



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

Citation: 2015 TMOB 67
Date of Decision: 2015-04-07

**IN THE MATTER OF AN OPPOSITION
by Jarrow Formulas, Inc. to application
No. 1,306,694 for the trade-mark POM
SHOTS in the name of Canada Bread
Company, Limited**

[1] Jarrow Formulas, Inc. opposes registration of the trade-mark POM SHOTS applied for registration under serial No. 1,306,694 in association with, among others, nutraceuticals for use as a dietary supplement, vitamin and mineral fortified non-alcoholic fruit-based beverages, nutritionally fortified water, vitamin enriched water, preparations for making fruit drinks, fruit flavored non-alcoholic beverages, sports drinks, non-alcoholic energy drinks, and pomegranate extracts for making non-alcoholic fruit drinks and fruit flavored beverages.

[2] The determinative issue in this proceeding is whether the trade-mark POM SHOTS (the Mark) is confusing with the trade-mark POME GREAT of application No. 1,277,280. At the date of advertisement of the application for the Mark, application No. 1,277,280 was pending for “dietary supplements namely fruit juice concentrates and vitamin and fruit extract supplements in liquid form”.

[3] For the reasons that follow, I find that the application ought to be refused in part.

The Record

[4] The application was filed by PomWonderful LLC on June 23, 2006 on the basis of proposed use in Canada and claims the priority of a United States application filed on

December 23, 2005; it currently stands in the name of Canada Bread Company, Limited as assignee. The term “Applicant” used throughout my decision refers to the owner of the application at the relevant time.

[5] The application has been amended twice during examination by the Canadian Intellectual Property Office (CIPO). On May 12, 2010, the statement of goods of the application was amended to conform to ordinary commercial terms and to add registration and use of the Mark as a second basis for registration in Canada. This basis was subsequently withdrawn in an amended application filed on August 5, 2010. Further to a voluntary amendment of October 3, 2012, the statement of goods of the application currently of record reads as follows:

(1) Nutraceuticals for use as a dietary supplement, namely, powders, liquids, capsules and pills, made from fruit extracts and plant extracts; vitamin and mineral fortified non-alcoholic fruit-based beverages; nutritionally fortified water; vitamin enriched water; preparations for making fruit drinks, namely fruit extracts and syrups for making non-alcoholic fruit drinks, non-alcoholic fruit flavored beverages and non-alcoholic fruit flavored beverages; non-alcoholic fruit extracts used in the preparation of beverages; fruit flavored non-alcoholic beverages and non-alcoholic fruit flavored beverages; non-alcoholic beverages containing fruit juices; drinking water, flavored water; sports drinks; non-alcoholic energy drinks; pomegranate extracts for making non-alcoholic fruit drinks, non-alcoholic fruit flavored beverages and non-alcoholic fruit flavored beverages.

[6] The application was advertised in the December 29, 2010 issue of the *Trade-marks Journal*.

[7] The statement of opposition filed on February 28, 2012 by Jarrow Formulas, Inc. (the Opponent) raises three grounds of opposition under section 38 of the *Trade-marks Act*, RCS 1985, c T-13 (the Act). In summary, the grounds of opposition are premised on allegations that:

- (i) the application does not comply with the requirements of section 30(a) of the Act because it does not contain a statement in ordinary commercial terms of the goods associated with the Mark [section 38(2)(a) of the Act];
- (ii) the Applicant is not the person entitled to registration of the Mark under section 16(3)(b) of the Act in view of confusion with the Opponent’s trade-

mark POME GREAT in respect of which application No. 1,277,280 had been previously filed [section 38(2)(c) of the Act]; and

- (iii) the Mark is not distinctive nor is it adapted to distinguish the Applicant's goods from the goods and services of others [section 38(2)(d) of the Act].

[8] The Applicant filed a counter statement denying each ground of opposition.

[9] The Opponent elected not to file evidence.

[10] The Applicant's evidence consists of an affidavit of Jessica Rodrigues-Cerqueira, a paralegal employed by the Applicant's trade-marks agent, sworn on June 27, 2013.

Ms. Rodrigues-Cerqueira introduces into evidence the particulars of active registrations and allowed applications (the POM Registrations and Applications), which she obtained from the Canadian trade-marks database, and owned by the Applicant for trade-marks consisting of or comprising the term "POM" (the POM Marks). Ms. Rodrigues-Cerqueira was not cross-examined by the Opponent.

