

**IN THE MATTER OF AN OPPOSITION by
Northern Group Retail Ltd. to Application
No. 1050198 for the Trade-mark
SOUVENIRS NORTHERN & Design filed
by Vêtements Northern Souvenir Inc**

I The Pleadings

On March 14, 2000 Vêtements Northern Souvenir Inc. filed an application, based on use since August 1998, to register the trade-mark SOUVENIRS NORTHERN and design as hereinafter illustrated:



application number 1050198, in association with outdoor clothing namely coats, jackets, parkas, anoraks, vests, overalls, pullover sweaters, cardigan sweaters, shirts, sweat tops, sweatpants, pants, slacks, blouses, shirts, neck warmers, ear bands, hosiery and accessories namely belts, scarves, hats, hoods, gloves and mittens (the “Wares”). In reply to an office action, the Applicant disclaimed the exclusive right to use of the word SOUVENIRS apart from the trade-mark as a whole.

The present application was advertised on February 20, 2002 in the Trade-Marks Journal for opposition purposes. The application was subsequently transferred to Raffi Kourkoian (unless specified otherwise Vêtements Northern Souvenir Inc and/or Raffi Kourkoian shall be referred to as the “Applicant”).

Northern Group Retail Ltd. (the “Opponent”) filed, on July 18, 2002, a statement of opposition raising the following grounds of opposition:

- 1) In virtue of s. 38(2)(a) of the *Trade-marks Act* R.S.C. 1985, c. T-13, (the “Act”) the application does not comply to the requirements of s. 30 as the Applicant has not used the mark in association with the Wares since the date alleged or at any other time pertinent to this opposition proceeding;

- 2) In virtue of s. 38(2)(b) of the Act, the Mark is not registrable as it is clearly descriptive of the character and quality of the Wares;
- 3) In virtue of s. 38(2)(b) of the Act, the Mark is not registrable as it is confusing with the following Opponent's registered trade-marks:
 - NORTHERN TRADITIONS TMA424058
 - NORTHERN TRADITIONS TMA410327
 - NORTHERN TRADITIONS & design TMA428054
 - NORTHERN REFLECTIONS AUTHENTICS TMA427811
 - NORTHERN REFLECTIONS TMA372905
 - NORTHERN REFLECTIONS & design TMA372896
 - NORTHERN REFLECTIONS & design TMA449944
 - NORTHERN GATEWAY TMA406620
 - NORTHERN GATEWAY TMA406621
 - NORTHERN GATEWAY & design TMA430146
 - NORTHERN GATEWAY & design TMA425563
 - NORTHERN ELEMENTS & design TMA459375
 - NORTHERN ELEMENTS & design TMA448921
 - NORTHERN ELEMENTS TMA448901
 - NORTHERN ELEMENTS TMA449183
- 4) In virtue of 38(2)(c) of the Act, the Applicant is not the person entitled to registration of the Mark as at the date of alleged use of the Mark:
 - i) it was confusing with the Opponent's trade-marks listed above;
 - ii) it was confusing with the following Opponent's trade-marks which had been previously used by it in Canada:
 - NORTHERN REFLECTIONS in association with footwear;
 - NORTHERN REFLECTIONS & design in association with ladies' clothing;
- 5) In virtue of s. 38(2)(d) and s. 2 of the Act, the Mark is not distinctive of the Wares nor is it adapted to distinguish, nor capable of distinguishing the Applicant's Wares from the Opponent's wares and services.

The Applicant filed on November 19, 2002 a lengthy counter statement that included written arguments. Disregarding the arguments contained therein, it essentially denies each ground of opposition.

The Opponent's evidence consists of the affidavit of Melanie Laidlaw while the Applicant filed the affidavit of Raffi Kourkoian. Only the Opponent submitted written arguments and no oral hearing was held.

II The Opponent's evidence

Ms. Laidlaw has been the Opponent's Director, Visual Marketing. She filed copies of the Opponent's trade-mark registrations listed above.

