



LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADE-MARKS

Citation: 2014 TMOB 265
Date of Decision: 2014-11-26

**IN THE MATTER OF OPPOSITIONS by
Canada Bread Company, Limited to
application Nos. 1,485,346 and 1,485,347
for the trade-marks SMART &
DELICIOUS WRAPS and SMART &
DELICIOUS TORTILLAS in the name of
La Tortilla Factory.**

[1] Canada Bread Company, Limited (Canada Bread) opposes registration of the trade-marks SMART & DELICIOUS WRAPS and SMART & DELICIOUS TORTILLAS applied for registration under Nos. 1,485,346 and 1,485,347 respectively in association with “tortillas and sandwich wraps”.

[2] Each application was filed by La Tortilla Factory (the Applicant) on June 16, 2010. Each trade-mark was applied for registration on the dual basis of its use in Canada since August 2006 and its registration and use in the United States.

[3] In each case, the grounds of opposition raised under section 38 of the *Trade-marks Act*, RSC 1985, c T-13 (the Act) are mostly premised on allegations of confusion between the Applicant’s trade-mark and Canada Bread’s alleged family of trade-marks consisting of or comprising the term “SMART” for bakery products.

[4] Both parties filed evidence and written arguments in each case. Only Canada Bread was represented at the hearing held on July 16, 2014 where both cases were heard together.

[5] For the reasons that follow, each opposition ought to be rejected.

Grounds of Opposition

[6] Each opposition was brought by statement of opposition filed on May 5, 2011. In each case, an amended statement of opposition was filed on July 18, 2012 with leave from the Registrar.

[7] As a preamble to the grounds of opposition, Canada Bread alleges ownership of “a number of Canadians trade-marks and corresponding registrations and applications for trade-marks consisting of or comprising the term ‘SMART’ for use in association with a variety of wares and services, including bakery products” (referred to in the amended statement of opposition collectively as the SMART Family of Trade-marks).

[8] I reproduce below the table found at paragraph 5 of the amended statement of opposition filed in each case. According to Canada Bread’s allegations, the table provides a list of the SMART Family of Trade-marks that are owned by Canada Bread and for which applications had been filed well before the Applicant’s claimed date of first use.

<u>Registration/ Application No.</u>	<u>Trade-mark</u>	<u>Filing Date</u>	<u>Registration date</u>
TMA708,753	SMART & Design	January 25, 2006	March 4, 2008
TMA761,257	DEMPSTER’S SMART	December 9, 2005	March 10, 2010
1,282,503	POM’S SMART	December 9, 2005	

[9] In each case, the grounds of opposition are premised on allegations that:

- i. the Applicant has not used the trade-mark in Canada in association with the services described in the application as of the alleged date of first use [sections 38(2)(a)/30(b) of the Act];
- ii. the Applicant has not used the trade-mark in the United States in association with each of the general classes of wares and services described in the application [sections 38(2)(a)/30(d) of the Act];

- iii. the Applicant could not have been satisfied that it was entitled to use the trade-mark in Canada having regard to Canada Bread's SMART Family of Trade-marks [sections 38(2)(a)/30(i) of the Act];
- iv. the trade-mark is not registrable as it is confusing with Canada Bread's registered trade-marks SMART & Design (TMA708,753), DEMPSTER'S SMART (TMA761,257) and SMART (TMA827,840) [sections 38(2)(b)/12(1)(d) of the Act];
- v. the Applicant is not the person entitled to registration of the trade-mark in view of confusion with Canada Bread's SMART Family of Trade-marks that had been previously used in Canada by Canada Bread and in respect of which applications for registration had been previously filed by Canada Bread [sections 38(2)(c)/16(1)(a) and 16(1)(b) of the Act]; and
- vi. the trade-mark is not adapted to distinguish the Applicant's wares from the wares of Canada Bread because of Canada Bread's SMART Family of Trade-Marks [sections 38(2)(d)/2 of the Act].

[10] I note that in each case the original statement of opposition was solely amended by including a separate section 12(1)(d) ground of opposition alleging confusion with Canada Bread's registered trade-mark SMART (No. TMA827,840). The ground of opposition was added as a final ground of opposition. I stress that the preamble and the pleadings of the original statement of opposition were not amended otherwise. These comments lead me to address Canada Bread's submissions concerning the counter statement of record.

Counter Statement

[11] In each case, the Applicant filed a counter statement in response to the original statement of opposition on September 23, 2011. The Applicant did not seek leave to amend its counter statement further to the amended statement of opposition.

[12] At the hearing, Canada Bread's agent argued that the section 12(1)(d) ground of opposition based on registration No. TMA827,840 for the trade-mark SMART should succeed in

each case because the Applicant did not deny this ground of opposition added through the amended statement of opposition. In this regard, Canada Bread's agent pointed out that the pleading at paragraph 1.b. of the counter statement, which I reproduced below, only denies the ground of opposition based upon the registrations for the trade-marks SMART & Design and DEMPSTER'S SMART:

The Trade-Mark is registrable under section 12(1)(d) as the Trade-mark is not confusing with any of the Opponent's registered marks (TMA708,753 and TMA761,257) ("Opponent's Registered Marks") referenced in the Statement of Opposition.

[13] I agree with Canada Bread's representations that the Applicant specifically denies the section 12(1)(d) ground of opposition contained in the original statement of opposition. However, the counter statement in each case contains a general denial of all the allegations in the statement of opposition. This general denial at paragraph 2 reads: "The Applicant denies all allegations in the Statement of Opposition, and puts the Opponent to the strict proof thereof."

[14] In my view, the general denial in each of the counter statement of record is wide enough to constitute a sufficient denial of the section 12(1)(d) ground of opposition premised on the allegation of confusion with registration No. TMA827,840.

Evidence of Record

Canada Bread's evidence

[15] As evidence in support of its opposition, Canada Bread filed in each case an affidavit of Mike Ponter, sworn January 20, 2012, with its Exhibits "1" to "6". Mr. Ponter is the Marketing Director of Canada Bread. Although the Applicant obtained an order for the cross-examination of Mr. Ponter in each case, the Applicant did not conduct cross-examination.

[16] Approximately two months before the hearing, namely on May 14, 2014, Canada Bread filed in each case certified copies of registration Nos. TMA708,753 (SMART & Design), TMA761,257 (DEMPSTER'S SMART), TMA812,868 (POM'S SMART), TMA802,724 (POM SMART) and TMA827,840 (SMART). Canada Bread submitted that this was done in accordance with paragraph 18 of its written argument, which I note reads: "Therefore, certified

copies of the registered trade-mark SMART will be filed with the Opposition Board before the hearing date.”

