

**IN THE MATTER OF AN OPPOSITION
by McCain Foods Limited to application No.
742,782 for the trade-mark PIZZA CHIPS
filed by 1009222 Ontario Inc.**

On December 6, 1993, the applicant, 1009222 Ontario Inc., filed an application to register the trade-mark PIZZA CHIPS based on proposed use in Canada. The application was advertised for opposition purposes on July 26, 1995. The application as advertised included a disclaimer to the words PIZZA and CHIPS and covered the following wares:

food and food products, namely, snack products made from corn, cooked pizza pies, uncooked pizza pies, pizza, pizza-like snack food.

On May 23, 2001, the applicant submitted a revised application in which the statement of wares was amended to read:

food and food products, namely, snack products made from corn based dough excluding tortilla chips, cooked pizza pies, uncooked pizza pies, pizza, pizza-like snack foods, namely snack foods having pizza type toppings and ingredients excluding potatoes.

The opponent, McCain Foods Limited, filed a statement of opposition on November 28, 1995, a copy of which was forwarded to the applicant on January 12, 1996. The first ground of opposition is that the applicant's application does not conform to the requirements of Section 30(a) of the Trade-marks Act because it does not state the applicant's proposed wares in ordinary commercial terms. The second ground is that the applicant's application does not conform to the requirements of Section 30(e) of the Act because the applicant did not intend to use the applied for trade-mark by itself or through licensees. The third ground is that the applicant's application does not conform to the requirements of Section 30(i) of the Act because the applicant could not have been satisfied that it was entitled to use the applied for trade-mark in Canada.

The fourth ground of opposition is that the applicant's trade-mark is not registrable pursuant to Section 12(1)(b) of the Act because it is clearly descriptive or deceptively misdescriptive of the character or quality of the applied for wares. The fifth ground is that the applicant's trade-mark is not registrable pursuant to Section 12(1)(c) of the Act because it is the name of the wares.

The sixth ground of opposition is that the applicant's trade-mark is not registrable pursuant to Section 12(1)(d) of the Act because it is confusing with the following registered trade-marks owned by the opponent:

<u>Trade-mark</u>	<u>Reg. No.</u>	<u>Wares</u>
MCCAIN PIZZA POCKETS	429,837	frozen bread with a pizza type filling (pizza topping ingredients) that is completely enclosed
DOLLAR CHIPS	160,955	frozen potatoes
CHIP WAGON FRIES	441,798	frozen french fried potatoes
PANTASTIC PIZZA	400,158	pizza in a pan
POCKET PIZZA	326,395	pizza
PIZZA SUB	269,891	frozen open-faced sandwiches
"PIZZA SUB"	269,898	frozen open-faced sandwiches

The seventh ground of opposition is that the applicant's trade-mark is not registrable pursuant to Sections 10 and 12(1)(e) of the Act because it has by ordinary and *bona fide* commercial usage become recognized in Canada as designating the kind, quality and value of the applied for wares. The eighth ground is that the applicant is not the person entitled to registration pursuant to Section 16(3)(a) of the Act because, as of the applicant's filing date, the applied for trade-mark was confusing with the seven registered trade-marks noted above previously used in Canada by the opponent. The ninth ground of opposition is that the applicant's trade-mark is not distinctive because it is confusing with the registered marks used by the opponent.

The applicant filed and served a counter statement. As its evidence, the opponent submitted an affidavit of its Vice-President of Marketing, Steven A. Yung. As its evidence, the applicant submitted an affidavit of Igor Muratovic and an affidavit of its President, Alfio

Pasquarelli. Mr Pasquarelli was cross-examined on his affidavit and the transcript of that cross-examination and the subsequently filed replies to undertakings given form part of the record of this opposition. Both parties filed a written argument and an oral hearing was conducted on May 24, 2001 at which both parties were represented.

Preliminary Matters

At the outset of the oral hearing, I dealt with a number of requests from the parties. As a first matter, I accepted the revised application filed by the applicant on May 23, 2001.

