

[3] Each application for registration filed on January 16, 2012 is based on the proposed use of the trade-mark in Canada.

[4] On November 10, 2015, the Applicant filed in each case an amended application, of which I confirmed acceptance on behalf of the Registrar on November 17, 2015. The statement of goods of each application for registration currently on record thus reads as follows:

[TRANSLATION] javel [*sic*] water, namely bulk quantities of several different concentrations and quantities manufactured exclusively to order of the industrial clientele according to their specific needs and excluding sale to retailers and retail sale of the goods for consumers (the Good).

[5] In general, in each case, the grounds of opposition are based on allegations of confusion between the Applicant's trade-marks and the Opponent's trade-marks, including the JAVEX and JAVALIN trade-marks. In each case, the Opponent also raises grounds of opposition based on the allegations concerning the use of the trade-mark by the Applicant and by third parties.

[6] In each case, each of the parties filed evidence and a written argument. The two parties were represented at the hearing, where both cases were heard together.

[7] For the following reasons, I consider it appropriate to reject each opposition.

II The grounds of opposition

[8] In each case, the statement of opposition was filed on March 18, 2013 and amended on August 19, 2014.

[9] Since the grounds of opposition raised regarding each application for registration are identical, I will summarize them by using "the Mark" to designate the JAVELO and JAVELO Drawing trade-marks interchangeably.

[10] As a preamble to the grounds of opposition raised under section 38 of the *Trade-marks Act*, RSC 1985, c. T-13 (the Act), the Opponent alleges the continuous use of the JAVEX trade-mark for over 60 years. The Opponent also alleges the ownership of application for registration No. 1,609,655 for the JAVEX & Drawing mark, and ten registrations collectively designated as "the Javex Registrations". Copies of the alleged application and the Javex Registrations are

attached to the amended statement of opposition. The trade-marks and the goods covered by the Javex Registrations are identified in Appendix A of my decision.

[11] Five of the seven grounds of opposition raised by the Opponent must be read in the context of the above-mentioned allegations. These are grounds of opposition according to which:

- the Mark is not distinctive according to section 2 of the Act;
- the Applicant is not the person entitled to registration of the Mark according to paragraph 16(3)(a) of the Act;
- the Applicant is not the person entitled to registration of the Mark according to paragraph 16(3)(b) of the Act;
- the Mark is not registrable according to paragraph 12(1)(d) of the Act;
- the Applicant could not state it is satisfied that it is entitled to use the Mark in Canada according to paragraph 30(i) of the Act.

[12] The other two grounds of opposition allege, in summary, that the Applicant:

- used the Mark in Canada before the filing date of the application, contrary to paragraph 30(b) of the Act; and
- permitted UBA Inc., Somavrac Group Inc., formerly Prommel Group, and Servitank Transport Inc. to use the Mark without exercising the control required by section 50 of the Act. Due to its use by unlicensed third parties, the trade-mark is not distinctive.

III The relevant dates

[13] The relevant dates for considering the circumstances in regard to the grounds of opposition are the following:

- sections 38(2)(a)/30 of the Act - the filing date of the application [see *Georgia-Pacific Corp. v Scott Paper Ltd* (1984), 3 CPR (3d) 469 (TMOB)];

- paragraphs 38(2)(b)/12(1)(d) of the Act - the date of my decision [see *Park Avenue Furniture Corporation v Wickes/Simmons Bedding Ltd and The Registrar of Trade Marks* (1991), 37 CPR (3d) 413 (FCA)];
- articles 38(2)(c)/16(3)(a) and (b) of the Act - the filing date of the application; and
- sections 38(2)(d)/2 of the Act - the filing date of the statement of opposition [see *Metro-Goldwyn-Mayer Inc v Stargate Connections Inc*, 2004 FC 1185, 34 CPR (4th) 317].

IV The burden incumbent on the Parties

[14] The legal onus is on the Applicant to show that the application for registration does not contravene the provisions of the Act. 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, the Opponent must discharge the initial burden of proving the facts on which it bases its allegations. The fact that an initial evidential burden is imposed on the Opponent means that a ground of opposition will be taken into consideration only if sufficient evidence exists to allow a reasonable conclusion of the existence of the facts alleged in support of this ground of opposition [see *John Labatt Ltd v Molson Companies Ltd* (1990), 30 CPR (3d) 293 (FCTD); *Dion Neckwear Ltd v Christian Dior, SA et al*, 2002 FCA 29, 20 CPR (4th) 155; and *Wrangler Apparel Corp v The Timberland Company*, 2005 FC 722, 41 CPR (4th) 223].