[17] For reasons unknown to me, Canada Bread was not advised at the time of its letter that the certified copies could only be filed as further evidence with leave from the Registrar under section 44 of the *Trade-marks Regulations*, SOR 96/195. After I raised this issue at the beginning of the hearing, in each case Canada Bread’s agent requested leave to file the certified copies as further evidence because the certified copies are purportedly intended to evidence the existence of the registrations relied upon in support of both section 12(1)(d) grounds of opposition. I then indicated to the agent that I would rule on the request for leave in my decision.

[18] It has to be said that the practice of requesting leave to file evidence at the latest possible stage in an opposition proceeding is to be discouraged. Indeed, the fact that a request is made when the opposition proceeding has reached the hearing stage could arguably be significant enough for the Registrar to find that it is not the interest of justice to grant the party’s request

[19] That said, I find it is not necessary to rule on the request for leave because the outcome of the section 12(1)(d) grounds of opposition does not turn on the grant or refusal of the request. For one thing, it is trite law that the Registrar has the discretion to check the trade-marks register to confirm that a registration alleged in support of a section 12(1)(d) ground of opposition is extant at the date of the decision. Moreover, it has been more than a year since the issuance of the certified copies on November 4, 2013. Thus, even if I were to grant the request, I would still exercise the Registrar’s discretion to confirm the existence of the pleaded registrations.

Applicant’s evidence

[20] As evidence in support of each application, the Applicant filed affidavits of Adrienne Jarabek, sworn May 17, 2012, with its Exhibit “A”, and of Sam Tamayo, sworn June 27, 2012, with its Exhibits “A” to “D”. Ms. Jarabek is an articling student employed by the former trade-mark agent of the Applicant. Mr. Tamayo is the CEO of the Applicant.

[21] Canada Bread obtained an order for the cross-examination of both affiants in each case. However, it only conducted the cross-examination of Mr. Tamayo. The transcript of the cross-examination, Exhibit IST-1 to the transcript and the replies to undertakings are of record.

Legal Onus and Evidential Burden

[22] The legal onus is on the Applicant to show that each application does not contravene the provisions of the Act as alleged in the statement of opposition of record. This means that if a determinate conclusion cannot be reached once all the evidence is in, then the issue must be decided against the Applicant. However, there is also an evidential burden on Canada Bread to prove the facts inherent to its pleadings. The presence of an evidential burden on Canada Bread means that in order for a ground of opposition to be considered at all, there must be sufficient evidence from which it could reasonably be concluded that the facts alleged to support that ground of opposition exist [see *John Labatt Ltd v Molson Companies Ltd* (1990), 30 CPR (3d) 293 (FCTD); *Dion Neckwear Ltd v Christian Dior, SA et al* (2002), 20 CPR (4th) 155 (FCA); and *Wrangler Apparel Corp v The Timberland Company* (2005), 41 CPR (4th) 223 (FC)].

Dismissal of the Section 30 Grounds of Opposition

[23] The material date for considering the circumstances pertaining to a ground of opposition based upon non-compliance with section 30 of the Act is the filing date of the application [see *Georgia-Pacific Corp v Scott Paper Ltd* (1984), 3 CPR (3d) 469 (TMOB)].

[24] In each case, the grounds of opposition alleging non-compliance with sections 30(b), (d) and (i) of the Act are dismissed for the reasons that follow.

Non-compliance with section 30(b) of the Act

[25] The ground of opposition alleges that the Applicant has not used the trade-mark in association with the *services* described in the application as of the alleged date of first use. However, each trade-mark has been applied for registration in association with wares. In the decision *Massif Inc v Station Touristique Massif du Sud (1993) Inc* (2011), 95 CPR (4th) 249 (FC), the Federal Court has directed that an opposition is to be assessed in view of the ground of

opposition as pleaded. Where an opponent has pleaded that the application fails to comply with a section of the Act based on a particular set of circumstances, it is not permissible to refuse it on the basis that it does not comply with that section of the Act for reasons different than those pleaded.

[26] In any event, Canada Bread did not file evidence to support an allegation that the Applicant has not used the trade-mark in Canada as of the alleged date of first use, nor did it rely on the Applicant's evidence to discharge its evidential burden. As a matter of fact, Canada Bread did not make any submissions about this ground of opposition be it in its written argument or at the hearing.

[27] Accordingly, in each case the ground of opposition is dismissed because it is invalid. Alternatively, it is dismissed for Canada Bread's failure to meet its evidentiary burden.

Non-compliance with section 30(d) of the Act

[28] Canada Bread did not make any submissions about this ground of opposition, nor did it file evidence to support the allegation that the Applicant had not used the trade-mark in the United States. Accordingly, the ground of opposition is dismissed in each case for Canada Bread's failure to meet its evidentiary burden.

Non-compliance with section 30(i) of the Act

[29] There is no evidence that the Applicant may have been aware of the prior rights alleged by Canada Bread. In any event, mere awareness of prior rights alleged by an opponent does not preclude an applicant from truthfully making the statement required by section 30(i) of the Act. Where an applicant has provided the required statement, the jurisprudence suggests that non-compliance with section 30(i) can be found only where there are exceptional circumstances that render the applicant's statement untrue, such as evidence of bad faith or non-compliance with a federal statute [see *Sapodilla Co Ltd v Bristol-Myers Co* (1974), 15 CPR (2d) 152 (TMOB) at 155; and *Canada Post Corporation v Registrar of Trade-marks* (1991), 40 CPR (3d) 221 (FCTD)]. These cases are not such a case.

Analysis of the Remaining Grounds of Opposition

[30] In each case, the remaining grounds of opposition revolve around the likelihood of confusion between the Mark and one or more of Canada Bread's pleaded trade-marks consisting of or comprising the term SMART; they raise the following issues:

1. Is the trade-mark registrable as of today's date?
2. Was the Applicant the person entitled to registration of the trade-mark as of the claimed date of first use?
3. Was the trade-mark distinctive of the Applicant's wares as of the filing date of the statement of opposition?

