

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

Citation: 2016 TMOB 49
Date of Decision: 2016-03-30

Jorge Suhail Monem

Opponent

and

Timothy M. Lingle

Applicant

**1,588,351 for WE LOVE BC & Heart
Design**

Application

[1] On July 31, 2012, Jorge Suhail Monem filed an application to register the trade-mark WE LOVE BC & Heart Design set out below (the Mark) on the basis of his proposed use in association with beverages, fruit, snack foods, clothing, stationery, CDs and accessories and the wholesale and online sale of these goods. The specific goods and services are set out in Schedule A (the Goods and Services).



[2] The application was advertised for opposition purposes in the *Trade-marks Journal* of January 29, 2014.

[3] On February 24, 2014, Timothy M. Lingle (the Opponent) filed a statement of opposition pleading the grounds summarized below:

- (a) the application does not comply with section 30(e) of the *Trade-marks Act*, RSC 1985, c T-13 (the Act) as the application does not include an accurate statement that the Applicant intends to use the Mark in Canada, in that the Applicant does not intend to use the Mark in association with all of the Goods and Services;
- (b) the application does not comply with section 30(i) of the Act since, having regard to the Opponent's use and registration of the trade-mark I HEART BC & Design, the Applicant could not have been satisfied that he is entitled to use the Mark;
- (c) the Mark is not registrable pursuant to section 12(1)(d) of the Act having regard to registration No. TMA713,162;
- (d) the Applicant is not the person entitled to registration of the Mark in view of section 16(3)(a) of the Act since the Mark is confusing with the Opponent's trade-mark I HEART BC & Design that had been previously used, and which continues to be used, in Canada by the Opponent; and
- (e) the Mark is not distinctive because it does not distinguish the Goods and Services.

[4] The Applicant filed and served a counter statement in which it denied the Opponent's allegations.

[5] The Opponent filed an affidavit in his own name as his evidence. Unless otherwise noted all references to Mr. Lingle's evidence in this decision refer to this affidavit. The Applicant filed as his evidence the affidavit of Katherine Dedul. The Opponent filed an affidavit in his name in

reply to the Applicant's evidence (Reply Affidavit of Timothy Lingle). The Opponent filed a written argument. The Applicant alone attended a hearing.

Material Dates and Onus

[6] The material dates that apply to the grounds of opposition are as follows:

- sections 38(2)(a)/30 - the filing date of the application [*Georgia-Pacific Corp v Scott Paper Ltd* (1984), 3 CPR (3d) 469 (TMOB) at 475];
- section 38(2)(b) – the date of this decision [*Park Avenue Furniture Corporation v Wickes/Simmons Bedding Ltd and The Registrar of Trade Marks* (1991), 37 CPR (3d) 413 (FCA)];
- sections 38(2)(c)/16(3) - the filing date of the application [see section 16(3) of the Act];
and
- sections 38(2)(d)/2 - the date of filing of the opposition [see *Metro-Goldwyn-Mayer Inc v Stargate Connections Inc* (2004), 2004 FC 1185 (CanLII), 34 CPR (4th) 317 at 324 (FC)].

[7] Before considering each of the grounds of opposition, it is necessary to review some of the technical requirements with regard to (i) the evidential burden on an opponent to support the allegations in the statement of opposition and (ii) the legal onus on an applicant to prove its case.

[8] With respect to (i) above, there is an evidential burden on an opponent to prove the facts in the allegations pleaded in the statement of opposition: *John Labatt Limited v Molson Companies Limited* (1990), 30 CPR (3d) 293 (FCTD) at 298. The presence of an evidential burden on the opponent with respect to a particular issue means that in order for the issue to be considered at all, there must be sufficient evidence from which it could reasonably be concluded that the facts alleged to support that issue exist. With respect to (ii) above, the legal onus is on an applicant to show that the application does not contravene the provisions of the Act as alleged by an opponent (for those allegations for which the opponent has met its evidential burden). The presence of a legal onus on an applicant means that if a determinate conclusion cannot be

reached once all the evidence is in, then the issue must be decided against it.

