



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

Citation: 2010 TMOB 67
Date of Decision: 2010-05-17

**IN THE MATTER OF AN OPPOSITION by
L'Oréal to Application No. 1,201,383 for the
trade-mark L'OREAL PARIS filed by
Robert V Marcon**

[1] On December 11, 2003, Robert V Marcon (the "Applicant") filed an application to register the trade-mark L'OREAL PARIS (the "Mark") in association with the following wares based on proposed use of the Mark in Canada:

(1) Vitamin, mineral and herbal supplements and combinations thereof.

(2) Aloe vera drinks.

(the "Wares")

[2] The application was advertised for opposition purposes in the *Trade-marks Journal* of January 3, 2007. On May 31, 2007, L'Oréal (the "Opponent") filed a statement of opposition. The Applicant filed and served a counterstatement on August 15, 2007 in which he denied the Opponent's allegations.

[3] The Opponent's evidence consists of the affidavit of Christian Bourque sworn on November 20, 2007, with Exhibits CB-1 through CB-6 (the "Bourque Affidavit"), the affidavit of Fabyenne Le Charlès sworn on January 29, 2008, with Exhibits FLC-1 through FLC-17 (the "Le Charlès Affidavit"), the affidavit of Dominique De Celles sworn on March 12, 2008, with Exhibits DDC-1 through DDC-17 (the "De Celles Affidavit"), the supplemental affidavit of

Dominique De Celles sworn on March 17, 2008 (the “De Celles Affidavit No. 2”), the affidavit of Karine Jarry sworn on March 14, 2008, with Exhibits KJ-1 through KJ-4 (the “Jarry Affidavit”). The Opponent also filed certified copies of seventeen trade-mark registrations and applications consisting of:

- Twelve third party registered trade-marks.
- Two of the Opponent’s registered trade-marks, namely L’OREAL (Registration No. TMDA290020) and L’OREAL PARIS (Registration No. TMA655,217).
- Three of the Opponent’s applications for registration of trade-marks, namely L’OREAL VITA LIFT (1,255,313), L’OREAL PREMIUM (1,201,383), and L’OREAL VIVE PRO (1,287,473).

[4] The Applicant’s evidence consists of his own affidavit (sworn March 17, 2008). Only the Applicant filed a written argument and a hearing was conducted at which only the Opponent was represented.

[5] The Opponent’s statement of opposition included the following grounds that can be summarized as follows:

1. The application does not conform to the requirements of section 30(i) of the *Trade-marks Act* (the “*Act*”) on the basis that the Applicant could not have been satisfied that he was entitled to use the Mark in Canada because the Applicant has adopted a “*modus operanti*” of filing applications for known trade-marks in identical or related fields in Canada and United States.
2. The Mark is not registrable because it is confusing with a number of the Opponent’s registered trade-marks contrary to s. 12(1)(d) of the *Act*, including most notably, the trade-mark L’OREAL PARIS registered under Registration No. TMA655,217 and the trade-mark L’OREAL registered under Registration No. TMDA29020. The particulars

of the Opponent's registrations are identified at Schedule A to this decision and are hereinafter sometimes collectively referred to as the "L'OREAL Trade-marks".

3. The Applicant is not the person entitled to registration of the Mark pursuant to s. 16 of the *Act* in that the Mark was confusing:
 - a. with a number of the Opponent's trade-marks including most notably, the trade-mark L'OREAL PARIS and the trade-mark L'OREAL previously used or made known in Canada by or for the Opponent or its predecessors in title in association with wares, services and companies in the field of, related to, or in the same nature as, cosmetics, perfumes, products for care or treatment, contrary to s. 16(3)(a) of the *Act*; and
 - b. with the Opponent's trade names including most notably L'Oréal and L'Oréal Paris, previously used in Canada by or for the Opponent or its predecessors in title in association with its wares, services and companies in the field of, related to, or in the same nature as, cosmetics, perfumes, care or treatment products, contrary to s. 16(3)(c) of the *Act*.
4. The Mark is not distinctive in that it does not distinguish and is not adapted to distinguish the Applicant's Wares from those of others, including the Opponent's vitamin, mineral and herbal supplements and combinations thereof, and aloe vera drinks.

