

**IN THE MATTER OF OPPOSITIONS
by Coca-Cola Ltd. to applications Nos.
793,369 and 793,370 for the trade-marks
QUALITY CLASSIC SELECTION & Design
and QUALITE CLASSIC SELECTION &
Design filed by The Southland Corporation
(now 7-Eleven, Inc.)**

On September 22, 1995, the applicant, The Southland Corporation (now 7-Eleven, Inc.), filed applications to register the trade-marks QUALITY CLASSIC SELECTION & Design and QUALITE CLASSIC SELECTION & Design (illustrated below). The first application was amended to include a disclaimer to the word QUALITY and the second application was amended to include a disclaimer to the word QUALITE. Both applications were advertised for opposition purposes on September 4, 1996.




Both applications cover the following wares:





- (1) non-alcoholic beverages, namely water, fruit juices and soft drinks
- (2) bread; rolls; buns; pastries; bacon; sausage; luncheon meats; hot dogs; butter; cheese; cottage cheese; margarine; milk; sour cream; yogurt; breakfast cereal; condiments; namely, mustard and ketchup; cookies; crackers; salty snack foods, namely corn chips and pretzels; flour; pasta; pet food; salad dressing; cooking oil; potato chips; nuts; sugar; dry vegetables; canned vegetables; frozen vegetables; ice cream; frozen juices; frozen dinners; frozen pizzas; frozen desserts; namely packaged ice cream, ice cream novelties; food bags; trash

bags; bleach for laundry use; paper cups; plastic cups; paper plates; diapers; dish soap; fabric softener; laundry detergent; paper napkins; paper towels; toilet tissue; facial tissue; motor oils; antacids; pharmaceutical preparations for treating colds, namely, over-the counter cold care liquids; pharmaceutical preparations for treating allergies; namely over-the counter allergy medication; cough syrup; first aid kits for domestic use, namely bandages; internal analgesics; mouthwash; vitamins; combs; hair brushes; tooth brushes; tooth brushes.

Both applications are based on use in Canada since March 1, 1995 for the wares marked (1) and on proposed use in Canada for the wares marked (2).

The opponent, Coca-Cola Ltd., filed essentially identical statements of opposition against the two applications on February 4, 1997, copies of which were forwarded to the applicant on February 14, 1997. The first ground of opposition in each case is that the applied for trade-mark is confusing with the following registered trade-marks owned by the opponent:

<u>Trade-mark</u>	<u>Reg. No.</u>	<u>Wares/Services</u>
CLASSIC	179,028	carbonated beverages
COCA-COLA CLASSIC	333,882	(1) non-alcoholic beverages, namely soft drinks (2) syrups used in the manufacture of non-alcoholic beverages, namely soft drinks
	371,451	non-alcoholic soft drink beverages and syrups used in the preparation of such beverages
COCA-COLA CLASSIQUE	333,885	(1) non-alcoholic beverages, namely soft drinks (2) syrups used in the manufacture of non-alcoholic beverages, namely soft drinks

	379,482	non-alcoholic soft drink beverages and syrups used in the preparation of such beverages
COKE CLASSIQUE	333,883	(1) non-alcoholic beverages, namely soft drinks (2) syrups used in the manufacture of non-alcoholic beverages, namely soft drinks
COKE CLASSIC	333,884	(1) non-alcoholic beverages, namely soft drinks (2) syrups used in the manufacture of non-alcoholic beverages, namely soft drinks
	379,483	non-alcoholic soft drink beverages and syrups used in the preparation of such beverages
	362,885	non-alcoholic soft drink beverages and syrups used in the preparation of such beverages
COCA-COLA CLASSIC	460,607	advertising, marketing and promotion of non-alcoholic soft drink beverages of others
	465,910	glass tumblers acrylic, mugs; metal containers and trays; coasters; ice buckets; cooler bags; aprons, oven mitts

The second ground of opposition in each case is that the applicant is not the person entitled to registration pursuant to Sections 16(1) and 16(3) of the Act because, as of the applicant's filing date and claimed date of first use, the applied for trade-mark was confusing

with the above-noted trade-marks previously used in Canada by the opponent. The third ground in each case is that the applied for trade-mark is not distinctive because it is confusing with the opponent's trade-marks used in Canada.

