

**IN THE MATTER OF AN OPPOSITION by Robert Groeneveld
to application No. 618,167 for the trade-mark ROUTE 66 &
Design filed by Andre Jacques Levy and Mairade Ann Levy
trading in co-partnership**

On October 31, 1988, the applicant, Andre Jacques Levy and Mairade Ann Levy trading in co-partnership, filed an application to register the trade-mark ROUTE 66 & Design, a representation of which appears below, based upon use and registration of the trade-mark in the United Kingdom, the country of origin of the applicant, in association with the following wares:

“Articles of clothing, namely: sweatshirts, T-shirts, sweaters, jumpers, cardigans, scarves, socks, casual jackets, casual trousers, denims, boots and shoes; beer, ale, lager, stout and shandy; non-alcoholic beverages, namely: fruit drinks, fruit juices, lemonade and cola and preparations for making such beverages; cigarettes, cigars, cigarillos; smoking tobacco, chewing tobacco, snuff; matches, lighters, ashtrays, pipes, tobacco cases; cigarette papers.”

The applicant claimed and was accorded a priority filing date of May 5, 1988.



The present application was advertised for opposition purposes in the *Trade-marks Journal* of June 21, 1995 and the opponent, Robert Groeneveld, filed a statement of opposition on November 20, 1995, a copy of which was forwarded to the applicant on December 19, 1995. The only ground of opposition is that the present application does not comply with Subsection 30(d) of the *Trade-marks Act* in that the trade-mark has neither been used nor made known in Canada by the applicant and has not been used by the applicant in the United Kingdom in association with the general classes of wares covered in the present application.

The applicant filed and served a counter statement on April 16, 1996. Neither the opponent nor the applicant submitted evidence and the applicant alone filed a written argument. Neither party requested an oral hearing.

With respect to the opponent's ground of opposition, the onus or legal burden is on the applicant to show that its application complies with Subsection 30(d) of the *Trade-marks Act*. There is, however, an initial evidentiary burden on the opponent to prove the allegations of fact being relied upon by it in support of its Section 30 ground [see *Joseph Seagram & Sons v. Seagram Real Estate*, 3 C.P.R.(3d) 325, at pp. 329-330 (T.M.O.B.)]. No evidence has been furnished by the opponent in support of its allegations that the applicant has not used the trade-mark in the United Kingdom in association with the wares covered in the present application. Further, no evidence has been submitted in support of the opponent's allegation that the applicant has not used or made known its trade-mark in Canada. Furthermore, the applicant did not claim that it had used or made its trade-mark known in Canada. I have therefore dismissed the opponent's ground of opposition.

In view of the above, and pursuant to the authority delegated to me under Subsection 63(3) of the *Act*, I reject the opponent's opposition pursuant to Subsection 38(8) of the *Trade-marks Act*.

DATED AT HULL, QUEBEC, THIS 10th DAY OF MARCH, 1998.

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