



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

Citation: 2014 TMOB 85
Date of Decision: 2014-04-17

**IN THE MATTER OF TWO
OPPOSITIONS by The Brick Warehouse
LP to application Nos. 1,423,690 and
1,423,703 for the trade-marks BRICKS and
BRICKS DUET, respectively, in the name of
Coupons.com Incorporated**

APPLICATION NO. 1,423,690 - BRICKS

FILE RECORD

[1] On January 7, 2009, Coupons, Inc., a California corporation, filed an application to register the trade-mark BRICKS, based on proposed use in Canada, in association with the following services:

advertising and marketing services, namely, promoting the goods and services of others through the distribution of coupons via the Internet and e-mail.

During the course of these proceedings, Coupons.com Incorporated became the owner of the applied-for mark through a merger with the originally named applicant.

[2] The Examination Section of The Canadian Intellectual Property Office (“CIPO,” under whose aegis this Board operates) advised the applicant as follows:

The mark which is the subject of this application is considered to be confusing with the registered trade-marks Nos. TMA 265,607 [for THE BRICK], TMA 286,365 [for BRICK], TMA 629,264 [ebrick], TMA 681,101 [BRICK Logo] identified on the attached copies.

In view of the provisions of paragraph 12(1)(d) of the *Trade-marks Act*, this mark does not appear registrable.

[3] The applicant replied to the Examination Section by pointing out that the services covered by the cited registrations have to do with the retail sale of furniture, home appliances and the like. The applicant argued, among other things, that its services, having to do with electronic coupon distribution, is very different from the opponent's wares and services and thus confusion was unlikely. It appears that the Examination Section accepted the applicant's submissions (there is no indication on the file record) as the subject mark was shortly thereafter advertised for opposition purposes in the *Trade-marks Journal* issue dated May 26, 2010.

[4] The application was then was opposed by The Brick Warehouse LP, the owner of the cited registrations, on July 22, 2010. The Registrar forwarded a copy of the statement of opposition to the applicant on August 10, 2010, as required by s.38(5) of the *Trade-marks Act*, R.S.C. 1985, c. T-13. The applicant responded by filing and serving a counter statement generally denying the allegations in the statement of opposition. The opponent was subsequently granted leave to file an amended statement of opposition: see the Board ruling dated April 11, 2011.

[5] The opponent's evidence consists of the affidavits of Paul Comrie, Kim Upright, and Terry Cowan (2 affidavits), as well as certified copies of the opponent's trade-mark registrations. The opponent was subsequently granted leave to file additional evidence namely, a second affidavit of Kim Upright: see the Board ruling dated July 13, 2011. The applicant's evidence consists of the affidavit of Sean Ringer. The opponent's reply evidence consists of a third affidavit of Terry Cowan. The parties agreed that one set of evidence would be filed for both opposition cases. Only the opponent submitted a written argument. Neither party requested an oral hearing.

STATEMENT OF OPPOSITION

Pleadings

[6] The opponent pleads as follows in paragraph 2 of the statement of opposition:

The opponent is one of Canada's largest retailers of furniture, mattresses and box springs, home appliances and consumer electronic products, which have been sold through the opponent's retail stores operated under the house marks THE BRICK and BRICK (“THE BRICK retail stores”) and through the opponent's web site www.thebrick.com. The opponent has advertised its the [sic] BRICK retail stores and its web site by way of flyers distributed with newspapers, advertisements in newspapers, radio advertisements, television advertisements, by signs, by email, by electronic flyers, over the internet and by other means, which advertising materials have used the marks THE BRICK, BRICK, ebrick (sometimes written as e-Brick or eBRICK), and TheBRICK.com, and other marks that include the word BRICK, such as NOBODY BEATS THE BRICK. The opponent has used the trade mark ebrick for an online marketing program distributing flyers and advertising materials by email to potential customers (ebrick Members) to advertise products offered for sale, and services offered, at the opponent's THE BRICK retail stores and its web site.

Main Issue for Decision

[7] Various grounds of opposition are alleged, however, the determinative issue for decision is whether the applied-for mark BRICKS, for use in association with marketing by means of coupons provided by e-mail or via the Internet, is confusing with one or more of the opponent’s above mentioned marks. The earliest material date to consider the issue of confusion is the date of filing of the subject application, that is, January 7, 2009, while the latest material date is the date of my decision: for a review of case law concerning material dates in opposition proceedings see *American Retired Persons v. Canadian Retired Persons* (1998), 84 C.P.R.(3d) 198 at 206 - 209 (FCTD).