Grounds of Opposition Which Can Summarily Be Dismissed


[9] The section 30(e) ground of opposition alleges that the Applicant did not intend to use the Mark in Canada with each of the Goods and Services. There is no evidence that supports this ground of opposition. Consequently, it is rejected on the basis that the Opponent has not satisfied his initial burden.

[10] The section 30(i) ground of opposition alleges that the Applicant could not have been satisfied that he was entitled to use the Mark because it is confusing with the Opponent's trade-mark. Where the Applicant has provided the statement required by section 30(i), this ground should only succeed in exceptional cases such as where there is evidence of bad faith [*Sapodilla Co v Bristol-Myers Co* (1974), 15 CPR (2d) 152 (TMOB) at 155]. As this application includes the required statement and there is no allegation or evidence of bad faith or other exceptional circumstances, the section 30(i) ground is rejected.

Remaining Grounds of Opposition

Section 12(1)(d) Ground of Opposition

[11] The Opponent has pleaded that the Mark is not registrable under section 12(1)(d) of the Act as it is confusing with the Opponent's trade-mark set out below:

Registration No.	Trade-mark	Opponent's Registered Goods and Services
TMA713,162		<u>GOODS:</u> (1) Clothing, namely, t-shirts. (2) Novelty items, namely, stickers. (3) Clothing, namely, athletic wear, beach wear, casual wear, childrens wear, exercise wear, gym wear, sports wear, outdoor spring, summer and fall wear and outdoor winter wear; headwear, namely, hats, caps, toques, bandanas and visors; jewellery; novelty items, namely, posters, decals, playing cards, mugs, insulated drinking steins, badges, crests, patches, cups, zipper tags, water bottles, pins,

		<p>pens, pencils and key rings; sunglasses; bags, namely, all purpose athletic bags, all purpose sport bags, gym bags, school bags, knapsacks, shoulder bags, beach bags, water bottle holders, fanny packs and tote bags; wallets; and towels.</p> <p><u>SERVICES:</u></p> <p>(1) Retail sale of clothing and novelty items.</p> <p>(2) Retail sale of headwear, jewellery, sunglasses, bags, wallets, and towels; online retail sale of clothing, headwear, jewellery, novelty items, sunglasses, bags, wallets, towels.</p>
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[12] I have exercised my discretion and checked the register to confirm that this registration is extant. Therefore, the Opponent has met his initial burden with respect to this ground.

Test to Determine Confusion

[13] The test to determine the issue of confusion is set out in section 6(2) of the Act where it is stipulated 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 likely lead to the inference that the goods and services associated with those trade-marks are manufactured, sold or leased by the same person, whether or not the goods and services are of the same general class. In making such an assessment I must take into consideration all the relevant surrounding circumstances, including those listed in section 6(5): the inherent distinctiveness of the trade-marks and the extent to which they have become known; the length of time the trade-marks have been in use; the nature of the goods and services or business; the nature of the trade; and the degree of resemblance between the trade-marks in appearance, or sound or in the ideas suggested by them. In *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée*, [2006] 1 SCR 824 at para 20, the Supreme Court of Canada set out how the test is to be applied:

The test to be applied is a matter of first impression in the mind of a casual consumer somewhat in a hurry who sees the [mark] at a time when he or she has no more than an imperfect recollection of the [prior] trade-marks and does not pause to give the matter any

detailed consideration or scrutiny, nor to examine closely the similarities and differences between the marks.

The criteria in section 6(5) are not exhaustive and different weight will be given to each one in a context specific assessment [*Mattel, Inc v 3894207 Canada Inc*, [2006] 1 SCR 772 (SCC) at para 54]. I also refer to *Masterpiece Inc v Alavida Lifestyles Inc* (2011), 92 CPR (4th) 361 (SCC) at para 49, where the Supreme Court of Canada states that section 6(5)(e), the resemblance between the marks, will often have the greatest effect on the confusion analysis.