[11] Only the Applicant filed a written argument. A hearing was not held.

Legal Onus and Evidential Burden

[12] The legal onus is on the Applicant to show that the application does not contravene the provisions of the Act as alleged in the statement of opposition. This means that if a determinate conclusion cannot be reached once all the evidence is in, then the issue must be decided against the Applicant. However, there is also an evidential burden on the Opponent to prove the facts inherent to its pleadings. The presence of an evidential burden on the Opponent means that in order for a ground of opposition to be considered at all, there must be sufficient evidence from which it could reasonably be concluded that the facts alleged to support that ground of opposition exist [see *John Labatt Ltd v Molson Companies Ltd* (1990), 30 CPR (3d) 293 (FCTD); *Dion Neckwear Ltd v Christian Dior, SA et al* (2002), 20 CPR (4th) 155 (FCA); and *Wrangler Apparel Corp v The Timberland Company* (2005), 41 CPR (4th) 223 (FC)].

Grounds of Opposition Summarily Dismissed

[13] I summarily dismiss the grounds of opposition raised under sections 38(2)(a) and 38(2)(d) of the Act for the reasons that follow.

[14] The ground of opposition raised under section 38(2)(a) of the Act, which is premised on an allegation that the application does not comply with the requirements of section 30(a) of the Act, appears to be a “boilerplate” pleading in that it merely repeats the wording of the Act. In any event, assuming that the ground of opposition has been sufficiently pleaded, it is dismissed for the Opponent’s failure to meet its evidential burden of showing that the application did not comply with section 30(a) of the Act.

[15] The non-distinctiveness ground of opposition raised under section 38(2)(d) of the Act also appears to be a “boilerplate” pleading as it merely alleges that the Mark does not distinguish, nor is it adapted to distinguish, the Applicant’s goods from the goods and services of others.

[16] According to *Novopharm Limited v AstraZeneca AB* (2002), 21 CPR (4th) 289 (FCA), I must assess the sufficiency of the pleading in association with the evidence. Since the Opponent has not furnished any evidence, I dismiss the ground of opposition for having been insufficiently pleaded.

[17] Alternatively, as the pleading in the context of the statement of opposition could arguably be understood as alleging that the Mark is not distinctive in view of the Opponent’s trade-mark POME GREAT, the ground of opposition is dismissed for the Opponent’s failure to meet its evidential burden. More particularly, the Opponent has failed to show that its alleged trade-mark had become known sufficiently in Canada as of the filing date of the statement of opposition, namely February 28, 2012, to negate the distinctiveness of the Mark [see *Metro-Goldwyn-Mayer Inc v Stargate Connections Inc* (2004), 34 CPR (4th) 317 (FC); *Motel 6, Inc v No 6 Motel Ltd* (1981), 56 CPR (2d) 44 (FCTD); and *Bojangles’ International LLC v Bojangles Café Ltd* (2006), 48 CPR (4th) 427 (FC)].

Analysis of the Remaining Ground of Opposition

[18] The remaining ground of opposition raised under section 38(2)(c) of the Act is based on section 16(3)(b) of the Act. It is premised on an allegation of confusion between the Mark and the Opponent's trade-mark POME GREAT of application No. 1,277,280.

[19] I find it is useful to start my analysis of this ground of opposition by reproducing the following excerpts of the Applicant's written argument as they essentially reflect its position:

13. In view of the Applicant's POM Registrations and Applications which were filed prior to the Opponent's POME GREAT Application (including the Applicant's previously filed application number 1,122,704 for POM that covers the same wares that are listed in the Opponent's POME GREAT Application as well as the Applicant's prior trade-mark registration for POM WONDERSFUL & Design which is the subject of registration number TMA832,083), the Applicant possesses superior rights in and to the trade-mark POM (and POM SHOTS) for use in association with the wares listed in the subject application as compared to the Opponent having regard to its POME GREAT Application.

[...]

22. [...] as is clearly demonstrated by the Applicant's evidence, the Applicant has superior rights in and to the trade-mark POM including all of the variations thereof (which would include POM SHOTS) having regard to the Applicant's long prior use of the POM Marks in Canada and its POM Registrations and Applications which were filed prior to the priority filing date of the Opponent's POME GREAT Application (including Applicant's prior application number 1,122,704 for POM which covers the same goods as are listed in the Opponent's POME GREAT Application).