Onus

[6] The Applicant bears the legal onus of establishing, on balance of probabilities that his application complies with the requirements of the *Act*. However, there is an initial evidential burden on the Opponent to adduce sufficient admissible evidence from which it could reasonably be concluded that the facts alleged support each ground of opposition (see *John Labatt Ltd. v. Molson Companies Ltd.*, (1990) 30 C.P.R. (3d) 293 (F.C.T.D.)).

Registrability

[7] The material date with respect to the s. 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 C.P.R. (3d) 413 (F.C.A.)). The Opponent has met its initial burden because its registrations of the L'OREAL Trade-marks as detailed on Schedule "A" are in good standing, including most notably Registration No. TMA655,217 for the trade-mark L'OREAL PARIS and Registration No. TMDA29020 for the trade-mark L'OREAL.

The test for confusion

[8] 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. In applying the test for confusion, the Registrar must have regard to all the surrounding circumstances, including those specifically enumerated in s. 6(5) of the *Act*, namely: a) the inherent distinctiveness of the trade-marks or trade-names and the extent to which they have become known; b) the length of time each has 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 or trade-names in appearance or sound or in the ideas suggested by them. These factors need not be attributed equal weight, but should be accorded the appropriate weight considering the facts of the case (*Mattel, Inc. v. 3894207 Canada Inc.* (2006), 49 C.P.R. (4th) 321 (S.C.C.)). Lastly, the test for confusion to be applied is a matter of first impression in the mind of a casual consumer somewhat in a hurry (*Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée* (2006), 49 C.P.R. (4th) 401 (S.C.C.)). It is with these principles in mind that I will assess all of the surrounding circumstances and determine the likelihood of confusion between the Applicant's Mark, L'OREAL PARIS, and the Opponent's trade-mark L'OREAL PARIS registered under Registration No. TMA655,217.

[9] The Applicant submits that the Opponent's trade-mark L'OREAL PARIS is a weak mark. In this regard, he filed internet evidence showing a listing of "Oréal" as first name and surname, a listing of "Loreal" as first name and surname, a listing of "Paris" as first name and surname, listings of "Paris" as geographical locations in Canada and elsewhere in the world, along with an explanation pertaining to the use of "elision" in French. I respectfully disagree with the Applicant that L'OREAL PARIS is a weak mark. However, even if it had been shown that the trade-mark L'OREAL PARIS lacked inherent distinctiveness, the evidence clearly demonstrates that the strength of the Opponent's L'OREAL PARIS trade-mark has increased through significant use in Canada. As the Federal Court of Appeal noted in *United Artists Pictures Inc. v. Pink Panther Beauty Corp.* (1998), 80 C.P.R. (3d) 247 (F.C.A.) at para 24:

Where a mark does not have inherent distinctiveness it may still acquire distinctiveness through continual use in the marketplace. To establish this acquired distinctiveness, it must be shown that the mark has become known to consumers as originating from one particular source.

[10] With respect to the extent to which the marks have become known, since the Applicant filed no evidence of use of his Mark, I must conclude it had not become known at all in Canada.

[11] In her affidavit, Ms. De Celles, V.P. Chief Marketing Officer of L'Oreal Canada Inc., attests that that the Opponent specialises in research, development, manufacturing, sales and distribution of perfumery products, cosmetics, make-up, skin and body care products, beauty products, as well as hair care, coloration and hair treatment products ("L'Oréal Products"). Founded in 1909, the Opponent's head office is located at Paris and conducts its business through its licensees around the world including L'Oréal Canada. Worldwide, the Opponent has manufactured nearly four billion units of L'Oréal Products annually for at least the last ten years.

