

**IN THE MATTER OF AN OPPOSITION by
Gilmar S.P.A. and Seminvest Investments B.V. to
application No. 1,248,727 for the trade-mark ICE
LOUNGE in the name of Mynt Ultralounge Inc.**

[1] On February 22, 2005, Mynt Nightclub & Ultralounge Ltd. (the Original Applicant) filed an application to register the trade-mark ICE LOUNGE (the Mark), based upon use of the Mark in Canada since December 15, 2004 in association with:

- promotional items namely, shirts, t-shirts, sweatshirts, drinking glasses, mugs, hats, baseball caps, jackets, decals, posters, pictures, key chains, wallets, coasters, necklaces, watches and rings (the Wares);
- night club, restaurant and lounge (the Services).

[2] The application was advertised for opposition purposes in the Trade-marks Journal of September 21, 2005. On November 21, 2005, Gilmar S.P.A. and Seminvest Investments B.V. (collectively the Opponent or the Opponents) filed a statement of opposition. The Opponent has pleaded grounds of opposition under s. 38(2)(a), (b), (c) and (d) of the *Trade-marks Act*, R.S.C. 1985, c. T-13 (the Act).

[3] The Original Applicant filed and served a counter statement in which it denied the Opponent's allegations.

[4] On April 20, 2006, an assignment of the application was recorded in favour of Mynt Ultralounge Inc. (the Current Applicant). The term Applicant will be used hereafter to refer to the Original Applicant and/or the Current Applicant.

[5] The Opponent filed an affidavit of Silvano Gerani in support of its opposition.

[6] On July 4, 2007, the Opponent was granted leave to amend its statement of opposition.

[7] The Applicant filed an affidavit of Victor Choy in support of its application.

[8] No cross-examinations were conducted.

[9] Both parties filed a written argument. Following the exchange of the written arguments, the Opponent pointed out that the Applicant's written argument improperly included new evidence. The Applicant accordingly requested leave to file such additional evidence, but leave was denied. Those portions of the Applicant's written argument that either attempt to introduce new evidence or that refer to evidence that was not previously filed are being disregarded.

[10] An oral hearing was not requested.

Grounds of opposition

[11] The grounds of opposition are summarized below:

1. The application does not conform to the requirements of s. 30(b) because, at the date of filing of the application, the Original Applicant had not used the Mark as alleged, or at all, or had subsequently abandoned the Mark.
2. Contrary to s. 30(i), at the date of filing of the application, the Original Applicant could not properly have been satisfied that it was entitled to use the Mark in Canada in association with the wares or services described in the application, given the facts set out in the statement of opposition.
3. The Mark is not registrable in view of s. 38(2)(b) and 12(1)(d) because it is confusing with registered trade-marks, namely registration No. 345,589 for the trade-mark ICEBERG, owned by Seminvest Investments B.V. for use in association with perfumeries, leather brooches, umbrellas, spectacles, spectacle frames, spectacle glasses, spectacle cases, watches and jewellery, and registration No. 345,589 for the trade-mark ICEBERG, owned by Gilmar S.P.A. for use in association with purses, belts, knitted vests, waistcoats, shirts, dresses, jackets, jerkins, coats, raincoats, fur jackets and coats, leather and skin jackets and coats, skirts, trousers, jeans, catsuits, shorts, sashes, scarves,

foulards, gloves, shawls, handkerchiefs, socks, towels, swimming suits, hats, boots, shoes and slippers (collectively the Registered Trade-marks).