On May 23, 2001, the applicant indicated that it wished to rely on (1) a dictionary definition for the word “could”, (2) a photocopy of a computer printout for the applicant’s registration No. 478,670 for the trade-mark POPCORN PIZZA and (3) photocopies of computer printouts of 17 abandoned applications filed by the opponent. Given that I can take judicial notice of dictionary definitions, I admitted the first item into evidence. Since the opponent had no objection to the second item, I also accepted it into evidence. However, given the lateness of the submission of the third item, its questionable relevance and the potential prejudice to the opponent, I refused leave for its admission.

Just prior to the oral hearing on May 24, 2001, the opponent sought leave to file a photocopy of a computer printout for registration No. 503,653 registered on November 4, 1998 for the trade-mark PIZZARIFIC for ‘inter alia’ pizza chips. At the oral hearing, after hearing the submissions of both parties, I refused the opponent’s request in view of the lateness of the request, the limited relevance of the proposed evidence and the failure to explain the lengthy delay in submitting the request.

The opponent’s agent also requested that the oral hearing be postponed in view of its request to submit the photocopy of a computer printout of registration No. 503,653 and in view of the amended application. As for the first reason, I indicated that the opponent’s request to submit the additional evidence could be dealt with immediately which I did. As for the second

reason, the opponent's agent submitted that the amended application might necessitate filing further evidence and/or requesting further cross-examination of Mr. Pasquarelli on his affidavit. However, given that the amendment to the application was a narrowing of the scope of the statement of wares, I did not see any justification for submitting additional evidence or pursuing further cross-examination. I therefore refused the opponent's request for an adjournment.

The Opponent's Evidence

In his affidavit, Mr. Yung describes McCain Foods Limited ("McCain") as a Canadian-based multinational corporation involved in the food industry. According to Mr. Yung, McCain manufactures french fries, prepared food products, vegetables, juice, pizza, meat products, cheese and potato products. Mr. Yung also states that he monitors the frozen food industry both in Canada and the United States.

Mr. Yung indicates that the product sold by McCain under the trade-mark MCCAIN PIZZA POCKETS falls within the category "Frozen Dinners & Entrees - Snack Category" which also includes competitors' products such as various PILLSBURY products and "Private Label Pizza Snacks." According to marketing research, for the year ending July 20, 1996, McCain's share of sales in this category was 43%. During that period, McCain spent over \$2 million on advertising and merchandising expenses relating to its trade-mark MCCAIN PIZZA POCKETS.

Mr. Yung states that the products sold under his company's trade-marks DOLLAR CHIPS, CHIP WAGON FRIES and MCCAIN SUPERCHIPS fall under the category "frozen potatoes - total non-fries." According to market research, for the year ending July 20, 1996, McCain's share of sales in this category was 46.7%. However, no breakdown of sales by trade-mark was provided by Mr. Yung and it may be that most of those sales were for the MCCAIN SUPERCHIPS product. Although Mr. Yung evidenced a copy of the opponent's registration for that mark, the opponent did not rely on it in its statement of opposition.

In his affidavit, Mr. Yung states his opinions that the applicant's trade-mark is the name of the applied for wares and is also clearly descriptive of those wares. He further opines that the descriptions "snack products made from corn" and "pizza-like snack foods" are not defined in ordinary commercial terms. He states that, in the food industry, the word CHIP refers either to potato chips or to french fries although he later also refers to tortilla chips.

As conceded by the applicant's agent at the oral hearing, Mr. Yung has qualified himself as an expert in the food industry and certain of his opinions can be given some weight. However, to the extent that Mr. Yung's opinions bear on the legal issues to be decided, I have not given them any weight.

The Applicant's Evidence

In his affidavit, Mr. Pasquarelli states that the applicant has approached various companies attempting to license the use of its trade-mark PIZZA CHIPS. On cross-examination, Mr. Pasquarelli conceded that his company's trade-mark has not yet been used although he did provide a portion of his company's proposed packaging bearing the applied for trade-mark.