[12] The evidence demonstrates that L'Oréal Canada is a wholly owned subsidiary of the Opponent and that it is the exclusive distributor of L'Oréal Products in Canada, including those sold under the trade-mark L'OREAL PARIS. The evidence also demonstrates that the Opponent has direct or indirect control of the character or quality of the L'Oréal Products distributed by L'Oréal Canada in Canada in association with the L'OREAL Trade-marks, including L'OREAL

PARIS.

[13] The Opponent first introduced L'Oréal Products in Canada in 1959 under the trade-mark L'OREAL or one of its variations. The L'OREAL PARIS trade-mark was introduced in Canada as early as 1993. Net sales of products in Canada in association with the trade-mark L'OREAL PARIS from 1997 to 2007 have increased from more than \$117 to 228 million CAD annually while advertising and promotional expenses have increased from more than \$12 to 30 million CAD each year. The Opponent also furnished samples of packaging materials and advertising materials showing the manner in which L'OREAL Trade-marks, notably L'OREAL PARIS, and L'OREAL were used in Canada in association with the L'Oréal Products from 2001 to 2007.

[14] The Opponent's registration for the trade-mark L'OREAL PARIS claims use in Canada since at least as early as April 1993. The Opponent has not demonstrated continuous use of L'OREAL PARIS since April 1993 in association with all of the registered wares, but has evidenced long and extensive use of its L'OREAL Trade-marks in Canada including use of the trade-mark L'OREAL PARIS in association with the registered wares. In view of this evidence, I am satisfied that the Opponent's L'OREAL PARIS trade-mark, has become very well known in Canada. The length of time that the Opponent's L'OREAL Trade-marks, including the L'OREAL PARIS trade-mark, have been in use also favours the Opponent.

[15] In considering the wares, services and trades of the parties, it is the statement of wares or services in the Applicant's trade-mark application, as amended, and the Opponent's L'OREAL PARIS trade-mark registration that govern with respect to the issue of confusion arising under s. 12(1)(d) (*Henkel Kommanditgesellschaft auf Aktien v. Super Dragon Import Export Inc.* (1986), 12 C.P.R. (3d) 110 (F.C.A.); *Mr. Submarine Ltd. v. Amandista Investments Ltd.* (1987), 19 C.P.R. (3d) 3 (F.C.A.); *Miss Universe Inc. v. Bohna* (1994), 58 C.P.R. (3d) 381 (F.C.A.)).

[16] In the present case, the Opponent's perfumery products, cosmetics, make-up, skin and body care products, beauty products, as well as hair care, coloration and hair products differ from the Applicant's "vitamin, mineral, and herbal supplements and combinations thereof" and "aloe vera drinks". The Opponent submits that while its goods are not identical to those of the

Applicant, there is nonetheless a connection. In this regard, the Opponent's evidence demonstrates that the Opponent has approximately 120 cosmetic related patents in Canada, including those in the field of nutricosmetics, described as an alternative type of cosmetics which activates the biological resources of the skin from within. In particular, the Opponent furnished a copy of Canadian patent No. 2352618 for a vitamin and mineral based formulation for reducing hair loss and promoting hair growth designed to be taken orally. The Opponent also furnished evidence demonstrating that in connection with the expansion of the Opponent's business, the Opponent signed a partnership agreement with Nestlé in 2002 to develop and market cosmetic products that are ingested orally under a company called Laboratoires Innéov. The Opponent also attests that Laboratoires Innéov has been mandated by the Opponent to develop nutricosmetic products. Lastly, the Opponent also furnished evidence demonstrating that aloe vera is a common component in skin care, beauty, and hair care products and that certain L'Oréal Products sold in association with the L'OREAL Trade-marks, including those sold under the trade-mark L'OREAL PARIS in Canada contain vitamins or minerals.

[17] The fact that the Opponent may also be involved in nutricosmetics, that beauty products, may contain aloe vera or vitamins or minerals, or that the Opponent is involved in a partnership to develop and market cosmetic products that are ingested orally does not necessarily lead me to the conclusion that the wares are similar. Accordingly, this factor tends to favour the Applicant.

