

**IN THE MATTER OF AN OPPOSITION by
Noosheen Fard Company Corporation to
Application No. 1198814 for the trade-mark
NOOSHIN filed by Canadian Distribution
Channel Inc**

I The Proceedings

On December 2, 2003 Canadian Distribution Channel Inc. filed an application to register the trade-mark NOOSHIN (the “Mark”) in association with:

Beans and peas, namely, great northern beans, mung beans, garbanzo beans, red beans, green lentils.(2) Rice, grains, flours and by - products, namely, rice Thai jasmine rice, barley, chick pea flour. (3) Jams and preserves, namely, quince preserve, rose petal jam, sour cherry jam, carrot jam, cucumber pickled, garlic pickled, shallots pickled, egg plants pickled, mixed vegetables pickled. (4) Syrups, namely, sour cherry syrup, quince syrup, orange blossom syrup, rose syrup. 5) Rose water and herbal extracts, namely, concentrated rose water, mint extract, willow water, kasni water shahtareh water, beedmeshk water, orange blossom water, dill water, fenugreek water.(6) Fruit juices, namely, sour grape juice, pomegranate juice, lime juice, lemon juice, mango juice, tamarind juice, apricot juice.(7) Dried fruit, namely, sour cherry, mulberries, barberry, fruit layers, dry figs, dry apricots. (8) Pure honey, pure honey with comb, pure light honey. (9) Non-alcoholic beverages, namely, carbonated soft drinks, fruit flavored soft drinks, soft drinks flavored with tea, dairy-based food chocolate beverages, vegetable juices. (10) Sugar and sugar cubes, candies, candid fruit and nuts. (11) Pastes and molasses, namely, pomegranate paste, pomegranate molasses, grape molasses, date molasses, tomato paste. (12) Stuffed cookies, namely, walnuts cookies, coconuts cookies, chocolate cookies (the “Wares”);

and in association with:

(1) Packaging of food products to the specification of others; operation of an export agency; wholesale and retail distribution of food products (the “Services”).

The application was filed based on use since 1997.

The application was advertised on September 1st, 2004 in the *Trade-marks Journal* for opposition purposes. Mohammed Ebrahim Beglari and Noosheen Fard. Co. Ltd. (the

“Opponent”) filed a statement of opposition on January 19, 2005 and was forwarded by the Registrar on February 15, 2005, to the Applicant. It was amended twice afterwards.

The Applicant filed on September 19, 2005 a counter statement denying essentially all grounds of opposition pleaded.

The Opponent filed certified copies of application 1,128,341 for the trade-mark NOOSHEEN LAHIDJAN & Design, an assignment dated January 27, 2006 and confirmation of change in title dated February 16, 2006 as well as the affidavit of Mohammed Ebrahim Beglari. The Applicant filed as its evidence the affidavit of Bruce Khabbazi sworn on November 2nd, 2006. Such affidavit refers and reiterates the allegations contained in an earlier affidavit dated August 28, 2006 and filed in another opposition proceeding involving the same parties. It was annexed as Exhibit A to his November 2nd, 2006 affidavit. Mr. Khabbazi was cross-examined and the transcript of his cross-examination has been filed in the record. However the transcript filed refers not only to the two affidavits mentioned before but also to a third affidavit sworn on December 29, 2004 that was filed in the other opposition proceeding. I shall discuss in another section of this decision the admissibility of that third affidavit and any reference to it as part of the evidence.

The Opponent filed a second affidavit of Mohammed Ebrahim Beglari as reply evidence.

None of the parties filed written submissions and only the Opponent was represented at the oral hearing.

II The Grounds of Opposition

The grounds of opposition, after the amendments were allowed, read as follow:

1. The Application does not comply with the requirements of s. 30 of the Trade-marks Act, R.S.C. 1985 c. T-13 (the “Act”) in that the Applicant has not used the Mark or alternatively or cumulatively the use of the Mark, if any, in whole or in part, is not a continuous one;
2. The statement that the Applicant is satisfied that it is entitled to the use of the Mark is false in view of the content of this opposition, including the Applicant’s knowledge of

the Opponent's Noosheen Fard Co. Ltd rights as herein alleged and of the unlawfulness of said use, if any, which will or would encroach upon the rights of the aforesaid opponent and which is contrary to various federal and provincial statutes and regulations pertaining to the marking of food products, including the Food and Drug Act with respect to inter alia, jams, syrups and juices;

