

**IN THE MATTER OF AN OPPOSITION by ALLIANZ OF CANADA, INC., ALLIANZ INSURANCE COMPANY OF CANADA, ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA and ALLIANZ AKTIENGESELLSCHAFT HOLDING (now ALLIANZ AKTIENGESELLSCHAFT) to application No. 821,347 for the trade-mark ALLIANCE MATURITÉ filed by ALLIANCE MATURITÉ INC.**

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On August 22, 1996, the applicant, ALLIANCE MATURITÉ INC., filed an application to register the trade-mark ALLIANCE MATURITÉ based on use of the trade-mark in Canada since at least as early as June 1996 in association with “Services d’assurances.”.

The present application was advertised for opposition purposes in the *Trade-marks Journal* of March 19, 1997 and the opponents, ALLIANZ OF CANADA, INC., ALLIANZ INSURANCE COMPANY OF CANADA, ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA and ALLIANZ AKTIENGESELLSCHAFT HOLDING, filed a statement of opposition on August 25, 1997, a copy of which was forwarded to the applicant on September 23, 1997. The applicant served and filed a counter statement in response to the statement of opposition on January 6, 1998. The opponents submitted as their evidence the affidavits of Bernd Honsel, Chao Ying Lin, Judy DesRoches and Edward J. Bonach, together with certified copies of registration Nos. 394,825 and 268,005 for the trade-marks MATURITY SECURITY PLAN and ALLIANZ & Design. The applicant elected not to file any evidence. Both parties submitted written arguments and the opponents alone were represented at an oral hearing. Further, the opponents advised the Registrar at the time of filing their written argument that ALLIANZ AKTIENGESELLSCHAFT HOLDING had changed its name to ALLIANZ AKTIENGESELLSCHAFT.

The following are the grounds of opposition asserted by the opponents in their statement of opposition:

- a) The present application does not comply with the requirements of subsection 30(b) of the *Trade-marks Act* in that the applicant has not used the trade-mark ALLIANCE MATURITÉ in Canada in association with insurance services since June 1996, as alleged in the present application.
- b) The present application does not comply with the requirements of subsection 30(i) of the *Trade-marks Act* in that, as of the filing date of the application, the applicant could not have been satisfied that it was entitled to use the trade-mark ALLIANCE MATURITÉ in Canada in association with insurance services, given the

prior use and making known of :

(i) the opponent, ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA's registered trade-mark MATURITY SECURITY PLAN, registration No. 394,825, by the opponent, ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA, and its predecessor-in-title, Allstate Insurance Company, in association with insurance services;

(ii) the opponent, ALLIANZ AKTIENGESELLSCHAFT HOLDING's registered trade-mark ALLIANZ & Design, registration No. 268,005, represented below, by ALLIANZ AKTIENGESELLSCHAFT HOLDING and its licensees, ALLIANZ OF CANADA, INC., ALLIANZ INSURANCE COMPANY OF CANADA and ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA, under strict quality control supervision, in association with the issuance and underwriting of property, casualty and surety insurance services;



(iii) the opponents trade-names ALLIANZ OF CANADA, INC., ALLIANZ INSURANCE COMPANY OF CANADA, ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA, ALLIANZ AKTIENGESELLSCHAFT HOLDING and ALLIANZ used in association with insurance services.

At the date of filing the present application, the applicant was aware of the opponent ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA's registered trade-mark MATURITY SECURITY PLAN and the opponent ALLIANZ AKTIENGESELLSCHAFT HOLDING's registered trade-mark ALLIANZ & Design, and the opponents trade-names ALLIANZ OF CANADA, INC., ALLIANZ INSURANCE COMPANY OF CANADA, ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA, ALLIANZ AKTIENGESELLSCHAFT HOLDING and ALLIANZ.

c) The trade-mark ALLIANCE MATURITÉ is not registrable under paragraph 12(1)(d) of the *Trade-marks Act* because it is confusing with any one or a combination of the opponents' prior registered trade-marks MATURITY SECURITY PLAN, registration No. 394,825, covering insurance services and ALLIANZ & Design, registration No. 268,005, covering issuance and underwriting of property, casualty and surety insurance services.