4. The Applicant is not the person entitled to registration of the Mark in view of s. 38(2)(c), 16(1)(a) and 16(5) because, at the date on which the Applicant or its predecessor in title allegedly first used the Mark, the Mark was confusing with one or both of i) the Registered Trade-marks and/or the trade-marks ii) ICE B ICEBERG & Design, iii) ICE JEANS, iv) ICE ICE ICEBERG, v) ICE HISTORY, vi) ICE J, vii) ICE B, viii) ICE ICEBERG and ix) ICE, which one or both of the Opponents had previously used or made known in Canada in association with clothing, clothing accessories, fashion accessories, footwear, headwear, fragrances, leather goods, jewellery, umbrellas, eyeglasses, eyeglass-related wares, trunks, carrying bags, watches, linens, tableware, mineral water and various other categories of goods, and which were not abandoned at the date of advertisement of the Applicant's application.
5. The Applicant is not the person entitled to registration of the Mark in view of s. 38(2)(c), 16(1)(b) and 16(4) because, at the date on which the Applicant or its predecessor in title allegedly first used the Mark, the Mark was confusing with the trade-mark ICE B & Design, which is the subject of previously filed application No. 1,219,582, which was pending at the date of advertisement of the Applicant's application.
6. The Mark is not distinctive, having regard to the provisions of s. 38(2)(d) and 2, because it is not capable of distinguishing the Applicant's wares or services from the wares and services of others, particularly the wares sold by the Opponents under either or both of the Registered Trade-marks and/or under the marks itemized in paragraphs 4 and 5 above, nor is it adapted to so distinguish them.
7. The Mark is not distinctive, having regard to the provisions of s. 38(2)(d) and 2 because the Mark is used outside the scope of the permitted use provided for by s. 50.

8. The Mark is not distinctive, having regard to the provisions of s. 38(2)(d) and 2 because, as a result of the transfer of the rights in the Mark, there subsists in two or more entities the right to use the Mark and those rights were exercised by such entities contrary to s. 48(2) of the Act.

[12] It appears from the schedule attached to the statement of opposition that the marks referred to as ICE B ICEBERG & Design and ICE B & Design are one and the same.

Summary of Opponent's Evidence

[13] Mr. Gerani is the President of Gilmar S.P.A. (Gilmar). He explains that Gilmar and Seminest Investments B.V. (Seminest) are related companies that are owned by the same holding company.

[14] Mr. Gerani attests that Gilmar is an Italian fashion company that designs, markets and distributes worldwide a range of goods including clothing, clothing accessories, perfumes, jewellery, watches, linens, tableware and mineral water. Seminest is a Netherlands company.

[15] Gilmar is the original owner of Canadian trade-mark registration No. 345,589 for ICEBERG. However, on June 27, 2002, Gilmar partially assigned such registration to Seminest in respect of certain of the wares, resulting in Gilmar owning ICEBERG for purses, belts, knitted vests, waistcoats, shirts, dresses, jackets and jerkins, coats, raincoats, fur jackets and coats, leather and skin jackets and coats, skirts, trousers, jeans, catsuits, shorts, sashes, scarves, foulards, gloves, shawls, handkerchiefs, socks, towels, swimming suits, hats, boots, shoes and slippers (collectively the Gilmar Wares) and Seminest owning ICEBERG for perfumeries, jewellery, spectacles, watches and umbrellas (collectively the Seminest Wares).

[16] Mr. Gerani attests that Gilmar also owns various other ICE marks, namely ICE J, ICE B, ICE B & Design, ICE JEANS, ICE HISTORY, ICE ICEBERG and ICE ICE ICEBERG, (collectively the ICE Collection Marks) for clothing, clothing accessories, fashion accessories,

footwear, headwear, leather goods, eyeglasses, eyeglass-related wares, trunks and carrying bags (collectively the ICE Collection Wares).

[17] Mr. Gerani attests that Gilmar has sold the Gilmar Wares in Canada in association with the ICEBERG mark since at least as early as 1982 and has sold the Seminvest Wares in Canada in association with the ICEBERG mark since at least as early as 1998. Since June 27, 2002, Gilmar has used the ICEBERG mark in association with the Seminvest Wares in Canada under an exclusive license from Seminvest and Seminvest controls the character and quality of such wares.

[18] In addition, Mr. Gerani attests that the ICE Collection Wares have been sold in Canada in association with the ICE Collection Marks since 1998.

[19] Photographs of representative labels and tags displaying the Opponents' marks have been provided. The Opponent's marks are also sometimes marked directly on their wares. [Exhibits F to I]

[20] The Opponents have advertised their marks in Canada in magazines, brochures and catalogues. [Paragraphs 18-20; Exhibits J to L] In paragraph 22, Mr. Gerani sets out annual marketing expenses but these are not useful since they relate to Canada and the U.S. combined.

