



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

Citation: 2016 TMOB 99
Date of Decision: 2016-06-20

IN THE MATTER OF AN OPPOSITION

**Fortune Mfg. Co. Ltd. and Archmetal
Industries Corp.
and**

Opponents

**JAG flocomponents n.a., an Alberta
general partnership having JAG
Flocomponents (North America) Inc. as
its majority partner**

Applicant

1,303,692 for FUSION

Application

The record

[1] On May 31, 2006, “JAG flocomponents n.a., an Alberta general partnership having JAG Flocomponents (North America) Inc. as its majority partner” filed application No. 1,303,692 to register the trade-mark FUSION (the Mark).

[2] The application, as originally filed, was based upon the use of the Mark since at least as early as August 2002/since as early as August 2002 by the applicant or the applicant’s predecessor in title JAG Flocomponents Inc. (JAG Inc.) and JAG Flocomponents (North America) Inc. (JAG North America). However, during the course of examination of the application, all references in the application to these predecessors in title were removed by the

applicant. The statement of goods and services covered by the application, as last revised by the applicant, is reproduced in Schedule “A” attached hereto.

[3] The application was advertised for opposition purposes in the *Trade-marks Journal* of April 10, 2013. Fortune Mfg. Co. Ltd. (Fortune) and Archmetal Industries Corp. (Archmetal) (sometimes collectively referred to as the Opponents) opposed the application under section 38 of the *Trade-marks Act*, RSC 1985, c T-13 (the Act) by filing a statement of opposition on June 10, 2013. The grounds of opposition are based upon sections 30(b), 30(i), 16(1)(a), and 2 of the Act.

[4] The Opponents filed evidence by way of an affidavit of Henry Chen, Secretary and a Director of Archmetal, and also Director of Sales of Fortune, sworn March 18, 2014 (the Chen affidavit). The applicant filed evidence by way of an affidavit of Warren Williams, President and COO of “JAG Flocomponents N.A.” and JAG North America, sworn November 27, 2014 (the Williams affidavit). It is my understanding that “JAG Flocomponents N.A.” and the applicant “JAG flocomponents n.a., an Alberta general partnership having JAG Flocomponents (North America) Inc. as its majority partner” are one and the same entity. I will refer to this entity interchangeably as JAG N.A. or the Applicant.

[5] Both parties filed written arguments. However, neither party requested an oral hearing.

[6] For the reasons that follow, the opposition is successful.

The parties’ respective burden or onus

[7] The Applicant bears the legal onus of establishing on a balance of probabilities that its application complies with the requirements of the Act. However, there is an initial evidentiary burden on the Opponents 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); and *Dion Neckwear Ltd v Christian Dior, SA et al* (2002), 20 CPR (4th) 155 (FCA)].

Overview of the evidence

[8] As it will become apparent from my review of the Chen and Williams affidavits below, the parties to the present proceeding are not strangers. They (and/or related companies or predecessors in title) have a history with respect to the use of the Mark in Canada and have been involved in this regard in a few legal disputes, including the one having led to the decision of the Federal Court in *JAG Flocomponents N.A. v Archmetal Industries Corporation*, 2010 FC 627, upheld by the Federal Court of Appeal (although for different reasons) in *Archmetal Industries Corporation v JAG Flocomponents N.A.*, 2011 FCA 235 (referred to below).

[9] I note that I am not affording weight to any of the statements made by the affiants that constitute personal opinion on the merits of the present proceeding. Furthermore, only the most salient facts will be mentioned.

The Chen affidavit

[10] Mr. Chen first provides background information about the Opponents. He explains that Archmetal is incorporated under the laws of the province of British Columbia and is also registered extra-provincially in Alberta. Archmetal is a wholly-owned subsidiary of Fortune, a Chinese company. Archmetal imports valves manufactured by Fortune into North America for sale.

[11] Mr. Chen also provides information about the history of the present application. More particularly, he attaches to his affidavit under Exhibits “A”, “B” and “C” excerpts from the Canadian Intellectual Property Office’s records showing that:

- when it was first filed, the present application claimed that the Mark had been used in Canada since at least as early as August 2002/since as early as August 2002 by the Applicant “or the [A]pplicant’s “predecessor(s) in title JAG Flocomponents Inc. to JAG Flocomponents (North America) Inc. to JAG flocomponents n.a., an Alberta general partnership having JAG Flocomponents (North America) Inc., as its majority partner”; and
- the application was revised by the Applicant on April 11 and September 22, 2008. All

references in the application to the Applicant's predecessors in title were deleted without explanation and do not appear in the two revised applications.