The applicant filed and served a counter statement in each case. As its evidence in each opposition, the opponent submitted the affidavits of Herbert McPhail, Daphne L. Maravei, Robbie J. Hindley and Ruth M. Corbin. Mr. Hindley and Dr. Corbin were cross-examined on their affidavits and the transcripts of those cross-examinations and the replies to undertakings given form part of the record of these proceedings. As its evidence in each case, the applicant submitted the affidavits of William Ford, Arnold Ceballos, Charles R. Mandly, Jr., Jean Olsen, John Donovan and David Huey. Both parties filed a written argument and an oral hearing was conducted at which both parties were represented.

The Opponent's Evidence

The McPhail affidavit serves to introduce into evidence certified copies of the eleven trade-mark registrations relied on in each statement of opposition. It also serves to introduce the results of searches of the trade-marks register conducted by Mr. McPhail with a view to locating trade-marks including the word CLASSIC or CLASSIQUE registered for soft drinks and carbonated beverages. The only such registrations located by Mr. McPhail were owned by the opponent. Mr. McPhail also made copies of the records of a number of applications for trade-marks including the word CLASSIC or CLASSIQUE which have either been

abandoned, withdrawn or opposed by the opponent.

The Maravei affidavit introduces into evidence details of Ms. Maravei's visits to two 7-ELEVEN stores in Ottawa. In both stores, Ms. Maravei noted that soft drinks bearing the opponent's trade-mark COCA-COLA CLASSIC and soft drinks bearing the applicant's trade-marks were sold side by side. Appended to her affidavit are a number of photos of the placement of products in the stores. She also appended as exhibits to her affidavit a bottle of the opponent's product and a bottle of a cola product bearing the applicant's trade-marks which she purchased in one of the stores.

In his affidavit, Mr. Hindley identifies himself as the Director, Promotions and Corporate Properties of the opponent, Coca-Cola Ltd. He describes the business of the opponent and states that the various CLASSIC trade-marks relied on have been used by the opponent in Canada in association with soft drinks since September of 1985. Prior to July 28, 1987, approximately 55% of the total volume of sales were manufactured by the opponent and the balance was produced by authorized bottlers. Since that date, 100% of the product has been produced by the authorized bottlers.

Mr. Hindley provides annual sales volumes for the opponent's product which total in the billions of eight-ounce equivalent drinks. Sales are effected through about 100,000 retail outlets across Canada. Sales are of bottles and cans or through on-site fountains. Mr. Hindley provides numerous exhibits of packaging and advertisements illustrating the use of the

opponent's various CLASSIC trade-marks in association with its soft drink product. The vast majority of those materials illustrate use of the design marks COCA-COLA CLASSIC & Design as shown in registration No. 371,451 and COCA-COLA CLASSIQUE & Design as shown in registration No. 362,885 or variations of those two marks. None of the materials appended to the Hindley affidavit which would be viewed by consumers shows use of the trade-mark CLASSIC by itself in association with soft drinks. As stated by Mr. Hindley on cross-examination: "We always ensure that the representation is 'Coca-Cola Classic'." (see page 52 of the Hindley transcript). Furthermore, use of the trade-mark COCA-COLA CLASSIC & Design does not constitute use of the trade-mark CLASSIC 'per se' as the average consumer would not view that component as being used as a separate trade-mark. Consumers would view the non-distinctive component CLASSIC as referring to a character, quality or type of the opponent's COCA-COLA brand product: see Nightingale Interloc Ltd. v. Prodesign Ltd. (1984), 2 C.P.R.(3d) 535 at 538 (T.M.O.B.) and Munsingwear Inc. v. Promafil Canada Ltee. (1992), 44 C.P.R.(3d) 59 (F.C.A.).

On cross-examination, it became apparent that Mr. Hindley did not have personal knowledge about the opponent's adoption of its various CLASSIC trade-marks since he was not employed by the opponent or its related companies prior to 1990. At question 32 of the Hindley cross-examination, Mr. Hindley was asked to undertake to inform himself as to whether or not the trade-marks COCA-COLA CLASSIC and COCA-COLA CLASSIQUE were used in January of 1985 to distinguish the associated beverage from the beverage known as COKE. In reply to the undertaking given, the opponent stated that Mr. Hindley had no

personal knowledge of the answer and he was not obligated to “....make inquiries and provide responses based on information and belief.” However, as a corporate officer, Mr. Hindley was obliged to check the opponent’s corporate records and to provide any relevant information. Since he did not, I must infer that the opponent’s trade-marks COCA-COLA CLASSIC and COCA-COLA CLASSIQUE were used to distinguish the associated beverage from another beverage product of the opponent. This suggests that the words CLASSIC and CLASSIQUE were adopted by the opponent to designate a particular type of its COCA-COLA or COKE brand product.