[8] Before reviewing the parties’ evidence, I will next discuss the meaning of confusion within the context of the *Trade-marks Act*, the test for confusion, and factors to be assessed in determining confusion.

WHEN ARE TRADE-MARKS CONFUSING?

[9] Trade-marks are confusing when there is a reasonable likelihood of confusion within the meaning of s.6(2) of the *Trade-marks Act*, shown below:

6(2) The 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 . . . or performed by the same person, whether or not the wares or services are of the same general class.

[10] Thus, the issue is not confusion between the marks themselves, but confusion of goods or services from one source as being from another source. In the instant case, the question posed by s.6(2) is whether purchasers of the applicant's services, provided under the mark BRICKS, would believe that those services were provided or authorized or licensed by the opponent who performs its services under its logos, trade-names and trade-marks comprised in whole or in part of the term BRICK. The legal onus is on the applicant to show, on the usual civil balance of probabilities standard, that there would be no reasonable likelihood of confusion.

TEST FOR CONFUSION

[11] The test for confusion is one of first impression and imperfect recollection. Factors to be considered, in making an assessment as to whether two marks are confusing, are "all the surrounding circumstances including" those specifically mentioned in s.6(5)(a) to s.6(5)(e) of the *Act*: the inherent distinctiveness of the marks and the extent to which they have become known; the length of time each has been in use; the nature of the wares, services or business; the nature of the trade; the degree of resemblance in appearance or sound of the marks or in the ideas suggested by them. This list is not exhaustive and all relevant factors are to be considered. Further, all factors do not necessarily have equal weight as the weight to be given to each depends on the circumstances: see *Gainers Inc. v. Tammy L. Marchildon and The Registrar of Trade-marks* (1996), 66 CPR(3d) 308 (FCTD). However, as noted by Mr. Justice Rothstein in *Masterpiece Inc. v. Alavida Lifestyles Inc.* (2011), 92 CPR(4th) 361 (SCC), although the degree of resemblance is the last factor cited in s.6(5), it is the statutory factor that is often likely to have the greatest effect in deciding the issue of confusion.

OPPONENT'S EVIDENCE

Paul Comrie

[12] Mr. Comrie identifies himself as a senior executive with the opponent company. The opponent is successor to The Brick Warehouse Corporation and has been carrying on business for over 30 years. The opponent operates retail stores which sell household bedding, furniture, large appliances, consumer electronic devices such as televisions and

stereos, and the like. The retail stores operate under the house brand “The BRICK,” with the word “The” in smaller typeface than the word “BRICK.” Mr. Comrie refers to his company’s stores as “THE BRICK retail stores” and I will do likewise. The opponent is one of Canada’s largest volume retailers of furniture, mattresses, appliances and home electronic products.

[13] The opponent also operates “THE BRICK Banner Stores” which refers to stores operating under the brands THE BRICK; BRICK; THE BRICK SUPERSTORE; THE BRICK MATTRESS STORE; and URBAN BRICK.

[14] As of September 2010, the opponent was operating 236 retail locations (including 52 franchise locations) across Canada. Of these, 111 operated as a THE BRICK retail store; 3 operated as a THE BRICK SUPERSTORE; 27 operated as a THE BRICK MATTRESS STORE; and 2 operated as an URBAN BRICK retail store.

[15] For the nine months ended September 30, 2010, retail sales of THE BRICK Banner Stores exceeded \$700 million; such stores achieved similar sales for each of the years 2006 - 2009 inclusive. For each of the fiscal years 2001 – 2005, retail sales of such stores exceeded \$500 million.

[16] The opponent has operated a website at www.thebrick.com for selling wares since 1998. The mark The Brick has always been featured on the English language version of the site and the mark BRICK has been featured on the French language version of the site since 2004. Retail sales for the website exceeded \$5 million annually for each of the years 2005 – 2009 inclusive.

[17] The opponent operates a fleet of 316 delivery vehicles prominently displaying the mark The BRICK. The fleet made in excess of 800,000 deliveries in the five-year period 2006 – 2010.