23. Such rights of the Applicant in and to the POM Marks, the POM Registrations and Applications (including previously filed application number 1,122,704) existed well prior to the alleged priority filing date of the Opponent's POME GREAT Application, namely May 23, 2005. In particular, such rights first starting over 75 years ago.

24. In view of this, it is respectfully submitted that it is not the subject application for POM SHOTS that should be considered to be confusing with the Opponent's POME GREAT Application but conversely, it is the Opponent's POME GREAT Application that should be considered to be confusing with the Applicant's prior POM Marks and prior POM Registrations and Applications. In fact, [...] the Opposition Board already arrived at this conclusion in the Applicant's opposition to the POME GREAT application (*sic*). As a result, this ground of opposition should fail.

25. In any event, the Opponent has not filed any evidence for a finding of confusion to be rendered.

[20] With due respect for the Applicant, the issue arising from the section 16(3)(b) ground of opposition is not the Opponent's entitlement to the registration of the trade-mark POME GREAT as of May 23, 2005. Rather, the issue is whether the Applicant was the person entitled to the registration of the Mark as of December 23, 2005. Also, it is the Applicant who has the ultimate burden of evidencing its entitlement to the registration of the Mark.

[21] It is true that the Opponent's application No. 1,277,280 for the trade-mark POME GREAT was refused under sections 16(3)(b) and 12(1)(d) of the Act by the Registrar further to the Applicant's opposition. I rendered the decision on behalf of the Registrar as I concluded to confusion between the Opponent's trade-mark POME GREAT and the Applicant's trade-mark POM WONDERFUL & Design of application No. 1,176,267 and registration No. TMA832,083. The decision issued on June 18, 2013, indexed as *Canada Bread Company, Limited v Jarrow Formulas Inc*, 2013 TMOB 108 (CanLII), is currently under appeal before the Federal Court [Court File No. T-1539-13].

[22] Nevertheless, all that is required from the Opponent to discharge its initial burden for the section 16(3)(b) ground of opposition is to show that its application No. 1,277,280 had been filed before the priority filing date of the application for the Mark, i.e. December 23, 2005, and was pending at the date of advertisement of the Applicant's application, i.e. December 29, 2010 [section 16(4) of the Act]. In other words, even if the Federal Court dismisses the appeal in *Canada Bread Company, Limited, supra*, the refusal of the Opponent's alleged application subsequently to the material date is of no consequence when considering the section 16(3)(b) ground of opposition [see *ConAgra Inc v McCain Foods Ltd* (2001), 14 CPR (4th) 228 (FCTD) where the abandonment of the opponent's application subsequent to the material date was found not to be a relevant circumstance in the assessment of confusion under section 16(3)(b) of the Act].

[23] In the present case, the Opponent has met its initial burden. Indeed, in the exercise of the Registrar's discretion to review the trade-marks register [see *Royal Appliance Mfg Co v Iona Appliance Inc* (1990), 32 CPR (3d) 525 (TMOB) at 529], I have confirmed that the Opponent's alleged application was filed on October 27, 2005 claiming a priority filing date of May 23, 2005, and was pending at the date of advertisement of the application for the Mark.

[24] Thus, the question becomes whether the Applicant has met its legal onus to show that, as of December 23, 2005, the Mark was not likely to cause confusion with the trade-mark POME GREAT of application No. 1,277,280.

[25] As indicated before, there is a legislative requirement that an application alleged in support of a section 16(3)(b) non-entitlement ground of opposition be pending at the date of advertisement of the opposed application. Accordingly, in my assessment of confusion as of December 23, 2005, I believe it is consistent with the intention of the legislator to consider the statement of goods of the Opponent's alleged application as it read at the date of advertisement of the application for the Mark.

[26] In exercising the Registrar's discretion to review the trade-marks register to inspect application No. 1,277,280, I have determined that on December 29, 2010 the statement of goods of application No. 1,277,280 read "dietary supplements namely fruit juice concentrates and vitamin and fruit extract supplements in liquid form" further to a voluntary amendment of November 12, 2009.