3. The wares described as "flours and by-products, namely, rice Thai jasmine rice, barley", "jams and preserves, namely, cucumber pickled, garlic pickled, shallots pickled, egg plants pickled, mixed vegetables pickled", "rose water and herbal extracts, namely concentrated rose water, mint extract, willow water, kasni water, shahtareh water, beedmeshk water, orange blossom water, dill water, fenugreek water", "dried fruit, namely, sour cherry, mulberries, barberry, fruit layers" and "candid fruits and nuts" do not have, in the context of the present application, the degree of specificity required by paragraph 30(a) of the Act;
4. The Applicant is not the person entitled to registration of the Mark pursuant to the provisions of s. 38(2)(c) and 16(1)(a) of the Act because at the relevant date, the Mark was confusing with trade-marks that have been previously used in Canada or made known in Canada by Noosheed Fard Co. Ltd. or its predecessors in title, namely NOOSHEEN, NOOSHIN and NOUSHIN in association with food products and services identical or of the same nature or overlapping with those referred to in the opposed application;
5. The Applicant is not the person entitled to registration of the Mark pursuant to the provisions of s. 38(2)(c) and 16(1)(b) of the Act because at the date of real first use (inasmuch as there were any user, which is denied), the Mark was confusing with a trade-mark in respect of which an application for registration had been previously filed in Canada by Noosheen Fard Co. Ltd. (or its predecessor in title) as per the particulars hereinafter set forth:

Application 1128341 for NOOSHEEN (& Design) as illustrated hereinafter



for food products;

6. The Applicant is not the person entitled to registration of the Mark pursuant to the provisions of s. 38(2)(c) and 16(1)(c) of the Act because at the date of real first use (inasmuch as there were any user, which is denied), the Mark was confusing with trade-names which had been previously used in Canada by Noosheen Fard Co. Ltd. or its predecessors in title Mohammed Ebrahim Beglari, namely LES IMPORTATIONS NOUSHIN, NOUSHIN IMPORT/EXPORT, NOUSHIN and NOOSHIN in association with food products and services identical or of the same nature or overlapping with those referred to in the opposed application;
7. The Applicant is not the person entitled to registration of the Mark pursuant to the introductory paragraph of s. 16(1) of the Act since the application does not comply with

the requirements of s. 30 of the Act as stated above; the Mark has not been used as said or such use has not been continuous, as the case may be; and the Mark is not registrable or does not function as a trade-mark;

8. Pursuant to s. 38(2)(d) and s. 2 of the Act, the Mark is not distinctive of the Wares and Services since:
 - i. the Mark does not actually distinguish the Wares and the Services from the wares or services of the opponent Noosheen Fard Co. Ltd., nor is it adapted to so distinguish them;
 - ii. the Mark is used outside the scope of the licensed use provided for by s. 50 of the Act since *inter alia*, the NOOSHIN products of the Applicant bear a unilingual mention “Product of C.D.C. Inc.,” and are apparently sold by C.D.C. Inc. and the Mark is also used by Taban Import and Export and Behrouz (Bruce) Khabazzi;
 - iii. As a result of the transfer of the Mark rights subsist in two or more persons to the use of trade-marks confusing with the Mark and those rights were exercised by those persons, contrary to s. 48(2) of the Act, amongst which C.D.C. inc., Taban Import & Export and Behrouz (Bruce) Khabazzi.

II General Principles Applicable to all Grounds of Opposition

The Applicant has the legal onus to show that its application complies with the provisions of the Act, but there is however an initial evidential burden on the Opponent to adduce sufficient admissible evidence from which it could reasonably be concluded that the facts alleged to support each ground of opposition exist. Once this initial burden is met, the Applicant still has to prove, on a balance of probabilities, that the particular grounds of opposition should not prevent the registration of the Mark [see *Joseph E. Seagram & Sons Ltd. et al v. Seagram Real Estate Ltd.*, 3 C.P.R. (3d) 325, at pp. 329-330; *John Labatt Ltd. v. Molson Companies Ltd.*, 30 C.P.R. (3d) 293 and *Wrangler Apparel Corp. v. The Timberland Company*, [2005] F.C. 722].

III Grounds of Opposition Improperly Pleaded or not Supported by Evidence

There is no evidence in the record to support the second and third grounds of opposition. As for the third portion of the eight ground of opposition it is also not supported by any evidence. Therefore those grounds of opposition are dismissed because the Opponent failed to meet its initial onus.