On cross-examination, Mr. Pasquarelli was reluctant to provide details about the nature of his company's proposed products on the basis that such information was confidential. However, at page 14 of the transcript, he did provide the following definition for the description "snack products made from corn":

A. Okay it is a pizza-like snack product that can be made either from corn, it can have a number of different bases, corn, wheat, could include dough based or corn based products that are filled with pizza toppings. Could include dough in corn based products that are topped with pizza toppings, sauce, et cetera. Basically they're pizza-like snack foods, essentially what the application describes.

In satisfaction of an undertaking given during the cross-examination, Mr. Pasquarelli provided samples of packaging bearing trade-marks or product descriptions using the word

CHIPS such as BAGEL CHIPS, NACHO CHIPS, BANANA CHIPS, CORN CHIPS and SUN CHIPS. In reply to another undertaking, Mr. Pasquarelli provided packaging for PIZZELLE cookies and TREATZA PIZZA ice cream cake.

On cross-examination, Mr. Pasquarelli was asked about the proposed channels of trade for the PIZZA CHIPS product. He indicated that they intended to sell the product through grocery stores and “general retailing.”

The Muratovic affidavit evidences the results of Mr. Muratovic’s search of the trade-marks register for registered trade-marks including the word PIZZA or CHIP for food-related wares or services. Not surprisingly, Mr. Muratovic’s search revealed about 75 registered marks including the word CHIP and about 275 with the word PIZZA. He did not locate any registrations for trade-marks comprising both words. The Muratovic affidavit also evidences a number of dictionary definitions for the words “chip” and “pizza.”

The Grounds of Opposition

As for the first ground of opposition based on Section 30(a) of the Act, the former Registrar of Trade-marks stated in Dubiner and National Yo-Yo and Bo-Lo Ltd. v. Heede Int’l Ltd. (1975), 23 C.P.R. (2d) 128 that an applicant in its application “must clearly set forth wares or services as they are customarily referred to in the trade.” In this regard, reference may also be made to the opposition decision in Pro Image Sportswear, Inc. v. Pro Image, Inc. (1992), 42 C.P.R.(3d) 566 at 573. As with other grounds of opposition, the legal burden is on the applicant to show its compliance with the Act although there is an initial burden on the opponent to evidence its supporting allegations of fact.

The opponent’s agent contended that all of the descriptions in the applicant’s statement of wares essentially refer to a single product and that they all fail to comply with the provisions of Section 30(a) of the Act. However, the descriptions “cooked pizza pies”, “uncooked pizza pies” and “pizza” are clear and unambiguous and employ ordinary commercial terminology.

The remaining two descriptions in the statement of wares are “snack products made from corn based dough excluding tortilla chips” and “pizza-like snack foods, namely snack foods having pizza type toppings and ingredients excluding potatoes.” The opponent contends that these descriptions are not in ordinary commercial terms because they are not specific enough. While it appears that more specific descriptions might have been provided (see, for example, the opponent’s statement of wares in registration No. 429,837), the evidence of record does not support the opponent’s contention that the lack of specificity is fatal.

On cross-examination, Mr. Pasquarelli described a number of different specific products that might qualify under the description “snack products made from corn.” He further stated that all of the proposed products are “pizza-like snack foods.” It appears that one of the specific products considered by the applicant is something similar to that sold by the opponent under its trade-mark MCCAIN PIZZA POCKETS.

The issue then becomes the degree of specificity required of the applicant in describing its proposed wares. The term “snack foods” or “snack products” would likely be too broad as it does not provide sufficient information to give a meaningful description of the wares. However, restricting the category of snack foods to those made with dough made from one type of grain or to those having qualities resembling a pizza appears to give enough information to determine the nature of the wares by those in the food industry. For example, Mr. Yung himself includes among the competitors for the MCCAIN PIZZA POCKETS product what he calls “Private Label Pizza Snacks.” The opponent itself uses the term “pizza pockets” generically on its own product to describe its pizza snacks (see the description under the heading “Baking Instructions” on Exhibit F-1 to the Yung affidavit).

In view of the above, I find that the applicant’s statement of wares does conform with the requirements of Section 30(a) of the Act. Although the last two descriptions under discussion may cover more than one specific product, that fact, by itself, is not fatal to the present application. Thus, the first ground of opposition is unsuccessful.

