

**IN THE MATTER OF AN OPPOSITION
by Centre Ice Limited to application No.
662,915 for the trade-mark CENTER ICE
filed by National Hockey League**

On July 25, 1990, the applicant, National Hockey League, filed an application to register the trade-mark CENTER ICE based on proposed use in Canada for various clothing items and items of ice hockey equipment. The application was advertised for opposition purposes on May 22, 1991.

The opponent, Centre Ice Limited, filed a statement of opposition on December 23, 1991, a copy of which was forwarded to the applicant on February 7, 1992. By letter dated February 19, 1993, the opponent was granted leave to amend its statement of opposition. The first ground of opposition is that the applicant's application does not comply with the provisions of Section 30(i) of the Trade-marks Act because the applicant was aware of the opponent's prior use of its trade-mark CENTRE ICE and its trade-name Centre Ice Limited in association with sports clothing and equipment and the operation of a retail outlet selling such wares.

The second ground of opposition is that the applicant is not the person entitled to registration pursuant to Section 16(3) of the Act because, as of the applicant's filing date, the applied for trade-mark was confusing with the trade-mark CENTRE ICE and the trade-name Centre Ice Limited previously used in Canada by the opponent in association with the wares and services noted above. The third ground is that the applied for trade-mark is not distinctive in view of the foregoing.

The applicant filed and served a counter statement. The opponent did not timely file its evidence and it was therefore returned. The opponent was subsequently unsuccessful in obtaining leave to re-file that evidence. The applicant did not file evidence. Only the applicant filed a written argument and no oral hearing was conducted.

As for the first ground of opposition, the onus or legal burden is on the applicant to show its compliance with the provisions of Section 30 of the Act. There is, however, an initial evidential burden on the opponent to adduce at least some evidence from which it could be concluded that its supporting allegations of fact are true. There being no evidence from the opponent, the first ground of opposition is unsuccessful.

As for the second ground of opposition, there was an initial evidential burden on the opponent to evidence use of its trade-mark or its trade-name prior to the applicant's filing date. Since there is no evidence of record from the opponent, this ground is also unsuccessful.

As for the third ground of opposition, the onus or legal burden is on the applicant to show that its applied for mark is distinctive. Again, however, there is an initial evidential burden on the opponent to adduce at least some evidence in support of its allegations of fact. As there is no evidence from the opponent, the third ground is therefore also unsuccessful.

In view of the above, I reject the opponent's opposition.

DATED AT HULL, QUEBEC, THIS 30TH DAY OF NOVEMBER 1994.

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