The Hindley cross-examination also revealed that Mr. Hindley had limited knowledge about the manufacture of the opponent’s product and the licensing arrangements between the opponent and its various authorized bottlers. However, to the extent that there is any doubt about use of the marks being the opponent’s use, the representative labelling and packaging appended to Mr. Hindley’s affidavit consistently indicate that the trade-marks on the labelling and packaging belong to the opponent and are used under license. Thus, the presumption of licensed use provided for by Section 50(2) of the Act applies and the applicant has not seriously challenged that presumption.

In her affidavit, Dr. Corbin identifies herself as President of Decision Resources Inc., a company engaged in marketing and consumer behavior research. Dr. Corbin has extensive education and experience relating to consumer surveys and qualifies as an expert in that field. At the direction of the opponent’s trade-mark agent, she designed a consumer survey to assess

“...the extent to which the term *Classic* is known by the public in Canada as a trade-mark used in association with soft drinks.” (see paragraph 12 of the Corbin affidavit) The survey was conducted in February of 1996 on a national telephone omnibus which is a survey dealing with several topics where the costs are shared among the companies involved.

The survey questioned 1004 Canadian adults, 500 of whom were questioned about the word CLASSIC and 504 of whom comprised a control group and were questioned about the word SELECT in relation to soft drinks. Respondents in the first group were asked: “Are you aware of any soft drink with the word ‘Classic’ in its name?” Of the 81% who answered “yes”, almost 99% identified COCA-COLA as the brand. Less than 1% of the respondents in the control group said they were aware of a soft drink with SELECT in its name. This result was used to correct for possible guessing by respondents in the first group. Dr. Corbin then concluded that the survey results showed that 79% of Canadians recognize the word CLASSIC in a name or brand associated with COCA-COLA soft drink products.

Survey evidence is admissible but care must be taken to ensure its reliability. As stated by Mr. Justice MacKay in Joseph Seagram & Sons v. Seagram Real Estate (1990), 33 C.P.R.(3d) 455 at 471 (F.C.T.D.):

The question of admissibility and reliability of surveys of public opinion polls has been the subject of debate in numerous trade mark cases. However, after considering the jurisprudence concerning the matter, I understand the general principle to be that the admissibility of such evidence and its probative value are dependant upon the relevance of the survey to the issues before the court and the manner in which the poll was conducted; for example, the time period over which the survey took place, the questions asked, where they were asked and the method of selecting the participants.

Mr. Justice Pinard also had occasion to consider survey evidence in Opus Building Corporation v. Opus Corporation (1995), 60 C.P.R.(3d) 100 at pages 105-106 as follows:

I find that the survey is admissible for the following reasons:

- (a) the survey was conducted by an expert in the field of public opinion research;
- (b) the sampling is from the appropriate "universe";
- (c) the survey was designed and conducted, and the resulting data was processed, in a professional manner, independent of both the applicant and its counsel;
- (d) the survey was not geographically restricted;
- (e) the survey was conducted in both national official languages and involved both male and female respondents; and
- (f) the survey evidence is put forward as the basis on which the expert assessed the recognizability of the word OPUS in the survey "universe".

In the present case, the survey meets those requirements. However, as noted by the applicant, there were several minor problems with the conduct of the survey. On cross-examination, Dr. Corbin conceded that the company that conducted the survey (Thompson, Lightstone & Co.) was not related to her company. She also indicated that she was only present during the first night of the survey (see pages 24-25 of the Corbin transcript) although the survey was conducted from February 15-24, 1996 (see the reply to the undertaking given in respect of question 105). Dr. Corbin also stated that the data from the survey was not collected by her or her company but rather by Thompson, Lightstone & Co. which maintained the data during the period up to October of 1997 when Dr. Corbin prepared her report. Further, she admitted that she did not review the completed survey questionnaires (see page 21 of the Corbin transcript).