[18] In *Mattel*, the Supreme Court of Canada reviewed the relevance of a connection or a resemblance between the nature of the wares when assessing confusion and noted that the wares need not be of the same general class. All surrounding circumstances including the nature of the wares must be taken into consideration. Stressing the importance of considering all surrounding circumstances, the Court reasoned in *Mattel* that the fame of a mark does not trump all remaining surrounding circumstances and confusion cannot be automatically presumed in these instances. The Court reasoned that "a difference in wares or services does not deliver the knockout blow, but nor does the fame of the trade-mark" (see *Mattel*, para 72). The full factual context of each case will determine the likelihood of confusion; in some cases, certain factors will carry greater weight than others. In this regard, I agree with the Opponent's submissions that it is not necessary for the parties to operate in the same general field or industry for there to be likelihood

of confusion (*Miss Universe, Inc. v. Dale Bohna* (1994), 58 C.P.R. (3d) 381 (F.C.A.)) and the wares or the services need not be of the same general class for the use of a trade-mark to cause confusion with another (*Maison Cousin (1980) Inc. v. Cousins Submarines Inc.* (2006), C.P.R. (4th) 369 (F.C.A.)).

[19] On this point, I understand the Applicant's submission to be that s.6(5)(c) of the *Act* is the determinative factor and in particular, that his L'OREAL PARIS Mark can co-exist in the Canadian marketplace with the Opponents' L'OREAL PARIS trade-mark because his goods are sufficiently different from those of the Opponent. As his evidence, he attaches printouts from the Canadian Trade-mark Database to show "parallel and co-existing use" of certain trade-marks, including the trade-marks DUTCH BOYS, TRIUMPH, APOLLO, GREYHOUND, FINLANDIA and CORONA. The Applicant also furnished in evidence printouts of court decisions from the Internet and a copy of a newspaper article regarding the registrability of trade-marks. I do not consider evidence of several unrelated identical or similar marks on the Register to be relevant to the present proceedings; the issue of confusion between the Mark and the Opponent's L'OREAL PARIS trade-mark is a decision to be made based on the surrounding circumstances and the particular facts of this case. Each case must be decided upon its own merit. In addition, the decisions by the Examination Section of the Trade-marks Office, who do not have evidence filed by the parties in opposition proceedings, to register marks are not binding and have no precedential value for the Registrar in determining the registrability of a trade-mark in an opposition proceeding (see *Thomas J. Lipton Inc. v. Boyd Coffee Co.* (1991), 40 C.P.R. (3d) 272 (T.M.O.B.) and *Procter & Gamble Inc. v. Morlee Corp.* (1993), 48 C.P.R. (3d) 377 (T.M.O.B.)).

[20] The Opponent's evidence demonstrates that the L'Oréal Products, including those sold under the trade-mark L'OREAL PARIS are sold *inter alia* in pharmacies, department stores and grocery stores. The Applicant did not file any evidence with regards to where his products would be sold. However, vitamin, mineral and herbal supplements, as well as non-alcoholic beverages are often sold in pharmacies, department stores and grocery stores. Accordingly, it appears that the channels of trade for the applied for Wares and the Opponent's L'Oréal Products, including those sold under the trade-mark L'OREAL PARIS may overlap.

[21] With respect to the degree of resemblance between the trade-marks at issue (s. 6(5)(e) of the *Act*), the Mark is identical to the Opponent's registered trade-mark. L'OREAL PARIS.

Conclusion regarding the likelihood of confusion

[22] In applying the test for confusion and in view of my findings above, in particular of the extensive reputation and use of the Opponent's registered trade-mark L'OREAL PARIS in Canada, the overlap between the channels of trade, and the fact that the marks are identical, I find that the Applicant has not discharged his burden of showing, on a balance of probabilities, that there is not a reasonable likelihood of confusion between his Mark, L'OREAL PARIS and the Opponent's registered trade-mark L'OREAL PARIS. Accordingly, this ground of opposition succeeds.