[31] As the pleadings, the evidence and the parties' representations are identical in each proceeding, for ease of reference I will use the singular form in the analysis of the issues. In addition, I will refer to the trade-marks SMART & DELICIOUS WRAPS and SMART & DELICIOUS TORTILLAS interchangeably as the Mark, but distinguishing them where necessary. Thus, my findings will apply to both proceedings.

[32] In turning to the analysis of the issues, I first note that Mr. Ponter states in his affidavit that Canada Bread owns the following trade-marks in Canada [paras 2-7 of his affidavit]:

- SMART & Design of registration No. TMA708,753, for "bread, buns and rolls";
- DEMPSTER'S SMART, registration No. TMA761,257, for "bread, buns and rolls";
- POM SMART of registration No. TMA802,724 for "bread, buns and rolls, English muffins, tortillas and bagels";
- POM'S SMART of registration No. TMA812,868 for "bread, buns and rolls";
- SMART, application No. 1,363,511 for "(1) Bakery products, namely breads. (2) Hot dogs buns and hamburger buns. (3) English muffins, bagels and tortillas";
- SMART of application No. 1,363,513 for "snack foods namely snack cakes, cookies, puffed cakes, snack bars, granola bars";

- SMARTMAN of application No. 1,382,655 for “bakery products, namely bread, buns, rolls, tortillas, pitas, English muffins, bagels and snack cakes”; and
- SMARTMAN Design of application No. 1,382,656 for “bakery products, namely, breads, buns, rolls, tortillas, English muffins, bagel and snack cakes”.

[33] The above-listed trade-marks and their associated wares are subsequently referred to collectively throughout Mr. Ponter’s affidavit as the “Marks” and the “Wares” respectively [para 9 of the affidavit]. Also, Mr. Ponter states that he files copies of extracts “of these applications” from the Canadian trade-marks database as Exhibit “1” to his affidavit [para 8 of the affidavit]. However, Exhibit “1” consists of copies of extracts of the four *registrations* referenced in his affidavit; not of any applications.

[34] As I will return to the pleaded trade-marks in the following analysis of the issues, suffice it to say that I agree with the Applicant that not all of the trade-marks referenced by Mr. Ponter have been pleaded in the amended statement of opposition.

Is the Mark registrable as of today’s date?

[35] This issue arises from the grounds of opposition alleging that the Mark is not registrable under section 12(1)(d) of the Act in view of confusion with the registered trade-marks SMART & Design (TMA708,753) shown below, DEMPSTER’S SMART (TMA761,257) and SMART (TMA827,840) of Canada Bread.



[36] The material date for considering the circumstances pertaining to a section 12(1)(d) ground of opposition is the date of my decision [see *Park Avenue Furniture Corporation v Wickes/Simmons Bedding Ltd and The Registrar of Trade Marks* (1991), 37 CPR (3d) 413 (FCA)].

[37] Having exercised the Registrar's discretion, I confirm that the three pleaded registrations are extant in the name of Canada Bread. As the latter met its evidentiary burden, the issue becomes whether the Applicant has satisfied its legal onus to show that the Mark is not reasonably likely to cause confusion with any of the pleaded registered trade-marks.

[38] The test for confusion is one of first impression and imperfect recollection. Section 6(2) of the Act indicates that use of a trade-mark causes confusion with another trade-mark if the use of both trade-marks in the same area would be likely to lead to the inference that the wares or services associated with those trade-marks are manufactured, sold, leased, hired or performed by the same person, whether or not the wares or services are of the same general class.

[39] In applying the test for confusion, the Registrar must have regard to all the surrounding circumstances, including those specifically enumerated in section 6(5) of the Act, namely: a) the inherent distinctiveness of the trade-marks and the extent to which they have become known; b) the length of time the trade-marks have been in use; c) the nature of the wares, services or business; d) the nature of the trade; and e) the degree of resemblance between the trade-marks in appearance or sound or in the ideas suggested by them. These enumerated factors need not be attributed equal weight. [See *Mattel, Inc v 3894207 Canada Inc* (2006), 49 CPR (4th) 321 (SCC); *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée et al* (2006), 49 CPR (4th) 401 (SCC); and *Masterpiece Inc v. Alavida Lifestyles Inc* (2011), 92 CPR (4th) 361 for a thorough discussion of the general principles that govern the test for confusion.]

[40] In my opinion, its registered trade-mark SMART presents Canada Bread's strongest case. In other words, if confusion is not likely between the Mark and the registered trade-mark SMART, then it would not be likely between the Mark and the registered trade-marks SMART & Design and DEMPSTER'S SMART. Accordingly, I will focus my analysis on the likelihood of confusion between the Mark and the trade-mark SMART (TMA827,840) registered in association with the following wares: (1) Bakery products, namely breads. (2) Hot dogs buns and hamburgers buns. (3) English muffins, bagels and tortillas.

[41] In *Masterpiece, supra*, the Supreme Court of Canada stated that the degree of resemblance between marks, although the last factor listed in section 6(5) of the Act, is often likely to have the greatest effect on the confusion analysis; the Court chose to begin its analysis

by considering that factor. Thus, I turn to the assessment of the section 6(5) factors starting with the degree of resemblance between the marks.

Section 6(5)(e) - The degree of resemblance between the trade-marks in appearance or sound or in the ideas suggested by them

[42] When considering the degree of resemblance, the law is clear that the trade-marks must be considered in their totality; it is not correct to lay them side by side and compare and observe similarities or differences among the elements or components of the trade-marks. The first portion of a trade-mark is usually considered more important for assessing the likelihood of confusion [see *Conde Nast Publications Inc v Union des Editions Modernes* (1979), 46 CPR (2d) 183 at 188 (FCTD)]. At paragraph 64 of the *Masterpiece* decision, the Court writes that to measure the degree of resemblance, a preferable approach is to first consider whether there is an aspect of the trade-mark that is particularly striking or unique.

[43] In my view, the laudatory adjective DELICIOUS and the descriptive word WRAPS or TORTILLAS, as the case may be, are not particularly striking or unique. Thus, as Canada Bread's trade-mark SMART is entirely found as the first component of the Mark, there is necessarily a fair degree of resemblance between the trade-marks at issue.

Section 6(5)(a) - The inherent distinctiveness of the trade-marks and the extent to which they have become known

[44] As the Applicant referenced the state of the register evidence introduced through the affidavit of Adrienne Jarabek as part of the section 6(5)(a) factor, I first note that I will return to this evidence under my consideration of the additional surrounding circumstances of this case.

