

**IN THE MATTER OF AN OPPOSITION by ALLIANZ LIFE  
INSURANCE COMPANY OF NORTH AMERICA to  
application No. 821,344 for the trade-mark MATURVIE 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 MATURVIE based on use of the trade-mark in Canada since at least as early as August 19, 1996 in association with “Services d’assurances.”.

The present application was advertised for opposition purposes in the *Trade-marks Journal* of April 23, 1997 and the opponent, ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA, filed a statement of opposition on September 22, 1997, a copy of which was forwarded to the applicant on October 14, 1997. The applicant served and filed a counter statement in response to the statement of opposition on November 12, 1997. The opponent submitted as its evidence the affidavits of Margaret Harrop and Peter Giddens, together with a certified copy of registration No. 394,825 for the trade-mark MATURITY SECURITY PLAN. The applicant elected not to file any evidence. Further, both parties submitted written arguments and neither party requested an oral hearing

The following are the grounds of opposition asserted by the opponent in its 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 MATURVIE in Canada in association with the services covered in the application since August 19, 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 MATURVIE in Canada in association with the services covered in the application, given the prior use and making known of the opponent’s confusingly similar registered trade-mark MATURITY SECURITY LIFE, registration No. 394,825, by the opponent and its predecessor-in-title, Allstate Insurance Company. At the date of filing the present application, the applicant was aware of the opponent’s registered trade-mark MATURITY SECURITY LIFE;
- c) The trade-mark MATURLIFE is not registrable having regard to the provisions of Paragraph 12(1)(b) of the *Trade-marks Act* in that the mark is either clearly descriptive or deceptively misdescriptive of the character or quality of the services in association with which it is allegedly used;
- d) The trade-mark MATURLIFE is not registrable having regard to the provisions of Paragraph 12(1)(d) of the *Trade-marks Act* in that the applicant’s mark is confusing with its registered trade-mark MATURITY SECURITY LIFE, registration No. 394,825, covering

insurance services;

e) The applicant is not the person entitled to registration of the trade-mark MATURLIFE in that, as of the claimed date of first use, and at all other times, the applicant's mark was confusing with the opponent's trade-mark MATURITY SECURITY LIFE which had been previously used and made known in Canada by the opponent and its predecessor-in-title, Allstate Insurance Company, 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 services from the services of others, including the insurance services of the opponent and its predecessor-in-title, Allstate Insurance Company, sold under the registered trade-mark MATURITY SECURITY LIFE.

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 opponent 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]. In the present opposition, no evidence has been furnished by the opponent to support its allegation that the applicant has not used its trade-mark MATURVIE in Canada since August 19, 1996 in association with the insurance services. Thus, the first ground of opposition is unsuccessful.

With respect to the Subsection 30(i) ground, no evidence has been furnished by the opponent to show that the applicant could not have been satisfied that it was entitled to use its trade-mark MATURVIE 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 MATURVIE is not registrable or not distinctive, or that the applicant is not the person entitled to registration of the trade-mark MATURVIE, 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.

As for the third ground, the issue as to whether the trade-mark MATURVIE is clearly

descriptive of the character or quality of the applicant's insurance services must be considered from the point of view of the average user of those services. Further, in determining whether the trade-mark MATURVIE is clearly descriptive, the trade-mark must not be dissected into its component elements and carefully analysed, but rather must be considered in its entirety as a matter of immediate impression [see *Wool Bureau of Canada Ltd. v. Registrar of Trade Marks*, 40 C.P.R. (2d) 25, at pp.27-28 and *Atlantic Promotions Inc. v. Registrar of Trade Marks*, 2 C.P.R. (3d) 183, at p.186]. While the legal burden is upon the applicant to show that its trade-mark is registrable, there is an initial evidential burden on the opponent to adduce sufficient admissible evidence which, if believed, would support the truth of its allegations that the trade-mark MATURVIE is either clearly descriptive or deceptively misdescriptive of the character or quality of the applicant's insurance services. It is therefore necessary to consider the opponent's evidence in order to determine whether it has met the initial burden on it as of the date of decision, the material date for considering the Paragraph 12(1)(b) ground [see *Lubrication Engineers, Inc. v. The Canadian Council of Professional Engineers*, 41 C.P.R. (3d) 243 (F.C.A.)].