[21] Canadian annual sales figures have been provided for each of the years 1998 through 2005, broken down into two categories: 1) ICEBERG; 2) ICE Collection and ICE B & Design. The first category ranges from 52,000 Euros to 107,000 Euros annually. The second category ranges from 159,000 Euros to 260,000 Euros annually. Representative invoices have been provided as Exhibit N.

Preliminary Comments re Opponent's Evidence

[22] I will comment now on the ramifications of the split ownership of the ICEBERG mark.

[23] By using ICEBERG in association with the Gilmar Wares, Gilmar has acquired a certain reputation in association with such mark in the field of clothing, clothing/fashion accessories and footwear. At the same time, Seminvest has acquired a certain reputation in association with ICEBERG with respect to wares that are often considered to be clothing/fashion accessories, namely perfumeries, jewellery, spectacles, watches and umbrellas. Even though Gilmar and Seminvest are corporately related and even though Seminvest has licensed Gilmar to use the ICEBERG mark in association with the Seminvest Wares, the fact remains that an identical mark is owned by two different entities in association with overlapping or closely-related wares. The result is that both Gilmar's ICEBERG mark and Seminvest's ICEBERG mark are entitled only to a narrow scope of protection.

Summary of Applicant's Evidence

[24] Mr. Choy, the President of the Current Applicant, states that the Current Applicant has used the Mark in Canada as of the date listed in the application, namely December 15, 2004. He provides three newspaper articles, dated January 21, 2005, February 5, 2005 and December 29, 2005. [Exhibits B to D] He also provides several pieces of promotional items concerning the Mark. [Exhibits E to G]

[25] As pointed out by the Opponent, the rest of Mr. Choy's affidavit is argument, not evidence; it will therefore be disregarded.

Onus

[26] The Applicant bears the legal onus of establishing, on a balance of probabilities, that its 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 to support each ground of opposition exist [see *John Labatt Limited v. The Molson Companies Limited* (1990), 30 C.P.R. (3d) 293 (F.C.T.D.) at 298].

Section 30(b) Ground of Opposition

[27] The Opponent's burden with respect to s. 30(b) can be met by reference not only to the Opponent's evidence but also to the Applicant's evidence [see *Labatt Brewing Company Limited v. Molson Breweries, a Partnership* (1996), 68 C.P.R. (3d) (F.C.T.D.) 216 at 230]. However, while the Opponent may rely upon the Applicant's evidence to meet its evidential burden in relation to this ground, the Opponent must show that the Applicant's evidence is 'clearly' inconsistent with the Applicant's claims as set forth in its application.

[28] Mr. Choy has attested that Mynt Ultralounge Inc. used the Mark as of the date listed in the application, whereas the application states that Mynt Nightclub & Ultralounge Ltd. used the Mark as of that date. Mr. Choy's evidence therefore contradicts the application. The fact that the application was assigned to Mynt Ultralounge Inc. in 2006 does not explain this discrepancy. Mr. Choy's statement that Mynt Ultralounge Inc. used the Mark as of December 15, 2004 remains clearly inconsistent with the claim that Mynt Nightclub & Ultralounge Ltd. used the Mark as of December 15, 2004.

[29] The first ground of opposition accordingly succeeds.

Section 30(i) Ground of Opposition

[30] Where an applicant has provided the statement required by s. 30(i), a s. 30(i) ground should only succeed in exceptional cases such as where there is evidence of bad faith on the part of the applicant. [*Sapodilla Co. Ltd. v. Bristol-Myers Co.* (1974), 15 C.P.R. (2d) 152 (T.M.O.B.) at 155]

[31] The required statement has been provided here and there is no evidence of bad faith. The second ground of opposition therefore fails.

Section 12(1)(d) Ground of Opposition

[32] Regarding the third ground of opposition, the Opponent's initial burden is met if the pleaded registration is extant. Registration No. 345,589 is extant.

[33] The material date for assessing the likelihood of confusion under this ground is the date of my decision [*Park Avenue Furniture Corporation v. Wickes/Simmons Bedding Ltd. and The Registrar of Trade Marks*, 37 C.P.R. (3d) 413 (F.C.A.)].

[34] 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.