[45] For the reasons that follow, I find that the section 6(5)(a) factor, which is a combination of inherent and acquired distinctiveness, does not weigh in either party's favour.

[46] Insofar as inherent distinctiveness is concerned, I find that the trade-marks at issue possess about the same degree of inherent distinctiveness. Furthermore, I find that they possess a low degree of inherent distinctiveness.

[47] For one thing, the term SMART is a word of the ordinary English language. Further, I agree with the Applicant that there is a laudatory connotation attaching to the term SMART as it suggests that a product is somehow a better choice than other available choices. The word SMART in the context of food products is suggestive of products that would be a healthier choice than other available products. Finally, neither the laudatory adjective DELICIOUS nor the descriptive word WRAPS or TORTILLAS, as the case may be, increases the inherent distinctiveness of the Mark.

[48] As the strength of a trade-mark may be increased by means of it becoming known in Canada through use or promotion, I shall now turn to the review of the parties' evidence.

Evidence of Canada Bread - Affidavit of Mike Ponter

[49] To better understand my review of Canada Bread's evidence, I find it is useful to first reproduce the statement found at paragraph 10 of the affidavit:

Canada Bread [Company, Limited] and its predecessors (which include POM Bakery Limited and Multi-Marques Inc.) (hereinafter the "Opponent") have, since 2005, extensively and continuously used the Marks in Canada in the normal course of trade in association with the Wares.

[50] Based on a fair reading of this statement, I understand that the term "Opponent" used by Mr. Ponter throughout his affidavit is a collective reference to Canada Bread, POM Bakery Limited and Multi-Marques Inc. Also, as I previously mentioned, Mr. Ponter uses the term "Marks" a collective reference to the previously identified trade-marks owned by Canada Bread and the term "Wares" as a collective reference to the wares associated with these trade-marks. Accordingly, my use of the terms "Opponent", "Marks" and "Wares" in the following review of Canada Bread's evidence will reflect Mr. Ponter's use of these terms throughout his affidavit.

[51] I summarize as follows Mr. Ponter's evidence concerning the use and promotion of the Marks in Canada since 2005 [paras 11-14 and 17-20 of the affidavit]:

- examples of packaging for the Wares sold in association with the Marks are appended as Exhibit "2" to the affidavit;

- for the years 2009 to 2011, the approximate volume and value of sales of Wares in association with the Marks were as follows:
 - 26.8 million units / \$73.9 million in 2009;
 - 26.1 million units / \$67.4 million in 2010; and
 - 19.8 million units / \$52.9 million for part of 2011;

- examples of invoices showing sales of Wares featuring the Marks are appended as Exhibit “3” to the affidavit. I note that these invoices are for the years 2006-2008; the earliest one is dated March 23, 2006 and the latest one is dated March 18, 2008. I will return to the fact that all of these invoices were issued by Multi-Marques Inc.;

- the Opponent conducts extensive and significant promotional and advertising campaigns, including point-of-sale marketing, featuring the Wares in association with the Marks. Examples of promotional and advertising materials are appended as Exhibit “5” to the affidavit;

- advertising is conducted through various media across Canada, including radio, television, the Internet, printed publications as well as other forums such as sporting events;

- the trade-marks POM’S SMART, SMART and SMARTMAN Design are promoted at sporting events such as professional hockey games of the Montreal Canadiens at the Bell Centre and professional football games of the Montreal Alouettes, which are broadcasted nationally. Mr. Ponter states that he furnishes copies of “photographs taken at these events” as Exhibit “4” to his affidavit. I note that because the quality of reproduction of the material is questionable, it is not clear to me what could be photographs taken at sporting events. Still, it is apparent that Exhibit “4” also includes other material. For instance, there is one document presumably originating from the Bell Centre bearing the mention *Document révisé présenté à Multi-Marques Mai 2007*;

- the Opponent’s expenditures “for the promotion, advertising and marketing of Wares featuring the Marks” were \$3.4 million in 2009, \$6.85 million in 2010 and \$2.84 million in 2011; and
- the Opponent’s Marks can be found on the website located at *www.multimarques.com*. Print-outs of the website are appended as Exhibit “6” to the affidavit.

[52] The fact that Mr. Ponter furnishes the evidence without distinction between the Marks and the Wares certainly opens the evidence to criticism. For instance, despite the substantial volume/value of sales since 2009, the part that can be attributed to the sales of bakery products featuring the trade-mark SMART is unknown. The evidence concerning the advertisement and promotion of the Marks is also open to criticism.

[53] That being said, when I consider the copies of product packages, the invoices for the years 2006 to 2008 and the sales figures for the years 2009 to 2011 as a whole, I find that the evidence is sufficient to establish use of the trade-mark SMART in Canada in association with bakery products since the earliest date of first use claimed in registration No. TMA827,840, namely February 2006.

[54] Indeed, I am satisfied that the photocopies of product packages filed as Exhibit “2” evidence use of the trade-mark SMART in association with bakery products, in particular cakes, English muffins, bagels, tortillas, bread, hot dog buns and hamburger buns. To address the Applicant’s submissions that seven of the nine photocopies of product packages “prominently show [...] the house brand POM at the top of the packaging along with the term ‘Smart’ in stylized font in the centre of the packaging”, suffice it to say that the Act does not distinguish between primary and secondary trade-marks [see *Groupe Procycle Inc v Chrysler Group LLC* (2010), 87 CPR (4th) 123 at para 47 (FC)].

[55] Furthermore, Mr. Ponter provides evidence as to the volume and value of sales of the Wares for the years 2009 to 2011. Also, I accept the invoices filed as Exhibit 3 as corroborative evidence of sales in Canada of bakery products associated with the Marks during the years 2006 to 2008, including the trade-mark SMART. However, as I previously noted, Multi-Marques Inc.

is shown as the issuer of these invoices. Thus, I shall now revert to the issue arising from the invoices filed by Canada Bread.

[56] The Applicant submits that since Multi-Marques Inc. is clearly a separate entity, the evidence does not establish use of the Marks in Canada by Canada Bread. To summarize these submissions, I reproduce paragraph 79 of the Applicant's written argument:

To the extent that [Canada Bread] relies on sales by Multi-Marques Inc. between 2005-2008 to support a claim of use since before 2009, the Applicant notes that none of [Canada Bread's] applications in Exhibit 1 of the Ponter affidavit make (*sic*) reference to Multi-Marques Inc. as being a predecessor-in-title. Furthermore, Mr. Ponter makes no reference in his evidence to Multi-Marques Inc. being an (*sic*) licensee of [Canada Bread]. In the face of such ambiguity as to the relationship between Multi-Marques Inc. and [Canada Bread], such use cannot inure to the benefit of [Canada Bread].