The contents of paragraphs 2 to 11 of the Giddens affidavit are based entirely on information and belief and therefore are hearsay with respect to Mr. Giddens. As the opponent has not explained why it considered it necessary to adduce this evidence by way of the affidavit of a student-at-law employed by the trade-mark agents for the opponent, I have accorded little weight to these paragraphs. In paragraph 13 of his affidavit, Mr. Giddens has adduced as evidence dictionary definitions for the words "maturité" and "vie". However, none of the definitions point to there being any readily apparent meaning or significance associated with the combined words "maturité vie" in relation to insurance services.

The opponent's second affidavit is that of Margaret Harrop, the Senior Library Technician with the trade-mark agents for the opponent. Ms. Harrop states that on May 21, 1998, she conducted a search of the InfoGlobe database which includes all articles from the Globe and Mail in the date range from November 14, 1997 to May 21, 1998 for all articles which included the words "mature" and "life", "mature" and "health", or "mature" and "vie", appearing one after the other. Ms. Harrop has annexed to her affidavit a copy of the full text of an article entitled "Insurance Industry Gets

Harsh Review” from the August 23, 1994 issue of The Globe & Mail retrieved as a result of the search, the article including reference to “mature life insurance industry”. The affiant also states that she conducted a similar search of the Lexis/Nexis Insure Library Allnws File database and has annexed to her affidavit copies of the full text of articles from the database containing the phrase “mature life” retrieved as a result of the search. However, none of the computer printouts disclose the use of the words “mature” or “maturité” followed by the word “vie”. Rather, the computer printouts uncovered by Ms. Harrop show the words “mature life” being used in a descriptive manner in the articles. Thus, this evidence is of no assistance in supporting the opponent’s allegation that the trade-mark MATURVIE is either clearly descriptive or deceptively misdescriptive of the character or quality of insurance services. Furthermore, even had the opponent’s evidence disclosed the descriptive use of the words “maturité vie” in articles relating to insurance, the applicant’s mark is not phonetically equivalent to “maturité vie” and such evidence would therefore not support the conclusion that the applicant’s mark MATURVIE is, when sounded, either clearly descriptive or deceptively misdescriptive of the character or quality of insurance services. I have dismissed the third ground of opposition.

The opponent has stated in its written argument that it is not proceeding with its fourth ground which is based on Paragraph 12(1)(d) of the *Act*. In any event, this ground would have been unsuccessful as the opponent’s registration for the trade-mark MATURITY SECURITY LIFE, registration No. 394,825, has been expunged from the register. As for its fifth ground, no evidence has been furnished by the opponent relating to use or making known of the trade-mark MATURITY SECURITY LIFE in Canada either by it or its predecessor-in-title, Allstate Insurance Company, in association with insurance services. Thus, this ground is also unsuccessful.

The final ground relating to the alleged non-distinctiveness of the applicant’s trade-mark MATURVIE is based on the opponent’s allegation that the applicant’s mark does not actually distinguish the applicant’s services from the insurance services of the opponent and its predecessor-in-title sold under the registered trade-mark MATURITY SECURITY LIFE. However, no evidence has been furnished by the opponent to show that either it or its alleged predecessor has used the trade-mark MATURITY SECURITY LIFE at any time in Canada. As a result, the opponent has

failed to meet the evidential burden on it in relation to this ground. I have therefore dismissed the final ground of opposition.

Having been delegated by the Registrar of Trade-marks by virtue of Subsection 63(3) of the *Trade-marks Act*, I reject the opponent's opposition pursuant to Subsection 38(8) of the *Trade-marks Act*.

DATED AT HULL, QUEBEC THIS 25<sup>th</sup> DAY OF OCTOBER, 2000.

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