As for the second ground of opposition, there was an initial burden on the opponent to submit evidence from which it could be concluded that the applicant did not intend to use its applied for trade-mark by itself or through a licensee when it filed the present application. The opponent failed to file evidence on point. Furthermore, the Pasquarelli affidavit and transcript are consistent with the applicant's intention to use the trade-mark PIZZA CHIPS by itself or through a licensee. Thus, the second ground is also unsuccessful.

The third ground does not raise a proper ground of opposition. The opponent merely reproduced the wording from Section 30(i) of the Act but did not include any supporting allegations of fact. Thus, the third ground is also unsuccessful.

As for the opponent's fourth ground of opposition, the material time for considering the circumstances respecting the issue arising pursuant to Section 12(1)(b) of the Act is the date of my decision: see the decision in Lubrication Engineers, Inc. v. The Canadian Council of Professional Engineers (1992), 41 C.P.R.(3d) 243 (F.C.A.). Furthermore, the issue is to be determined from the point of view of an everyday user of the wares. Finally, the trade-mark in question must not be carefully analyzed and dissected into its component parts but rather must be considered in its entirety and as a matter of first impression: see Wool Bureau of Canada Ltd. v. Registrar of Trade Marks (1978), 40 C.P.R.(2d) 25 at 27-28 and Atlantic Promotions Inc. v. Registrar of Trade Marks (1984), 2 C.P.R.(3d) 183 at 186.

As noted by the opponent, both components of the applicant's proposed mark have been disclaimed. Thus, the applicant has conceded that each component is non-distinctive, presumably because it is clearly descriptive of one or more of the applicant's proposed wares. The issue then becomes whether the combination (i.e. - PIZZA CHIPS) offends the provisions of Section 12(1)(b) of the Act. The applicant contends that since the phrase "pizza chips" cannot be found in dictionaries or in the snack food trade, it cannot be clearly descriptive. However, the test is not whether the trade-mark has a known definition or has been used by others but rather what it means to an everyday user of the wares.

In the context of the applicant's wares "snack products made from corn based dough excluding tortilla chips" and "pizza-like snack foods, namely snack foods having pizza type toppings and ingredients excluding potatoes", the word CHIPS clearly points to a thin, edible, grain-based snack item similar to a potato chip or a corn chip. The use of the word PIZZA and the word CHIPS with the applicant's wares points to three possibilities depending on which specific product the applicant chooses to ultimately produce, namely (1) chips with pizza-like toppings, (2) chips that look like pizzas and (3) pizza-flavored chips. Given that all of those possibilities clearly describe the character of the wares, I find that the applicant's trade-mark PIZZA CHIPS is either clearly descriptive or deceptively misdescriptive of "snack products made from corn based dough excluding tortilla chips" and "pizza-like snack foods, namely snack foods having pizza type toppings and ingredients excluding potatoes."

As for the remaining wares in the applicant's application, they all comprise pizza. In that context, the trade-mark PIZZA CHIPS does not clearly describe the character or quality of the wares. Although the component PIZZA is clearly descriptive, the combination PIZZA CHIPS does not, as a matter of first impression, tell the consumer anything meaningful about the wares. Thus, the fourth ground of opposition is successful in relation to the wares "snack products made from corn based dough excluding tortilla chips" and "pizza-like snack foods, namely snack foods having pizza type toppings and ingredients excluding potatoes" but is otherwise unsuccessful.

As for the fifth ground of opposition, there is an initial burden on the opponent to provide evidence showing that the words PIZZA CHIPS are the name of the applicant's wares. The opponent has failed to evidence any reference materials or trade activities which point to the words PIZZA CHIPS as the name of any wares. Thus, the fifth ground is unsuccessful.

As for the sixth ground of opposition, 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 trade-mark PIZZA CHIPS is an inherently weak mark being clearly descriptive of the wares "snack products made from corn based dough excluding tortilla chips" and "pizza-like snack foods, namely snack foods having pizza type toppings and ingredients excluding potatoes" and suggestive of the remaining wares. Since there is no evidence of use or advertising of the applicant's mark, I must conclude that it has not become known at all in Canada.