Section 30(i) of the *Act*

[23] Section 30(i) of the *Act* requires that an applicant include in his application for registration of a trade-mark: "a statement that the applicant is satisfied that he is entitled to use the trade-mark in Canada in association with the listed wares or services described in the application". A plain reading of s. 30(i) of the *Act* suggests that this statement required by s. 30(i) of the *Act* is largely a formal requirement. However, it seems to me that s. 30(i) of the *Act* must require something more than a mere formal requirement of a statement otherwise the provision lacks meaning and purpose. As discussed by H.G. Richard in *Canadian Trade-marks Act – Annotated Robic Leger*, rev. ed. (Scarborough, Ont.: Carswell) (looseleaf) at 30-47, 30-48 although the statement required by s. 30(i) of the *Act*, may be a formal requirement, it is confirmation of the applicant's good faith in submitting its application for registration of the trade-mark in Canada:

The final consideration before proceeding to the actual search of the indexes and examination of the mark itself, is whether or not the applicant is satisfied "that he is entitled to use the mark in Canada in association with the wares or services described in the application". This can be looked at as a type of contract between the applicant and the public, establishing that all information and supporting evidence, including revisions or additions of same, have been submitted **in good faith**, and that the application as it stands, is approved by

the applicant. Assuming that everything is in order, the applicant or his agent affixes his signature. The examiner can then proceed with the examination of the mark and the search of the indexes. (emphasis added)

[24] In cases where an applicant has provided the statement required by s. 30(i) of the *Act*, this ground of opposition will only succeed in exceptional cases, such as in cases where there is evidence of bad faith on the part of the applicant (*Sapodilla Co. v. Bristol Myers Co.* (1974), 15 C.P.R. (2d) 152 (T.M.O.B.) at 155). The Applicant has clearly met the formal requirements of s. 30(i) of the *Act* by including in his application a statement that he is satisfied that he is entitled to use the trade-mark in Canada. However, in this case, I understand the Opponent to be alleging that there is bad faith on the part of the Applicant in that he appears to have a *modus operandi* of filing applications for registration of well-known trade-marks in Canada and the United States, including this application for registration of L'OREAL PARIS. Accordingly, the Opponent submits that the Applicant could not have been satisfied that he was entitled to use the trade-mark L'OREAL PARIS in Canada in compliance with s. 30(i) of the *Act*.

[25] In support of this ground of opposition, the Opponent furnished evidence demonstrating that in 2003, when the Applicant filed this application for registration of L'OREAL PARIS, he also filed nineteen other applications for registration of the following trade-marks in Canada:

Trade-Mark	Application No.	Filing Date
BAYER	1201366	2003-12-11
BEEFEATER	1168023	2003-02-18
BUDWEISER	1168020	2003-02-18
COORS	1168021	2003-02-18
CORONA	1168019	2003-02-18
DOM PERIGNON	1168014	2003-02-18
EVIAN	1188155	2003-09-02
FINLANDIA	1168024	2003-02-18
HEINEKEN	1168025	2003-02-18
JACK DANIEL'S	1168016	2003-02-18
JACK DANIEL'S	1202335	2003-12-29
NESCAFÉ	1201480	2003-12-11
NESTLÉ	1201360	2003-12-11
SENSODYNE	1186813	2003-08-18
TIM HORTONS	1186804	2003-08-18
ABSOLUT	1168026	2003-02-18
CANADIAN CLUB	1168022	2003-02-18

Trade-Mark	Application No.	Filing Date
SOUTHERN COMFORT	1168272	2003-02-24
CHANEL	1202435	2003-12-30

[26] I note that among these Canadian trade-mark applications evidenced by the Opponent as being filed by the Applicant in 2003, the latter is identified as “Marcon, Robert Victor”, “Robert V Marcon”, “Robert V. Marcon”, “Robert Victor Marcon”, and “Robert Marcon” with the same mailing address as that of this application.

