

**IN THE MATTER OF AN OPPOSITION by ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA to application No. 821,342 for the trade-mark MATURHEALTH 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 MATURHEALTH based on proposed use of the trade-mark in Canada 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(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 is entitled to use the trade-mark MATURHEALTH 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;
- b) The trade-mark MATURHEALTH 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 proposed to be used;
- c) The trade-mark MATURHEALTH 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;
- d) The applicant is not the person entitled to registration of the trade-mark MATURHEALTH in that, as of the filing date of the present application, 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;

e) 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 ground of opposition is based on Subsection 30(i) of the *Trade-marks Act*. While the legal burden is on the applicant to show that its application complies with Subsection 30(i) of the *Act*, there is an initial evidential burden on the opponent to adduce admissible sufficient evidence which, if believed, would support the truth of the allegations relating to the Subsection 30(i) ground [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 opponent to show that the applicant could not have been satisfied that it was entitled to use its trade-mark MATURHEALTH 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 MATURHEALTH is not registrable or not distinctive, or that the applicant is not the person entitled to registration of the trade-mark MATURHEALTH, 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.

With respect to the second ground, the issue as to whether the trade-mark MATURHEALTH. 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 MATURHEALTH 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 MATURHEALTH 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. Additionally, the material date for considering a ground of opposition based on Paragraph 12(1)(b) of the *Trade-marks Act* is the date of decision [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 12 of his affidavit, Mr. Giddens has adduced as evidence dictionary definitions for the words "health" and "life". However, none of the definitions point to there being any readily apparent meaning or significance associated with the combined words "health life" 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 on May 5, 1998 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” and “mature health” retrieved as a result of the search.

Ms. Harrop did not locate and review the actual articles in order to confirm that the printouts accurately reflect the contents of the articles. I have therefore accorded diminished weight to the results of Ms Harrop’s searches. Moreover, of the five computer printouts adduced by Ms. Harrop, the first disclosed a use of the words “mature” and “health” as follows:

“... As health care markets mature, health plans can’t depend on traditional provider network strategies to maintain their historic growth rates in share and profitability.”

In this case, the separation of the words “mature” and “health” by a comma do not evidence a descriptive significance associated with the words “mature health” taken together. Further, in two of the computer printouts, the words “mature health” appear in the phrase “mature health care industry” and in a third, the words appear in a reference to “mature health promotion programs”. Thus, these exhibits do not point to a descriptive significance of the words “mature health” in relation to insurance services. As a result, the opponent’s evidence merely establishes the existence of one computer printout in which the words “mature health” are used descriptively in an article relating to insurance services. However, this evidence is not sufficient to meet the evidential burden on the opponent in relation to the second ground. I have therefore rejected the paragraph 12(1)(b) ground of opposition.

The opponent has stated in its written argument that it is not proceeding with its third ground with 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 fourth 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 MATURHEALTH 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 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 and it too is unsuccessful.

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.