[12] In paragraph 5 of his affidavit, Mr. Chen states that at all relevant times, Archmetal was Fortune's importer of valves into the North American market, although this relationship changed slightly in the period between 2001 and 2003 to also involve JAG Inc. In this regard, Mr. Chen attaches to his affidavit as Exhibit "D" a Letter of Intent dated November 28, 2001 defining the business relationship between JAG Inc. and Fortune as contemplated at that time. In particular, he points out that the business relationship contemplated that:

- JAG Inc. was to be Fortune's exclusive Canadian distributor of Fortune's current and future industrial valves, all of which were to be "Fortune branded" product lines;
- Archmetal would refer its current industrial valve customers to JAG Inc. and concentrate on non-industrial markets;
- Archmetal would acquire 30% ownership of JAG Inc.; and
- Fortune would sell its valves to JAG Inc. on a consignment basis.

[13] Mr. Chen also attaches to his affidavit as Exhibit "E" a Consignment Agreement dated January 1, 2002 between JAG Inc. and Archmetal further setting out the business relationship between the parties at that time, including Archmetal appointing JAG Inc. as its "Agent" and "Canadian Master Distributor" in respect of industrial valve products supplied by Fortune. Mr. Chen points out that under the Consignment Agreement:

- Archmetal shipped industrial valve products to JAG Inc. but retained ownership of the products until after JAG Inc. actually sold them; and
- after JAG Inc. actually sold the products, Archmetal would bill JAG Inc. at the end of each calendar month and JAG Inc. would pay promptly such invoices.

[14] In paragraph 7 of his affidavit, Mr. Chen states that in 2002, Fortune's research and development team in Fortune's China facility developed a line of industrial valves to be marketed and sold in Canada under the Mark. He states that since at least as early as September 2002, and continuously through the present, Fortune has supplied valves bearing the Mark to Archmetal for sale and distribution in Canada, and Archmetal has sold such valves

bearing the Mark in Canada in the normal course of Archmetal's trade, including for a time through JAG Inc.

[15] In support of the foregoing, Mr. Chen attaches as Exhibit "F" to his affidavit photographs of valves manufactured by Fortune and marked with the Mark and imported into Canada and sold in Canada by Archmetal, representative of valves bearing the Mark sold from September 2002 through the present. He also attaches under Exhibit "G" a copy of an invoice issued by Archmetal on September 30, 2002 to JAG Inc. for valves bearing the Mark actually sold on September 2, 2002.

[16] In paragraph 8 of his affidavit, Mr. Chen states that sometimes valves manufactured/supplied by Fortune to Archmetal for sale in Canada under the Mark also included an "F design" mark owned by Fortune. The valves shown in Exhibit "F" include this F design mark, as does the invoice in Exhibit "G".

[17] In paragraphs 9 to 11 and through Exhibits "J", "K", and "L", Mr. Chen provides evidence of the Opponent's promotional activities and expenditures in Canada in relation to Fortune's valves bearing the Mark since 2002. He states that the Opponents have spent thousands of dollars a year promoting Fortune's valves bearing the Mark. Among others:

The Opponents promote Fortune's valves bearing the [Mark] by attending trade shows, by distributing printed materials bearing the [Mark] with information about Fortune's valves, and by distributing product samples. Since 2002, the Opponents have spent between \$26,000 and \$41,000 a year in Canada in the early years and much more today promoting the [Mark] in association with valves supplied by Fortune. [at para 11]

[18] In paragraph 12 of his affidavit, Mr. Chen provides a table of Archmetal's approximate sales figures for Fortune's valves bearing the Mark for the years 2002 to 2004. Mr. Chen states that Archmetal "sells millions of dollars' worth" of these valves, and that "even in the initial years 2002 to 2004 when the FUSION product line was first launched, sales amounting [sic] to at least hundreds of thousands of dollars even then, increasing to millions of dollars in sales now".

[19] In paragraph 13 of his affidavit, Mr. Chen states that until July 2003, JAG Inc. remained the exclusive consignee and marketing agent of Fortune's valves bearing the Mark in Canada.