All of the opponent's registered trade-marks are inherently weak marks since they are suggestive of the character of the related wares. The Yung affidavit establishes that the opponent's trade-mark MCCAIN PIZZA POCKETS has been widely used and advertised in Canada with the opponent's pizza-like snack product. Thus, I am able to conclude that it has become well known in Canada.

Given the deficiencies in the Yung affidavit, I am unable to determine the extent to which the opponent's trade-marks DOLLAR CHIPS and CHIP WAGON FRIES have been used and advertised in Canada. Thus, I can only ascribe a limited acquired reputation to these two marks. Since there is no evidence of use or advertising for the remaining marks, I must conclude that they have not become known at all in Canada.

The length of time the marks have been in use favors the opponent. As for the wares and trades of the parties, it is the applicant's statement of wares and the opponent's statements of wares in its various registrations that govern: see Mr. Submarine Ltd. v. Amandista Investments Ltd. (1987), 19 C.P.R.(3d) 3 at 10-11 (F.C.A.), Henkel Kommanditgesellschaft v. Super Dragon (1986), 12 C.P.R.(3d) 110 at 112 (F.C.A.) and Miss Universe, Inc. v. Dale Bohna (1994), 58 C.P.R.(3d) 381 at 390-392 (F.C.A.). However, those statements must be read with

a view to determining the probable type of business or trade intended by the parties rather than all possible trades that might be encompassed by the wording. In this regard, evidence of the actual trades of the parties is useful: see the decision in McDonald's Corporation v. Coffee Hut Stores Ltd. (1996), 68 C.P.R.(3d) 168 at 169 (F.C.A.).

The wares associated with the opponent's trade-mark MCCAIN PIZZA POCKETS are similar to the applicant's wares, particularly those described as "pizza-like snack foods." The wares listed in the registrations for DOLLAR CHIPS and CHIP WAGON FRIES are frozen potato products and therefore differ from the applicant's wares except to the extent that they are all food products. The wares listed in the remaining registrations all have counterparts in the applicant's statement of wares.

The applicant has acknowledged that its trade will include grocery stores and general retailing. The opponent's wares are generally sold through grocery stores, presumably in the frozen foods section. Thus, there is a potential overlap in the trades of the parties. This is particularly true in relation to the pizza wares of both parties and the applicant's snack food products which could easily be sold through the same channels of trade as are the opponent's MCCAIN PIZZA POCKETS product and PIZZA SUB product.

As for Section 6(5)(e) of the Act, there is a minor degree of resemblance between the applicant's mark and each of the opponent's registered marks. However, that resemblance is due in each case to the common use of the non-distinctive term PIZZA or CHIP(S).

The applicant has submitted that the significance of any resemblance between the marks is mitigated by the state of the register evidence introduced by means of the Muratovic affidavit. State of the register evidence is only relevant insofar as one can make inferences from it about the state of the marketplace: see the opposition decision in Ports International Ltd. v. Dunlop Ltd. (1992), 41 C.P.R.(3d) 432 and the decision in Del Monte Corporation v. Welch Foods Inc. (1992), 44 C.P.R.(3d) 205 (F.C.T.D.). Also of note is the decision in Kellogg Salada Canada Inc. v. Maximum Nutrition Ltd. (1992), 43 C.P.R.(3d) 349 (F.C.A.) which is

support for the proposition that inferences about the state of the marketplace can only be drawn from state of the register evidence where large numbers of relevant registrations are located.

In the present case, Mr. Muratovic's search revealed a large number of food trade-marks incorporating the word **CHIP** and an even larger number incorporating the word **PIZZA**. Furthermore, in reply to an undertaking given during cross-examination, Mr. Pasquarelli confirmed his familiarity with a number of those marks. I am therefore able to conclude that many of those marks are in active use in the marketplace. Consequently, consumers would be accustomed to seeing such marks and would therefore be more likely to differentiate them based on their other components. This conclusion greatly diminishes the effect of any resemblance between the marks at issue.