[18] I would add that the manner of use of the mark The BRICK, as illustrated by the exhibits attached to Mr. Comrie's affidavit, may be considered to be use of the mark BRICK *per se*: in this regard see the Board decision in *Nightingale Interloc v. Prodesign Ltd.* (1984), 2 CPR(3d) 535 at 538.

[19] Mr. Comrie provides further information concerning the opponent's use of its mark "ebrick" which has been related to him by Kim Upright, the opponent's Manager eCommerce. It is hearsay evidence and therefore I have not had regard to it. Ms. Upright has provided her own testimony, summarized below.

Kim Upright

[20] As mentioned above, Ms. Upright is Manager eCommerce for the opponent. In November 2004 the opponent started a membership service under the brand "ebrick." The ebrick service permits persons who visit the opponent's website to join a marketing distribution list and receive emails from the opponent concerning store offerings. Emails sent to members are referred to as "ebrick messaging." Since fall 2008 there have been over 100,000 ebrick members; they are sent ebrick messaging weekly. Ms. Upright further describes the opponent's e-mail and Internet activities as follows:

13. Through the ebrick Service, the Company has sent ebrick messaging offering select products or macro-message offers to subscribers of the Company's ebrick Service . . . The ebrick messaging sent by the Company has often been tied to products the Company has been concurrently advertising in-store, on television, in circulars/flyers and through direct mail . . . Since 2004, English language ebrick messaging has invariably prominently featured the mark The Brick . . . In many instances, ebrick messaging has displayed TheBRICK.com (rather than just The Brick) with ".com" in small type, which my company considers is a use of both its marks THE BRICK and The BRICK.COM. . . In many instances ebrick messaging has displayed TheBRICK.com (rather than just The Brick) with ".com" in small type, which my company considers a use of both its marks THE BRICK and The BRICK.COM."

14. Beginning in July, 2009, continuing to the present and with expected carriage in future, the Company has provided third party offers to the Company's ebrick membership ("Third Party Offers") as part of the ebrick Service. These have been offers for products or services of companies that are not related to the Company, and for which the Company has been paid by the third party for sending the Third Party Offers to the ebrick membership. One example of Third Party Offers has been offers made available by Delta Hotels

to the Company's ebrick membership that were sent as ebrick messaging . . . the ebrick members have been able to click on Third Party Offers in ebrick messaging and have been taken to web pages providing more information on the Third Party Offers. . .

15. For at least ten years the Company has run contests approximately ten times per year on an annual basis), either alone or in conjunction with third parties ("Contest"). For at least five years the Company has utilized ebrick messaging to announce and communicate Contest details to the ebrick membership. . .

16. The Company has officially been on facebook since October, 2009 as www.facebook.com/thebrick.com ("Facebook Page"). Since October, 2009, the Company has used its Facebook Page to advertise selected products, discounts, coupons and contests, and on average has made a new posting to its wall at least once a week. The Company is on facebook as TheBrick.com, and the Company's Facebook Page has, since inception, prominently featured the Company's brand TheBrick.com, with the words "The" and "corn" in a much smaller typeface than the word "BRICK". . .

17. Since October, 2009 the Company has concurrently run similar promotions on its Facebook Page, Website and in email messaging . . .

Terry Cowan

Affidavit of January 11, 2011

[21] Mr. Cowan identifies himself as the Director of Advertising for the opponent. He repeats some of Mr. Comrie's testimony before focusing on the opponent's advertising activities. Advertising for THE BRICK retail stores, THE BRICK Banner Stores and the opponent's website is by means of newspapers, radio, direct marketing, flyers, signage on the vehicle fleet and television. In each of the years 2006 – 2010 advertising costs have exceeded \$40 million; for the same period in excess of 180 million flyers, prominently featuring the mark The BRICK, have been delivered to potential customers in Canada. The opponent's other marks have also been featured in extensive advertising.

[22] Since 2006, the opponent has annually distributed over 30,000 coupon books in the Province of Quebec. The books, attached as Exhibit G1, prominently feature the mark BRICK and are intended to draw customers into BRICK retail stores. The coupons in the books offer limited time savings, as indicated by an expiry date, on various wares.