Inherent Distinctiveness

[14] The Opponent's trade-mark I HEART BC & Design does not possess a high degree of inherent distinctiveness as it suggests that the Opponent's Registered Goods and Services are directed at those that love BC. Further, since the degree of stylization is relatively limited it does not significantly increase the trade-mark's inherent distinctiveness. Similarly, the Mark also suggests those that love BC and has a similar degree of stylization. As such, it is also a relatively weak trade-mark.

Extent Known

[15] There is no evidence that the Mark is known to any extent in Canada. With respect to the Opponent's trade-mark I HEART BC & Design, the Opponent has only provided limited evidence of sales and promotion through invoices showing the sale of approximately 30 items (Exhibits E, L), the price list (Exhibit N) and the display of the Opponent's Registered Goods and Services featuring the trade-mark at one trade show (Exhibit G). This evidence is not sufficient for me to conclude that the Opponent's trade-mark is known to any extent in Canada or BC. The Opponent also provides screenshots of the *ilovebc.ca* website featuring the trade-mark (Exhibit H) and website analytics showing over 80,000 hits to this website from January 2014 until August 2014 (Exhibit K). Even if I was to accept the evidence of hits, notwithstanding that it is hearsay, as the average visit lasts only 35 seconds, in the absence of other evidence of promotion or sales, the website analytics evidence does not allow me to find that the Opponent's trade-mark is known to any extent in Canada or BC.

Length of Time in Use

[16] There is no evidence that the Mark has been in use in Canada. With respect to the Opponent's registration which registered on April 29, 2008, while there is some limited evidence of use, it is difficult to determine whether such use has been more than *de minimis* for any length of time. For example, in his business plan dated March 7, 2013, the Opponent states (Exhibit O, page 3):

The financial plan of I [HEART] BC will have realistic shorter term goals that will put I [HEART] BC into a positive cash flow position by the end of the first year. Because of I [HEART] BC's low overhead, the startup costs are minimal ... The business funding requirements ... are for the production of promotional and sample items, the website to be designed and for travel and operational expenses. I [HEART] BC will use the funding from the YMB program for the startup costs, and the remainder to be used for operational expenses.

Nature of the Goods and Services and the Trade

[17] The Applicant's clothing and headwear, stickers, key chains, water bottles, cloth towels, coffee mugs, drinking glasses, lapel pins, stationery, CDs, clothing accessories, sunglasses, flags and blankets and services related to the sales of these items (the Overlapping Goods and Services) set out below are identical to or significantly overlap with the Opponent's Registered Goods and Services.

GOODS:

packaged clothing, namely, casual, sports, athletic and jackets; headwear, namely, hats, caps and touques; key chains; coffee mugs; drinking glasses and shot glasses; water bottles; stationery, namely, writing paper, writing pads, note paper, note pads, envelopes, pens and pencils; cell phone cases; pre-recorded CDs containing music; postcards; fridge magnets; stickers; clothing accessories, namely, scarves; jewellery; sunglasses; flags; blankets; cloth towels; and lapel pins

SERVICES:

Wholesale and online sale of clothing, headwear, key chains, coffee mugs, drinking glasses and shot glasses, water bottles, stationery, cell phone cases, pre-recorded CDs containing music, postcards, fridge magnets, stickers, scarves, jewellery, sunglasses, flags, blankets, cloth towels and lapel pins

Due to the overlap in the nature of goods, I would expect the channels of trade to overlap.

[18] On the other hand, the Applicant's beverage and food products and the sale of these products (the Food Related Goods and Services) set out below appear to differ from the Opponent's Registered Goods and Services. Even though the nature of these goods differs from those of the Opponent, I consider that the nature of trade may well overlap since the Opponent targets retail sales that sell to tourists (Exhibit O, page 5) and such stores may sell both the Opponent's Registered Goods and the Food Related Goods and Services.