The first portion of the eight ground of opposition is improperly pleaded as it merely repeats the wording of the Act without providing any allegation of facts to support it. It is therefore dismissed.

The seventh ground of opposition is based on the introductory paragraph of s.16 (1) of the Act, which by itself is not a ground of opposition. The ground of opposition under s. 16(1) is limited to the circumstances described in each of its sub-paragraphs. The seventh ground of opposition as pleaded is not a valid ground of opposition and it is therefore dismissed.

IV Issues of Admissibility of Evidence

Some of the evidence filed by both parties is aimed at discrediting the evidence filed by the opposing party. As there is no *viva voce* evidence before the Registrar it adds to the difficulty in determining who is telling the truth when facing two contradictory statements. I also have to take into consideration the fact that the Applicant decided not to file a written argument and was not present at the oral hearing to plead its case. Under these circumstances the rules of evidence must be applied with scrutiny. Any hearsay evidence shall be disregarded. Thus I shall refer only to what I consider pertinent and admissible evidence.

The first issue, and it was raised by the Opponent at the oral hearing, without unfortunately any case law to support it, is the admissibility of a copy of Mr. Khabbazi's affidavit sworn on December 29, 2004 filed as exhibit MEB-1 to Mr. Beglari's affidavit sworn on October 4, 2006. That exhibit also includes the transcript of Mr. Khabbazi's cross-examination held on March 16, 2005 on his aforesaid affidavit. Mr. Khabbazi is the Applicant's president while Mr. Beglari is the personal opponent and Chairman of the Board of the other opponent, Noosheen Fard Company Corporation, previously known as Noosheen Fard Co. Ltd.

The affidavit in issue was filed in the context of an opposition proceeding involving the same parties wherein the Applicant opposed the application filed by the Opponent for the registration of the trade-mark NOOSHEEN LAHIDJAN & design based on prior use of the Mark. Mr. Khabbazi's affidavit of December 29, 2004 was filed to support the Applicant's contention that

the Opponent was not entitled to the registration of the trade-mark NOOSHEEN LAHIDJAN & design in view of its prior use of the Mark since 1997. By filing Mr. Khabbazi's affidavit sworn on December 29, 2004 as an exhibit together with the transcript of his cross-examination on the aforesaid affidavit, the Opponent is attempting to meet its initial onus to prove that the Mark was not used since 1997 in Canada in association with the Wares and Services as claimed in the present application, or at least create a serious doubt about that statement in order to shift the burden on the Applicant to prove use of the Mark as of the claimed date of first use.

Finally, I noted that Mr. Khabbazi in the second paragraph of his affidavit sworn on November 2nd, 2006 did adopt the facts recited in his affidavit dated December 22, 2004 (sic). He admitted during his cross-examination that the reference date was wrong and the allegation in his affidavit should have read December 29, 2004.

It is in this context that at the oral hearing I considered as part of the evidence Mr. Khabbazi's affidavit of December 29, 2004 as well as the transcript of his cross-examination on that affidavit. I refer to *Beachcombers Restaurant Ltd. v. Vita-Pakt Citrus Co.* (1976), 26 C.P.R. (2d) 282 and *Canpark Services Ltd. v. Canadian Pacific Express & Transport Ltd.* (1984), 81 C.P.R. (2d) 77 to support my decision.

IV Compliance with the Requirements of s. 30 of the Act

The Opponent does not refer specifically to s. 30(b) of the Act in its statement of opposition. However the wording of the first ground of opposition combined with the evidence filed makes no doubt that the Opponent is challenging the date of first use of the Mark claimed in the application.

The relevant date to assess a ground of opposition based on s. 30(b) of the Act is the filing date of the application [see *Dic Dac Holdings (Canada) Ltd v. Yao Tsai Co.* (1999), 1 C.P.R. (4th) 263]. This ground of opposition turns on the Applicant's allegation, in its application, that it has used the Mark in association with the Wares and Services since at least 1997. The Applicant does not need to file any evidence at the initial stage to support its date of first use. There is an

initial onus on the Opponent. The Opponent relies, as mentioned before, on a copy of Mr. Khabbazi's affidavit dated December 29, 2004 filed in another opposition proceeding involving the same parties to discharge its initial onus.

Most of the argumentation presented at the oral hearing by the Opponent had to do with this ground of opposition. The Opponent's agent invited the Registrar into a long journey of a meticulous analysis of some of the documents attached to Mr. Khabbazi's affidavit dated December 29, 2004. Such time consuming exercise could have been easily avoided by the filing of a written argument. Not only it would have shorten the oral hearing but it would have been of great assistance to the Registrar during the decision process. In this modern day and age the concept of "trial by ambush" has become obsolete.

