely: water faucets, utility pumps, fittings, hot water heaters. (6) Snow removing equipment and accessories, namely: snowblowers and shovels. (7) Camping, sports and hunting equipment, supplies and accessories, namely: fire logs, charcoal, rubber boots, waders, boots, insoles, socks and booties, pants, vests and shells, headwear, namely, full face protectors, pocket knives, hunting knives, pocket compasses, matchboxes and sports shoes. (8) Painting supplies and accessories, namely: house paints, stains, brushes, rollers, trays, pads, solvents, paint and varnish remover, lacquer, liquid sander, brush cleaner, painter's tools, namely putty knives, scrapers, drop sheets, roof patch, and roof and foundation coating. (9) Glass shelving, vinyl-covered shelving, finished shelving, unfinished shelving, decorative wall standards and decorative brackets. (10) Tires. (11) Air tools and compressors. (12) Carpenter's hand tools, namely: axe handles, vice clamps, staple guns, ratchet screw drivers; mechanic's hand tools, namely; socket sets; hand tools, namely; saws and ratchet screw drivers; carpenter's hand tools, namely; wrench holders, wire cutters; bench type power tools, namely; wet saws; tool storage systems, namely; tool cabinets.</p>
 <p>TMA540,480 January 30, 2001</p>	<p><u>Wares:</u> (1) Hand tools, namely, axes, bow-hacksaw combo, handsaws, hacksaws, utility knives, planes, levels, clamps, anvils, vices, hammers, screwdrivers, ratcheting sets, tap and die sets, hex key sets; portable power tools, namely, cordless drills, drill kits, corded drills, palm sanders, jigsaws, circular saws, angle grinders; stationary bench type power tools, namely, belt/disc sander, wet sharpener, scroll saw, bandsaws, drill press, chop saw, wood lathe. (2) Power tillers, lawn mowers, garden tractors, garden hose, tank sprayers, grass seed, fertilizer, garden chemicals, insecticides, wheelbarrows, herbicides, lawn and garden spreaders, shovels, rakes, cultivators, shears, tables and table umbrellas, chairs, chaise lounges, kits for repair of chairs and chaise lounges. (3) Household appliances and accessories, namely wood burning stoves, fireplace and wood burning stove accessories, namely pipes, grates, grills, fireplace sets, air conditioners, humidifiers, dehumidifiers, electric fans, baseboard heaters, portable heaters, smoke detectors, devices controlling the operation of electric appliances and lighting, namely timers, portable toilets, water purifiers, water filters, sump pumps, sewage pumps, laundry tub pumps, fire extinguishers. (4) High speed steel drill bits, masonry drill bits, router bits, hole saw blades, power tools, hand tools, building</p>

	<p>construction equipment and supplies namely: fencing material and fencing hardware, welding rods, soldering equipment, namely torches and soldering guns, night latches, door guards, doorstops, sash fasteners, padlocks, door lock sets, cable locks, drawer locks, casters, drapery hardware, builder's hardware, namely cabinet hardware, garage door accessories and openers; door hardware, namely lock sets, hinges, domestic cleaning supplies, namely, liquid drain cleaner, toilet bowl cleaner, granular drain cleaner; garbage bags, measuring tapes and masking tape and silicone sealants, tiles, fluorescent lights, heating cables, wood repair supplies, namely: wood sealers and preservatives, putty, wood fillers, caulking compounds, repair tapes, glues, adhesives, wood preservatives, rope preservatives, fabric preservatives, chain saws, tool boxes, chests and cabinets, power tool accessories, namely precision abrasive sets for hobby tools and routers, woodworker sets for hobby tools and routers, cut-off blades for hobby tools and routers, earplugs, chuck keys, keyless chucks, screwdriver bits, wood drilling bits, metal drilling bits, magnetic bit holders, magnet nut setters; jigsaw blades, circular saw blades, carpenter's and mechanic's hand tools, marine hardware and electrical hardware, namely: fixtures, fuse panels, circuit breakers, wire and cable, cords and plugs, extension lamps and cords, switches, receptacles, switch and receptacle boxes, wall plates and fuses. (5) Plumbing supplies, fixtures, tools and accessories, namely: water faucets, utility pumps, fittings, hot water heaters. (6) Snow removing equipment and accessories, namely: snowblowers and shovels. (7) Camping; fire logs, charcoal, rubber boots, waders, boots, insoles, socks and booties, pants, vests and shells, headwear, namely, full face protectors, pocket knives, hunting knives, pocket compasses, matchboxes and sports shoes. (8) Painting supplies and accessories, namely: house paints, stains, brushes, rollers, trays, pads, solvents, paint and varnish remover, lacquer, liquid sander, brush cleaner, painter's tools, namely putty knives, scrapers, drop sheets, roof patch, and roof and foundation coating. (9) Glass shelving, vinyl-covered shelving, finished shelving, unfinished shelving, decorative wall standards and decorative brackets. (10) Tires.</p>
<p>Mastercraft TMA542,736 March 20, 2001</p>	<p><u>Wares:</u> (1) Carpenters' and mechanics tools, namely: pliers, wrenches, mirrors, metal snips, bolt cutters, saw horses, worktables, worktable pegs and sawhorse brackets, measuring squares and specialty measuring devices, namely tape measures, levels, lazer levels, wood mark gauges, lazer measuring gauges and stud sensors; mitre boxes; specialty cutting devices, namely glass cutters, linoleum cutters, plastic laminate cutters and tubing cutters; woodworking tools, chisels, aprons and pouches, mallets, wrecking bars, nail pullers, nail sets, staplers, hacksaw blades, utility knife blades, plane blades, replacement handles for hammers. (2) Portable power tools, namely</p>