[57] Although I acknowledge that Mr. Ponter identifies Multi-Marques Inc. as a predecessor of Canada Bread, it remains that there are no statements in his affidavit to explain the chain-of-title for the Marks. More particularly, we do not know since when the Marks have been owned by Canada Bread, nor when they were owned by Multi-Marques Inc. or POM Bakery Limited. I would add that when I exercised the Registrar's discretion to confirm the existence of the three pleaded registrations, I noted that Canada Bread was identified in each case as "Registrant", i.e. the person or entity to whom the protection right was originally granted. In other words, Canada Bread was not recorded as owner of the trade-marks after they had been registered. Finally, and not less importantly, Mr. Ponter does not make any mention of Multi-Marques Inc. being a licensee of Canada Bread.

[58] As Canada Bread's written argument did not address the issue arising from the invoices, at the hearing I invited the submissions of Canada Bread's agent.

[59] First and foremost, Canada Bread's agent argued that the Applicant did not cross-examine Mr. Ponter. He also argued that Multi-Marques was a business name of Canada Bread. When I asked the agent to point out the relevant evidence, he directed my attention to the following notice at the bottom of the print-outs of the website [Exhibit "6"]:

Copyrights and trademarks owned or used under license by Multi-Marques - a division of Canada Bread Company, Limited.

[60] Canada Bread's agent also argued that the website notice was sufficient for Canada Bread to benefit from the presumption set out at section 50(2) of the Act. This section provides that "to the extent that public notice is given of the fact that the use of a trade-mark is a licensed use and of the identity of the owner, it shall be presumed, unless the contrary is proven, that the use is licensed by the owner of the trade-mark and the character or quality of the wares or services is under the control of the owner".

[61] For the reasons that follow, the oral submissions of Canada Bread's agent did not convince me that I may conclude that Canada Bread benefited from the use of the Marks by Multi-Marques Inc.

[62] For one thing, the fact that Mr. Ponter was not cross-examined does not prevent me from assessing the value of his evidence. I acknowledge that Mr. Ponter's written testimony that the Marks have been used since 2005 has not been contradicted through cross-examination. Still, as discussed before, his written testimony is ambiguous.

[63] I am not convinced that significant weight should be afforded to the notice on the website as evidence that Multi-Marques is a business name of Canada Bread, especially since Mr. Ponter makes absolutely no mention of Canada Bread carrying on business under this name. Nonetheless, if the notice is of any value as evidence that Multi-Marques is a division of Canada Bread, as opposed to a distinct entity, in my view it is evidence as of the date of the website print-outs, i.e. January 17, 2012. Surely, it is of no assistance to Canada Bread in establishing that Multi-Marques *Inc.* was not a separate legal entity in 2006-2008.

[64] Lastly, while public notice has been recognized by the Registrar where on packages or labels for wares, what constitutes proper public notice is not defined in the Act. Thus, I acknowledge that there may be cases where a notice on a website could be considered a "public notice" under section 50(2) of the Act. That being said, I find it is not necessary to decide whether this is such a case. Again, I do not see how the notice on the website on January 17, 2012 may be of assistance in establishing that the use of the Marks in 2006-2008 by

Multi-Marques Inc. was licensed by Canada Bread with control over the character or quality of the Wares.

[65] To sum up, having considered the affidavit of Mr. Ponter as a whole, I find it is sufficient to establish use of the trade-mark SMART in Canada in association with bakery products since February 2006. However, given the ambiguity of the affidavit, I am not satisfied that it establishes that Canada Bread can benefit from the use of the trade-mark SMART by Multi-Marques Inc. for the years 2006 to 2008.

[66] Finally, there is no evidence clearly establishing that the volume and value of sales provided for the years 2009 to 2011 relate to sales by Canada Bread. Although not providing invoices for the years 2009 to 2011 is not by itself fatal to Canada Bread's case, it remains that the only invoices provided were issued by Multi-Marques Inc. Thus, in the circumstances of this case, I am not prepared to infer from the evidence before me that the trade-mark SMART has been used by Canada Bread itself during the years 2009 to 2011.

[67] In the end, I am unable to conclude that the trade-mark SMART has acquired distinctiveness as a result of its promotion or use by Canada Bread or to its benefit.

Evidence of the Applicant - Affidavit of Sam Tamayo

[68] As a preliminary matter, I note that in considering the evidence, I will disregard any statements of Mr. Tamayo which amount to an opinion on the questions of fact and law to be determined by the Registrar in this proceeding. Also, I will refer to his cross-examination to the extent that it is relevant in the context of his written testimony and the parties' submissions. Finally, my use of "SMART & DELICIOUS Marks" in the review of the Applicant's evidence will reflect Mr. Tamayo's collective reference to the trade-marks SMART & DELICIOUS WRAPS and SMART & DELICIOUS TORTILLAS in his affidavit.

[69] Mr. Tamayo states that the Applicant is an independent California-based company manufacturing tortillas and related food products that it sells to food brokers, restaurant and food stores across the United States. The Applicant sells its wares in Canada through Tree of Life Canada, a distributor of specialty and natural foods [para 2 of the affidavit].

[70] I summarize as follows Mr. Tamayo's evidence concerning the use and promotion of the SMART & DELICIOUS Marks in Canada in association tortillas and sandwich wraps since 2006:

- the SMART & DELICIOUS Marks have been used on product packaging, the Applicant's website (*www.latorillafactory.com*), letterhead, business cards and in marketing brochures and presentations [paras 8-9 of the affidavit];
- a printout of the website homepage [Exhibit "A"], copies of "product packaging" [Exhibit "B"], of "sell sheets" [Exhibit "C"] and of a promotional coupon [Exhibit "D"] are filed as examples of use of the SMART & DELICIOUS Marks. I note in passing that Exhibit "B" seems to consist of copies of mock-ups of product packaging as opposed to copies of actual product packaging.
- for the years 2006 to 2012, the volume and value of "sales of wares" in association with the SMART & DELICIOUS Marks were as follows [para 10 of the affidavit]:
 - 2,246 units / \$50,423 in 2006;
 - 8,310 units / \$170,118 in 2007;
 - 15,278 units / \$323,785 in 2008;
 - 19,960 units / \$418,733 in 2009;
 - 31,334 units / \$649,995 in 2010;
 - 27,733 units / \$654,809 in 2011;
 - 9,494 units / \$203,448 in 2012 (at the date of the affidavit); and
- advertising and promotional campaigns in Canada are conducted three times a year for four weeks through the offer of price discounts to Tree of Life Canada's customers. There are no advertisements on television, radio or in publications in Canada [para 13 of the affidavit, Q107-Q110].