[20] In paragraph 14 of his affidavit, Mr. Chen states that Jérôme Chen, the President of the

Opponents, became one of the principals of JAG Inc. after the business relationship contemplated by the Letter of Intent and Consignment Agreement took effect. He explains that the two other principals of JAG Inc. were John McCrae and Gary Williams and that the shareholders of JAG Inc. were Archmetal, 944898 Alberta Ltd. (whose principal was John McCrae), and G.R.W. Oilfield International (1993) Inc. (whose principal was Gary Williams). In support of the foregoing he attaches as Exhibit “M” to his affidavit a printout of the particulars from the Alberta Corporate Registry for JAG Inc. as of December 14, 2004.

[21] In paragraphs 15 and 16 and through Exhibits “N” and “O”, Mr. Chen provides further information obtained from the Alberta Corporate Registry showing, among other things, that JAG North America (whose principals are John McCrae and Gary Williams) was incorporated on September 6, 2002 and that the Applicant JAG N.A. came into existence on September 30, 2004 (i.e. *after* the dates of first use claimed by the Applicant).

[22] In paragraph 19 of his affidavit, Mr. Chen states that the Opponents have never supplied any valves marked with the Mark to JAG North America or the Applicant.

[23] In paragraph 20 of his affidavit, Mr. Chen states that on April 12, 2006, Archmetal obtained Canadian trade-mark registration No. TMA662,598 for FUSION in association with “ball valves for industrial use” based on use in Canada since at least as early as September 2002 and he attaches as Exhibit “P” the particulars of this registration. Mr. Chen goes on to explain that this registration was however expunged on June 10, 2010 by the Federal Court [see the decision in *JAG Flocomponents N.A. v Archmetal Industries Corporation, supra*] and that, upon appeal, the Federal Court of Appeal on August 11, 2011 upheld the expungement of the registration but based on different reasons than provided by the Federal Court [see the decision in *Archmetal Industries Corporation v JAG Flocomponents N.A., supra*, a copy of which is attached as Exhibit “Q” to his affidavit].

[24] In paragraph 21 of his affidavit, Mr. Chen states that in view of the Federal Court of Appeal decision, Archmetal executed an assignment on August 19, 2011 transferring to Fortune any right that Archmetal may have acquired in the Mark and he attaches as Exhibit “R” to his affidavit a copy of this assignment.

The Williams affidavit

[25] In the first paragraph of his affidavit, Mr. Williams states that he is the President and COO of Jag N.A. and Jag North America (“Jag”), and as such, he has personal knowledge of the matters and facts sworn in this affidavit.

[26] As Mr. Williams thereafter refers throughout his affidavit to “Jag”, I will do the same when reviewing his affidavit. However, I wish to note that Mr. Williams’ reference to “Jag” is ambiguous in that it is not clear if it refers to JAG North America or to the Applicant and JAG North America collectively. Moreover, as it will become apparent throughout my review of his affidavit, Mr. Williams’ reference to “Jag” is contradicted by some of the exhibits introduced into evidence, not only by the Opponents, but also by Mr. Williams himself.

[27] In paragraphs 2 and 3 of his affidavit, Mr. Williams states that:

[2] Jag was created on October 1, 2001 by John McCrae and Gary Williams to sell current valve models to the oil field industry and design and produce new valves. The focus of the business was to be the sale, design, and production of ball valves but Jag also needed to sell other forms of valves to create volume sales to finance the initial stage of business.

[3] On November 28, 2001, Jag entered into a Letter of Intent with [Fortune]. Attached as Exhibit “A” to this Affidavit is a copy of the Letter of Intent. The Letter of Intent outlined the relationship between the parties: (1) Fortune granted Jag an exclusive marketing relationship for all Fortune’s current and future valves in Canada; (2) any valve design that Fortune did not have the capacity or capability to manufacture would be outsourced to other manufacturers; and (3) the Fortune-manufactured valves were to be consigned to Jag on the terms set out in the Consignment Agreement, dated January 1, 2002. Attached as Exhibit “B” to this Affidavit is a copy of the Consignment Agreement.

[28] I note that the “creation date” of October 1, 2001 is contradicted by the particulars from the Alberta Corporate Registry filed as Exhibits “N” and “O” to the Chen affidavit, which indicate that JAG North America was incorporated on September 6, 2002 and that JAG N.A. came into existence on September 30, 2004. I further note that contrary to what is stated by Mr. Williams, the Letter of Intent and the Consignment Agreement were both entered into by JAG Inc., not JAG North America or JAG N.A. In this regard, it is worth mentioning that the particulars from the Alberta Corporate Registry filed as Exhibit “M” to the Chen affidavit indicate that JAG Inc. was incorporated on October 2, 2001, which is closer to the date stated by

Mr. Williams.