V The parties' evidence

[15] Before proceeding with the analysis of the grounds of opposition, I will give an overview of the evidence presented by the parties in each case. Evidence will be examined in more detail in the analysis of the grounds of opposition, as applicable.

(1) Opponent's evidence

[16] In each case, the Opponent filed an affidavit by Elenita Anastacio, dated October 2, 2013, and its Exhibit A.

[17] Ms. Anastacio, a researcher employed by the Opponent's trade-mark agent firm, filed copies of the Javex Registrations.

(2) Applicant's evidence

[18] In each case, the Applicant filed the following affidavits:

- that of Sylvain Demers, dated January 29, 2014, and its Exhibits SD-1 to SD-16;
- that of Denis Manias, dated January 23, 2014, and its Exhibits DM-1 to DM-20;
and
- that of Sandro Romeo, dated January 17, 2014, and its Exhibit SR-1.

[19] Each of the witnesses was cross-examined. The transcripts of their respective cross-examinations and the responses to the undertakings are on the record.

[20] Since the evidence presented by a witness is essentially the same in both cases, I will use the singular in the review of his or her affidavits. I will refer to passages of the cross-examination of a witness, to the extent I find they are relevant regarding the evidence and the representations of the parties. Finally, I will use "the Mark" to refer interchangeably to the JAVELO and JAVELO Drawing trade-marks.

Affidavit of Sylvain Demers

[21] Mr. Demers has been Vice-President, Finance and Administration of Groupe Somavrac Inc. (GS) since August 6, 2012 [paragr. 1].

[22] Mr. Demers is also Vice-President, Finance and Administration of all GS subsidiaries, including the Applicant and UBA Inc. (UBA). He takes part in all the strategic discussions concerning the GS subsidiaries and has access to their account books [paragr. 2].

[23] According to Mr. Demers' testimony, GS has worked since 1963 in stevedoring, handling and transformation, storage, transportation, and distribution of chemicals. GS was previously known as Prommel Inc. and all of its affiliates together were known as Prommel Group

[paragr. 5]. The name change from Prommel Inc. to GS dates back to October 10, 2013

[paragr. 6]. "*GS is known through its affiliated companies*" [paragr. 7].

[24] The following is my summary of Mr. Demers' testimony concerning the Applicant, and the use and promotion of the Mark in Canada:

- the Applicant is a limited partnership under the Civil Code of Québec, the general partner of which is Somavrac Inc. [paragr. 3]. Somavrac Inc. is a corporation distinct from GS. It does not use the Mark [Q7, Q10];
- the Applicant is based in Quebec, where it produces sodium hypochlorite (Javel water) [paragr. 8];
- Javel water is a versatile product. The Applicant offers its customers a product that meets their needs and expectations. Thus, the Goods associated with the Mark are manufactured by the Applicant at its own plant in Beauharnois and are available in several concentrations to meet the needs of municipalities and the mining, sanitary, food, beverage and water treatment industries [paragr. 9-10];
- UBA is the exclusive distributor of the Goods associated with the Mark [paragr. 7];
- UBA has used the Mark in Canada, under licence, since at least February 22, 2012, for the promotion, marketing and sale of the Goods associated with the Mark [paragr. 12];
- an approximate sum of \$138,777 was spent for the development of the Mark and the Goods associated with it, including the programming of the website at *www.javelo.ca* [paragr. 15];
- since 2012, the Mark has been used by the Applicant on the website at *www.javelo.ca*, on brochures, in advertising, newspaper ads and presentations, and on business cards [paragr. 16];
- since 2012, UBA has invested approximately \$106,099 to market and promote the Goods associated with the Mark. UBA spent \$1,500 to affix the Mark to two tank trucks [paragr. 17-18]; and

- since 2012, the value of sales by UBA of the Goods associated with the Mark total over \$5,314,405 [paragr. 19].