	<p>cordless power tools, batteries, battery chargers and accessories therefor, namely drill bits, screwdriver bits, grinding disks, sandpaper, saw blades and power tool attachments; drywall guns, impact wrenches, belt sanders, routers, electric planers; hobby tools, namely routers, rotary tools, detail sanders, router and rotary tool conversion attachments; reciprocating saws, jointers. (3) Stationary bench-type power tools, namely bench grinders, mitre saws, table saws, planers, jointers and dust collection systems, namely electric dust collectors. (4) Grinding wheels, sanding paper and sanding belts. (5) Hole saw blade accessories, namely hole saw mandrels. (6) Chain saw accessories, namely sharpening stones, files and sharpening kits and grease guns. (7) Safety products, namely ear plugs, ear protectors, safety glasses, safety goggles and face masks. (8) Shafting and accessories for electric motors, namely v-belts, pulleys and mandrels. (9) Hot-melt glue guns, hot-melt glue, glue sticks and glue pads.</p>
<p>MASTERCRAFT CANADA</p> <p>TMA508,647</p> <p>March 1, 1999</p>	<p><u>Wares:</u> Skis, ski harness, ski poles, ski boots, skating boots, hockey skates and hockey boots; tools, namely, bench type power tools and hand tools; sporting equipment, namely, baseballs, fishing tackle, toboggans, sleighs and shot guns; camping equipment, namely, sleeping bags, tents, and cartop carriers and parts; lawn equipment, namely, power tillers, lawn mowers, lawn tractors, garden tractors, garden hose, tank sprayers, grass seed, fertilizer, garden chemicals, insecticides, wheelbarrows, herbicides, lawn and garden spreaders, shovels, rakes, cultivators, shears, tables and table umbrellas, chairs, chaise lounges, kits for the repair of chairs and chaise lounges; tools, namely, hand tools, namely, axes, bow-hacksaw combo, handsaws, hacksaws, utility knives, planes, levels, clamps, anvils, vices, hammers, screwdrivers, ratcheting sets, tape and die sets, hex key sets; portable power tools, namely, cordless drills, drill kits, corded drills, palm sanders, jigsaws, circular saws, angle grinders; stationary tools, namely belt/disc sander, wet sharpener, scroll saw, bandsaws, drill press, chop saw, wood lathe; household appliances and accessories, namely wood burning stoves, fireplace and wood burning stove accessories, namely insulated chimney systems and pipes, grates, grills, fireplace sets, air conditioners, humidifiers, dehumidifiers, electric fans, baseboard heaters, portable heaters, smoke detectors, timers, portable toilets, water purifiers, water filters, sump pumps, sewage pumps, laundry tub pumps, shutters, fire extinguishers; tools, high speed steel drill bits, masonry drill bits, router bits, hole saw blades, power tools, hand tools, building construction equipment and supplies namely: fencing material and fencing hardware, welding rods; torches and soldering guns, night latches, doorstops, sash fasteners, padlocks, door lock sets, cable locks, drawer locks, drapery hardware, builder's hardware, namely cabinet hardware, garage door openers; door hardware, namely lock sets, hinges, liquid drain cleaner,</p>

	<p>toilet bowl cleaner, granular drain cleaner, garbage bags, measuring tapes, masking tapes, silicone sealants, tiles, fluorescent lights, heating cables, wood repair supplies, namely, wood sealers and preservatives, putty, wood fillers, caulking compounds, repair tapes, glues, adhesives, wood preservatives, rope preservatives, fabric preservatives, chain saws, tool boxes, chests and cabinets, jigsaw blades, reciprocating saw blades, screwdriver bits, magnetic bit holder, magnetic nut setter, key chucks, drill bits, auger bits, circular saw blades, carpenter's and mechanic's hand tools, marine hardware and electrical hardware, namely: fixtures, fuse panels, circuit breakers, wire and cable, cords and plugs, extension lamps and cords, switches, receptacles, switch and receptacle boxes, wall plates and fuses; plumbing supplies, fixtures, tools and accessories, namely: water faucets, sump pumps, jet pumps, shallow-well pumps, deep-well submersible pump, convertible pump and tank sets, submersible sump pumps, utility pumps, hot water heaters; snow removing equipment and accessories, namely: snowblowers and shovels; camping, sports and hunting equipment, supplies and accessories, namely, fire logs, charcoal, briquettes, rifles, shotguns, air rifles, pistols and revolvers, gun cases, cartridges, shotgun shells, BB pellets and cartridges, shooting targets and traps, bird and animal calls, decoys, footwear repair kits, rubber boots, waders, boots, insoles, socks and booties, pants, vests and shells, coats and jackets, suits and overalls, fishing parkas, rainsuits, gloves and mitts, full face protectors, pocket knives, hunting knives, pocket compasses, matchboxes, sports shoes; painting supplies and accessories, namely: house paints, stains, brushes, rollers, trays, pads, solvents, paint and varnish remover, lacquer, liquid sander, brush cleaner, painter's tools, namely putty knives, scrapers, drop sheets, roof patch; glass shelving, vinyl-covered shelving, finished shelving, unfinished shelving, decorative wall standards and decorative brackets; tires.</p> <p><u>Services:</u> Operation of a business dealing in the selling of vehicular parts, tools and accessories of others; the selling of maintenance and service supplies of others; the selling of hardware of others; the selling of housewares of others; the selling of household goods of others; the selling of sporting goods of others; and the servicing and maintenance of vehicles.</p>
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