d) The applicant is not the person entitled to registration of the trade-mark ALLIANCE MATURITÉ in that, as of the date on which the applicant allegedly first used the trade-mark, namely, June 1996, the applicant's mark was confusing with the opponent ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA's trade-mark MATURITY SECURITY PLAN which had been previously used and made known in Canada by the opponent ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA in association with insurance services and the opponent ALLIANZ AKTIENGESELLSCHAFT HOLDING's registered trade-mark ALLIANZ & Design and its unregistered word trade-mark ALLIANZ which had been previously used and made known in Canada by the opponent ALLIANZ AKTIENGESELLSCHAFT HOLDING and its licensees, ALLIANZ OF CANADA, INC., ALLIANZ INSURANCE COMPANY OF CANADA and ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA, under strict quality control supervision, in association with the issuance and underwriting of property, casualty and surety insurance.

e) The applicant is not the person entitled to registration of the trade-mark ALLIANCE MATURITÉ in that, as of the date on which the applicant allegedly first used the trade-mark, namely, June 1996, the applicant's mark was confusing with the opponent's trade-names. Each of the opponents use their respective trade-name in Canada as follows: ALLIANZ OF CANADA, INC. used in association with insurance services; ALLIANZ INSURANCE COMPANY OF CANADA used in

association with insurance services; ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA used in association with insurance services; ALLIANZ AKTIENGESELLSCHAFT HOLDING used in association with insurance services namely the issuance and underwriting of property, casualty and surety insurance; and ALLIANZ used by ALLIANZ AKTIENGESELLSCHAFT HOLDING in association with the issuance and underwriting of property, casualty and surety insurance, and by the opponents, ALLIANZ OF CANADA, INC., ALLIANZ INSURANCE COMPANY OF CANADA and ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA, under license to ALLIANZ AKTIENGESELLSCHAFT HOLDING and under strict quality control supervision, in association with insurance services.

f) The applicant's trade-mark is not distinctive because it does not actually distinguish and is not adapted to distinguish the applicant's insurance services from the services of others, including the issuance and underwriting of property, casualty and surety insurance by the opponent ALLIANZ AKTIENGESELLSCHAFT HOLDING under the registered trade-mark ALLIANZ & Design, the insurance services of the opponent ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA and its predecessor-in-title, Allstate Insurance Company, under the registered trade-mark MATURITY SECURITY LIFE, and the insurance services of the opponents under the trade-names ALLIANZ OF CANADA, INC., ALLIANZ INSURANCE COMPANY OF CANADA, ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA and ALLIANZ AKTIENGESELLSCHAFT HOLDING and the services of the opponents used under the unregistered trade-mark ALLIANZ as follows: used by ALLIANZ AKTIENGESELLSCHAFT HOLDING in association with the issuance and underwriting of property, casualty and surety insurance; and used by ALLIANZ OF CANADA, INC., ALLIANZ INSURANCE COMPANY OF CANADA and ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA under license to ALLIANZ AKTIENGESELLSCHAFT HOLDING and under strict quality control supervision, in association with insurance services.

At the oral hearing, the agent for the opponents advised the Registrar that they would not be proceeding with their grounds of opposition based on the trade-mark MATURITY SECURITY PLAN as registration No. 394,825 has been expunged from the register. As a result, it is unnecessary to consider those grounds of opposition.

The first two grounds of opposition are based on section 30 of the *Trade-marks Act*. While the legal burden is on the applicant to show that its application complies with section 30 of the *Trade-marks Act*, there is an initial evidential burden on the opponents to adduce sufficient admissible evidence which, if believed, would support the truth of the allegations relating to the section 30 grounds [see *Joseph E. Seagram & Sons Ltd. et al v. Seagram Real Estate Ltd.*, 3 C.P.R. (3d) 325, at pp. 329-330]. Further, the material time for considering the circumstances respecting the issue of non-compliance with section 30 of the *Act* is the filing date of the application [see *Georgia-Pacific Corp. v. Scott Paper Ltd.*, 3 C.P.R.(3d) 469, at p. 475].