Non-alcoholic beverages, namely, drinking water, fruit and vegetable juices, soda pop and energy drinks; non-alcoholic fruit drinks, namely, smoothies; almond-based beverage for use as a milk substitute; fresh and packaged fruit; fresh and packaged vegetables; canned vegetables; snack foods, namely, potato chips; baked goods, namely, cookies, cakes, pies, pastries, bread and muffins; confectionery, namely, breath freshening mints and chewing gum; edible seeds;

Wholesale and online sale of beverages, fresh, packaged and canned fruits and vegetables, snack foods, baked goods, confectionery, edible seeds

Degree of Resemblance Between the Trade-marks

[19] When considering the degree of resemblance between the trade-marks, the law is clear that the trade-marks must be considered in their totality; it is not correct to lay the trade-marks side by side and compare and observe similarities or differences among the elements or components of the marks [*Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée*, 2006 SCC 23 (CanLII) at para 20]. The Supreme Court in *Masterpiece, supra* [at para 64] advises that the preferable approach when comparing marks is to begin by determining whether there is an aspect of the trade-marks that is particularly striking or unique.

[20] Given that the heart design symbolizes the word "love" and the phrases I LOVE BC and WE LOVE BC are descriptive of an enthusiasm for the province of BC, I consider that the only striking aspect of the parties' respective trade-marks is their stylization; specifically, the typewriter font of the letters, simple heart design, and the fact that the letter and heart design elements are stacked to form a rectangle in each case.

[21] The Applicant argues that the differences between the I and WE elements and the stacking favour the Applicant with respect to this factor. I do not agree with the Applicant's submission as it appears to involve a side-by-side comparison of the type warned against by the courts [*Veuve Clicquot, supra; International Stars SA v Simon Chang Design Inc*, 2013 FC 1041 (CanLII) at para 9]. Rather, I find that when the parties' marks are considered as a whole, from the perspective of first impression and imperfect recollection, that the highly similar stylization and stacking of the word and heart elements into a rectangle would result in a fairly high degree of visual resemblance, despite the differences noted by the applicant. With respect to the differences in the trade-marks as sounded, I find the difference between WE and I to be minor at best. To the extent that both trade-marks suggest goods and services related to an enthusiasm or love for BC, the ideas suggested are the same. However, I do not consider that either party would be entitled to a monopoly in respect of such an idea as applied to their respective goods and services.

State of the Register Evidence Filed by the Applicant

[22] State of the register evidence is usually introduced to show the commonality of a trade-mark or a portion of a trade-mark in relation to the register as a whole. Since it is only relevant insofar as one can make inferences from it about the state of the marketplace, it should be comprised of trade-marks which include both the applied for mark or portion of the applied for mark and that are used with goods or services similar to those at issue [*Ports International Ltd. v Dunlop Ltd.* (1992), 41 CPR (3d) 432; *Del Monte Corporation v Welch Foods Inc.* (1992), 44 CPR (3d) 205 (FCTD)]. 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 [*Kellogg Salada Canada Inc. v Maximum Nutrition Ltd.* (1992), 43 CPR (3d) 349 (FCA)]. Relevant trade-marks include those that (i) are registered or are allowed and based on use; (ii) are for similar goods and services as the marks at issue and (iii) those that include the component at issue in a material way.

[23] Ms. Dedul, a legal assistant employed by the Applicant's agent, performed a search for advertised and allowed applications or registrations containing "I HEART" (Exhibit A). Ms. Dedul attaches printouts of 14 of the 36 trade-marks her search identified. As she has not

showing the particulars of the remaining results including a depiction of the trade-mark or the goods and services, I will not have regard to them. I have also not had regard to trade-marks which have been abandoned, opposed or are not based on use (application Nos 1,504,805; 1,380,505; 1,558,981) or those with goods and services unrelated to those of the parties (registration Nos. TMA818,617; TMA872,379). The remaining printouts include about ten or so relevant third party trade-marks which contain either the word HEART and/or a heart design in association with goods and services of interest to the parties. There is therefore at least some evidence to support the Applicant's submission that the word HEART and/or heart designs are common.