The above-noted deficiencies go to the reliability of the survey. Since they are relatively minor in nature and given the uncomplicated nature of the survey, I do not consider that they materially affect the conclusions flowing from the results.

The cross-examination of Dr. Corbin also revealed a deficiency which goes to the validity of the survey. In reply to an undertaking given in respect of question 48, the opponent provided the French version of the survey questionnaire used. The question asked in that version of the questionnaire referred to the word CLASSIQUE rather than the word CLASSIC which was the term supposedly being assessed. Thus, the results obtained from francophone respondents must be discounted in this case. Since the evidence does not indicate what percentage of the respondents were francophone or what percentage of positive responses were attributed to them, the final tally of 79% recognition of the word CLASSIC as part of a name of a soft drink in Canada is somewhat suspect. Nevertheless, given that the survey was nationwide and given the very high positive recognition rate, I can still conclude that at least a majority of adult Canadians would recognize CLASSIC as part of the name of the opponent's soft drink.

The cross-examination of Dr. Corbin also helped to clarify what the survey results show. As noted, in paragraph 12 of her affidavit, Dr. Corbin stated that the purpose of the survey was to assess the public recognition of CLASSIC as a trade-mark for soft drinks. On cross-examination, however, she conceded that it would be more accurate to say that the survey simply measured the public recognition of CLASSIC as part of the name of a soft drink

(see page 17 of the Corbin transcript). Furthermore, Dr. Corbin conceded that the survey was not designed to assess possible confusion between the mark CLASSIC and the applicant's two trade-marks.

The Applicant's Evidence

The Ford affidavit serves to introduce into evidence the results of Mr. Ford's investigations on February 6 and May 11, 1998 of products that bore the word CLASSIC and were available at a Toronto LOBLAWS store. Mr. Ford located six such products, none of which was a beverage product.

The Ceballos affidavit serves to confirm the findings of Mr. Ford. Mr. Ceballos attended at the same LOBLAWS outlet in Toronto on February 20, 1999 and also located six products that bore the word CLASSIC, five of them being the same products identified by Mr. Ford a year earlier. Mr. Ceballos also visited a BULKMINE retail food store in Toronto on June 7, 1999 and purchased three soft drink bottles bearing the trade-mark STEWART'S. The exhibits show that each bottle has the words FOUNTAIN CLASSICS® on the neck of the bottle.

The Mandly affidavit deals with Mr. Mandly's purchase in a Chicago, Illinois grocery store of a soft drink bearing the brand ORIGINAL STEWART'S and the words FOUNTAIN

CLASSICS. Since the Mandly affidavit deals with an isolated purchase in the United States, it is not relevant to the issues in this case.

The Olsen affidavit evidences the results of telephone enquiries made by Ms. Olsen of half a dozen different American companies regarding beverage products possibly bearing trade-marks which include the word CLASSIC. This evidence is not only inadmissible as hearsay but would be irrelevant, in any event, since it relates to the United States market. Ms. Olsen purchased five items on her own at grocery stores in the Chicago area but such evidence is irrelevant to the issues at hand. Finally, Ms. Olsen accessed two American-based Internet web sites regarding possible beverage trade-marks incorporating the word CLASSIC. In the absence of evidence of Canadians being aware of such web sites, their mere existence is of no import to this opposition.

In his affidavit, Mr. Donovan identifies himself as a Logistics Manager with 7-Eleven, Inc. in the United States. He states that the applicant's two trade-marks have been used in the United States since November 30, 1993. According to Mr. Donovan, sales of water and soft drinks sold in association with those two marks have been in excess of \$84 million (U.S.) for the period 1994 to 1997 with sales continuing in 1998 and 1999. Prior to October of 1998, Mr. Donovan was Category Manager for the applicant. He states that, in that capacity, any instances of actual confusion between his company's marks and those of the opponent would have been brought to his attention. He is unaware of any such instances of confusion.

In his affidavit, Mr. Huey identifies himself as the Senior Vice-President of Southland Canada Inc., a wholly owned indirect subsidiary of the applicant. He states that his company operates approximately 471 7-ELEVEN convenience stores across Canada. CLASSIC SELECTION wares have been sold in Canada only through 7-ELEVEN stores and sales of beverages under the applicant's two trade-marks for water and soft drinks have totalled almost \$10 million for the period 1995 to 1997. Mr. Huey states that the applicant has a customer hotline for both Canada and the United States but that no instances of confusion with the opponent's trade-marks have been brought to his attention.