[29] In paragraph 4 of his affidavit, Mr. Williams states that:

[4] After signing the Letter of Intent, Jag advised Fortune that there were difficulties in the market's acceptance of the products marked "Fortune" because of the perception of quality problems with Chinese manufactured products. Prompted by this observation, in January 2002, John McCrae developed the name "FUSION" to be marked on the products and the style in which it was to appear on the products.

[30] In paragraphs 5 to 9 of his affidavit, Mr. Williams deposes that Fortune was unable to manufacture large diameter ball valves for Jag and that Gary Williams located a contract manufacturer, Suzhou Neway Machinery Co., Ltd. (Neway) in China to produce such valves. Mr. Williams also deposes that Jag entered into a market representation agreement with Neway by February 27, 2002 (which developed into an exclusive representation agreement by June 2002) for Neway's ball valve products branded with the Mark. Mr. Williams states that "Fortune neither made nor exercised any product quality control over these FUSION valves" and that "Gary Williams was responsible for the design and quality control of the valves that Neway manufactured for Jag."

[31] In paragraph 9 of his affidavit, Mr. Williams states that the relationship between Jag and Neway "did not arise out of the Consignment Agreement and the Consignment Agreement had no application to this relationship." He further states that the "Consignment Agreement was treated as concluded by July 2003."

[32] In paragraph 10 of his affidavit, Mr. Williams states that:

In the later part of 2002, the name FUSION was used on certain Fortune-manufactured valves. However, Jag could not sell these valves due to quality and pricing issues which were never resolved. Ultimately, the valves were returned to Fortune in July 2003.

[33] In paragraphs 11 to 13 of his affidavit, Mr. Williams refers the Federal Court and Federal Court of Appeal decisions identified above. He thereafter concludes his affidavit by stating that he makes his affidavit "in support of the [present] Application by Jag". Once again, the reference to Jag is incorrect in that the application was filed by the partnership JAG N.A., not JAG North America or JAG N.A. and JAG North America collectively.

Analysis of the grounds of opposition

Ground of opposition based on section 30(b) of the Act

[34] The Opponents have pleaded that:

Contrary to Sections 38(2)(a) and 30(b) of the [Act], at the date of filing of the application, the Applicant had not used the [Mark] as alleged, or since the date alleged, or at all; or had subsequently abandoned the [Mark]; or had made only unlawful use of the [Mark] upon which it was not entitled to rely.

[35] Section 30(b) of the Act provides that an applicant for the registration of a trade-mark shall file with the Registrar an application containing:

[...] in the case of a trade-mark that has been used in Canada, the date from which the applicant or his named predecessors in title, if any, have so used the trade-mark in association with each of the general class of goods or services described in the application.
[my underlining]

[36] The relevant date for considering a section 30(b) ground of opposition is the filing date of the Applicant's application [see *Georgia-Pacific Corporation v Scott Paper Ltd* (1984), 3 CPR (3d) 469 at 475 (TMOB)]. In this regard, section 30(b) of the Act requires that there be continuous use of the Mark since the date claimed [see *Labatt Brewing Co v Benson & Hedges (Canada) Ltd* (1996), 67 CPR (3d) 258 (FCTD)].

[37] To the extent that the relevant facts pertaining to a ground of opposition based on section 30(b) of the Act are more readily available to the Applicant, the evidentiary burden on the Opponents with respect to such a ground of opposition is less onerous [see *Tune Master v Mr P's Mastertune Ignition Services Ltd* (1986), 10 CPR (3d) 84 (TMOB)]. Furthermore, this burden can be met by reference not only to the Opponents' evidence but also to the Applicant's evidence [see *Labatt Brewing Company Limited v Molson Breweries, a Partnership* (1996), 68 CPR (3d) (FCTD) 216]. However, the Opponents may only successfully rely upon the Applicant's evidence to meet their initial burden if the Opponents show that the Applicant's evidence puts into issue the claims set forth in the Applicant's application [see *Corporativo de Marcas GJB, SA de CV v Bacardi & Company Ltd* 2014 FC 323 at paras 30-38 (CanLII)].

[38] I am satisfied from the Opponents' evidence that the Opponents have put compliance of

the application with section 30(b) of the Act into issue. Suffice it to recall that neither the partnership “JAG Flocomponents N.A.” nor JAG North America existed as of the dates of first use claimed by the Applicant [see Exhibits “N” and “O” to the Chen affidavit].