[71] In my view, the evidence as introduced by Mr. Tamayo is open to criticism. For instance, I have not been provided with any details as to how many Canadians have accessed the

Applicant's website. Also, I have no information to conclude on the extent of the distribution of promotional material, such as the promotional coupons filed as Exhibit "D". Finally, but not less importantly, as Mr. Tamayo introduces the volume and value of sales without distinction between the SMART & DELICIOUS Marks, I cannot conclude on the extent of the sales of the Applicant's wares in association with each of the trade-marks SMART & DELICIOUS WRAPS and SMART & DELICIOUS TORTILLAS.

[72] In the end, I find that the Applicant's evidence as introduced by Mr. Tamayo does not allow me to draw a meaningful conclusion as to the acquired distinctiveness of the Mark.

Section 6(5)(b) - The length of time the trade-marks have been in use

[73] As I understand its submissions, Canada Bread contends that while the application for the Mark claims use in Canada since August 2006, it is favoured by this factor as its evidence establishes use of its SMART Family of Trade-marks since 2005.

[74] Although Canada Bread's evidence supports the earliest date of first use claimed in registration No. TMA827,840 for the trade-mark SMART, i.e. February 2006, as discussed above, Canada Bread failed to evidence that it has used by itself the trade-mark SMART or has benefited from its use in Canada.

Sections 6(5)(c) and (d) - The nature of the wares and the nature of the trade

[75] It is the statement of wares in the application for the Mark and the statement of wares in Canada Bread's registration that must be taken into consideration when assessing the section 6(5)(c) and (d) factors under the section 12(1)(d) ground of opposition [see *Mr Submarine Ltd v Amandista Investments Ltd* (1987), 19 CPR (3d) 3 (FCA); and *Miss Universe, Inc v Bohna* (1994), 58 CPR (3d) 381 (FCA)].

[76] Both the section 6(5)(c) and (d) factors favour Canada Bread.

[77] I agree with Canada Bread that there is no merit to the Applicant's suggestion that the nature of the parties' wares is distinguishable because the Mark is not associated with a complete line of bakery products, but only tortillas and wraps. Besides the fact that the trade-mark

SMART is registered in association with “tortillas”, there is an obvious overlap between “sandwich wraps” and Canada Bread’s registered wares.

[78] In terms of the nature of the trade, I disagree with the Applicant’s suggestion that the fact that its wares often appear on stand-alone racks is of any significance [Q60]. In this regard, suffice it to say that section 6(2) of the Act makes it clear that the wares do not have to be sold side by side. To the extent that both parties’ wares are sold in grocery stores and supermarkets, there is an obvious overlap between the channels of trade [para 15 of the Ponter affidavit; para 11 of the Tamayo affidavit, Q12].

Additional surrounding circumstance - State of the register

[79] State of the register evidence is introduced to show the commonality or distinctiveness of a mark or portion of a mark in relation to the register as a whole. Evidence of the state of the register is only relevant insofar as inferences may be made on it concerning the state of the marketplace, and inferences about the state of the marketplace can only be drawn when a significant number of pertinent registrations are located [see *Ports International Ltd v Dunlop Ltd* (1992), 41 CPR (3d) 432 (TMOB); *Welch Foods Inc v Del Monte Corp* (1992), 44 CPR (3d) 205 (FCTD); and *Maximum Nutrition Ltd v Kellogg Salada Canada Inc* (1992), 43 CPR (3d) 349 (FCA)].

[80] The Applicant relies on the state of the register evidence introduced through the affidavit of Adrienne Jarabek as supporting its case. In a nutshell, the Applicant argues that the evidence establishes that trade-marks containing the word SMART are highly prevalent in the food industry trade, including for bakery products, and therefore the consumers are undoubtedly accustomed to distinguishing between these trade-marks.

[81] Ms. Jarabek states that she conducted a search on the *NameReporter* database provided by OnScope Group Inc., which she states reflects the electronic records of the Canadian Intellectual Property Office, to locate active registrations and pending applications for trade-marks with the term “smart” [paras 2-3 of the affidavit]. Ms. Jarabek goes on to state that she “then manually reviewed the aggregate search results, being 1,360 results, for any mark

containing the term ‘smart’ and having food or food related items as part of its wares”; a copy of “the results of this search” is attached as Exhibit “A” to her affidavit [para 3 of the affidavit].

[82] Exhibit A to the affidavit consists of a table identifying 129 trade-marks as well as the following particulars for each: “Status”, “Date”, “Wares/Services”, “App. No.”, and “Owner”. As Canada Bread elected not to cross-examine Ms. Jarabek, I have no reasons to believe that the particulars reproduced in the table are not an accurate reflection of those that would have been shown by the full print-outs of the registrations and applications. As a matter of fact, Canada Bread did not challenge the accuracy of the search results appended as Exhibit “A” to the affidavit. Rather, Canada Bread submits that no inference can be drawn from the state of the register evidence because it does not disclose a significant number of pertinent registrations.

[83] In this regard, Canada Bread submitted in its written argument that following a more thorough review and analysis of the search report, there are no registered trade-marks with the term “smart” that are associated with Canada Bread’s wares and services, including bakery products. Canada Bread also submitted that the statement of wares and services of the registrations for the trade-marks SMART SPOT, SMART SELECTIONS MADE EASY and SMART SELECTIONS. BIEN CHOISIR refers to potato-based goods, whereas its trade-marks are associated with a variety of wares and services, including bakery products and not potato-based goods. At the hearing, Canada Bread’s agent merely stated that he was reiterating the submissions found in Canada Bread’s written argument. In other words, Canada Bread’s agent made no representations to address the submissions found in the Applicant’s written argument.

[84] The Applicant’s submissions are that of the 129 trade-marks, 99 are the subject of registrations or allowed applications; many of the trade-marks found in Exhibit A are associated with bakery products, including bread, rolls, buns, bagels, cakes, cookies, muffins and the like and stand in the name of various entities.