[24] As I understand it, the Applicant wishes me to conclude that heart designs are so common, that the Opponent's trade-mark should only be granted a very narrow scope of protection. I agree that the Opponent ought not to be able to prevent the use of any design consisting of a heart. However, both the Mark and the Opponent's trade-mark I HEART BC & Design feature (i) stacked designs where all the design elements form a rectangle; (ii) an identical or nearly identical heart shapes; (iii) the words I/WE and BC in a typewriter font; and (iv) designs where all elements are of a similar scale. There is simply insufficient evidence to conclude that consumers are used to distinguishing such highly similar designs.

State of the Register Evidence Filed by the Opponent

[25] I do not find the evidence of Mr. Lingle's search of the Canadian trade-marks database for trade-marks including the heart symbol and BC which identified the Mark and the Opponent's registration (Reply Affidavit of Timothy Lingle) to be a relevant circumstance since this evidence is not indicative of whether there is a likelihood of confusion between the trade-marks.

The I LOVE NY Symbol

[26] In the business plan attached to his affidavit, Mr. Lingle says that the idea of the I HEART BC & Design trade-mark "was formulated after the familiarity of the famous I Love NY symbol seen all around the world" (Exhibit O, page 6). In the absence of evidence from the

Applicant of the design features of this symbol, I am unable to conclude that the use of this symbol impacts on the distinctiveness of the Opponent's trade-mark.

Related Registrations

[27] Ms. Dedul's affidavit includes a search for trade-marks which have been advertised and have "Jorge Suhail Monem" in the current owner name. The search revealed the following allowed trade-marks and registration.

No.	Trade-mark
TMA886,577	WE ♥ VAN
1,597,256	WE ♥ TO
1,597,253	WE ♥ MTL

[28] I do not find these trade-marks to assist the Applicant in proving that there is no likelihood of confusion. It is well established that an applicant's ownership of one or more trade-marks does not give the automatic right to obtain a further registration no matter how closely they may be related to the original applications or registrations [*see Coronet-Werke Heinrich Schlerf GmbH v Produits Ménagers Coronet Inc* (1984), 4 CPR (3d) 108 at 115 (TMOB); *385229 Ontario Limited v ServiceMaster Company*, 2012 TMOB 59 (CanLII) at para 47].

Not Used as a Trade-mark

[29] The Applicant argues that the Opponent has not used its trade-mark I HEART BC & Design as a trade-mark since it is used in an ornamental manner as opposed to denoting source. Even if I were to find that the Opponent has not demonstrated use of its trade-mark pursuant to sections 2 and 4 of the Act, such a finding would not invalidate the ground of opposition based on section 12(1)(d) because the validity of the Opponent's mark is not in issue in opposition proceedings: see *Sunshine Biscuits, Inc. v Corporate Foods Ltd.* (1982), 61 CPR (2d) 53 at 61 (FCTD).

Evidence of Actual Confusion

[30] Mr. Lingle states in his affidavit that he was approached by an individual in 2014 when wearing a shirt with the I HEART BC & Design trade-mark on it who believes he saw the “Opponent’s” WE LOVE BC logo on a bottle of water in Granville Island suggesting the consumer thought the Applicant’s product was the Opponent’s. Hearsay issues aside, I do not give this evidence any weight. As stated in *WIC TV Amalco Inc. et al. v ITV Technologies, Inc.* (2005), 38 CPR (4th) 481 (FCA) at 501, “While it is true that the Court can draw an adverse inference from the absence of evidence of actual confusion in certain cases (see *Dion Neckwear Ltd v Christian Dior, S.A.*, [2002] 3 FC 405, 2002 FCA 29 (CanLII), 20 CPR (4th) 155, 216 DLR (4th) 451 (CA)), it does not follow that a single instance of confusion is conclusive.”