The Opponent is also relying on the first portion of Mr. Beglari's affidavit that deals with the issue of the existence of a toll-free telephone number appearing on the invoices filed as an exhibit to Mr. Khabbazi's affidavit dated December 29, 2004. Mr. Beglari's contention is that those invoices could not have been issued on the dates referred therein, or at least most of them, as the toll-free telephone number appearing on those invoices came only in service on July 8, 2003. Therefore any invoices bearing a date prior to July 8, 2003 and on which appears that telephone number are not genuine.

As stated previously, I intend to apply the rules of evidence rigorously. Any inadmissible hearsay evidence shall be disregarded. Unfortunately for Mr. Beglari, the documents filed as exhibits MEB-2 to MEB-10 to his affidavit to corroborate his contention constitutes inadmissible hearsay evidence as it is information obtained on various third parties' websites. Those documents establish that Mr. Beglari performed searches on the Internet but they do not make proof of their content.

There remains Mr. Beglari's sworn statement that the toll-free telephone number appearing on the invoices referred hereinabove only came into service on July 8, 2003. The Applicant has not contradicted that statement. In fact there is an implicit admission on its part. Mr. Khabbazi filed

as an exhibit a letter from a third party in order to explain the presence of the toll-free telephone number on all the invoices. However that letter is also inadmissible hearsay evidence.

The Applicant's onus under that ground of opposition is a light one. Moreover the Opponent can rely on the evidence filed by the Applicant itself. However in the latter case the Applicant's evidence must raise serious doubts on the accuracy of the statements made by the Applicant in its application. [See *Tune Masters v. Mr. P's Mastertune Ignition Services Ltd.* (1986) 10 C.P.R. (3d) 84 (T.M.O.B.), *Labatt Brewing Co. v. Molson Breweries, a Partnership* (1996), 68 C.P.R. (3d) 216 (F.C.T.D.) and *Williams Telecommunications Corp. v. William Tell Ltd.*, (1999) 4 C.P.R. (4th) 107 (T.M.O.B)].

Under these circumstances I conclude that the invoices annexed to Mr. Kabbazi's affidavit sworn on December 29, 2004 and dated prior to July 8, 2003 that contain a reference to a toll-free telephone number do raise serious doubts on the alleged date of first use of the Mark in Canada in association with the Wares and Services. Therefore the burden shifts onto the Applicant to show use of the Mark as of the claimed date of first use.

Neither of the affidavits of Mr. Khabbazi dated November 2nd, 2006 and August 28, 2006 that I consider as part of this record address this issue with one exception however. In paragraph 2 of his August 28, 2006 affidavit, Mr. Khabbazi refers to a third party's letter to provide explanation on the presence of that toll-free telephone number on the invoices issued prior to July 8, 2003. I already ruled that such letter constitutes inadmissible hearsay evidence.

I must also consider the other allegations contained in Mr. Khabbazi's affidavit sworn on December 29, 2004. There are labels and a yearly sales report chart annexed to that affidavit. Would those documents constitute evidence of use of the Mark as of 1997?

Eight of the sixteen labels annexed to Mr. Khabbazi's affidavit of December 29, 2004 bear the toll free telephone number. Therefore it is more than unlikely that those eight labels have been used since 1997 as that toll free telephone number only came in operation in July 2003.

I shall discuss the other eight labels. First there are two separate labels for pickles: one for “Baby Cucumber Pickles” (sic) and the other for “Dill Pickles”. The net weight indicated on these labels is 1500 g. for the former product and 5.5 Lbs. for the latter. However the unit weight used in the yearly sales report chart, filed as Exhibit B to Mr. Khabbazi’s affidavit of December 29, 2004, do not match. The heading for those products on that chart refers to 750 g. as the unit weight. Moreover if one adds the yearly sales figures from 1999 to 2004 appearing on the chart under the column of “Pickles/Jams”, the total dollar amount does not correspond to the figure appearing as the total dollar amount under such category. Therefore I do not attach any credibility to the allegation that the Opponent has sold in Canada “pickles” since 1997 in association with the trade-mark “NOOSHIN”.

As for the label for “Iranian Noodles”, such product is not mentioned in the yearly sales report chart of the Opponent, exhibit B to Mr. Khabbazi’s affidavit of December 29, 2004. Any reference to that product in the invoices would not assist the Opponent as I already disregarded the invoices filed for the reasons detailed hereinabove.