She alleges that the trade-mark NORTHERN TRADITIONS has been used in Canada by the Opponent and its predecessors-in-title since July 17, 1991, in association with the operation of retail stores as set out in registration number TMA410327. As of the execution date of her affidavit (June 27, 2003), the Opponent was operating 19 stores under the trade-mark NORTHERN TRADITIONS, located in Ontario, Manitoba, Nova Scotia, Newfoundland and New Brunswick. The Opponent has also been using since July 17, 1991, the trade-marks NORTHERN TRADITIONS and NORTHERN TRADITIONS & design in association with articles of clothing more fully particularized in certificates of registration TMA424058 and TMA428054

As evidence of use of the trade-marks NORTHERN TRADITIONS and NORTHERN TRADITIONS & design we have in the record the following exhibits:

- A photograph of an exterior sign;
- Photographs of articles of clothing and accessories bearing the trade-mark NORTHERN TRADITIONS, including: t-shirt, dress, blouse, pant, skirt, short, hosiery, earrings, necklace and socks;
- Labels and hangtags;
- A sample bag;
- In-store signage and window banners;
- Promotional material distributed in the retail outlets or by mail;
- Advertising material published in periodical publications, newspapers and flyers circulated in various Shopping Centres across Canada where the Opponent operates a retail outlet in association with the trade-mark NORTHERN TRADITIONS.

The Opponent has spent since 1992 close to \$1,4 million to promote in Canada the trade-mark NORTHERN TRADITIONS. Retail sales in Canada between 1991 and 2002 have ranged from an excess of \$2 millions to \$30 millions.

She alleges that the Opponent and its predecessors-in-title have also been using the trade-mark NORTHERN REFLECTIONS in Canada since November 1, 1986 in association with retail store services and articles of clothing, as appears from certificates of registration TMA372905 and TMA372896. The trade-mark NORTHERN REFLECTIONS & design has been used by the Opponent and its predecessors-in-title since March 1, 1992 in association with the operation of retail outlets selling women's clothing; and women's articles of clothing, as appears from certificate of registration TMA449944. As of the execution date of her affidavit, the Opponent was operating 154 retail outlets located across Canada under the trade-mark NORTHERN REFLECTIONS.

To substantiate the use of the trade-marks NORTHERN REFLECTIONS and NORTHERN REFLECTIONS & design she filed the following exhibits:

- A photograph of an exterior sign;
- Photographs of articles of clothing and accessories bearing the trade-mark NORTHERN REFLECTIONS, including: tops, dress, shirt, jeans, short, hosiery, belts, socks; vests, t-shirt and coat;
- Labels;
- Bags and a box;
- In-store signage and window banners;
- Promotional material distributed in the retail outlets or by mail;
- Advertising material published in periodical publications, newspapers and flyers circulated in various Shopping Centres across Canada where the Opponent operates a retail outlet in association with the trade-mark NORTHERN REFLECTIONS.

The Opponent and its predecessors-in-title have spent since 1987 in excess of \$11 millions in advertisement, including mall advertising, window displays and marketing expenses to promote its retail outlets operated under the trade-mark NORTHERN REFLECTIONS. The Opponent's retail

sales in Canada of the opponent and of its predecessors-in-title in association with the trade-mark NORTHERN REFLECTIONS have varied since 1987 from \$8,5 millions to \$158 millions.

Furthermore, she alleges that the trade-marks NORTHERN GATEWAY and NORTHERN GATEWAY & design have been used in Canada by the Opponent and its predecessors-in-title since June 26, 1992, in association with the operation of children's clothing and footwear retail stores as set out in certificate of registration TMA406621 and TMA425563. As of the execution date of her affidavit the Opponent was operating 101 stores, located across Canada, under the trade-mark NORTHERN GATEWAY.

The following exhibits were filed to substantiate her allegation of use of the trade-marks NORTHERN GATEWAY and NORTHERN GATEWAY & design:

- A photograph of an exterior sign;
- Photographs of children's articles of clothing and accessories bearing the trade-mark NORTHERN REFLECTIONS including: tops, dress, shirt, skirt, pants, shorts, sweaters, socks; vests, and t-shirt;
- Labels;
- Bags and a box;
- In-store signage;
- Promotional material distributed in the retail outlets or by mail;
- Advertising material published in periodical publications, newspapers and flyers circulated in various Shopping Centres across Canada where the Opponent operates a retail outlet in association with the trade-mark NORTHERN GATEWAY.