[85] Having considered only the registered trade-marks, according to my review of the search results, Ms. Jarabek selected 70 registrations. Not all of these registrations cover wares that qualify as food products (for instance SPUD SMART registered for “periodical publications, namely magazines with content of interest to potato producers and processors”). Also, I

acknowledge that some of the trade-marks are registered for services. Still it is apparent that a significant number of the registered trade-marks are for food products and the like, including bakery products. Suffice it to note the following as examples of trade-marks owned by third parties for bakery products or products identical to those at issue:

- SMART FIESTA (TMA805,543) for “tortillas...”;
- EAT A COOKIE SKIP A SERVING BE SMART FOR LIFE (TMA796,822) for “cookies”;
- MASTER CHOICE LIFESMART SMART EATING FOR LIFE & Design (TMA445,370) for “...cookies and biscuits...”;
- SCHNEIDERS SMART LUNCH & Design (TMA772,041) for “...bagels... baked goods, namely crispy rice bar”;
- SIMPLY SMART MEALS (TMA811,746) for “...bread...”;
- SMART & HEALTHY (TMA711,521) for “bakery products, namely bread”;
- SMART AS A COOKIE (TMA503,535) for “cookies”;
- SMART FOR LIFE CUPCAKE DIET (TMA805,630) for “cupcakes and muffins”;
- SMART PACK (TMA754,635) for “...bakery goods, namely: bread, buns, rolls, bagels...”; and
- SMART-GRAIN (TMA709,933) for “...bread...cookies...”;

[86] In the end, I am satisfied that the state of the register evidence shows sufficient relevant registrations for me to draw an inference favourable to the Applicant. In other words, I conclude that the state of the register for trade-marks including the term “smart” effectively dilutes the scope of protection to which Canada Bread’s trade-mark SMART is entitled.

Additional surrounding circumstance - No instances of confusion

[87] An opponent needs not to prove instances of confusion. The burden is on an applicant to demonstrate the absence of likelihood of confusion. Absence of evidence of confusion does not relieve an applicant from its burden of proof. Nevertheless, an adverse inference may be drawn from the lack of evidence of actual instances of confusion when there is evidence of extensive concurrent use of the marks [see *Mattel Inc*, *supra* at page 347].

[88] In this case, I do not afford any significance to Mr. Tamayo's written testimony that he is not aware of any instances when the Applicant or its products have been confused with Canada Bread or its products [para 4 of his affidavit (as corrected by Exhibit IST-1 to the transcript)]. Indeed, Mr. Tamayo acknowledged on cross-examination that he did not make any verification and so he may not know about instances of confusion [Q46-Q49].

Additional surrounding circumstance - Family of trade-marks

[89] Canada Bread submits that its ownership of a family of trade-marks comprising the word SMART is an additional surrounding circumstance supporting a finding in its favour. I disagree. I find this is not a case where Canada Bread may assert a family of trade-marks.

[90] A party seeking to take advantage of the wider scope of protection afforded to a family of trade-marks must first establish use of the trade-marks that comprise the family [see *MacDonald's Corporation v Yogi Yogurt Ltd.* (1982), 66 CPR (2d) 101 (FCTD)]. Besides the deficiency resulting from the introduction of the evidence by collective reference to the Marks, it follows from my review of the Ponter affidavit that Canada Bread failed to evidence use by itself or to its benefit.

[91] I wish to add that the presumption of the existence of a family is rebutted where there is evidence that the alleged family's common feature is registered and used by others [see *Thomas J. Lipton Inc v Fletcher's Fine Foods Ltd* (1992), 44 CPR (3d) 279 (TMOB) at 286-7].

Conclusion on the likelihood of confusion

[92] In *Man and His Home Ltd v Mansoor Electronic Ltd* (1999), 87 CPR (3d) 218 (FCTD) at 224, the Court stated the following regarding trade-marks that have little inherent distinctiveness:

It is well established that trade-marks containing words which are suggestive of the wares or services offered by the owner are considered to be weak marks and consequently, are afforded a minimal level of protection. In such cases, even a small difference between the marks will be sufficient to diminish the likelihood of confusion. Furthermore, where a person adopts a word in common use and seeks to prevent competitors from doing the same, the trade-marks will have less inherent distinctiveness and the range of protection

granted by the Court will be limited. Finally, where a party chooses to use a suggestive non-distinctive name, regardless of any acquired distinctiveness, it must accept a certain amount of confusion without sanction.

[93] In applying the test for confusion, I have considered it as a matter of first impression and imperfect recollection. In weighing all of the factors enumerated at section 6(5) of the Act and their relative importance, I am satisfied that the differences between the trade-marks when considered as a whole are sufficient to distinguish the Mark from the trade-mark SMART.

[94] Indeed, while I have concluded to a fair degree of resemblance between the trade-marks, it remains that Canada Bread's trade-mark SMART has a low degree of inherent distinctiveness. Furthermore, Canada Bread has failed to provide evidence establishing that its trade-mark has any measure of acquired distinctiveness. Finally, the state of the register evidence supports the Applicant's case. When I consider the evidence of record, in my view, a finding for Canada Bread under section 12(1)(d) of the Act would in effect grant Canada Bread an unreasonable breadth of monopoly over the word SMART in relation to food products.

[95] Accordingly, I am satisfied that the Applicant has discharged its legal onus of establishing that there is no reasonable likelihood of confusion between the trade-mark SMART & DELICIOUS WRAPS or SMART & DELICIOUS TORTILLAS and Canada Bread's registered trade-mark SMART (TMA827,840).

[96] Since I previously indicated that the registered trade-mark SMART presents Canada Bread's strongest case, I also conclude that the Applicant has discharged its legal onus of establishing that the trade-mark SMART & DELICIOUS WRAPS or SMART & DELICIOUS TORTILLAS is not reasonably likely to cause confusion with Canada Bread's registered trade-marks SMART & Design (TMA708,753) and DEMPSTER'S SMART (TMA761,527).

[97] Accordingly, I dismiss each of the section 12(1)(d) grounds of opposition.

Was the Applicant the person entitled to registration of the Mark as of the claimed date of first use?

[98] This issue arises from the grounds of opposition alleging that the Applicant is not the person entitled to registration of the Mark under sections 16(1)(a) and (b) of the Act owing to confusion with Canada Bread's SMART Family of Trade-marks that had been previously used in Canada by Canada Bread and in respect of which applications for registration had been previously filed in Canada.