[25] The documentary evidence filed by Mr. Demers to substantiate the assertions contained in his affidavit includes:

- copies of the resolutions adopted by the Board of the Applicant and the Board of UBA to certify the licence granted to UBA [Exhibit SD-8]. I have reproduced these resolutions in Appendices B and C of my decision;
- a representative sample of invoices showing sales of the Goods by the Applicant to UBA [Exhibit SD-16]; and
- excerpts from the GS website [Exhibits SD-4, SD-6 and SD-7].

[26] According to the cross-examination of Mr. Demers, the reference to Chloretec Inc. (my emphasis) in the excerpt from the website filed as Exhibit SD-7 is meant to be a reference to the Applicant; the use of "Inc.," is the result of a typographical error [Q16-Q17]. Transport Servitank Inc. (Servitank), identified in the same excerpt, is a GS member company that transports bulk liquid products [Q18-Q19].

[27] To conclude my review of the evidence presented by Mr. Demers, I note that he affirms in his affidavit that GS, UBA and the Applicant have never received a complaint, comment or order from a customer attempting to procure one of the Opponent's products [paragr. 21]. Under cross-examination, Mr. Demers indicates that there is no system in place within the Applicant or UBA to receive and handle complaints concerning the use of the Mark, but that he would have been informed of this type of complaint. He acknowledges that he did investigate the question of cases of confusion before signing his affidavit [Q33-Q35].

Affidavit of Denis Manias

[28] Mr. Manias has been the Vice-President of UBA, the GS subsidiary and the Applicant's sister company, since September 2007 [paragr. 1].

[29] Mr. Manias affirms that UBA is the unique and exclusive distributor of the Goods associated with the Mark [paragr. 4]. Under cross-examination, he explained that the Goods associated with the Mark are one of 12 products distributed by UBA, which sells organic and inorganic chemical substances [Q10-Q11].

[30] I will continue my review of the evidence presented by Mr. Manias by reproducing below his written assertions concerning the choice of the Mark by the Applicant.

17. To sell its product (liquid bleach), the Applicant has chosen the [Trade-mark] because it is original and it is a nice coined word (word game) that suggests in the French language the word “Javelot”, which is a light spear designed to reach a long distance target with force, standing for the quality of the Applicant’s product.

18. Therefore, the use [sic] the word “javelo” by the Applicant has more than one meaning: the [Trade-mark] suggests, with a wink, the product as being liquid bleach without describing it or enunciated it directly, by its two component [sic]: (1) the last letter which is the letter “O” that the sound [sic] means in the French language “water”, and (2) the use of the common word “javel” [sic] which, in French, stands for a liquid oxidating solution known to remove colour, whiten, disinfect via oxidation. The letter “O” also stands for “oxidation” which is part of the process when liquid bleach is used.

19. The Applicant has also chosen [the Trade-mark] because of the form of the drawing that represents a shield that protects from dirt, dust and soiling.

[31] I will continue by summarizing as follows Mr. Manias' testimony concerning the sales and promotion of the Goods associated with the Mark by UBA:

- UBA began the promotion of the Goods associated with the Mark in September 2011 with an initial presentation to its sales force and participation in the "Salon affaires municipales de la Fédération québécoise des Municipalités" (Municipal affairs trade show), held in Quebec City on September 29 and 30, 2011 [paragr. 5];
- since at least September 29, 2011, UBA has continuously used the Mark in Canada, under licence, to promote, market and sell the Goods associated with the Mark [paragr. 6];

- UBA sells the Goods associated with the Mark in bulk and semi-bulk. The Goods, a "custom based product", are sold in all concentrations up to 19%. The Goods are intended for an industrial clientele, namely municipalities, and the mining, sanitary, swimming pool, food, beverage and water treatment industries [paragr. 8-10];
- the Goods are distributed by means of tank trucks displaying the Mark. UBA's customers purchase the Goods in bulk and usually store them in a tank [paragr. 13-14];
- in its capacity as exclusive distributor, UBA has contributed financially to the preparation of marketing tools [paragr. 16];
- the promotion of the Goods associated with the Mark is done, inter alia, through the website at *www.javelo.ca*; ads in trade magazines; corporate brochures and pamphlets; and participation in trade shows [paragr. 7, 11, 24 and 25];
- apart from its participation in the trade show held in Quebec City on September 29 and 30, 2011, UBA has participated in different trade shows held in Canada, namely: "Canadian Pool & Spa Shows", held in Niagara Falls in December 2011, November 2012, and December 2013; "IPG (International Pool Group) Shows", held in Niagara Falls in December 2011, and in Montreal in December 2012 and November 2013 [paragr. 25]. There were sales of the Goods associated with the Mark during these trade shows [Q25-Q26]; and
- since 2012, the value of sales by UBA of the Goods associated with the Mark have totalled over \$5,314,405 [paragr. 23].