There are labels for “Iranian Tamarin” and “Sugar Cubes” but none of those products are mentioned in paragraph 3 of Mr. Khabbazi’s affidavit of December 29, 2004 wherein he lists the products sold in association with the trade-mark NOOSHIN, nor are there any references to them in the yearly sales report chart, Exhibit B. Finally even considering the invoices filed, there is no reference to “Iranian Tamarin” in them.

There is a label for “Mixed Vegetables”. However, in the list of products under the heading “pickles/jams” found in the yearly sales report chart, Mr. Khabbazi is referring to “mixed vegetable pickles”. Moreover in the aforesaid chart, the unit weight used for such product is 750 g. and the label refers to 100 g. For these reasons I have serious doubts that there have been sales since 1997 in Canada of “Mixed Vegetables” in association with the Mark.

There is a label for “Iranian Sauce Kashk”. There is no reference to that product in paragraph 3 to Mr. Khabbazi’s affidavit of December 29, 2004 where all the products allegedly sold in association with the Mark are listed under different categories. The label refers to a net weight of

750 g. while if I were to consider the invoices filed, they refer to containers of 350 g. Finally that product is not listed in the yearly sales report chart. For these reasons there are also serious doubts that “Iranian Sauce Kashk” was sold in Canada since 1997 in association with the Mark.

Finally there is a label for “Pomegranate Paste”. That product is also not mentioned in paragraph 3 of Mr. Khabbazi’s affidavit of December 29, 2004. It does not appear in the yearly sales report chart and even if I were to consider the invoices, there is no reference to that product in them.

Consequently I conclude that the Applicant has not discharged its burden to prove use of the Mark in Canada since 1997 in association with each of the Wares and Services. The first ground of opposition is therefore maintained.

V Other Grounds of Opposition

The second portion of the distinctiveness ground of opposition is based on information appearing on the labels attached to Mr. Khabbazi’s affidavit sworn on December 29, 2004. As I already ruled that I had serious doubts that those labels were ever used in Canada, they cannot form the basis of that ground of opposition. However should I be wrong in my conclusion on the legitimacy of those labels, then the Opponent would be successful under this ground of opposition. The labels do in fact contain the inscription “Product of C.D.C. Inc.”. There is no evidence that the Applicant and C.D.C. Inc. are one and the same. There is no evidence that the Applicant granted a licence to C.D.C. Inc. to use the Mark in association with the Wares and Services.

The third, fourth, fifth and sixth grounds of opposition all turn on the issue of likelihood of confusion between the Mark and the Opponent’s trade-marks and trade-names referred thereto. As the Opponent was successful under the first ground of opposition, the relevant date for these grounds of opposition becomes the filing date of the application [see *Everything for a Dollar Store (Canada) Inc. v. Dollar Plus Bargain Centre Ltd.* (1998), 86 C.P.R. (3d) 69 (T.M.O.B.)].

Mr. Beglari has provided, in paragraph 45 of his affidavit of October 4, 2006, the yearly sales figures of cookies sold under the trade-marks NOOSHEEN and NOOSHEEN LAHIDJAN. However he has not provided the breakdown of those sales per trade-mark. This becomes important as I do not consider that the Mark is likely to be confused with the trade-mark NOOSHEEN LAHIDJAN.

I shall not do a detailed analysis of the different criteria listed under s. 6(5) of the Act to determine if there is a likelihood of confusion between the Mark and the trade-marks NOOSHEEN and NOOSHEEN LAHIDJAN as I do not have any representations on those from the Applicant; and the Opponent made very brief comments on them at the oral hearing. Suffice to say at this point to dispose of this issue that the most important factor is the degree of resemblance since the parties' respective wares and services fall in the general category of food products and the evidence shows that they would be sold in specialty food retail outlets. When viewed as a whole, the Mark differs from the Opponent's trade-mark NOOSHEEN LAHIDJAN. The addition of LAHIDJAN is sufficient to distinguish NOOSHEEN LAHIDJAN from the Mark. However there remains the issue of likelihood of confusion between the Mark and NOOSHEEN. In order to discuss this issue there must be evidence of use in Canada of the Opponent's trade-mark NOOSHEEN prior to December 2, 2003.