[39] Because of this evidence, it was up to the Applicant to show use of the Mark since the date claimed and to include the appropriate predecessor in title in its application to support this claimed date, which it has not done.

[40] To the contrary, all references to the Applicant’s predecessors in title were removed from the application without explanation. Moreover, Mr. Williams’ statements concerning the Applicant’s alleged development and use of the Mark in the course of the year 2002 raise more questions than answers to the issue at stake.

[41] As indicated above, Mr. Williams asserts that the Mark was *developed* in January 2002 by John McCrae (acting on behalf of “Jag?”), who came up with the name FUSION because the name “Fortune” would not be readily acceptable in the Canadian market. According to Mr. Williams the name FUSION was *selected* to be used on Neway valves by February 27, 2002, and by June 2002, the relationship between “Jag” and Neway *developed* into an exclusive representation agreement and all Neway valves bore the FUSION name. Notably, the claimed dates of first use of the Mark “since at least as early August 2002” and “as early as August 2002” are nowhere referred to in his affidavit. Nor does his affidavit attempt in any way to show use of the Mark in association with each of the goods and services listed in the application at any time whatsoever. More importantly, and as indicated above, Mr. Williams’ reference to “Jag” is ambiguous and contradicted by, among others, the Letter of Intent and the Consignment Agreement [copies of which have been filed by both Messrs. Williams and Chen], and the Alberta Corporate Registry according to which the Applicant did not even exist as of August 2002 [see Exhibit “O” to the Chen affidavit].

[42] Accordingly, the section 30(b) ground of opposition succeeds on the basis that the Applicant has not met its legal onus.

Ground of opposition based on non-distinctiveness of the Mark under section 2 of the Act

[43] The non-distinctiveness ground of opposition, as pleaded by the Opponents, has two prongs. The first prong reads as follows:

12.(d) The [Mark] is not distinctive, having regard to the provisions of Sections 38(2)(d) and 2 of the [Act], because it is not capable of distinguishing the Applicant's wares or services from the wares and services of others, particularly valves sold by the Opponents under the [Mark], nor is it adapted to so distinguish them.

[44] An opponent meets its evidentiary burden with respect to a distinctiveness ground if it shows that as of the filing date of the opposition (in this case June 10, 2013) its trade-mark had become known to some extent at least to negate the distinctiveness of the applied-for mark [see *Motel 6, Inc v No 6 Motel Ltd* (1981), 56 CPR (2d) 44 (FCTD)].

[45] I find that the Opponents have met their burden. Suffice it to recall that the Chen affidavit shows that:

- the Mark has been displayed (together with Fortune's "F design" mark) on valves manufactured by Fortune and imported into Canada and sold by Archmetal [see Exhibit "F" to the Chen affidavit];
- the Mark (together with Fortune's "F design" mark) has been displayed on the technical specifications of Fortune's valves bearing the FUSION mark [see Exhibit "L" to the Chen affidavit], which Mr. Chen asserts were distributed by the Opponents at trade shows, at their business offices, and at their customers' premises, to purchasers and potential purchasers of Fortune's valves bearing the Mark. In this regard, Mr. Chen asserts in paragraph 10 of his affidavit that "[e]ven as of 2004, thousands of specifications have been distributed in Canada;" and
- the Opponents have promoted the Mark in association with Fortune's valves and continue to do so at various trade shows in Canada, such as the ISH North America Show in Toronto in 2002, the Global Petroleum Show in Calgary in 2002 [see Exhibit "J" to the Chen affidavit] and 2004, and the Oil Sands Trade Show and Conference in Fort McMurray in 2004.

[46] Mr. Chen also provides the sales figures and marketing expenses for Fortune's valves

bearing the Mark.

[47] It is also worth recalling that the Applicant does not contradict that “in the later part of 2002, the name FUSION was used on certain Fortune-manufactured valves.” Furthermore, the fact that according to Mr. Williams, “Fortune neither made nor exercised any product quality control” over the FUSION valves allegedly manufactured by Neway is of no consequence to my analysis. The Opponents are only under an obligation to show that they have used the FUSION trade-mark sufficiently to negate the distinctiveness of the Mark.

[48] The test for confusion is one of first impression and imperfect recollection. Section 6(2) of the Act provides that 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 goods or services associated with those trade-marks are manufactured, sold, leased, hired or performed by the same person, whether or not the goods or services are of the same general class.