[32] The documentary evidence filed by Mr. Manias to substantiate the assertions contained in his affidavit concerning the sales and promotion of the Goods associated with the Mark includes:

- a breakdown of the total value of the sales by UBA for the months of March to April 2012, May 2012 to April 2013, and May to December 2013 [Exhibit DM-13];

- a representative sample of invoices issued by UBA for sales of the Goods associated with the Mark [Exhibit DM-7];
- specimens of magazine ads [Exhibit DM-8];
- photographs of the tank trucks displaying the Mark [Exhibit DM-9];
- copies of invoices showing expenses incurred by UBA during the years 2011 and 2012 for marketing tools [Exhibit DM-11];
- an excerpt from a corporate brochure, 10,000 copies of which have been distributed since September 2011 [Exhibit DM-14]; and
- copies of invoices attesting to UBA's participation in trade shows [Exhibit DM-15], and photographs of the UBA stand during trade shows [Exhibit DM-16].

[33] Under cross-examination, Mr. Manias had undertaken to provide a copy of any "written licence agreement" concerning the Mark [Q22]. The Applicant responded to this undertaking by providing copies of the resolutions adopted by the Board of the Applicant and UBA [see Appendices B and C of my decision].

[34] Mr. Manias affirms in his affidavit that UBA has never received a complaint, comment or order issued by a customer attempting to procurement a product from the Opponent. He also affirms that UBA has never noticed the presence of the Opponent or its JAVEX or CLOROX goods at the trade shows in which UBA participated [paragr. 34]. During his cross-examination, Mr. Manias recognized that he did not investigate the question of cases of confusion. However, Mr. Manias affirmed that due to the fact that UBA is a small business, he is informed of all complaints [Q112-Q114].

[35] In conclusion, I note that in his affidavit, Mr. Manias makes assertions regarding the Opponent's goods and the absence of confusion between the parties' trade-marks. These assertions are based, in part, on the contents of the Opponent's website, which Mr. Manias affirms he consulted. Copies of pages of the Opponent's website are attached as Exhibits DM-17 to DM-19 in Mr. Manias' affidavit. It is sufficient to say that I do not attach any significance to Mr. Manias' assertions, which can be likened to opinions concerning questions of fact and law that must be settled by the Registrar in the case at bar.

Affidavit of Sandro Romeo

[36] Mr. Romeo is a trade-mark analyst-researcher employed by Thomson CompuMark [paragr. 1].

[37] On January 16, 2014, Mr. Romeo conducted a search in the Canadian trade-marks database to identify all the marks bearing the prefix "jav" for cleaning products [paragr. 4]. He attaches the search report to his affidavit as Exhibit SR-1.

VI Preliminary Remarks

[38] I will begin my preliminary remarks by returning to the amended application for registration of the JAVELO Drawing trade-mark, which is currently on record.

[39] In drafting this decision, I noticed that the colour claim found in the original application for registration was no longer found in the amended application filed on November 10, 2015. Apart from the fact that the Applicant, in its correspondence, referred only to an amendment to the statement of goods, the withdrawal of the colour claim escaped my attention when I accepted the amended application for the JAVELO Drawing trade-mark on November 17, 2015. Indeed, according to paragraph 32(a) of the *Trade-marks Regulations*, SOR /96-195, no application for the registration of a trade-mark may be amended, after it has been advertised in the *Trade-marks Journal*, to change the trade-mark in any manner whatsoever. In other words, intentionally or unintentionally, the amendment of the application for registration by the withdrawal of the colour claim was unacceptable.

