

IN THE MATTER OF AN OPPOSITION by Genfoot Inc.
to application No. 519,702 for the trade-mark
SNOWMASS & Design filed by Greg Swanson Limited,
and presently standing in the name of George-Bond
(Ont.) Corp.

On April 3, 1984, the applicant, Greg Swanson Limited, filed an application to register the trade-mark SNOWMASS & Design, a representation of which appears below, based upon proposed use of the trade-mark in Canada in association with "clothing, namely coats, jackets, ski jackets, vests, pants, sweaters and hats".

The opponent, Genfoot Inc., filed a statement of opposition on May 28, 1985 in which it alleged that the applicant's trade-mark is not registrable and not distinctive, and that the applicant is not the person entitled to its registration, in view of the registration and prior user in Canada by the opponent of its trade-mark SNOW-MASTER, registration No. N.S. 137-35014.

During the opposition proceeding, the opponent requested and was granted leave pursuant to Rule 42 of the Trade-marks Regulations to amend its statement of opposition in order to allege the further ground of opposition that the applicant's trade-mark SNOWMASS & Design is either clearly descriptive or deceptively misdescriptive of the place of origin of the applicant's wares. In respect of this ground, the opponent alleged that the name "Snowmass" is the name of a well-known mountain and ski resort in the U.S.A., namely Snowmass Mountain in the State of Colorado. Accordingly, the opponent submitted that the name Snowmass used in association with coats, jackets, ski jackets, vests, pants, sweaters and hats would lead a prospective purchaser of those goods in Canada to believe that they emanate from Snowmass Mountain, Colorado.

The applicant filed a counter statement, and subsequently an amended counter statement, in which it in effect denied the grounds of opposition asserted by the opponent in its original and amended statements of opposition.

The opponent filed as its evidence the affidavits of Gordon Cook and Morris J. Holervich while the applicant submitted as its evidence the affidavits of George Wong and Linda Elford. The opponent also requested and was granted leave to adduce as further evidence pursuant to Rule 46(1) of the Trade-marks Regulations the affidavits of Maria Strom and Wendy Laatumen.

Both the applicant and the opponent submitted written arguments and neither party requested an oral hearing. Further, during the opposition proceeding, the applicant assigned its trade-mark by way of an assignment dated March 13, 1986 to George-Bond (Ont.) Corp., the present applicant of record.

22nd DECEMBER, 1989