[27] The Opponent filed in evidence certified copies of the following Canadian trade-mark registrations, demonstrating that many of the above referenced trade-marks filed by the Applicant had already been registered in Canada in the name of third parties as follows:

Trade-mark	Registration Number	Registered Owner
BAYER	TMDA24895	Bayer Aktiengesellschaft
BEEFEATER	TMA120,981	Allied Domecq Spirits & Wine Limited
CHANEL	UCA18468	Chanel S. de R.L.
COORS	TMA230,978	Coors Global Properties, Inc.
CORONA	TMA598,045	Cerveceria Modelo, S.A. de C.V.
DOM PERIGNON	UCA38900	Champagne Moët & Chandon
FINLANDIA & DESIGN	TMA259,325	Finlandia Vodka Worldwide Ltd.
HEINEKEN	TMA554,809	Heineken Brouwerijen B.V.
L'OREAL PARIS	TMA655,217	L'Oreal
NESTLE	TMDA36039	Société des Produits Nestlé S.A.
SENSODYNE	TMA124,139	GlaxoSmithKline Consumer Healthcare Inc.
TIM HORTONS & DESIGN	TMA226,560	The TDL Marks Corporation
EVIAN	TMA306,440	Société anonyme des eaux minérales d'Evian

[28] The Opponent also provided evidence that the above referenced registered trade-mark owners also own many related or associated trade-marks in Canada as follows:

- 13 trade-marks filed by or registered to Bayer Aktiengesellschaft containing the word BAYER;
- 7 trade-marks filed by or registered to Allied Domecq Spirits & Wine Limited containing the word BEEFEATER;

- 13 trade-marks registered to Chanel S. de R.L. containing the word CHANEL;
- 12 trade-marks filed by or registered to Coors Global Properties, Inc. containing the word COORS;
- 10 trade-marks filed by or registered to Cerveceria Modelo, S.A. de C.V. containing the word CORONA;
- 3 trade-marks registered to Champagne Moët & Chandon containing the words DOM PERIGNON;
- 6 trade-marks registered to Société anonyme des eaux minérales d'Evian, 4 of which contain the word EVIAN;
- 12 trade-marks filed by or registered to Finlandia Vodka Worldwide Ltd. containing the word FINLANDIA;
- 10 trade-marks filed by or registered to Heineken Brouwerijen B.V. containing the word HEINEKEN;
- 6 trade-marks filed by or registered to Jack Daniel's Properties, Inc. containing the words JACK DANIEL'S;
- 28 trade-marks filed by or registered to Société des Produits Nestlé S.A. containing the word NESTLÉ;
- 12 trade-marks filed by or registered to GlaxoSmithKline Consumer Healthcare Inc. containing the word SENSODYNE; and
- 13 trade-marks filed by or registered to The TDL Marks Corporation containing the words TIM HORTONS.

[29] The evidence demonstrates that many of these third party trade-marks have been on the Canadian trade-marks register for years and claim to have been used in Canada for many years, some since before the turn of the 20th century.

[30] I am satisfied that the Opponent has met its initial evidentiary burden by adducing sufficient admissible evidence to support its allegation of the Applicant's non-compliance with s. 30(i) of the *Act* (*John Labatt Limited Supra*). In view of the Opponent having met its initial evidentiary onus, the Applicant must demonstrate he was satisfied that he is entitled to use the Mark in Canada in association with the applied for wares. However, in this case, the Applicant did not file any evidence with respect to the nature of his business or his intended use of the applied for Mark in Canada. Moreover, the Applicant's affidavit is notably silent with respect to his compliance with s. 30(i) of the *Act*. In particular, the Applicant did not attest that he was satisfied that he is entitled to use the Mark in Canada, or provide any evidence demonstrating the reasons for his belief. I consider that it would have been a simple matter for the Applicant to explain in his affidavit why he was satisfied that he is entitled to use the Mark in Canada. The Applicant's failure to tender any evidence that could reasonably be expected in the

circumstances of this case leads me to draw a negative inference. In addition, the Applicant does not address this issue in his written argument, except to state that he considers that evidence relating to his other trade-mark applications is irrelevant, immaterial and that I should disregard it. I disagree.