[35] 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 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 in appearance or sound or in the ideas suggested by them. These enumerated factors need not be attributed equal weight. [See, in general, *Mattel, Inc. v. 3894207 Canada Inc.* (2006), 49 C.P.R. (4th) 321 (S.C.C.).]

[36] Since the registered ICEBERG mark is owned by two different parties, that is severally not jointly, I consider it appropriate that I assess the likelihood of confusion with the Applicant's Mark severally. I will begin by assessing the likelihood of confusion between Gilmar's registered mark and the Applicant's Mark.

(a) the inherent distinctiveness of the trade-marks and the extent to which they have become known

[37] Gilmar's ICEBERG mark is inherently distinctive. The Applicant's ICE LOUNGE mark is also inherently distinctive, but less so than the Opponent's mark in so far as the Applicant's services are concerned because "lounge" is descriptive of the Applicant's services.

[38] The strength of a trade-mark may be increased by means of it becoming known through promotion or use. Mr. Gerani has provided evidence of promotion and use of ICEBERG without breaking such evidence down after 2002 between the ICEBERG mark owned by Gilmar and the ICEBERG mark owned by Seminvest. Prior to 2002, when Gilmar owned ICEBERG for all of the registered wares, Canadian sales exceeded 350,000 Euros. However, the sales provided for the years after 2002 are meaningless since they comprise two parties' marks. I am therefore willing to only accept that Gilmar's ICEBERG mark has become known to some unquantifiable extent as of today's date.

[39] There is very little evidence before me concerning the promotion or use of the Applicant's Mark and so I cannot conclude that it has become known to any significant extent as of today's date.

(b) the length of time each has been in use

[40] Gilmar claims use of the ICEBERG mark since 1982, whereas the Applicant claims use of its Mark since December 15, 2004.

(c) the nature of the wares, services or business

[41] Gilmar's registration covers clothing, clothing/fashion accessories and footwear. The Applicant's application is for the services of a night club, restaurant and lounge, plus promotional wares that include clothing and clothing/fashion accessories.

(d) the nature of the trade

[42] With respect to the Applicant's Services, it seems self-evident that the parties' channels of trade differ. However, I cannot tell whether there is an overlap between the channels of trade with respect to the parties' wares. Gilmar sells its wares to consumers in Canada through distributors and retail stores. It is not known whether the Applicant sells its wares only through its night clubs, restaurants and lounges or whether it might sell them through other channels.

e) the degree of resemblance between the trade-marks in appearance or sound or in the ideas suggested by them

[43] Although marks are to be considered in their entirety, the first component of a mark is often considered more important for the purpose of distinction [*Conde Nast Publications Inc. v. Union des Editions Modernes* (1979), 46 C.P.R. (2d) 183 (F.C.T.D.)]. However, a word that is a common, descriptive word, is entitled to a narrower range of protection than an invented or unique word [*Park Avenue Furniture Corp. v. Wickes/Simmons Bedding Ltd.* (1991), 37 C.P.R. (3d) 413 (F.C.A.)].

[44] Overall, I find that there is not a great degree of resemblance between ICEBERG and ICE LOUNGE. Although they both begin with the ordinary dictionary word “ice”, the marks as a whole present quite differently visually, aurally and in ideas suggested.

other surrounding circumstances

[45] I consider the evidence of Seminvest’s ownership of ICEBERG for clothing/fashion accessories to be a surrounding circumstance that favours the Applicant. Essentially, the Opponent has evidenced that two entities are actively using ICEBERG in the fashion/clothing industry, which necessarily narrows the scope of protection that either owner of ICEBERG may claim.

[46] Another surrounding circumstance is that Gilmar has adopted more than one mark that begins with ICE. However, this does not negate the fact that the scope of protection attributable to ICEBERG has been narrowed due its split ownership.