The Opponent and its predecessors-in-title have spent since 1992 in excess of \$4,7 millions in advertisement, including mall advertising, window displays and marketing expenses to promote its retail outlets operated under the trade-mark NORTHERN GATEWAY. The retail sales in Canada of the Opponent and its predecessors-in-title in association with the trade-mark NORTHERN GATEWAY have varied since 1992 between \$11,6 millions to \$74 millions.

She is also alleging that the Opponent and its predecessors-in-title have operated retail outlets in Canada between November 4, 1994 to June 2002 in association with the trade-mark NORTHERN ELEMENTS and NORTHERN ELEMENTS & design which offered for sale and sold men's clothing, footwear, accessories, watches backpacks, duffel bags, sport bags and knives as set out in registration numbers TMA449183 and TMA448921 respectively. As of January 2002, the Opponent was operating 63 retail outlets, located across Canada, under the trade-mark NORTHERN ELEMENTS.

To support her allegation of use of the trade-mark NORTHERN ELEMENTS and NORTHERN ELEMENTS and design, she filed the following exhibits:

- A photograph of an exterior sign;
- Photographs of a t-shirt and a sweatshirt sold in association with the trade-mark NORTHERN ELEMENTS;
- Labels;
- Bags and a box;
- In-store signage and window banners;
- Promotional material distributed in the retail outlets or by mail;
- Advertising material published in periodical publications, newspapers and flyers circulated in various Shopping Centres across Canada where the Opponent or its predecessors-in-title operated a retail outlet in association with the trade-mark NORTHERN ELEMENTS.

The Opponent and its predecessors-in-title have spent from 1994 to June 2002 in excess of \$2,5 millions in advertisement, including mall advertising, window displays and marketing expenses to promote its retail outlets operated under the trade-mark NORTHERN ELEMENTS. The retail sales in Canada of the Opponent and its predecessors-in-title in association with the trade-mark NORTHERN ELEMENTS have varied during the same period between \$19,7 millions to \$44,5 millions.

III The Applicant's evidence

Mr. Kourkoain is the current owner of the present application and is the president of Vêtements Northern Souvenir Inc, his predecessor-in-title. He alleges that the Mark has been used in Canada in association with outdoor clothing and accessories since August 1, 1998. To support his contention he filed the following exhibits:

- An invoice dated April 30, 1998 for the purchase of labels bearing the Mark;
- Photocopies of labels bearing the Mark that are affixed to the Wares;
- Photocopies of photographs of various articles of outdoor clothing sold in association with the Mark;
- Catalogue depicting the Wares sold in association with the Mark;
- Samples of sale invoices of Wares bearing the Mark ranging from June 1998 to October 2003.

IV Analysis of the legal issues

The legal onus is upon the Applicant to show that its application complies with the provisions of s. 30 of the Act, but there is however an initial evidential burden on the Opponent to establish the facts relied upon by it in support of each ground of opposition. 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 applied for. [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, *Christian Dior, S.A. and Dion Neckwear Ltd* (2002), 20 C.P.R. (4th) 155]

With respect to grounds of opposition based on s. 30 of the Act, even though the Opponent has an evidential onus, it is a light one. [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)] The Opponent can refer to the evidence adduced by the Applicant to meet such initial onus. [See *Dic Dac Holdings (Canada) Ltd v. Yao Tsai Co.* (1999), 1

C.P.R. (4th) 263]. However in such a situation, the Applicant's evidence must be clearly inconsistent with the allegations contained in the application.

The Opponent has not introduced any evidence to support its first ground of opposition. The Applicant's evidence described above is not clearly inconsistent with the allegation of first use (August 1998) contained in the application. The earliest invoice filed is dated in June 1998, which is earlier than the claimed date of first use. On the assumption that such invoice would establish an earlier date of first use of the Mark by the Applicant or its predecessor-in-title, alleging in an application a later date of first use than the actual date of first use of the Mark is not fatal to the Applicant. By doing so, the Applicant is losing the benefit of claiming an earlier date of first use. [See *Marineland v. Marine Wonderland and Animal Park Ltd.* (1974), 16 C.P.R. (2d) 97 (F.C.T.D.)]. Therefore the first ground of opposition is dismissed.