No evidence has been furnished by the opponents to support their allegation that the applicant has not used its trade-mark ALLIANCE MATURITÉ in Canada since June, 1996 in association with insurance services. As a result, the opponents have failed to meet their evidential burden in relation to the first ground. I have therefore dismissed the subsection 30(b) ground. Likewise, no evidence has been furnished by the opponents to show that the applicant could not have been satisfied that it was entitled to use its trade-mark ALLIANCE MATURITÉ in Canada. Moreover, to the extent that the subsection 30(i) ground is founded upon allegations set forth in the remaining grounds of opposition, the success of this ground is contingent upon a finding that the trade-mark ALLIANCE MATURITÉ is not registrable or not distinctive, or that the applicant is not the person entitled to registration of the trade-mark ALLIANCE MATURITÉ, as alleged in those grounds [see *Consumer Distributing Co. Ltd. v. Toy World Ltd.*, 30 C.P.R. (3d) 191, at p.195; and *Sapodilla Co. Ltd. v. Bristol-Myers Co.*, 15 C.P.R.(2d) 152, at p.155]. I will therefore consider the remaining grounds of opposition.

The third ground is based on paragraph 12(1)(d) of the *Trade-marks Act*, the opponents alleging that the trade-mark ALLIANCE MATURITÉ is confusing with the registered trade-mark ALLIANZ & Design, registration No. 268,005. In determining whether there would be a reasonable likelihood of confusion between the trade-marks at issue, the Registrar must have regard to all of the surrounding circumstances including those specifically set forth in subsection 6(5) of the *Trade-mark Act*. Further, the Registrar must bear in mind that the onus or legal burden is on the applicant to show that there would be no reasonable likelihood of confusion between the trade-marks at issue as of the date of my decision, the material date with respect to the paragraph 12(1)(d) ground [see *Park Avenue Furniture Corporation v. Wickes/Simmons Bedding Ltd. and The Registrar of Trade Marks*, 37 C.P.R. (3d) 413 (F.C.A.)].

Considering initially the inherent distinctiveness of the trade-marks at issue [para.6(5)(a)], the applicant's trade-mark ALLIANCE MATURITÉ as applied to "Services d'assurances." and the registered trade-mark ALLIANZ & Design when applied to the issuance and underwriting of property, casualty and surety insurance services both possess some measure of inherent distinctiveness when considered in their entireties.

With respect to the extent to which the trade-marks at issue have become known [para.6(5)(a)] and the length of time the marks have been in use [para.6(5)(b)], the applicant has not submitted any evidence in this opposition and its trade-mark ALLIANCE MATURITÉ must be considered as not having become known to any extent in Canada. On the other hand, the opponents' evidence establishes that the registered trade-mark ALLIANZ & Design has become known in Canada in association with services relating to the issuance and underwriting of property, casualty and surety insurance. In particular, in her affidavit, Judy DesRoches, Assistant Vice-President, Marketing of Allianz Insurance Company of Canada and of Trafalgar Insurance Company of Canada, states that both companies are licensed by Allianz Aktiengesellschaft to use the trade-marks ALLIANZ and ALLIANZ & Design in Canada and that, from 1993 to July of 1998, Allianz Insurance Company of Canada and Trafalgar Insurance Company of Canada have underwritten insurance policies in Canada which represent in excess of \$350,000,000 in premiums. Further, Edward J. Bonach, Vice President and Chief Financial Officer of Allianz Life Insurance Company of North America, states in his affidavit that his company is licensed by Allianz Aktiengesellschaft to use the trade-marks ALLIANZ and ALLIANZ & Design. Mr. Bonach sets out in paragraph 6 of his affidavit his company's annual direct and assumed earnings, including the payments for the first year and the renewal of its policies provided in Canada in association with the ALLIANZ & Design mark from 1992 to 1998, the total exceeding \$91,000,000. Thus, both the extent to which the trade-marks at issue have become known and the length of time the marks have been in use clearly favour the opponents in this opposition.