[49] In applying the test for confusion, the Registrar must have regard to all the surrounding circumstances, including those listed at 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 goods, 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. This list is not exhaustive and all relevant factors are to be considered. Further, all factors are not necessarily attributed equal weight as the weight to be given to each depends on the circumstances [see *Mattel, Inc v 3894207 Canada Inc* (2006), 2006 SCC 22 (CanLII), 49 CPR (4th) 321 (SCC); *Veuve Clicquot Ponsardin v Boutiques Clicquot Ltée* (2006), 2006 SCC 23 (CanLII), 49 CPR (4th) 401 (SCC); and *Masterpiece Inc v Alavida Lifestyles Inc* (2011), 2011 SCC 27 (CanLII), 92 CPR (4th) 361 (SCC) for a thorough discussion of the general principles that govern the test for confusion].

[50] Transposing the comments of former Board Member Bradbury in *Archmetal Industries Corp v Jag Flocomponents NA Inc*, 2007 CanLII 80803 (TMOB) to the present case, the analysis of the likelihood of confusion is a simple matter in the present case. The trade-marks are identical and therefore share an equal degree of inherent distinctiveness. Only the Opponents have filed evidence concerning the use of the FUSION trade-mark. The parties’ goods and/or

services are the same or overlap, as would their businesses and channels of trade.

[51] Accordingly, the first prong of the non-distinctiveness ground of opposition succeeds on the basis that the Applicant has not met its legal onus.

Remaining grounds of opposition

[52] As I have already found in favour of the Opponents under two grounds, I need not address the remaining grounds.

Disposition

[53] Pursuant to the authority delegated to me under section 63(3) of the Act, I refuse the application under section 38(8) of the Act.

Annie Robitaille
Member
Trade-marks Opposition Board
Canadian Intellectual Property Office

Schedule "A"

Statement of goods and services covered by appl' No. 1,303,692 (as revised by the Applicant)

Goods:

- (1) Ball valves for use in the energy, oil and gas, water, chemical and mining industries.
- (2) Metal valves for use in the energy, oil and gas, water, chemical and mining industries.
- (3) Manually operated metal valves for use in the energy, oil and gas, water, chemical and mining industries.
- (4) Valves and automatic flow control devices, namely valves, for use in the oil and gas, petrochemical, plumbing, heating, shipping and water industries.
- (5) Ball valves.
- (6) Floating ball valves for use in the energy, oil and gas, water, chemical and mining industries.
- (7) Trunnion ball valves for use in the energy, oil and gas, water, chemical and mining industries.
- (8) Flow control devices, namely valves for use in the oil and gas, petrochemical, plumbing, heating, shipping and water industry.
- (9) Valves and flow control devices, namely valves and parts and fittings therefore for use in the oil and gas, petrochemical, plumbing, heating, shipping and water industry.
- (10) Printed publications, namely installation, maintenance and operation manuals in respect of valves and flow control devices, namely valves.

Services:

- (1) Design and manufacturer of ball valves to customer specifications for use in the energy industry and other piping applications.
- (2) Development, design, manufacture, testing, sale, importation distribution, installation, services, repair and maintenance of chokes, valves and flow control devices.
- (3) Custom development, design and manufacture of chokes, valves and flow control devices to customer specifications.
- (4) Engineering services, namely the development, design, manufacture, and testing of chokes, valves, and flow control devices.
- (5) Operation of a business providing the development, design, manufacture, testing, sale, importation, distribution, installation, repair and maintenance of chokes, valves and flow control devices and parts and accessories therefore for use in the oil and gas, petrochemical, plumbing, heating, shipping and water industry.
- (6) Research and development in the field of chokes, valves and flow control devices and parts and accessories therefore.
- (7) Consulting in the field of chokes, valves and flow control devices and parts and accessories therefore.
- (8) Providing technical support and product information to customers in the field of chokes, valves and flow control devices.
- (9) Providing technical support and product training to field representatives, distributors and end users of chokes, valves and flow control devices.
- (10) Creating prototypes of chokes, valves, and flow control devices and the testing thereof.

Claims :

Used in Canada since at least as early as August 2002 on goods (1), (2), (3), (4), (5), (6), (7), (8),

(10) and on services.

Used in Canada since as early as August 2002 on goods (9).

**TRADE-MARKS OPPOSITION BOARD
CANADIAN INTELLECTUAL PROPERTY OFFICE
APPEARANCES AND AGENTS OF RECORD**

No Hearing Held

AGENTS OF RECORD

Owen Wiggs Green & Mutala LLP

FOR THE OPPONENTS

Dentons Canada LLP

FOR THE APPLICANT