The relevant date to consider the second ground of opposition is the filing date of the application. [See *Shell Canada Limited v. P.T. Sari Incofood Corporation* (2005) 41 C.P.R. (4th) 450 (F.C.T.D.) and *Fiesta Barbeques Limited v. General Housewares Corporation* (2003), 28 C.P.R. (4th) 60] The issue as to whether the Mark is clearly descriptive must be considered from the point of view of the average consumer. The word "clearly" in s. 12(1)(b) of the Act has been interpreted to mean easy to understand, self evident or plain [see *G.W.G. Ltd. v. Registrar of Trade-marks* (1981), 55 C.P.R. (2d) 1 (F.C.T.D.)]. Furthermore, in determining whether the Mark is clearly descriptive, the Mark must be considered in its entirety as a matter of immediate impression and not be dissected into its component elements and carefully analysed. [See *Wool Bureau of Canada Ltd. v. Registrar of Trade Marks* (1978), 40 C.P.R. (2d) 25 (F.C.T.D.); *Atlantic Promotions Inc. v. Registrar of Trade Marks* (1984), 2 C.P.R. (3d) 183 (F.C.T.D.)]

A trade-mark can be highly suggestive without being clearly descriptive of the character and quality of the wares associated with. In those instances, such a trade-mark would benefit from a narrow ambit of protection. The Opponent has not elaborated at length this ground of opposition in its written argument, concentrating its submissions to the issue of the likelihood of confusion between the Mark and its abovementioned trade-marks. The Opponent limited its argument to:

“(…) the word NORTHERN is either clearly descriptive of the character and quality of the wares, which are to be used in the north or cold climates, and the retail outlets selling such wares are deceptively misdescriptive. The Applicant’s mark is descriptive of the character or quality of the wares and services.”

First, the Mark must be viewed as a whole and even though the word “Souvenirs” has been disclaimed, it forms part of the Mark. It could suggest to a Canadian consumer that the Wares are to be used to protect himself from the North climate but even by giving such broad meaning to the Mark, I fail to see how it could describe the character or quality of the Wares. Therefore, I also dismiss the second ground of opposition.

The remaining grounds of opposition deal with the issue of likelihood of confusion between the Mark and the Opponent’s trade-marks listed above. I shall thereafter analyze first the third ground of opposition.

The relevant date to determine the registrability of the Mark is the date of the Registrar’s decision. [See *Park Avenue Furniture Corporation v. Wickes/Simmons Bedding Ltd. (1991)*, 37 C.P.R. (3d) 413 at 424 (F.C.A)]. It has been established that the likelihood of confusion between the Mark and the Opponent’s registered trade-marks must be assessed by taking into consideration all surrounding circumstances including the criteria listed under s. 6(5) of the Act which are: the inherent distinctiveness of the trade-marks or trade-names and the extent to which they have become known; the length of time the trade-marks or trade-names have been in use; the nature of the wares, services, or business; the nature of the trade; and the degree of resemblance between the trade-marks or trade-names in appearance, or sound or in the ideas suggested by them. This list is not exhaustive. Moreover, it is not necessary to give each one of them equal weight. [See *Clorox Co. v. Sears Canada Inc. (1992)*, 41 C.P.R. (3d) 483 (F.C.T.D.) and *Gainers Inc. v. Marchildon (1996)*, 66 C.P.R.(3d) 308 (F.C.T.D.)]

For the purpose of this analysis I will compare the Mark to the Opponent’s registered trade-marks NORTHERN ELEMENTS and NORTHERN ELEMENTS & design, hereinafter reproduced, as they are the closest of the Opponent’s trade-marks to the Applicant’s Mark.



TMA459375



TMA448921

Certificate of registration TMA448921 covers the operation of retail outlets selling men's and women's clothing, footwear, accessories, watches, backpacks, duffle bags, sport bags and knives (the "Opponent's services") while certificate of registration TMA459375 is for clothing, namely t-shirts and sweatshirts, sweaters, vests, tops, pants, shorts, overalls, shirts, polo shirts, rugby shirts, turtlenecks, jackets, socks, underwear, gloves, mittens, ties, swimwear, coats, hats; accessories, namely: belts, suspenders, scarves; footwear, namely: casual shoes, athletic shoes, boots, slippers, overshoes; jewellery, namely: watches; backpacks, duffle bags; sport bags and knives (the "Opponent's wares").