[27] The test for confusion is one of first impression and imperfect recollection. Section 6(2) of the Act indicates that the 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 goods or services associated with those trade-marks are manufactured, sold, leased, hired or performed by the same person, whether or not the goods or services are of the same general class.

[28] In applying the test for confusion, the Registrar must have regard to all the surrounding circumstances, including those specifically enumerated in section 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 the trade-marks have been in use; c) the nature of the goods, 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 *Mattel, Inc v 3894207 Canada Inc* (2006), 49 CPR (4th) 321 (SCC); *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée et al* (2006), 49 CPR (4th) 401 (SCC); and *Masterpiece Inc v Alavida Lifestyles Inc* (2011), 92 CPR (4th) 361 for a thorough discussion of the general principles that govern the test for confusion.]

[29] In *Masterpiece, supra*, the Supreme Court of Canada stated that the degree of resemblance between marks, although the last factor listed in section 6(5) of the Act, is often likely to have the greatest effect on the confusion analysis; the Court chose to begin its analysis by considering that factor. Thus, I turn to the assessment of the section 6(5) factors starting with the degree of resemblance between the trade-marks.

Section 6(5)(e) - The degree of resemblance between the trade-marks in appearance or sound or in the ideas suggested by them

[30] When considering the degree of resemblance, the law is clear that the trade-marks must be considered in their totality; it is not correct to lay them side by side and compare and observe similarities or differences among the elements or components of the trade-marks.

[31] The first portion of a trade-mark is usually considered more important for assessing the likelihood of confusion [see *Conde Nast Publications Inc v Union des Editions Modernes* (1979), 46 CPR (2d) 183 at 188 (FCTD)]. At paragraph 64 of the *Masterpiece* decision, the Court writes that to measure the degree of resemblance, a preferable approach is to first consider whether there is an aspect of the trade-mark that is particularly striking or unique.

[32] As I do not consider the laudatory adjective “great” forming the suffix of the Opponent’s trade-mark to be particularly striking or unique, I conclude that its prefix “pome” is somewhat more important for the purposes of distinction. As for the Mark, I do not consider its suffix “shots” to be more striking than its prefix “pom” in the context of its associated goods. The term “shot” is a word of the English language having different meanings, including informally meaning an injection or drink of especially hard liquor [see the online *Canadian Oxford Dictionary* (2 ed)]. Thus, I also find that the first component of the Mark is somewhat more important for the purposes of distinction.

[33] Thus, considering the trade-marks as a matter of first impression and not of close scrutiny, I do find that there is some degree of resemblance in appearance and sound owing to their respective first components. That being said, I find that the degree of resemblance between the trade-marks in terms of sound is greater than in terms of appearance. Indeed, even though one could argue that “pom” and “pome” are distinguishable when considering an English

speaking consumer, my own knowledge of my mother tongue leads me to conclude that “pom” and “pome” would be pronounced identically by a French speaking consumer; both “pom” and “pome” sounds like the French word “*pomme*” (in English: apple). It should be remembered that a trade-mark cannot be registered when there is confusion on the part of either the average English speaking consumer, the average French speaking consumer or the average bilingual consumer [see *Pierre Fabre Medicament v SmithKline Beecham Corporation v* (2001), 11 CPR (4th) 1 (FCA)].

[34] In terms of ideas suggested, while not particularly striking, I find their respective suffixes do result in differences between the ideas suggested by the trade-marks. Indeed, I find it can fairly be concluded that the Opponent’s trade-mark suggests the idea that its associated goods are above average. By comparison, the Mark suggests the idea that its associated goods are offered or taken in a shot size format.

Section 6(5)(a) - The inherent distinctiveness of the trade-marks and the extent to which they have become known

[35] I find that the Opponent’s mark POMEGREAT does not possess an important degree of inherent distinctiveness in the context of the goods listed in application No. 1,277,280. Besides the laudatory connotation of the suffix “great”, to the extent that “pome” sounds like the French word “*pomme*”, to a French speaking consumer the prefix “pome” in the context of “dietary supplements namely *fruit* juice concentrates and vitamin and *fruit extract supplements* in liquid form” (emphasis added) is evocative of apple juice concentrates and apple extract supplements.