In applying the test for confusion, I have considered that it is a matter of first impression and imperfect recollection. In view of my conclusions above, and particularly in view of the inherent weakness of the marks of the parties, the low degree of resemblance between the marks at issue and the common adoption and use by others of food trade-marks incorporating either the word **CHIP** or **PIZZA**, I find that the applicant's trade-mark **PIZZA CHIPS** is not confusing with any of the opponent's seven registered marks. The sixth ground of opposition is therefore unsuccessful.

As for the seventh ground of opposition, the opponent asserts that the applied for trade-mark is not registrable pursuant to Section 12(1)(e) because it contravenes Section 10 of the Act which reads as follows:

Where any mark has by ordinary and 'bona fide' commercial usage become recognized in Canada as designating the kind, quality, quantity, destination, value, place of origin or date of production of any wares or services, no person shall adopt it as a trademark in association with such wares or services or others of the same general class or use it in a way likely to mislead, nor shall any person so adopt or so use any mark so nearly resembling that mark as to be likely to be mistaken therefor.

The relevant date for determining the "ordinary and *bona fide* commercial usage" of the mark

for the purposes of Section 10 would appear to be the date of my decision: see Olympus Optical Company Ltd. v. Canadian Olympic Association (1991), 38 C.P.R. (3d) 1 at 3-4 (F.C.A.).

There is no evidence that any trader has used the term PIZZA CHIPS to describe wares of the type listed in the applicant's statement of wares. Furthermore, there is no evidence that the term PIZZA CHIPS has an accepted definition or meaning in the snack food industry or the food trade. Thus, the opponent has failed to meet its evidential burden and the seventh ground is unsuccessful.

The opponent's agent submitted that Section 10 is not necessarily restricted to a prohibition against the adoption of a specific mark. She submitted that the words "any mark" in Section 10 can also refer to a mark comprising a prohibited term preceded by any adjective which is descriptive of the applied for wares. In other words, in the present case, an applicant would be precluded from registering any trade-mark for snack foods comprising the word CHIPS preceded by a descriptive word such as POTATO, CORN or even PIZZA.

I disagree with the opponent's interpretation. If Section 10 were intended to have a broader effect, then presumably the wording of the section would have been expanded to specifically cover such formatives. Furthermore, giving the section the interpretation placed on it by the opponent would arguably preclude registration of a trade-mark such as PIZZA PIZZA which has otherwise been found registrable: see Pizza Pizza Ltd. v. Registrar of Trade Marks (1982), 67 C.P.R.(2d) 202 (F.C.T.D.).

As for the eighth ground of opposition, the opponent failed to evidence use of any of the seven trade-marks relied on prior to the applicant's filing date of December 6, 1993. Thus, the opponent failed to meet its initial burden under Section 16(3)(a) of the Act and the eighth ground is unsuccessful.

As for the ninth ground of opposition, 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. - November 28, 1995): 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.).

As noted, the opponent failed to evidence any use or reputation for its registered trade-marks **PANTASTIC PIZZA, POCKET PIZZA, PIZZA SUB and PIZZA SUB Design**. Thus, the ninth ground essentially turns on the issue of confusion between the applicant's mark and the opponent's three other registered marks. In this regard, my conclusions respecting the issue of confusion with those marks under the sixth ground are, for the most part, applicable to this ground as well. Thus, I find that the applicant's trade-mark was not confusing with the opponent's trade-marks **MCCAIN PIZZA POCKETS, DOLLAR CHIPS and CHIP WAGON FRIES** as of the filing of the present opposition. Consequently, the opponent has failed to show that the applicant's mark was not distinctive as of that date and the ninth ground is unsuccessful.

In view of the above, and pursuant to the authority delegated to me under Section 63(3) of the Act, I refuse the applicant's application in respect of the wares "snack products made from corn based dough excluding tortilla chips" and "pizza-like snack foods, namely snack foods having pizza type toppings and ingredients excluding potatoes" and I otherwise reject the opposition. Authority for such a divided result may be found in Produits Menagers Coronet Inc. v. Coronet-Werke Heinrich Schlerf GmbH (1986), 10 C.P.R.(3d) 482 at 492 (F.C.T.D.).

DATED AT HULL, QUEBEC, THIS 5th DAY OF JUNE, 2001.

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