Mr. Justice Linden defined the inherent distinctiveness of a trade-mark in the following terms in *Pink Panther Beauty Corp. v. United Artists*, (1998) 80 C.P.R. (3d) 247 (F.C.A.):

"The first item listed under subsection 6(5) is the strength of the mark. This is broken down into two considerations: the inherent distinctiveness of the mark, and the acquired distinctiveness of the mark. Marks are inherently distinctive when nothing about them refers the consumer to a multitude of sources. Where a mark may refer to many things or, as noted earlier, is only descriptive of the wares or of their geographic origin, less protection will be afforded the mark. Conversely, where the mark is a unique or invented name, such that it could refer to only one thing, it will be extended a greater scope of protection.

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. In *Cartier, Inc. v. Cartier Optical Ltd./Lunettes Cartier Ltée*,²¹ Dubé J. found that the Cartier name, being merely a surname, had little inherent distinctiveness, but, nevertheless, it had acquired a great deal of distinctiveness through publicity. Likewise in *Coca-Cola Ltd. v. Fisher Trading Co.*,²² the Judge found that the word "Cola" in script form had become so

famous that it had acquired a very special secondary meaning distinctive of the beverage, and was, therefore, worthy of protection.”

The Mark possesses a low degree of inherent distinctiveness as the combination of the words “souvenirs” and “northern” suggests that the Wares constitute souvenirs bought in some northern region. A similar conclusion can be drawn for the Opponent’s trade-mark NORTHERN ELEMENTS & design. The combination of the words “northern” and “elements” suggests that the Opponent’s wares are articles of clothing designed to face northern weather conditions.

The Opponent has established extensive use of its trade-mark NORTHERN ELEMENTS & design across Canada in association with the Opponent’s services. The affiant has not specified if the retail sales represent sales of the Opponent’s wares bearing the trade-mark NORTHERN ELEMENTS & design and/or NORTHERN ELEMENTS or if it is the total sales in association with the operation of its retail outlets under those trade-marks. I presume that the retail sales provided represent the Opponent’s total sales associated with the operation of its retail outlets under the trade-mark NORTHERN ELEMENTS & design.

The sales figures and the sums of money spent to promote such mark are impressive. On the other hand the Applicant has not provided any information on the extent of its sales. The Opponent has used its trade-mark NORTHERN ELEMENTS & design since August 1994 in association with the Opponent’s wares while the Applicant began using its Mark in June 1998. The invoices filed by the Applicant establish sales in the province of Quebec and Ontario only. Those sales are not of the same magnitude than the Opponent’s sales. I conclude, from the evidence in the record, that the Opponent’s trade-mark NORTHERN ELEMENTS & design is more known than the Applicant’s Mark. This factor therefore favours the Opponent.

The Opponent has been using the trade-mark NORTHERN ELEMENTS & design in association with the Opponent’s wares described above since August 1994 as per the certificate of registration TMA445375 [see *Cartier Men’s Shops Ltd. c. Cartier Inc.* (1981), 58 C.P.R. (2d) 68] while the Applicant began using the Mark in association with the wares in 1998. The length of time the trade-marks in issue have been in use also favours the Opponent.

The nature of the Wares are the same as those detailed in certificate of registration TMA459375 of the Opponent. They are both articles of clothing. Even in considering the trade-mark NORTHERN ELEMENTS & design covered by certificate of registration TMA448921, the nature of the Opponent's services are closely related to the Wares of the Applicant. This factor is also favourable to the Opponent.