Conclusion

[31] Considering all of the surrounding circumstances, I conclude that, on a balance of probabilities, that there is a reasonable likelihood of confusion between the trade-mark I HEART BC & Design and the Mark. I conclude this, despite the trade-marks’ low degree of distinctiveness, based on the high degree of resemblance between the trade-marks and the significant overlap in the nature of the Overlapping Goods and Services with the Opponent’s Registered Goods and Services and the potential overlap in the channel of trade with respect to the Opponent’s Registered Goods and Services and the Food Related Goods and Services. Accordingly, this ground of opposition is successful. Given the lack of inherent and acquired distinctiveness of the Opponent’s trade-mark, the result may have been different if the Applicant had filed evidence of use of the Mark.

Section 16(3)(a) Ground of Opposition

[32] The section 16(3)(a) ground of opposition is rejected because the Opponent has not met its initial burden. The Opponent has alleged that the Applicant is not the person entitled to register the Mark as it is confusing with the Opponent's trade-mark I HEART BC & Design which had been previously used in Canada. In order to satisfy its evidential burden, the Opponent must evidence use of the its trade-mark prior to the filing date of the application. Section 4 of the Act sets out the requirements of use of a trade-mark for goods and services.

[33] At the outset, I note that almost all of Mr. Lingle's evidence postdates the material date and is not relevant to this ground of opposition. The remaining relevant evidence includes:

- receipts dated between 2004-2006 for printing of the trade-mark I HEART BC & Design on shirts, hats and toques (para 4, Exhibits B-D); and
- a copy of a sales receipt dated April 4, 2005 for the sale of an I LOVE BC sticker (para 5; Exhibit E).

[34] With respect to the evidence that the Opponent's trade-mark was printed on shirts, hats and toques, this does not assist the Opponent because he has failed to provide evidence of transfers of the Opponent's clothing that would constitute use pursuant to section 4(1) of the Act.

[35] The question then is whether the Opponent's evidence of a sale of a single I HEART BC & Design sticker is sufficient to meet his burden. The Applicant argues that the Opponent's trade-mark is not being used as a trade-mark. If the Applicant's argument is successful than the Opponent will fail to meet its burden with respect to this ground of opposition.

[36] A trade-mark is a mark that is used for the purposes of distinguishing goods sold by one trader from those sold by others (see section 2 of the Act). In the context of an infringement action, the Federal Court of Appeal has held that both the intention of the user and recognition by the public are relevant as to whether there has been use of a trade-mark and either of these may be sufficient to show that there has been trade mark use: it is not necessary that there should be both [*Guccio Gucci S.p.A. v Meubles Renel Inc.* (1992), 43 CPR (3d) 372 (FCA) at para 14]. However, the Federal Court has held that in order to oppose an application based on prior use of

a trade-mark, an opponent must also establish reputation under the relied upon mark [*British American Bank Note Co. v Bank of America National Trust & Saving Assn* (1983), 71 CPR (2d) 26 (FCTD) at para 58; *British Petroleum Co. Ltd. v Bombardier Ltd.* (1971), 4 CPR (2d) 204 (FCTD) aff'd (1973), 10 CPR (2d) 21 (FCA)]. In the case of a mark which is not inherently adapted to distinguish such as one consisting of descriptive or laudatory words, an opponent must show that there has been some recognition of the mark as a trade-mark [*Merrill Lynch & Co. v Bank of Montreal* (1996), 66 CPR (3d) 150 (FCTD) at para 35.]