[36] To the extent that the goods associated with the Mark consist of *fruit* extracts, *fruit*-based and *fruit* flavored beverages, and non-alcoholic beverages containing *fruit* juices (emphasis added), the “pom” component of the Mark for a French speaking consumer is evocative of apple extracts, apple-based and apple flavored beverages, and non-alcoholic beverages containing apple juices. I also find it can fairly be concluded that “pom” is evocative of pomegranate in the context of “pomegranate extracts for making non-alcoholic fruit drinks, non-alcoholic fruit flavored beverages and non-alcoholic fruit flavored beverages”. As also discussed above, the “shots” component of the Mark is not without suggestive connotation in the context of the Applicant’s goods.

[37] In the end, I find that both trade-marks possess some measure of inherent distinctiveness that I assess as about the same, although the inherent distinctiveness of the trade-mark POME GREAT is arguably less given its laudatory connotation.

[38] Finally, neither party has filed evidence to establish that its trade-mark acquired distinctiveness through promotion or use in Canada.

Section 6(5)(b) - The length of time the trade-marks have been in use

[39] This factor is of no significance. The Mark and the trade-mark POME GREAT have both been applied for registration on a proposed use basis and neither party filed evidence of use in Canada.

Sections 6(5)(c) and (d) - The nature of the goods and the nature of the trade

[40] As mentioned before, I find it is appropriate to consider the statement of goods of the application for the trade-mark POME GREAT as it read at the advertisement date of the application for the Mark, namely “dietary supplements namely fruit juice concentrates and vitamin and fruit extract supplements in liquid form” (the Opponent’s dietary supplements).

[41] To the extent that the goods associated with the Mark are intended for use as a dietary supplement, I find it is reasonable to conclude to an overlap between them and the Opponent’s dietary supplements. Accordingly, absent representations from the Applicant to convince me otherwise, I find it may reasonably be concluded to an overlap between the following goods listed in the application for the Mark and the Opponent’s dietary supplements:

(1) Nutraceuticals for use as a dietary supplement, namely, powders, liquids, capsules and pills, made from fruit extracts and plant extracts; [...] (the Applicant’s nutraceuticals).

[42] However, absent representations from the Opponent to convince me otherwise, I conclude that the following goods listed in the application for the Mark are distinguishable from the Opponent’s dietary supplements:

(1) [...] vitamin and mineral fortified non-alcoholic fruit-based beverages; nutritionally fortified water; vitamin enriched water; preparations for making fruit drinks, namely fruit extracts and syrups for making non-alcoholic fruit drinks, non-alcoholic fruit flavored beverages and non-alcoholic fruit flavored beverages; non-alcoholic fruit extracts used in the preparation of beverages; fruit flavored non-alcoholic beverages and non-alcoholic fruit flavored beverages; non-alcoholic beverages containing fruit juices; drinking water, flavored water; sports drinks; non-alcoholic energy drinks; pomegranate extracts for making non-alcoholic fruit drinks, non-alcoholic fruit flavored beverages and non-alcoholic fruit flavored beverages.

[43] Indeed, not only are the above-identified goods not referenced in the application as being for use as a dietary supplement, they are listed separately from the Applicant's nutraceuticals.

[44] Finally, to the extent that I conclude to an overlap between the Applicant's nutraceuticals and the Opponent's dietary supplements, for the purposes of assessing confusion and without evidence to convince me otherwise, I also conclude to a potential for overlap between the parties' channels of trade for these goods.

[45] Accordingly, I conclude that the overall consideration of the sections 6(5)(c) and (d) factors favours the Opponent only as regards the Applicant's nutraceuticals.

Additional surrounding circumstances

[46] The Applicant's evidence and submissions arguably advance the Applicant's ownership of registrations for trade-marks consisting of or comprising the term "POM" as an additional surrounding circumstance.

[47] The Applicant's evidence does establish that four of its POM Marks were registered at the material date of December 23, 2005. These trade-marks are: POM of registration No. TMDA49765, POM LITE of registration No. TMA335,814, "POM GOLD"(POM D'OR) of registration No. UCA40516, and POM & Design of registration No. TMA469,001. However, not only do the goods covered by these registrations are essentially bakery goods, but it is trite law that the ownership of a registration does not give the automatic right to obtain further registrations no matter how closely they may be related to the original registration [see *Groupe Lavo Inc v Procter & Gamble Inc* (1990), 32 CPR (3d) 533 (TMOB) at 538].