[23] Mr. Cowan discusses the use of the third party mark DUET in conjunction with the opponent's THE BRICK retail stores marks in para.17 of his affidavit:

For a number of years my Company's THE BRICK retail stores, BRICK retail stores and the Website have sold appliances marked with the trade mark WHIRLPOOL, that have been manufactured by a third party ("Whirlpool"). For a number of years Whirlpool has manufactured a washer and dryer laundry pair that it has marked with the brand Duet, which have been sold through my Company's THE BRICK retail stores, my Company's BRICK retail stores in Quebec, and the Website. Attached as Exhibit "H-1" is a copy of one of my Company's flyers, dated October, 2001, dedicated to the launch of the Duet at THE BRICK retail stores and on the Website. Over 200,000 copies of the flyer that is Exhibit "H-1" were delivered through national and local newspapers in Canada in October, 2001. Attached as Exhibit "H-2" is a copy of a flyer for THE BRICK retail stores, dated June, 2005, advertising the Duet® Front-Load Laundry Pair from Whirlpool at THE BRICK retail stores and on the Website. Over 200,000 copies of the flyer that is Exhibit "H-2" were delivered through national and local newspapers in Canada in June, 2005. Attached as Exhibit "H-3" is a copy of the French-language flyer for my Company's BRICK retail stores, dated June, 2006, advertising the Duet® Front- Load Laundry Pair from Whirlpool at BRICK retail stores and on the Website. Over 50,000 copies of the flyer that is Exhibit "H-3" were delivered in Quebec in June, 2006. Attached as Exhibit "H-4" is a flyer for THE BRICK retail stores with an insert prominently advertising Duet HT Front Load Laundry Team immediately below my Company's THE BRICK trade mark. Over 200,000 copies of the flyer and insert that are Exhibit "H-4" were delivered through national and local newspapers in Canada in July, 2008.

Affidavit of January 18, 2011

[24] Mr. Cowan discusses how the opponent's coupon books promote third party wares and services at paragraph 3 of his second affidavit:

Attached as Exhibit "F1" to my earlier affidavit was a Coupons book from August, 2006. Exhibit "F1" includes two coupons at page 69 for Whirlpool's "Duet" washer and dryer, products sold in 2006 from my Company's The Brick retail stores and the Website. Exhibit "F1" includes a coupon on the inside of the front cover that advertises and promotes "TransGLOBAL Service" appliance and electronic repair services, one of Canada's largest appliance servicers. Exhibit "F1" includes two coupons on the inside of the back cover that advertise and promote two digital receiver systems sold in 2006 from my Company's The Brick retail stores and the Website, which coupons offered the customer pay per view (PPV) credits and programming credits off of the digital receiver systems for use with satellite television services provided by Star Choice, a company not associated with my company.

APPLICANT'S EVIDENCE

Sean Ringer

[25] Mr. Ringer identifies himself as Senior Corporate Counsel to the opponent. The opponent provides digital offers, printable coupons and promotional services to its major manufacturer clients in Canada each year. Canadian consumers “have printed hundreds of thousands of dollars in coupon savings in Canada.”

[26] Mr. Ringer describes the applicant's business in greater detail at paragraphs 2 and 3 of his affidavit:

2. [The applicant] provides digital offers, printable coupons and various promotional services to its major manufacturer clients in Canada each year. As such, [the applicant] makes available digital offers that result in thousands of printed coupons through and on behalf of its major manufacturer and retailer clients. Canadian consumers have printed hundreds of thousands of dollars in coupon savings in Canada.

3. Applicant's advertising and marketing services performed under its trade-marks BRICKS and BRICKS DUET both in Canada and the U.S.A. is a service made available to its retail and manufacturer clients. The trade-marks BRICKS and BRICKS DUET do not appear on the coupons directly or indirectly sourced by [the applicant] to potential consumers of the third-party goods or services providers identified in the coupons.

[27] I note that Mr. Ringer's affidavit is dated August 11, 2011. I therefore conclude that the applicant began to use its mark in Canada after January 7, 2009, that is, after the date of filing of the subject application.

[28] The exhibits attached to Mr. Ringer's affidavit is comprised, in part, of literature which the opponent makes available to brand marketers in Canada and the United States concerning its coupon service activities performed under its marks BRICKS and BRICKS DUET. The applicant's business is further described in the following excerpts from Exhibits A and C:

From Exhibit C

Our Bricks® service is a flexible tool available for integrating coupons with our clients' existing interactive marketing program, allowing them to coupon-enable elements of their promotional program, including their websites, banner ads, newsletters, and emails. Transform your marketing

program into a promotional powerhouse by coupon-enabling with our Bricks® service.