[37] In the absence of specific evidence demonstrating the recognition of the design I HEART BC & Design as a trade-mark or some reputation of the I HEART BC & Design as a trade-mark, the Opponent's evidence of the sale of a single sticker has not met its burden of proving that he has used the trade-mark such that this use could form the basis of this ground of opposition. As such, this ground of opposition is rejected.

Section 2 Ground of Opposition

[38] The Opponent alleges that the trade-mark is not distinctive as a result of his use of the I HEART BC & Design trade-mark. There is an evidential burden on the Opponent to establish that, as of February 24, 2014, his trade-mark I HEART BC & Design was known to such an extent that it could negate the distinctiveness of the Mark. In *Bojangles' International, LLC v Bojangles Café Ltd* (2006), 48 CPR (4th) 427 (FC) at para 33, the Federal Court provided that a mark could negate another mark's distinctiveness if it was known to some extent at least and its reputation in Canada was substantial, significant or sufficient or alternatively, if it is well known in a specific area of Canada. An attack based on non-distinctiveness is not restricted to the sale of goods or services in Canada. It may also be based on evidence of knowledge or reputation of the Opponent's trade-mark including that spread by means of word of mouth or newspaper or magazine articles [*Motel 6, Inc. v No. 6 Motel Ltd.* (1981), 56 CPR (2d) 44 at 58 (FCTD)].

[39] The Opponent's evidence is insufficient for him to meet his evidential burden as I am unable to determine the extent of use and the degree of reputation associated with the Opponent's trade-mark as of the material date. In this regard, the Opponent has not provided evidence of his total sales or advertising expenditures concerning his trade-mark I HEART BC & Design. Rather, the Opponent provides evidence that shortly before the material date he attended

the Vancouver Gift Expo (paras 6-7; Exhibits F-G) and attaches to his affidavit invoices showing the sale of over thirty shirts (Exhibits L and J). I note that the Opponent's screenshots of its website and website analytics data likewise do not assist the Opponent in meeting his evidential burden due to (i) the reasons set forth in paragraph 15 and (ii) the fact that the time period covered almost all postdates the material date for this ground. As the Opponent has failed to meet his evidential burden, this ground of opposition is rejected.

Disposition

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

Natalie de Paulsen
Member
Trade-marks Opposition Board
Canadian Intellectual Property Office

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

Hearing Date: 2016-02-09

Appearances

Bonnie D. Headley

FOR THE OPPONENT

No one appearing

FOR THE APPLICANT

Agents of Record

Bennett Jones LLP

FOR THE OPPONENT

No agent appointed

FOR THE APPLICANT

Schedule A

GOODS:

Non-alcoholic beverages, namely, drinking water, fruit and vegetable juices, soda pop and energy drinks; non-alcoholic fruit drinks, namely, smoothies; almond-based beverage for use as a milk substitute; fresh and packaged fruit; fresh and packaged vegetables; canned vegetables; snack foods, namely, potato chips; baked goods, namely, cookies, cakes, pies, pastries, bread and muffins; confectionery, namely, breath freshening mints and chewing gum; edible seeds; packaged clothing, namely, casual, sports, athletic and jackets; headwear, namely, hats, caps and touques; key chains; coffee mugs; drinking glasses and shot glasses; water bottles; stationery, namely, writing paper, writing pads, note paper, note pads, envelopes, pens and pencils; cell phone cases; pre-recorded CDs containing music; postcards; fridge magnets; stickers; clothing accessories, namely, scarves; jewellery; sunglasses; flags; blankets; cloth towels; and lapel pins

SERVICES:

Wholesale and online sale of beverages, fresh, packaged and canned fruits and vegetables, snack foods, baked goods, confectionery, edible seeds, clothing, headwear, key chains, coffee mugs, drinking glasses and shot glasses, water bottles, stationery, cell phone cases, pre-recorded CDs containing music, postcards, fridge magnets, stickers, scarves, jewellery, sunglasses, flags, blankets, cloth towels and lapel pins