conclusion re s. 12(1)(d) as it relates to Gilmar’s registration for ICEBERG

[47] Having considered all of the surrounding circumstances, I dismiss the s. 12(1)(d) ground of opposition to the extent that it is based on Gilmar’s registration for ICEBERG. I am satisfied that confusion between the marks is not likely. I reach this conclusion based primarily on the differences between the marks. The most crucial or dominant factor in determining the issue of confusion is the degree of resemblance between the trade-marks and other factors play a

subservient role. [*Beverley Bedding & Upholstery Co. v. Regal Bedding & Upholstery Ltd.* (1980), 47 C.P.R. (2d) 145 (F.C.T.D.) at 149, affirmed 60 C.P.R. (2d) 70]

conclusion re s. 12(1)(d) as it relates to Seminvest's registration for ICEBERG

[48] A review of all the surrounding circumstances vis-à-vis Seminvest's registered mark ICEBERG does not improve the Opponent's position. Use of ICEBERG in association with the Seminvest Wares began later than it did in association with the Gilmar Wares (June 27, 2002) and it is not possible to ascertain the degree to which Seminvest's mark has been used or promoted as of today's date. Moreover, the Seminvest Wares are less similar to the Applicant's Wares than are the Gilmar Wares.

[49] I am therefore also dismissing the s. 12(1)(d) ground to the extent that it is based on Seminvest's registration for ICEBERG, based in large part on the differences between the marks.

Section 16(1)(a) Grounds of Opposition

[50] Regarding the s. 16(1)(a) grounds of opposition, the Opponent must evidence use or making known of its marks prior to December 15, 2004 and non-abandonment of its marks as of the date of advertisement of the Applicant's application (s. 16(5)).

[51] Mr. Gerani has provided the date of first use for each of the marks pleaded under s. 16(1)(a). He has also provided annual Canadian sales figures for each of the years 1998 through 2005. These figures are broken down into two groups, 1) ICEBERG and 2) all the other pleaded marks collectively, i.e. as a single lump sum.

[52] Mr. Gerani has provided representative labels for the following pleaded marks (the numbers correspond to those used in the pleadings): i) ICEBERG, iii) ICE JEANS, iv) ICE ICE ICEBERG, v) ICE HISTORY, vi) ICE J, vii) ICE B, viii) ICE ICEBERG and ix) ICE. He has also provided photographs of associated wares for the following pleaded marks: i) ICEBERG, iii) ICE JEANS, iv) ICE ICE ICEBERG, v) ICE HISTORY, vi) ICE J, vii) ICE B, and ix) ICE. As well, he has provided magazine advertisements for i) ICEBERG and iii) ICE JEANS.

[53] Of all the Opponent's marks, I consider the ICE mark to be the most similar to the Applicant's Mark. Therefore the Opponent's strongest position under s. 16(1)(a) is based on that mark. I will therefore focus my assessment of the likelihood of confusion under this ground as between ICE and ICE LOUNGE. The material date for assessing the likelihood of confusion under this ground is the Applicant's claimed date of first use, December 15, 2004.

(a) the inherent distinctiveness of the trade-marks and the extent to which they have become known

[54] The Opponent's ICE mark is inherently distinctive. The Applicant's ICE LOUNGE mark is also inherently distinctive, but less so than the Opponent's mark in so far as the Applicant's services are concerned given that "lounge" is descriptive of the Applicant's services.

[55] There is no evidence that the Applicant's Mark had become known to any extent prior to December 15, 2004. I cannot tell to what extent the Opponent's ICE mark had become known prior to December 15, 2004.

(b) the length of time each has been in use

[56] The Opponent claims use of ICE since 1987, whereas the Applicant claims use of ICE LOUNGE since December 15, 2004.

(c) the nature of the wares, services or business

[57] The Opponent's ICE mark is associated with clothing. The Applicant's application is for the services of a night club, restaurant and lounge, plus promotional wares that include clothing and clothing/fashion accessories.

(d) the nature of the trade

[58] With respect to the Applicant's Services, it seems self-evident that the parties' channels of trade differ. However, I cannot tell whether there is an overlap between the channels of trade with respect to the parties' wares. Gilmar sells its wares to consumers in Canada through

distributors and retail stores. It is not known whether the Applicant sells its wares only through its night clubs, restaurants and lounges or whether it might sell them through other channels.

e) the degree of resemblance between the trade-marks in appearance or sound or in the ideas suggested by them

[59] The Applicant has incorporated the entirety of the Opponent's ICE mark into its Mark and has incorporated it as the first part of its Mark. Overall, I find that there is a significant degree of resemblance between ICE and ICE LOUNGE, even though there are differences between them visually, aurally and in ideas suggested.

