

IN THE MATTER OF AN OPPOSITION by The Guru of Yoga Center & Spiritual World Society to application No. 1215780 for the trade-mark MYSTICWEB filed by The Gnostic Movement

- [1] On May 5, 2004, The Gnostic Movement (the “Applicant”), filed an application for the trade-mark MYSTICWEB (“the Mark”) for the following wares and services (as revised):

Wares:

Electronic publications, namely electronic books, guides, and manuals containing information in the fields of meditation, astral travel, religious studies, spiritual studies, esoteric studies and cultural studies, spirituality, gnosticism, anthropology, metaphysics, self-awareness and new age studies.

Services:

- (1) Promoting books and book publishing for others through advertising on an on-line communications network, namely through websites, email and on-line forums; providing linking to websites for others.
- (2) Hosting a website for online forums, chat rooms, and electronic bulletin boards in the fields of meditation, astral travel, religious studies, spiritual studies, esoteric studies and cultural studies, spirituality, gnosticism, anthropology, spirituality, metaphysics, self-awareness and new age studies.

- [2] The application is based upon use in Canada since as early as August 2002 on wares and on services marked as (2) and use in Canada since May 15, 2003, on services marked as (1).

- [3] The application was advertised for opposition purposes in the Trade-marks Journal of April 27, 2005.

- [4] On June 29, 2005, The Guru of Yoga Center & Spiritual World Society (the “Opponent”) filed a statement of opposition against the application. The grounds of opposition are that the Applicant’s application does not conform to the requirements of s. 30(b), s. 30(e) and 30(i) of the *Trade-marks Act*, R.S.C. 1985, c. T-13 (“the Act”), and the Mark is not registrable pursuant to s. 12(1)(d) as it is confusing with trade-mark Registration No.TMA 508,321 owned by the Opponent for the mark MYSTIC. While the Opponent had also originally included a ground of opposition based on s. 38(2)(d) of the Act, such ground was struck by way of interlocutory ruling dated July 19, 2006.

- [5] The Applicant filed and served a counter statement, in which it denied the Opponent's allegations.
- [6] The Opponent's evidence consists of a certified copy of its trade-mark Registration No. TMA508,321 for the mark MYSTIC. The Applicant elected not to file any evidence.
- [7] Only the Opponent filed a written argument, and only the Applicant was represented at an oral hearing.

Onus and Material Dates

- [8] The Applicant bears the legal onus of establishing, on a balance of probabilities, that its application complies with the requirements of the Act. There is however an initial burden on the Opponent to adduce sufficient admissible evidence from which it could reasonably be concluded that the facts alleged to support each ground of opposition exist. [See *John Labatt Ltd v. Molson Companies Ltd.* (1990), 30 C.P.R. (3d) 293 (F.C.T.D.) at 298; *Dion Neckwear Ltd. v. Christian Dior, S.A. et al.* (2002), 20 C.P.R. (4th) 155 (F.C.A.).]
- [9] The material dates that apply to the grounds of opposition are as follows:
- s. 30 - the filing date of the application [see *Georgia-Pacific Corp. v. Scott Paper Ltd.* (1984), 3 C.P.R. (3d) 469 (T.M.O.B.) at 475]; and
 - s. 12(1)(d) - the date of my decision [see *Park Avenue Furniture Corporation v. Wickes/Simmons Bedding Ltd. and The Registrar of Trade Marks* (1991), 37 C.P.R. (3d) 413 (F.C.A.)].

Section 30 Grounds of Opposition

- [10] The Opponent admitted in its written argument that it did not file any evidence in support of its s. 38(2)(a) grounds of opposition. These grounds of opposition are accordingly dismissed.

Section 12(1)(d) Ground of Opposition

- [11] The remaining ground of opposition turns on the issue of the likelihood of confusion between the Mark and the Opponent's MYSTIC mark, Registration No. TMA 508,321. The

Opponent filed a certified copy of this registration as its Rule 41 evidence, and I note that registration No. TMA 508,321 was in good standing on the date it was filed. At the oral hearing, however, the Applicant's agent advised me that the Opponent's MYSTIC mark had since been expunged. Relying on the decision in *Quaker Oats Co. of Canada Ltd./La Compagnie Quaker Oats du Canada Ltee v. Menu Foods Ltd.* (1986), 11 C.P.R. (3d) 410 (T.M.O.B.), the Applicant's agent argued that where a registration forms the basis of a ground of non-registrability, it is in the public interest that the Registrar exercise her discretion to check the register to confirm the existence of this registration. I agree. In exercising my discretion to check the register, I have confirmed that the Opponent's registration no. TMA 508,321 was expunged on February 3, 2009.

[12] As the material date for assessing the likelihood of confusion under s. 12(1)(d) is the date of my decision, and the Opponent's registration is no longer in good standing, I dismiss this ground of opposition.

Disposition

[13] Having been delegated by the Registrar of Trade-marks by virtue of s. 63(3) of the Act, I reject the opposition pursuant to s. 38(8).

[14]

DATED AT Gatineau, Quebec, THIS 29th DAY OF September, 2009.

C.R. Folz
Member
Trade-marks Opposition Board