As for the nature of the services [para.6(5)(c)] and the nature of the trade of the parties [para.6(5)(d)], the applicant's insurance services overlap the services relating to the issuance and underwriting of property, casualty and surety insurance covered in registration No.268,005. Furthermore, I would expect there to be a potential overlap in the nature of the trade associated with the respective services of the parties. As a result, both of these criteria weigh in the opponents' favour.

Considering the degree of resemblance between the trade-marks at issue, the applicant's trade-mark ALLIANCE MATURITÉ bears at least some similarity in appearance and in sounding

to the registered trade-mark ALLIANZ & Design although the marks do not appear to convey similar ideas.

Having regard to the foregoing and, in particular, to the fact that the services and the nature of the trade of the parties overlap and that the trade-marks at issue bear some similarity in appearance and in sounding, and bearing in mind that the applicant has not adduced any evidence in support of its application, I find that the applicant has not met the legal burden on it of showing that there would be no reasonable likelihood of confusion between its trade-mark ALLIANCE MATURITÉ and the registered trade-mark ALLIANZ & Design. Thus, the third ground of opposition is successful.

The fourth ground is based on subsection 16(1) of the *Trade-marks Act*, the opponents relying *inter alia* on their prior use of their trade-marks ALLIANZ & Design and ALLIANZ in challenging the applicant's entitlement to registration. The opponents' evidence establishes that the trade-marks ALLIANZ & Design and ALLIANZ have been used in Canada prior to June of 1996 in association with insurance services and that the marks had not been abandoned as of the date of advertisement of the present application. The opponents have therefore met the initial burden on them under subsections 16(5) and 17(1) of the *Trade-marks Act*. Consequently, this ground turns on the issue of confusion between the applicant's trade-mark ALLIANCE MATURITÉ and the opponents' trade-marks ALLIANZ & Design and ALLIANZ. Again, in assessing whether there would be a reasonable likelihood of confusion between the applicant's trade-mark and the opponents' trade-marks ALLIANZ & Design and ALLIANZ, the Registrar must have regard to all of the surrounding circumstances and must bear in mind that the legal burden is on the applicant to show that there would be no reasonable likelihood of confusion between its trade-mark ALLIANCE MATURITÉ and the opponents' marks as of the applicant's claimed date of first use.

The applicant's trade-mark ALLIANCE MATURITÉ as applied to "Services d'assurances." and the opponent's trade-marks ALLIANZ and ALLIANZ & Design when applied to insurance services possess some measure of inherent distinctiveness. As noted above, the applicant's trade-mark ALLIANCE MATURITÉ must be considered as not having become known to any extent in Canada while the opponents' evidence establishes that the trade-marks ALLIANZ and ALLIANZ

& Design have become known in Canada in association with insurance services. The nature of the services and the nature of the trade of the parties are the same and there is at least some similarity in appearance and in sounding between the applicant's trade-mark ALLIANCE MATURITÉ and the opponents' trade-marks ALLIANZ and ALLIANZ & Design although the marks do not appear to convey similar ideas.

Having regard to the foregoing and, in particular, to the fact that the services and the nature of the trade of the parties overlap and that the trade-marks at issue bear some similarity in appearance and in sounding, and bearing in mind that the applicant has not adduced any evidence in support of its application, I find that the applicant has not met the legal burden on it of showing that there would be no reasonable likelihood of confusion between its trade-mark ALLIANCE MATURITÉ and the trade-marks ALLIANZ and ALLIANZ & Design as of its claimed date of first use. Thus, the fourth ground of opposition is also successful.

In view of the above, I have not considered the opponents' remaining grounds of opposition. However, having concluded that the applicant's trade-mark is confusing with the opponents' trade-marks, it would follow that the applicant's trade-mark is not distinctive.

Having been delegated by the Registrar of Trade-marks by virtue of subsection 63(3) of the *Trade-marks Act*, I refuse the applicant's application pursuant to subsection 38(8) of the *Trade-marks Act*.

DATED AT HULL, QUEBEC THIS 11<sup>th</sup> DAY OF JANUARY, 2001.

G.W.Partington,  
Chairperson,  
Trade-marks Opposition Board.