The Grounds of Opposition

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

As for Section 6(5)(a) of the Act, the applicant's two trade-marks are dominated by the words QUALITY CLASSIC SELECTION and QUALITE CLASSIC SELECTION which are

arguably descriptive of the applied for wares or, at the very least, laudatory. Thus, the two marks are inherently weak. Given the Canadian sales evidenced by Mr. Huey, I am able to conclude that the applicant's two marks have become known at least to some extent in Canada in association with water and soft drinks. As for the remaining wares, I must conclude that the marks have not become known at all in Canada.

All but one of the opponent's registered trade-marks include the coined term COCA-COLA or COKE. Thus, those marks are inherently distinctive. As for registration No. 179,028 covering the trade-mark CLASSIC, the primary dictionary definition for the word "classic" is "of recognized value; serving as a standard of excellence." Thus, that mark is laudatory and inherently very weak when used with any wares. The inherently weak nature of that mark is underscored by the fact that the opponent uses a French translation of the word CLASSIC in its COCA-COLA CLASSIQUE and COKE CLASSIQUE marks and by the fact that Dr. Corbin used the word "classique" rather than "classic" in the French version of the survey questionnaire notwithstanding that the aim of the survey was to assess the recognition of the word "classic."

The evidence of record shows that the trade-marks COCA-COLA CLASSIC, COCA-COLA CLASSIQUE and the design versions of those marks have become extremely well known throughout Canada in association with soft drinks. There is also evidence pointing to an acquired reputation for the opponent's registered marks comprising or including the words COKE CLASSIC or COKE CLASSIQUE for soft drinks. The evidence does not show any

reputation of note for the marks for the advertising services and housewares items covered by the final two registrations.

As for the registered trade-mark CLASSIC, as discussed, the evidence of record does not show use of that word as a separate trade-mark. It is consistently used as part of other trade-marks which include the term COCA-COLA or COKE. Furthermore, the evidence does not show any acquired reputation for CLASSIC as a separate trade-mark. As clarified during the cross-examination of Dr. Corbin, the extensive reputation evidenced by the survey relates to CLASSIC as a part of a brand name or trade-mark and not to CLASSIC as a trade-mark on its own. Thus, I cannot ascribe any reputation of note to CLASSIC as a trade-mark.

The length of time the marks have been in use favors the opponent. As for Sections 6(5)(c) and 6(5)(d) of the Act, the wares of the parties are the same or very similar with respect to the wares marked (1) in the two applications. In respect of those wares, the trades of the parties overlap as evidenced by the Maravei affidavit which shows the wares of the parties being sold side by side in the applicant's stores. Otherwise, the wares of the parties differ and presumably the trades would differ somewhat as well.

As for Section 6(5)(e) of the Act, the applicant's trade-marks bear some resemblance with the opponent's registered trade-mark CLASSIC since they include the entirety of that mark. However, the applicant's trade-marks include other significant components and the word CLASSIC is used as an adjective in those marks. Furthermore, as discussed, the word

CLASSIC is inherently weak when used with any wares and thus minor differences are sufficient to distinguish it from other marks comprising or including that word.

As for the remaining trade-marks of the opponent, there is little, if any, resemblance between each of them and the applicant's two marks. In some cases, there is no common element between the marks and in the remaining cases the only common element is the word CLASSIC or CLASSIQUE.

As an additional surrounding circumstance, the applicant has relied on state of the register evidence and state of the marketplace evidence to show that the word CLASSIC is a common component of trade-marks. To some extent, the McPhail affidavit and the Ford and Ceballos affidavits support that contention. However, as noted by the opponent, no one other than the opponent has a Canadian registration for a trade-mark including the word CLASSIC for soft drinks. Furthermore, there is minimal evidence of third party use of such a mark in Canada. Thus, the state of the register and state of the marketplace evidence in the present cases does nothing more than reinforce the observation that CLASSIC is a laudatory and inherently weak word in general. It does not, however, show that the word CLASSIC is common to the soft drink trade.

The applicant has also relied on the absence of evidence of actual confusion between the marks at issue as an additional surrounding circumstance. Both Messrs. Huey and Donovan indicate that no such instances were brought to their attention notwithstanding the

fairly coextensive use of the parties' marks. In fact, even though the products of the parties are sold side by side and the applicant even sells a cola product under its two trade-marks, no actual confusion has been evidenced. I consider that fact to be significant in the present case.