Use our Bricks® service to drive visitor registrations, build customer profiles, reward market survey responses, drive loyalty programs, introduce new products, and more.

From Exhibit A

The [applicant] is the driving force in transforming the multi-billion dollar coupon industry and ushering it into the digital world. For decades, the Sunday newspaper has been the dominant distribution method for coupons, but as the reach of the newspaper declines and a growing number of consumers are online, more and more consumers and brands alike are looking to digital. Today, [the applicant] and its digital coupons network is far and away the largest provider of digital coupons.

The company's goal is to provide coupons everywhere a brand has the opportunity to interact with a consumer across the digital domain. Coupons.com is not only shifting the multi-billion dollar Sunday coupon insert market online, it is also expanding both the supply of coupons, by using the power of the Internet to lower the cost of entry for coupon issuers, as well as increasing the demand for coupons, by introducing a whole new consumer demographic to coupons via the Internet, social media, and mobile phones. Coupons.com already enables client's coupon promotions in web pages, email campaigns, social media initiatives, mobile devices, store kiosks, shopping carts, consumer electronics, and more. The company intends to expand that reach further into every nook, cranny and corner across the digital landscape-anywhere there is a digital connection to consumers creating a digital marketplace where brands, retailers and consumers can connect at every step along the consumer's path to purchase. The possibilities are endless . . .

[29] Exhibit D illustrates representative coupon samples as used in Canada by the applicant's retailer clients "who have subscribed to my company's [the applicant's] BRICKS and BRICK DUET coupon programs." The applicant's clients include GlaxoSmithKline; Unilever Canada; Alberto Culver; and Kimberly-Clark.

[30] In para. 9 of his affidavit, Mr. Ringer addresses the parties' channels of trade and the absence of instances of actual confusion:

. . . in my capacity as Senior Corporate Counsel for the applicant, I have not been made aware of any actual or perceived instances of confusion between these two trade-marks of my company and any trade-marks of the opponent. This is not surprising since the advertising and marketing services which my company performs under its two BRICKS trade-marks is in a universe entirely different from a retailer who operates a chain of stores specializing in the retail sale of third-

party supplied household furnishings including appliances and home entertainment equipment.

OPPONENT'S REPLY EVIDENCE

Terry Cowen

Affidavit of September 1, 2011

[31] Mr. Cowen takes issue with statements made by Mr. Ringer. First, Mr. Cowen notes that the opponent sells to businesses as well as individual consumers and that it has sent coupon books to business clients. Secondly, Mr. Cowen explains how the opponent performs advertising and marketing services for its “manufacturing clients” or “suppliers,” that is, companies whose products have appeared in the opponent’s coupon book. In this respect, the opponent negotiates with the supplier or manufacturer for a lower cost than the opponent usually pays and passes on the reduced price to the consumer. The supplier is motivated to provide a lower price because “the Coupon Books generate increased sales of their products.” Further, suppliers that sell under their own brands are charged a fee for space in the coupon book. From about September 2006, the opponent has received in excess of \$100,000 from suppliers for space in the opponent’s coupon books.

CONSIDERATION OF S.(6)(5) FACTORS

First Factor – Inherent and Acquired Distinctiveness

[32] The opponent’s mark BRICK possesses some degree of inherent distinctiveness. In this regard, it is a common dictionary word, however, it has no direct or apparent connection to the opponent’s retail services. Similarly, the applied for mark BRICKS possesses a fair degree of inherent distinctiveness. I conclude from the opponent’s evidence that the opponent’s mark BRICK was very well known in Canada (if not famous in Canada) at all material times in association with the retail sale of household furnishings and appliances.

[33] The opponent’s reputation for its couponing program would have been known to some extent to manufacturers and suppliers rather than to the general public. Further, the

couponing program is primarily intended to draw attention to the opponent's retail activities rather than to third party manufacturers and suppliers. In this regard, the opponent's couponing program is primarily restricted to wares purchased through the opponent.

[34] The subject application for the mark BRICKS is based on proposed use in Canada and therefore the mark would not have acquired any reputation at the earliest material date, that is, at the date of filing of the application. However, I infer from the applicant's evidence that its mark BRICKS had acquired some reputation at the later material dates. Further, the applicant uses its mark in connection with a couponing service that is intended to draw attention solely to the applicant's clients rather than to the applicant.

