

**IN THE MATTER OF AN OPPOSITION  
by Jarvis Collegiate Institute to application  
No. 763,431 for the trade-mark RED DOG  
Design filed by Molson Breweries, A Partnership**

On September 8, 1994, the applicant, Molson Breweries, A Partnership, filed an application to register the trade-mark RED DOG Design based on (1) use in Canada since June of 1994 with a number of clothing items, (2) use in Canada since July of 1994 with “clocks and bar signs” and (3) proposed use in Canada with a long list of wares. The application was advertised for opposition purposes on April 5, 1995.

The opponent, Jarvis Collegiate Institute, filed a statement of opposition on December 5, 1995, a copy of which was forwarded to the applicant on December 19, 1995. The first ground of opposition is that the applicant’s application does not comply with the provisions of Section 30(i) of the Trade-marks Act. In this regard, the opponent alleged that the applicant could not have been satisfied that it was entitled to use the applied for mark because it was aware of the opponent’s use of its mark “BULLDOG design.”

The second ground of opposition is that the applicant is not the person entitled to registration pursuant to Section 16 of the Act because, as of the applicant’s filing date and its claimed dates of first use, the applied for mark was confusing with the trade-mark “BULLDOG design” previously used in Canada by the opponent in association with “... a wide variety of wares and services including sporting goods and clothing.” The third ground of opposition is that the applied for trade-mark is not distinctive in view of the foregoing.

The applicant filed and served a counter statement. Neither party filed evidence. Only the applicant filed a written argument and no oral hearing was conducted.

As for the opponent's first ground of opposition, the onus or legal burden is on the applicant to show its compliance with the provisions of Section 30(i) of the Act: see the opposition decision in Joseph Seagram & Sons v. Seagram Real Estate (1984), 3 C.P.R.(3d) 325 at 329-330. There is, however, an evidential burden on the opponent respecting its allegations

**of fact in support of that ground. Since the opponent has failed to file any evidence, I find that the first ground of opposition is unsuccessful.**

**As for the second ground of opposition, Sections 16(1)(a), 16(3)(a) and 16(5) of the Act require the opponent to evidence use of its trade-mark prior to the applicant's priority dates and non-abandonment of that mark as of the applicant's advertisement date. Since the opponent did not file evidence, it has failed to meet those two burdens and the second ground is therefore unsuccessful.**

**As for the third ground of opposition, the opponent has failed to evidence any use of its trade-mark. Thus, the third ground is also unsuccessful.**

**In view of the above, and pursuant to the authority delegated to me under Section 63(3) of the Act, I reject the opponent's opposition.**

**DATED AT HULL, QUEBEC, THIS 17th DAY OF APRIL, 1997.**

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