[40] Given the foregoing, I confirm that only the amendment to the statement of goods of the application for registration of the JAVELO Drawing trade-mark was accepted on behalf of the Registrar. Thus, the colour claim found in the original application for registration of the JAVELO Drawing trade-mark is considered still part of the amended application for registration filed on November 10, 2015.

[41] I will continue my preliminary remarks by pointing out that, in my opinion, that word "javelo" is the dominant element of the JAVELO Drawing mark. Consequently, I accept that any

evidence of use of the JAVELO Drawing trade-mark according to subsection 4(1) of the Act can also be valid as evidence of use of the JAVELO trade-mark.

[42] Since no material differences exist between the two opposition proceedings, I will pursue my decision by continuing to use "the Mark" to refer interchangeably to the JAVELO and JAVELO Drawing trade-marks, but I will make the distinction between the two as needed. Thus, my conclusions concerning a ground of opposition will apply to both proceedings.

[43] Finally, I agree with the Applicant that affixing the Mark to the tank trucks in which the Goods are distributed constitutes, in the case at bar, a use of the Mark according to subsection 4(1) of the Act. The Opponent does not contest this conclusion.

VII Grounds of opposition summarily rejected

[44] For the following reasons, I summarily reject the grounds of opposition according to which: the application does not satisfy the requirements of paragraph 30(i) of the Act; the Applicant is not the person entitled to registration of the Mark according to paragraphs 16(3)(a) and 16(3)(b) of the Act; and the Mark is not distinctive from the Opponent's trade-marks.

[45] Section 30(i) of the Act simply requires that an applicant provide a statement proving that the applicant is satisfied that he is entitled to use the trade-mark in Canada in association with the goods or services described in his application. The Applicant complied strictly with the requirements of this provision.

[46] I will add that the mere knowledge of the existence of an opponent's trade-mark does not, in itself, substantiate an allegation that the applicant could not be satisfied it was entitled to use a mark [*Woot, Inc v WootRestaurants Inc/Les Restaurants Woot Inc* 2012 TMOB 197]. It is established by the case law that a ground of opposition based on non-compliance with article 30(i) of the Act should be accepted only in specific cases, in particular, when the applicant's bad faith is alleged and established or specific legislative provisions are an obstacle to the registration of the mark covered by the application [see *Sapodilla Co. Ltd. v. BristolMyers Co.* (1974), 15 C.P.R. (2d) 152 (TMOB); and *Canada Post Corporation v. Registrar of Trade-marks* (1991), 40 CPR (3d) 221 (FCTD)]. This is not the case here.

[47] Regarding the ground of opposition based on paragraph 16(3)(a) of the Act, the Opponent maintained at the hearing that it had discharged its burden of proving that its registered trade-marks had been used in Canada before January 26, 2012 and had not been abandoned as of the date the Applicant's application was advertised, namely October 17, 2012 [s. 16(5) of the Act]. In this regard, the Opponent submitted that in the matter of *Rooxs, Inc v Edit – SRL*, 2002 CanLII 61421 (TMOB), cited by the Applicant, the Registrar mentions that the existence of a registration establishes a minimum use of the registered trade-mark.

[48] With respect for the Opponent, I note that the Registrar (acting through Jill Bradbury) in the *Rooxs* case specifically mentions that the mere filing of a certified copy of the opponent's registration did not allow it to discharge its burden regarding the allegations pertaining to the grounds of opposition based on the absence of the entitlement to registration or the absence of distinctiveness.

[49] Consequently, the ground of opposition based on paragraph 16(3)(a) of the Act is rejected, because the Opponent did not establish the use in Canada, before the relevant date, of one of the trade-marks alleged in its statement of opposition.

[50] For the ground of opposition based on paragraph 16(3)(b) of the Act, it should be noted that the Opponent confirmed at the hearing that only its application for registration No. 1,609,655 for the JAVEX & Drawing trade-mark is alleged in support of this ground. However, the Opponent acknowledged that its application for registration was filed on January 8, 2013, i.e. subsequent to the relevant date.

[51] Consequently, the ground of opposition based on paragraph 16(3)(b) of the Act is rejected because it is not a valid ground of opposition.