[48] Accordingly, I do not consider the existence of the Applicant's registrations noted above to be of relevance to the determination of the section 16(3)(b) ground of opposition.

[49] Finally, despite not being relevant to the assessment of the issue before me, the Applicant's submissions regarding the Opponent's non-entitlement to the registration of the trade-mark POME GREAT arguably advance the fact that the application for the Mark was approved by CIPO's Examination Section despite the Opponent's previously filed application. I wish to stress that the burden on an applicant differs whether the application is at the examination stage or at the opposition stage. More particularly, at the examination stage, the Registrar is under an obligation to advertise an application unless he is satisfied that the applicant is not the person entitled to registration of the trade-mark [section 37 of the Act]. At the opposition stage, the burden is on the applicant to satisfy the Registrar that it is the person entitled to registration of the trade-mark.

Conclusion on the likelihood of confusion

[50] In applying the test for confusion, I have considered it as a matter of first impression and imperfect recollection. In weighing all of the factors enumerated at section 6(5) of the Act and their relative importance, I am not satisfied that the Applicant has discharged its legal onus of establishing that there was no reasonable likelihood of confusion between the Mark in association with the Applicant's nutraceuticals and the Opponent's trade-mark POME GREAT of application No. 1,277,280 for the average French speaking consumer as of December 23, 2005.

[51] Indeed, given the overlap between the Applicant's nutraceuticals and the Opponent's dietary supplements, and the potential for overlap in the channels of trade, when I factor in the degree of resemblance between the trade-marks, especially in terms of sound, I find that there is an even balance of probabilities between a finding of confusion and a finding of no confusion. As the onus is on the Applicant to establish on a balance of probabilities that the Mark was not confusing with the trade-mark POME GREAT of application No. 1,277,280 as of December 23, 2005, I must decide against the Applicant.

[52] However, I am satisfied that the Applicant has discharged its legal onus of establishing that there was no reasonable likelihood of confusion between the Mark in association with goods

other than the Applicant's nutraceuticals and the Opponent's trade-mark POME GREAT of application No. 1,277,280 as of December 23, 2005. Indeed, despite the degree of resemblance between the trade-marks, when I factor in the fact that the trade-mark POME GREAT does not benefit from acquired distinctiveness with my finding that the other goods listed in the application for the Mark are distinguishable from the Opponent's dietary supplements, I find that the balance of probabilities tips in favour of the Applicant.

[53] Accordingly, the section 16(3)(b) ground of opposition succeeds only with respect to the following goods:

(1) Nutraceuticals for use as a dietary supplement, namely, powders, liquids, capsules and pills, made from fruit extracts and plant extracts; [...]

[54] I wish to add that had the Applicant provided evidence to establish that its POM Marks had been used or had become known to some extent in Canada as of the material date, I might have concluded that the overall consideration of the section 6(5) factors weighs in its favour when considering the Applicant's nutraceuticals. However, the outcome of an opposition is based on the evidence and pleadings of the parties and not on the unsupported submissions of the parties.

Disposition

[55] Pursuant to the authority delegated to me under section 63(3) of the Act, I refuse the application under section 38(8) of the Act for the following goods:

(1) Nutraceuticals for use as a dietary supplement, namely, powders, liquids, capsules and pills, made from fruit extracts and plant extracts; [...]

[56] However, I reject the opposition under section 38(8) of the Act for the following goods:

(1) [...] vitamin and mineral fortified non-alcoholic fruit-based beverages; nutritionally fortified water; vitamin enriched water; preparations for making fruit drinks, namely fruit extracts and syrups for making non-alcoholic fruit drinks, non-alcoholic fruit flavored beverages and non-alcoholic fruit flavored beverages; non-alcoholic fruit extracts used in the preparation of beverages; fruit flavored non-alcoholic beverages and non-alcoholic fruit flavored beverages; non-alcoholic beverages containing fruit juices; drinking water, flavored water; sports drinks; non-

alcoholic energy drinks; pomegranate extracts for making non-alcoholic fruit drinks,
non-alcoholic fruit flavored beverages and non-alcoholic fruit flavored beverages.

[See *Produits Menager Coronet Inc v Coronet-Werke Heinrich Schlerf GmbH* (1986), 10 CPR
(3d) 492 (FCTD) as authority for a split decision.]

Céline Tremblay
Member
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