[99] As a first matter, I note that both in written and oral arguments, Canada Bread did not make any distinctions between the ground of opposition raised under section 16(1)(a) and the one raised under section 16(1)(b) of the Act. Canada Bread basically argued that its evidence establishes the use of its SMART Family of Trade-marks prior to August 2006 and both grounds of opposition should succeed when assessing confusion under section 6(5) of the Act.

[100] In addition, I stress that the trade-marks pleaded in support of both grounds of opposition are alleged as the "SMART Family of Trade-Marks, as set out above". In my view, this part of the pleading can only be read as a reference to the trade-marks listed in the table found in the statement of opposition of record. As I previously indicated, when Canada Bread amended the statement of opposition to add a section 12(1)(d) ground of opposition based on the registered trade-mark SMART, it did not amend the table found in the original statement of opposition to list this trade-mark in the table. Thus, contrary to what has been indicated at paragraph 6 of Canada Bread's written argument, the registered trade-mark SMART has not been identified in the table provided in the amended statement of opposition.

[101] As I previously indicated, the Federal Court in the decision *Massif Inc, supra*, has directed that an opposition is to be assessed in view of the ground of opposition as pleaded. In my view, the trade-marks specifically pleaded by Canada Bread in support of these grounds of opposition are those identified at paragraph 5 of the amended statement of opposition, namely: SMART & Design (TMA708,753), DEMPSTER'S SMART (TMA761,257) and POM'S SMART (1,282,503). In other words, I consider that the pleadings do not encompass an allegation of confusion with Canada Bread's previously used or applied for trade-mark SMART.

[102] It is with the above comments in mind that I shall now consider the non-entitlement grounds of opposition raised under sections 16(1)(a) and (b) of the Act in turn.

Non-entitlement ground of opposition raised under section 16(1)(a) of the Act

[103] In order to meet its evidentiary burden in support of this ground of opposition, Canada Bread is required to show that each of its alleged trade-marks SMART & Design, DEMPSTER'S SMART and POM'S SMART had been used in Canada prior to the Applicant's claimed date of first use, i.e. August 2006 [see section 16(1)(a) of the Act] and had not been abandoned at the date of advertisement of the application for the Mark, i.e. March 9, 2011 [section 16(5) of the Act].

[104] Since the Applicant did not state a specific date of the month of August 2006, I consider the claimed date of first use to be the last day of the month, i.e. August 31, 2006 [see *Khan v Turban Brand Products Ltd* (1984), 1 CPR (3d) 388 (TMOB)]. Having said that, however, I find it is a moot point to decide whether Canada Bread's evidence establishes use of each pleaded trade-mark prior to August 31, 2006.

[105] Indeed, my previous conclusion that the affidavit does not establish use of the Marks by Canada Bread itself or use that has accrued to its benefit would apply to any of the pleaded trade-marks. Thus, I would conclude to the dismissal of the section 16(1)(a) ground of opposition for Canada Bread's failure to evidence its use of any of its alleged trade-marks prior to the Applicant's claimed date of first use.

Non-entitlement ground of opposition raised under section 16(1)(b) of the Act

[106] In order to meet its evidentiary burden in support of this ground of opposition, Canada Bread is required to show that any application relied upon had been filed before the date of first use claimed in the application for the Mark [section 16(1)(b) of the Act] and remained pending at the date of advertisement of the application for the Mark [section 16(4) of the Act].

[107] For the reasons that follow, I dismiss the ground of opposition in its entirety.

[108] To the extent that the ground of opposition is based upon the trade-marks SMART & Design (TMA708,737) and DEMPSTER'S SMART (TMA761,257), it is dismissed for having been improperly pleaded as both trade-marks had matured to registration as of March 9, 2011.

[109] However, to the extent that the ground of opposition is based on the trade-mark POM'S SMART of application No. 1,282,503, I am satisfied that Canada Bread has met its evidentiary burden. Indeed, having exercised the Registrar's discretion, I have confirmed that application No. 1,282,503 was filed on December 9, 2005 on the basis of proposed use and was pending as of March 9, 2011 [see *Royal Appliance Mfg Co v Iona Appliance Inc* (1990), 32 CPR (3d) 525 (TMOB) at 529].

[110] Canada Bread's position is not stronger under the section 16(1)(b) ground of opposition than under the section 12(1)(d) ground. In my opinion, it is even weaker as the prefix POM'S, which is clearly the most striking element of the alleged trade-mark, create further differences between the trade-marks in terms of appearance, sound and ideas suggested.

[111] In the end, I am satisfied that the Applicant has met its legal onus to show that the trade-mark SMART & DELICIOUS WRAPS or SMART & DELICIOUS TORTILLAS was not likely to cause confusion with the trade-mark POM'S SMART of application No. 1,282,503 as of August 31, 2006.

Was the Mark distinctive of the Applicant's wares as of the filing date of the statement of opposition?

[112] This issue arises from the ground of opposition alleging that the Mark is not distinctive under section 2 of the Act because it is not adapted to distinguish the Mark "from the wares of [Canada Bread] because of [Canada Bread's] SMART Family of Trade-marks".

[113] Once again, I find it is a moot point to decide whether Canada Bread has discharged its evidentiary burden to show whether one or more of its alleged trade-marks had become known sufficiently as of May 5, 2011 to negate the distinctiveness of the Mark [see *Motel 6, Inc v No 6 Motel Ltd*, (1981), 56 CPR (2d) 44 (FCTD); and *Bojangles' International, LLC and Bojangles Restaurants, Inc v Bojangles Café Ltd* (2006), 48 CPR (4th) 427 (FC)].

[114] Indeed, as the Ponter affidavit does not establish use by Canada Bread itself or use that has accrued to its benefit, it would follow that there would have been non-distinctive use of any of the pleaded trade-marks. Thus, the non-distinctiveness ground of opposition would have to be dismissed for Canada Bread's failure to show that any of these trade-marks had been used as of May 5, 2011 so as to negate the distinctiveness of the Mark, as pleaded by Canada Bread.

Disposition

[115] Pursuant to the authority delegated to me under section 63(3) of the Act, I reject the oppositions to application Nos. 1,485,346 and 1,485,347 under section 38(8) of the Act.

Céline Tremblay
Member
Trade-marks Opposition Board
Canadian Intellectual Property Office