[52] Finally, the ground of opposition according to which the Mark is not distinctive from the Opponent's trade-marks is rejected, because it did discharge its burden of proving that its alleged trade-marks had become sufficiently known in Canada to negate the distinctiveness of the Mark as of March 18, 2013 [*Motel 6, Inc v No 6 Motel Ltd* (1981), 56 CPR (2d) 44 (FCTD) and *Bojangles' International LLC v Bojangles Café Ltd*, 2006 FC 657, 48 CPR (4th) 427].

VIII Analysis of the remaining grounds of opposition

[53] The three remaining grounds of opposition raise the following questions:

- (1) Had the Mark been used in Canada before January 26, 2012?
- (2) Had the Mark lost its distinctiveness as of March 18, 2013 due to its use by third parties?
- (3) Does the Mark create confusion with the Javex Registrations?

[54] I will analyze each of these questions in turn.

(1) Had the Mark been used in Canada before January 26, 2012?

[55] This question arises from the ground of opposition argued as follows:

The Applicant had used the [trade-mark] in Canada prior to the January 26, 2012 filing date contrary to Section 30(b) of the Act.

[56] Although the formulation of the ground of opposition seems to me somewhat garbled, I interpret it as a ground of opposition alleging that the application does not satisfy the requirements of paragraph 30(b) of the Act because it does not contain the date effective from which the Mark was used for the first time in Canada.

[57] I agree with the Opponent that there is a series of decisions in which the Registrar refused an application for registration based on the proposed use of the Mark because the use of the Mark had been proved before the filing date of the application for registration [see *Nabisco Brands Ltd v Cuda Consolidated Inc*, 1997 CanLII 15856 (TMOB)].

[58] In the case at bar, the Opponent has not filed any evidence in support of this ground of opposition. It relies on the Applicant's evidence to discharge its initial burden. More specifically, the Opponent submits that the evidence submitted by Mr. Manias proves that the Mark has been used in Canada since September 2011.

[59] In this regard and in particular, the Opponent submits that:

- Mr. Manias affirms in paragraph 6 of his affidavit that UBA has continuously used the Mark since September 29, 2011 "to promote market and sale [sic - should be sell]" the Goods associated with it;
- Mr. Manias indicated under cross-examination that UBA made sales of the Goods associated with the Mark during its participation in trade shows [Q25-Q26]. Two of these shows were held before January 26, 2012, namely in Quebec City on September 29 and 30, 2011, and in Niagara Falls on December 7 and 8, 2011;
- the corporate brochure attached to the affidavit as Exhibit DM-14 has been distributed since September 2011; and
- according to Exhibit DM-8 to the affidavit, the Mark was publicized in the magazines *Piscines & Spas* of October 2011, *Pool and Spa Marketing* of December 2011, and *FabricareCanada* of November/December 2011.

[60] The Applicant responded to the Opponent's claims during the hearing. I completely agree with the Applicant's oral representations, according to which:

- it is well established in law that the use of a trade-mark in advertising and promotional material is insufficient in itself to constitute a use in association with goods according to subsection 4(1) of the Act. Thus, the fact that the Mark has been used since September 2011 in a corporate brochure, advertising and a stand during trade shows has no consequence under the ground of opposition in question;
- paragraph 6 of Mr. Manias' affidavit must not be considered in isolation. It must be considered in harmony with paragraph 3 of the affidavit, where Mr. Manias affirms that UBA began *promotion* of the Mark by participating in the "Salon affaires municipales de la Fédération québécoise des Municipalités" (municipal affairs trade show) held in Quebec City on September 29 and 30, 2011;
- when Mr. Manias indicated under cross-examination that UBA made sales of the Goods associated with the Mark during trade shows, he was responding to a general question concerning all the shows mentioned in paragraph 25 of his

affidavit. Thus, it is entirely possible that Mr. Manias was referring to sales during shows held after January 26, 2012; and

- according to the breakdown of sales by UBA, which is attached to the affidavit as Exhibit DM-13, its first sales of the Goods associated with the Mark were made during the period of March and April 2012.

[61] I will add that Mr. Manias indicated under cross-examination that UBA had not sold the Goods associated with the Mark during the show held in Quebec City in September 2011 [Q24]. Moreover, since the Goods are custom based, I find it reasonable to conclude that, even if UBA had realized sales at a show held before January 26, 2012, the Goods would not have been turned over to a buyer on site. In other words, there could not have been a transfer of ownership of the Goods in association with the Mark during the show.