In his counterstatement the Applicant has raised the following argument that, for the purpose of this discussion, I am prepared to consider even though it has not been reproduced in a written argument. The Applicant argues that the Applicant's Wares are offered for sale only in souvenir retail outlets while the Opponent's wares are sold exclusively in the Opponent's retail outlets operated under the trade-mark NORTHERN ELEMENTS. First, there is no evidence of the Applicant's channels of trade. Moreover it is the description of the wares that appears in the application and in the certificates of registration in issue that must be considered. Even if the Opponent's wares were sold exclusively in its retail stores, there is no restriction in the description of the wares contained in certificate of registration TMA459375 that would restrain the sale of those wares in the Opponent's retail outlets operated under the same trade-mark. There is nothing to prevent the Opponent from selling its wares bearing the trade-mark NORTHERN ELEMENTS & design in any other clothing retail outlets. In the absence of evidence about specific channels of trade and in view of the fact that the parties' respective wares are of the same nature, I can presume that the channels of trade are the same.

The degree of resemblance between trade-marks is most important especially when the wares are identical or there is some overlap between them. [See *Beverly Bedding & Upholstery Co. v. Regal Bedding & Upholstering Ltd. (1980)*, 47 C.P.R. (2d) 145 at 149 (F.C.T.D.)] The test is one of first impression in the mind of an ordinary consumer having a vague recollection of the Opponent's trade-mark. [See *Miss Universe v. Bohna (1995)*, 58 C.P.R. (3d) 381 at 387]

Without doing a careful analysis to determine the similarities and the resemblance between the marks in issue, I note that the dominant feature of the Mark is the word "northern" by the size of its letters and its location. The word "souvenirs" is written in small print. The design features of

the Mark consist of mountains, snow and pine trees. The Opponent's trade-marks NORTHERN ELEMENTS & design, as illustrated above, also feature mountains, snow and pine trees. The word "northern" is prominently displayed on such design trade-marks. The design of the parties' trade-marks suggests the idea of the North portion of Canada. I conclude that there is some degree of resemblance between the Mark and the Opponent's trade-marks NORTHERN ELEMENTS & design.

As an additional surrounding circumstance the Opponent has established, as appears from the summary of the evidence described above, the existence and use of a family of trade-marks that contains the word "northern" in association with the operation of retail outlets offering for sale articles of clothing as well as in association with articles of clothing. Therefore a consumer would be more likely to assume that a new "NORTHERN" mark is a trade-mark of the Opponent.

From my analysis of the surrounding circumstances, I conclude that the Applicant has not discharged its burden to prove, on a balance of probabilities, that the Mark is not likely to cause confusion with the Opponent's trade-marks NORTHERN ELEMENTS & design. I wish to point out that I would have come to the same conclusion if I had chosen any of the other Opponent's trade-marks. The analysis on the degree of resemblance may have been different because of the design portion of the Mark, but on a whole the majority of the surrounding circumstances would still favour the Opponent. Even on the issue of the degree of resemblance, the dominant feature of the Mark is the word NORTHERN which is the first element of any of the Opponent's trade-marks. Therefore the Opponent is successful on its third ground of opposition.

The material time for considering the issue of non-entitlement to the registration of the Mark is the date of first use alleged in the application [See s. 16(1) of the Act]. It is generally accepted that the filing date of the statement of opposition is the critical date to assess the distinctiveness of the Mark as a ground of opposition. [See *Andres Wines Ltd. and E&J Gallo Winery* (1975), 25 C.P.R. (2d) 126 at 130 (F.C.A.), *Park Avenue Furniture Corporation, op. cit* and *Metro-Goldwyn-Meyer Inc. v. Stargate Connections Inc.* (2004), 34 C.P.R. (4th) 317(F.C.T.D.)]

The difference in the material dates between those grounds of opposition and the third ground of opposition would not have an impact on my analysis of the likelihood of confusion between the Mark and the Opponent's trade-marks. The Opponent has discharged its initial onus under the non-entitlement ground of opposition to prove that it has used its trade-marks prior to the claimed date of first use of the Mark and that it has not abandoned such use as of the date of advertisement of the present application (s.16(5) of the Act). For the same reasons detailed above with respect to the third ground of opposition, I maintain the fourth and fifth grounds of opposition.

V Conclusion

Therefore, having been delegated authority by the Registrar of Trade-marks by virtue of s. 63(3) of the Act, I refuse the Applicant's application for the registration of the Mark in association with the Wares, the whole pursuant to s. 38(8) of the Act.

DATED, IN BOUCHERVILLE, QUEBEC, THIS 17th DAY OF MAY 2006.

Jean Carrière

Member

Trade-marks Opposition Board