I do not consider evidence of use of the trade-mark NOOSHEEN LAHIDJAN as use of the trade-mark NOOSHEEN. In my opinion, they constitute two distinct trade-marks [see *Canada (Registrar of Trade-marks) v. Cie. Internationale pour l'informatique CII Honeywell Bull, S.A.* (1985), C.P.R. (3d) 523]. Mr. Beglari does provide price lists, sample packaging and some information on advertisements or sponsorship of events broadcasted on television. For the reasons detailed hereinafter I do not consider that the Opponent has established use of its trade-mark NOOSHEEN prior to the filing date of the application.

Exhibit MEB-23 to Mr. Beglari's affidavit is a price list (Exhibit MEB-23) dated November 17, 2002 but such document by itself does not constitute evidence of use of a trade-mark in association with wares. Mr. Beglari has filed what he has identified as "list of food products" (Exhibit MEB-24). However the illustration and description of the products on the document are

illegible. It is impossible to determine which trade-mark appears on the packaging of the products. There is a sample packaging bearing the trade-mark NOOSHEEN filed in the record (Exhibit MEB-22). However Mr. Beglari failed to state since when such packaging has been used in Canada. His affidavit is dated October 4, 2006 and it could very well be a current packaging, but I cannot presume that the Opponent used it prior to December 2, 2003.

The Health Certificates issued for customs purposes by the Ministry of Health of the Islamic Republic of Iran cannot constitute evidence of use of the trade-mark NOOSHEEN in Canada. They are inadmissible hearsay evidence as they emanate from a third party. Moreover all they can establish is that such certificates were issued in Iran on the date appearing on each one of them. It does not prove that those wares were ever sold in Canada prior to December 2, 2003.

There are voluminous documents and CD-Roms filed by Mr. Beglari as evidence of advertising and promotional material. Firstly, we have no information on the distribution in Canada of the brochures, Exhibit MEB-25, and if ever distributed, during what period. Then there are pictures taken at sporting events sponsored by the Opponent such as the Soccer World Cup qualification games. To support his contention that all the events referred in his affidavit (paragraphs 52 and 53) were broadcasted via satellite in Canada and watched by Canadians, Mr. Beglari does file third party documentation. This evidence (Exhibits MEB-26 to MEB-37) constitutes inadmissible hearsay evidence and as such I have no evidence that those events were watched by Canadians and if so by how many Canadians. We have no information as to when any of the other promotional material such as bags (Exhibit MEB-40) might have been distributed in Canada. In any event, the distribution of promotional material would not constitute evidence of use of the trade-mark NOOSHEEN in association with cookies in Canada.

Consequently, the Opponent failed to meet its burden of proof to show use of its trade-mark NOOSHEEN in Canada prior to the filing date of the application. Grounds of opposition three and four are dismissed.

As for the fifth ground of opposition, I already ruled that there is no likelihood of confusion between the Mark and the Opponent's trade-mark NOOSHEEN LAHIDJAN. Therefore the same

conclusion holds true with respect to the trade-mark NOOSHEEN LAHIDJAN & Design with the additional reason that the design portion serves to further distinguish that trade-mark from the Mark. Consequently that ground of opposition is also dismissed.

There remains the sixth ground of opposition. In order to be successful the Opponent not only has to show use of the trade-names mentioned under that ground of opposition, but it also has to demonstrate that it has not abandoned such use at the date of advertisement of the application, namely on September 1, 2004 [see s. 16(5) of the Act]. I can dispose of this ground of opposition on the basis of the Opponent's failure to meet its onus of proof. The trade-names in issue are LES IMPORTATIONS NOUSHIN, NOUSHIN IMPORT/EXPORT, NOUSHIN and NOOSHIN. The evidence is clear that the opponent Mohammed Ebrashim Belgradi ceased using the trade-names LES IMPORTATIONS NOUSHIN and NOUSHIN IMPORT/EXPORT in October 1997 (see Exhibit MEB-13). There is no evidence that the trade-names were ever used or made known by Noosheen Fard Company Corporation in Canada. That leaves us with the trade-names NOUSHIN and NOOSHIN. There is no evidence in the record that there has been use of those words as trade-names in Canada at any time. Consequently that ground of opposition also fails.

V Conclusion

The Opponent having been successful on the first ground of opposition and having been delegated authority by the Registrar of Trade-marks by virtue of s. 63(3) of the Act, I refuse the application pursuant to s. 38(8) of the Act.

DATED, IN BOUCHERVILLE, QUEBEC, THIS 30th DAY OF APRIL 2009.

Jean Carrière,
Member, Trade-marks Opposition Board