[62] Finally, considering the Applicant's evidence as a whole, I note that the oldest of the invoices concerning the sales of the Goods by the Applicant to UBA is dated February 22, 2012 [Exhibit SD-16 to Mr. Demers' affidavit]. It seems obvious to me that UBA could not distribute the Goods in association with the Mark before the Applicant sold them to it.

[63] Ultimately, the Opponent did not convince me that the evidence presented by Mr. Manias supports the ground of opposition argued. Instead, I agree with the Applicant that its evidence does not prove that the Mark had been used in Canada in association with the Goods, according to subsection 4(1) of the Act, before January 26, 2012.

[64] Consequently, the ground of opposition based on paragraph 30(b) of the Act is rejected due to the Opponent's failure to discharge its burden.

(2) Had the Mark lost its distinctiveness as of March 18, 2013 due to its use by third parties?

[65] This question arises from the ground of opposition alleging that the Mark is not distinctive due to its use by unlicensed third parties. This ground of opposition is argued as follows:

The Applicant has allowed third party to use its trade-mark without quality control standards and specification as to the wares being manufactured and sold in association with the trade-mark at issue as required by Section 50 of the Act and has resulted in the Applicant's mark being non-distinctive. The unlicensed use has been made at least by UBA Inc., Somavrac Group Inc., formerly Prommel Group, and Servitank Transport Inc.

[66] According to subsection 50(1) of the Act, the owner of a trade-mark must have direct or indirect control of the character or quality of the goods or services for the use of the trade-mark by a licensee to be deemed a use by the owner. It is a well-known legal principle that a corporate relationship is insufficient alone to fulfill the conditions set by subsection 50(1) of the Act [see *MCI Communications Corp v MCI Multinet Communications Inc* (1995), 61 CPR (3d) 245 (TMOB); and *Dynatech Automation Systems Inc v Dynatech Corp* (1995), 64 CPR (3d) 101 (TMOB)].

[67] This having been said, my consideration of the evidence leads me to conclude that the provisions of section 50 of the Act are not applicable in the case at bar for the following reasons.

[68] First, there is no evidence of record proving that GS has used the Mark in Canada in association with the Goods. Moreover, apart from its representations that the evidence does not prove that GS is a licensee, the Opponent does not refer to any evidence that could prove that GS uses the Mark according to subsection 4(1) of the Act. I would add that Mr. Manias mentioned during his cross-examination that GS is a "holding company" [Q94]. This testimony is in harmony with that of Mr. Demers, according to which GS is known through its affiliates [paragr. 7 of Mr. Demers' affidavit].

[69] I also conclude from a reasonable reading of all the evidence that the Goods associated with the Mark are manufactured by the Applicant and sold to UBA. UBA sells the Goods manufactured by the Applicant to customers in Canada as a distributor. The Goods, sold in bulk and in semi-bulk by UBA, are distributed by means of tank trucks displaying the Mark. UBA also promotes the Goods associated with the Mark.

[70] Even though it clearly emerges from all the evidence as a whole that the first link in the distribution chain is the owner of the trade-mark, any evidence of use by a distributor is evidence of use of the trade-mark in Canada by its owner [see *Manhattan Industries Inc v Princeton*

Manufacturing Ltd (1971), 4 CPR (2d) 6 (FCTD)]. Moreover, as the Court specified in *Philip Morris Inc v Imperial Tobacco Ltd* (1985), 7 CPR (3d) 254 (FCTD), at page 275:

... the words "normal course of trade" recognize the continuity of a transaction from the manufacturer to the ultimate consumer and provide protection for the manufacturer's trade mark throughout these intervening transactions ...

[71] I will add that my conclusion regarding the role of UBA in the distribution chain of the Goods associated with the Mark is incompatible with the assertions of the Applicant's witnesses that UBA uses the Mark under licence. It is sufficient to say that a simple reading of the resolutions submitted in evidence confirms the granting to UBA of a licence to use the Mark for *distribution* of the Goods manufactured by the Applicant [see Appendices B and C of my decision].

