



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

**Citation: 2013 TMOB 55**  
**Date of Decision: 2013-04-03**

**IN THE MATTER OF AN OPPOSITION  
by Congregation Talmud Torah D'Chasidei  
Bobov of Monsey and Baruch C. Greenfeld  
to application No. 1,276,632 for the trade-  
mark BOBOV in the name of United Bobov  
International, Inc.**

FILE RECORD

[1] On October 21, 2005, the applicant United Bobov International, Inc. filed an application to register the trade-mark BOBOV, based on use in Canada in association with the wares “matzo” and with various charitable, educational and religious services. The applicant claims use of the mark BOBOV since 1958 for the wares. The earliest date of first use claimed for the services is 1946, for educational services, while the latest date of first use claimed for services is 1985, for religious services and the like.

[2] The applicant also claims a priority filing date of April 21, 2005, pursuant to s.34 of the *Trade-marks Act*, based on the filing of corresponding trade-mark applications in the United States of America for the wares and services specified in the Canadian application.

[3] The subject application was advertised for opposition purposes in the *Trade-marks Journal* issue dated June 10, 2009 and was opposed on July 28, 2009 by Congregation Talmud Torah D'Chasidei Bobov of Monsey and Baruch C. Greenfeld.

[4] The Registrar forwarded a copy of the statement of opposition to the applicant on August 20, 2009 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.

[5] Neither party filed any evidence and neither party filed a written argument. Only the applicant attended at an oral hearing held on April 2, 2013. The applicant argued that the opponents failed to meet their evidential burden with respect to each of the grounds of opposition.

#### STATEMENT OF OPPOSITION

[6] I will set out the grounds of opposition summarily, for the reason that I agree with the applicant's submissions at the oral hearing. A detailed examination of the case is therefore unnecessary.

##### *Grounds of Opposition*

1. The application does not comply with s.30(b) of the *Trade-marks Act* in that the applicant has not used the wares and services since the dates claimed in the application.
2. The application does not comply with s.30(i) of the *Act* in that the applicant was bound by an Arbitration Agreement (executed in the United States) to have the right to the name Bobov determined in a Jewish court of law (a "Beth Din").
3. The applied-for mark BOBOV is not registrable, pursuant to s.12(1)(b), because it is clearly descriptive or deceptively misdescriptive of the applicant's wares and services.
4. The applicant is not entitled to register the mark BOBOV, pursuant to s.16(1)(a), because at the date of filing the application, the opponent Congregation Talmud Torah D'Chasidei Bobov of Monsey was the senior user of the mark.
5. The mark BOBOV is not distinctive, pursuant to s.2, because it does not distinguish the applicant's wares and services from the wares and services of the opponent Congregation Talmud Torah. Further, BOBOV is a traditional

term which signifies a religious community and is not susceptible to trade-mark protection.

TECHNICAL ISSUES - LEGAL ONUS ON THE APPLICANT AND EVIDENTIAL BURDEN ON THE OPPONENTS

[7] This case cannot be decided on its merits - which are unknown as none of the parties has filed evidence. It therefore remains for the case to be decided on “technical” issues. In this regard, there is a legal onus on the applicant to show that the application does not contravene the provisions of the *Trade-marks Act* as alleged by the opponents in the statement of opposition. However, there is also, in accordance with the usual rules of evidence, an evidential burden on the opponents to prove the facts inherent in the allegations pleaded in the statement of opposition: see *John Labatt Limited v. The Molson Companies Limited*, 30 CPR (3d) 293 at 298 (FCTD).

[8] The presence of an evidential burden on the opponents with respect to a particular issue means that in order for the issue to be considered at all, there must be sufficient evidence from which it could reasonably be concluded that the facts alleged to support that issue exist.

REASONS FOR DECISION

[9] In the instant case, the opponents have failed to put into issue any of the allegations in the statement of opposition because there is no evidence to support any of the allegations. Accordingly, each ground of opposition is rejected for the reason that the opponents have failed to meet their evidential burden.

DISPOSITION

[10] The opposition to the mark BOBOV is rejected. This decision has been made pursuant to a delegation of authority under s.63(3) of the *Trade-marks Act*.

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Myer Herzig  
Member, Trade-marks Opposition Board