[31] The Opponent's evidence clearly demonstrates that during the course of 2003, the Applicant filed twenty separate and unrelated applications seeking registration of trade-marks already owned by various third parties in Canada. Ten of these applications were all filed on the same day, namely February 18, 2003, including applications for registration of the following trade-marks: BUDWEISER, COORS, DOM PERIGNON, HEINEKEN, TIM HORTONS and CANADIAN CLUB. In this regard, I agree with the reasoning of Member Folz in the case *Cerverceria Modelo, S.A. de C.V. v. Marcon* (2008), 70 C.P.R. (4th) 355 (T.M.O.B.) at 369, involving the same Applicant:

I am not aware of any jurisprudence that describes what "bad faith" is in the context of s. 30(i). While I am not sure whether this term applies in the present circumstances, I question how any reasonable person would be satisfied that he/she was entitled to file trade-mark applications for over 18 arguably well known marks for arguably related wares and/or services. I also question the underlying intent of such an applicant in doing so. In my view, the activity of attempting to coat-tail on the established reputation of so many well known marks should be the type of activity that s. 30(i) is designed to prevent.

[32] The evidence demonstrates that the particular facts of this case are exceptional. Specifically, in view of the evidence filed by the Opponent and in the absence of any evidence filed by the Applicant, I am not satisfied that the Applicant's statement required by s. 30(i) of the *Act* was made in good faith. I also reach this conclusion on the basis of having already found that there is a likelihood of confusion between the Applicant's Mark and the Opponent's registered trade-mark L'OREAL PARIS. Accordingly, the s. 30(i) ground of opposition also succeeds.

Remaining Ground(s) of Opposition


[33] As I have already refused the application under two grounds, I will not address the remaining grounds.

Conclusion

[34] Therefore, having been delegated authority by the Registrar of Trade-marks by virtue of section 63(3) of the *Act*, I reject the application to register the Mark, the whole pursuant to section 38(8) of the *Act*.

Darlene H. Carreau
Chairperson, Trade-marks Opposition Board

Schedule A

Trade-mark	Registration Number
DUO L'ORÉAL	TMA327,867
FLOREAL L'OREAL	TMA194,790
L'OREAL VIVE	TMA475,212
L'OREAL AIRWEAR	TMA613,987
L'OREAL COVER EXPERT	TMA631,930
L'OREAL DOUBLE EXTEND	TMA589,174
L'OREAL ENDLESS	TMA665,184
L'OREAL EXCELLENCE	TMA177,145
 L'ORÉAL HAUTE MODE	TMA266,035
L'OREAL	TMA586,713
HYDRA-REPAIR	
L'OREAL INFINIUM	TMA525,821
L'OREAL JET SET	TMA518,676
L'OREAL KIDS	TMA489,213
L'ORÉAL LE CHIC	TMA273,740

**L'OREAL
PERFORMANCE**

TMA439,487

L'OREAL
PERFORMANCE
FORTIFIANCE

TMA455,328

L'ORÉAL

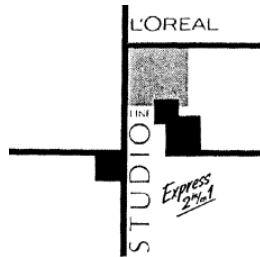
TMA511,303

PLÉNITUDE

FUTUR·e

**PARIS L'ORÉAL
PROFESSIONNEL**

TMA502,706



TMA400,918

**L'OREAL
TECHNIQUE
PROFESSIONNELLE**

TMA407,758

L'ORÉAL

ULTRA RICH

TMA338,603

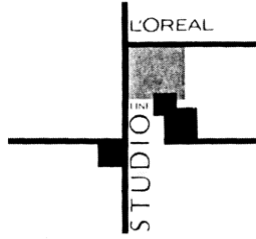
L'OREAL, PARCE QUE
JE LE VAUX BIEN

TMA555,969



TMA451,900

**L'OREAL
TECHNIQUE
PROFESSIONNELLE**



TMA357,971



TMA438,090



TMA232,841

SuperBlonde
L'OREAL