other surrounding circumstances

[60] It is clear from the evidence that Gilmar has adopted a number of clothing marks that incorporate the word ICE as the first portion. There is of course also evidence that Seminvest has used ICEBERG in association with clothing accessories.

conclusion re s. 16(1)(a)

[61] The Applicant has not satisfied me that confusion is not reasonably likely between ICE clothing and ICE LOUNGE clothing. Even though the Applicant identifies its clothing as promotional wares, this would not necessarily make confusion unlikely given that the Applicant's Mark incorporates the Opponent's mark in its entirety and it is not clear what channels of trade would be used by the Applicant to distribute its clothing. On the other hand, given the significant differences between clothing and the Applicant's Services and other wares, I am satisfied that confusion would not be reasonably likely with respect to the Applicant's services and non-clothing wares. The s. 16(1)(a) ground of opposition therefore is successful with respect only to the following wares: shirts, t-shirts, sweatshirts, hats, baseball caps, jackets. This ground is dismissed with respect to the remaining wares and services.

Section 16(1)(b) Ground of Opposition

[62] Regarding the s. 16(1)(b) ground of opposition, the Opponent must evidence that its application was filed prior to December 15, 2004 and was still pending when the Applicant's

application was advertised, namely September 21, 2005 (s. 16(4)).

[63] The ICE B & Design mark that is the subject of the pleaded application No. 1,219,582 is shown below:



[64] This application issued to registration on February 2, 2006 for the following wares: leather and imitation of leather, namely, jackets, coats, pants, skirts, shorts, gilets, tops, backpacks, purses, wallets, key holders; trunks and traveling bags; animal skins; hides; walking sticks; whips, harness and saddlery; athletic clothing; beachwear; casual clothing; casual wear; children's clothing; baby clothes; outdoor winter clothing; rainwear; exercise clothing; clothes for fishing; golf wear; ski wear; formal wear; protective clothing; bridal wear; undergarments; athletic footwear; beach footwear; children's footwear; infant footwear; outdoor winter footwear; rain footwear; exercise footwear; golf footwear; ski footwear; evening footwear; protective footwear; bridal footwear; hats, caps and helmets.

[65] The Opponent has therefore met its initial onus.

[66] Mr. Gerani attests that Gilmar has sold wares in association with the ICE B & Design mark in Canada since January 25, 2004. However, this statement has not been supported by labels/tags, photographs of the associated wares, invoices etc.

[67] A review of all of the s. 6(5) factors under this ground of opposition would be less favourable to the Opponent than that conducted with respect to the s. 16(1)(a) ground of

opposition, given that ICE B & Design is less similar to ICE LOUNGE than is ICE and the Opponent's evidence with respect to ICE B & Design is less than its evidence with respect to ICE.

[68] I am therefore dismissing this ground.

Distinctiveness Grounds of Opposition

[69] The material date for establishing distinctiveness is the date of filing of the opposition [*Metro-Goldwyn-Mayer Inc. v. Stargate Connections Inc.* (2004), 34 C.P.R. (4th) 317 (F.C.)].

[70] The Opponent has not met its initial burden with respect to the facts pleaded under the seventh and eight grounds of opposition. Those grounds are accordingly dismissed.

[71] To meet its initial burden with respect to the sixth ground of opposition, the Opponent must show that as of November 21, 2005, at least one of the pleaded marks had become known sufficiently to negate the distinctiveness of the applied-for mark [*Motel 6, Inc. v. No. 6 Motel Ltd.* (1981), 56 C.P.R. (2d) 44 at 58 (F.C.T.D.)].

[72] There is insufficient evidence for me to make any conclusion regarding the distinctiveness as of November 21, 2005 of any of the Opponent's marks, other than ICEBERG. I have already concluded that there is not a reasonable likelihood of confusion between ICEBERG and ICE LOUNGE as of today's date and considering this issue as of the earlier material date that applies to this ground would not result in any different conclusion.

[73] All of the distinctiveness grounds are therefore dismissed.

Disposition

[74] Having been delegated 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 AT TORONTO, ONTARIO, THIS 12th DAY OF NOVEMBER 2009.

Jill W. Bradbury
Member
Trade-marks Opposition Board