[35] The first factor in s.6(5), which is a combination of inherent and acquired distinctiveness, favours the opponent.

Second Factor - Length of Time the Marks have been in Use

[36] The opponent has been using its marks, including the mark BRICK, since about 1980 in association with its retail selling service. As far as I am able to determine from the evidence of record, the opponent began its couponing program some time about 2005. The applicant, on the other hand, did not begin its couponing service in Canada until some time after January 7, 2009. The second factor in s.6(5) therefore favours the opponent.

Third and Fourth Factors - The Nature of the Parties' Services and Trades

[37] I am inclined to agree with the applicant that its service and its business is quite different from the opponent's service and business (see para. 30, above), although I recognize that there is a minimal overlap. In this regard, although the opponent engages in couponing services, such services are restricted to its suppliers, are mostly in print form, and are merely an adjunct to its main business which is the retail sale of household furnishings and appliances. The third and fourth factors therefore favour the applicant.

Fifth Factor – Degree of Resemblance

[38] For the purposes of this proceeding, I consider that the applied-for mark BRICKS is essentially identical to the opponent's marks BRICK and THE BRICK which, from my review of the exhibit material filed by the opponent, the opponent uses more extensively than any of its other marks. The fifth factor therefore favours the opponent.

Surrounding Circumstance – No Instances of Actual Confusion

[39] I also give some weight to the applicant's evidence, which has not been challenged by cross-examination, that there have been no instances of actual confusion despite the applicant operating in Canada beginning some time after January 2009. Of course, the absence of evidence of actual confusion does not necessarily raise any presumptions unfavourable to the opponent and is by no means determinative of the issue of confusion. I am aware, for example, that in *Mr. Submarine Ltd. v. Amandista Investments Ltd.* (1987), 19 CPR (3d) 3 (FCA), the Court found that the defendant's marks MR. SUBS'N PIZZA and MR. 29 MIN. SUBS'N PIZZA were confusing with the plaintiff's mark MR. SUBMARINE although there was no evidence of actual confusion despite 10 years of contemporaneous use of the parties' marks in the area of Dartmouth, Nova Scotia. Nevertheless, the absence of evidence of actual confusion is one surrounding circumstance among the many to be considered.

CONCLUSION

[40] In a case such as this, where the opponent's mark is inherently a relatively weak mark, where the opponent's services are quite different from the applicant's services, and where the opponent's marks have not acquired a significant reputation for the services provided by the applicant, I find that the third and fourth factors in s.6(5) namely, the natures of the parties' services and trades, are to be given greater weight than the other factors. This is not a case where the fifth factor, resemblance, is the most important factor. I have also given some weight to the applicant's evidence that there have been no instances of actual confusion despite apparent contemporaneous use of the parties' marks.

[41] In view of the foregoing, I find that, at all material times, the applied-for mark BRICKS was not and is not confusing with the opponent's marks BRICK, THE BRICK or with any other of the opponent's BRICK family of marks.

APPLICATION No. 1,423,703 - BRICKS DUET

[42] The application and file history for the mark BRICKS DUET parallels the BRICK application and file history. The issues, evidence, material dates and considerations in the BRICKS DUET opposition are entirely analogous to those in the BRICKS opposition, with two exceptions: first, there is less resemblance between the applied-for mark BRICKS DUET and the opponent's marks owing to the second component DUET in the applied-for mark; second, the applicant has not adequately demonstrated any use of its mark BRICKS DUET. Of course, the first changed circumstance favours the applicant while the second changed circumstance favours the opponent to some extent. Considering all of the factors in s.6(5), and giving more weight to the third and fourth factors, results in the same conclusion as in the BRICKS opposition, that is, I find that, at all material times, the applied-for mark BRICKS DUET was not and is not confusing with the opponent's marks BRICK, THE BRICK or with any other of the opponent's BRICK family of marks.

DISPOSITION

[43] The oppositions to the marks BRICKS and BRICKS DUET are rejected. These decisions have been made pursuant to a delegation of authority by the Registrar of Trade-marks under s.63(3) of the *Trade-marks Act*.

Myer Herzig, Member,
Trade-marks Opposition Board
Canadian Intellectual Property Office