In applying the test for confusion, I have considered that it is a matter of first impression and imperfect recollection. Furthermore, the onus or legal burden is on the applicant to show no reasonable likelihood of confusion between the marks at issue. As for the opponent's registered trade-mark CLASSIC, in view of my conclusions above, and particularly in view of the inherent weakness of the marks at issue, the absence of evidence of an acquired reputation for the opponent's trade-mark CLASSIC by itself and the absence of any evidence of actual confusion or mistake between the marks at issue, I find that the applicant's two trade-marks are not confusing with the opponent's registered trade-mark in respect of beverages. That conclusion is even stronger in respect of the remaining wares in the applicant's applications.

As for the opponent's ten remaining registered marks, in view of my conclusions above, and particularly in view of the inherent weakness of the component CLASSIC or CLASSIQUE, the low degree of resemblance between those marks and the applicant's marks and the absence of any evidence of actual confusion or mistake and notwithstanding the fame of the opponent's trade-marks comprising the words COCA-COLA CLASSIC or COCA-COLA CLASSIQUE, I find that the applicant's two trade-marks are not confusing with the opponent's remaining registered marks in respect of beverages. That conclusion applies with

even greater force for the remaining wares in the two applications. Thus, the first ground of opposition is unsuccessful in each case.

As for the second ground of opposition in each case, there is an initial burden on the opponent to evidence use of each of its trade-marks prior to the applicant's filing date and its claimed date of first use. As discussed, the opponent has failed to evidence any use of its trade-mark CLASSIC and thus the second ground is unsuccessful insofar as it is based on prior use of that mark. As for the trade-marks registered under Nos. 460,607 and 465,910, the opponent has failed to evidence any use of these two marks prior to the material times. Thus, the second ground is unsuccessful in relation to those two marks.

As for the remaining marks, the opponent has evidenced use of them prior to the material times. Thus, the second ground remains to be decided on the issue of confusion in respect of those marks. Most of my conclusions respecting the issue of confusion for the first ground are also applicable here. As discussed, the degree of resemblance between the opponent's remaining marks and the applicant's two marks is minimal. Although the extensive contemporaneous use of the parties' marks without evidence of incidents of actual confusion did not take place until after the applicant's claimed date of first use, I can infer that it is reflective of the situation as of that earlier date as well. Thus, I find that the applicant's trade-marks were not confusing with the opponent's remaining marks as of the material times. The remaining aspects of the second ground of opposition are therefore also unsuccessful.

As for the third ground of opposition in each case, the onus or legal burden is on the applicant to show that its mark is adapted to distinguish or actually distinguishes its wares from those of others throughout Canada: see Muffin Houses Incorporated v. The Muffin House Bakery Ltd. (1985), 4 C.P.R.(3d) 272 (T.M.O.B.). Furthermore, the material time for considering the circumstances respecting this issue is as of the filing of the opposition (i.e. - February 4, 1997): see Re Andres Wines Ltd. and E. & J. Gallo Winery (1975), 25 C.P.R.(2d) 126 at 130 (F.C.A.) and Park Avenue Furniture Corporation v. Wickes/Simmons Bedding Ltd. (1991), 37 C.P.R.(3d) 412 at 424 (F.C.A.).

The third ground turns on the issue of confusion with the various marks relied on by the opponent. As discussed, the opponent has failed to evidence use of CLASSIC as a trademark. As for the remaining marks, the evidence establishes that those comprising or including the terms COCA-COLA CLASSIC or COCA-COLA CLASSIQUE have become extremely well known in Canada in relation to soft drinks. Those comprising or including the words COKE CLASSIC or COKE CLASSIQUE have also been shown to have acquired a reputation in Canada.

My conclusions respecting the issue of confusion for the first ground are, for the most part, applicable here as well. Thus, for the reasons discussed earlier, I find that the applicant's two trade-marks are not confusing with the opponent's various trade-marks that, on the evidence, have been shown to be in use. The third ground is therefore also unsuccessful.

In view of the above, and pursuant to the authority delegated to me under Section 63(3) of the Act, I reject the opponent's oppositions.

DATED AT HULL, QUEBEC, THIS 20th DAY OF DECEMBER, 2001.

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