[72] I have taken note of the Opponent's remark regarding the fact that the witnesses affirm that UBA is the *exclusive* distributor of the Goods associated with the Mark, whereas the resolution refer to a *non-exclusive* distribution licence. However, I do not see how this hurts the Applicant's case. On the contrary, the granting of a non-exclusive distribution licence to UBA proves that another company could distribute the Goods associated with the Mark and manufactured by the Applicant. This last comment leads me to address the Opponent's representations concerning Servitank.

[73] According to my understanding of its oral representations, the Opponent claims that it must be concluded that the excerpt from the website filed as Exhibit SD-7 to Mr. Demers' affidavit that Servitank is the company that transports the Goods in the trucks displaying the Mark, and by way of consequence, that Servitank uses the Mark in Canada.

[74] I acknowledge that Exhibit SD-7 indicates: "*In collaboration with subsidiaries Transport Servitank Inc. and UBA Inc., Chlorotec Inc. [sic] offers transportation services seven days a week.*" However, contrary to the Opponent's suggestion, I do not believe that the evidence allows the conclusion that the tanks displaying the Mark are the property of Servitank.

[75] On the one hand, when Mr. Demers was questioned as to whether Servitank was the owner of the trucks displaying the Mark ("*the Javelo trucks*"), he responded: "*I am not sure.*

Maybe some, but not all, but I am not certain." [Q20]. On the other hand, Mr. Demers specified in his affidavit that UBA had defrayed the expenses for affixing the Mark to two tank trucks. Moreover, under cross-examination Mr. Manias indicated that the term "our trucks" (my emphasis) used in paragraph 6 of his affidavit refers to the trucks displaying the Mark [Q30].

[76] Ultimately, I agree with the Applicant that it is reasonable to infer from its evidence as a whole that any Servitank intervention in the distribution, as applicable, is that of a mere carrier of the Goods and that, in this capacity, Servitank uses the Mark only according to subsection 4(1) of the Act.

[77] Given the above, I conclude that the evidence of record proves the use of the Mark by the Applicant. Consequently, the ground of opposition alleging that the Mark is not distinctive on the ground of its use by third parties is rejected due to the Opponent's failure to discharge its burden.

(3) Does the Mark create confusion with the Javex Registrations?

[78] This question arises from the ground of opposition alleging that, due to the Javex Registrations, the Mark is not registrable pursuant to paragraph 12(1)(d) of the Act.

[79] I have exercised the Registrar's discretionary power to confirm that each of the ten Javex Registrations alleged by the Opponent is in good standing. It turns out that registration No.TMA492,104 for the JAVELLISANT POUR NON-JAVELLISABLES trade-mark was expunged on November 21, 2013. Consequently, insofar as it concerns confusion with registration No. TMA492,104, the ground of opposition is rejected due to the Opponent's failure to discharge its burden.

[80] However, the Opponent has discharged its burden regarding the nine other Javex Registrations, because each remains in good standing. Thus, it is appropriate to determine whether the Applicant has discharged its legal onus of proving, according to the balance of probabilities, that there is no confusion between the trade-marks involved.

[81] The test for confusion is that of first impression and imperfect recollection. According to subsection 6(2) of the Act, 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.

[82] In deciding whether these trade-marks are confusing, the registrar shall have regard to all the surrounding circumstances, specifically those listed in subsection 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; e) the degree of resemblance between the trade-marks in appearance or sound or in the ideas suggested by them. This list is not exhaustive and different weight will be given to each of these factors in a context-specific assessment. [See *Mattel, Inc v 3894207 Canada Inc*, 2006 SCC 22, 49 CPR (4th) 321; *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée et al*, 2006 SCC 23, 49 CPR (4th) 401; and *Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27, 92 CPR (4th) 361].

[83] A trade-mark cannot be registered if there is a likelihood of confusion for the average Anglophone consumer, the average Francophone consumer or the average bilingual consumer [see *Pierre Fabre Medicament v SmithKline Beecham Corporation* (2001), 11 CPR (4th) 1 (FCA)].

[84] Apart from brief representations concerning its JAVALIN trade-mark, the Opponent, in its written argument, argues a risk of confusion between the Mark and the Javex Registrations overall. It emerges from the Opponent's representations that it considers that the marks covered by its Javex Registrations are "*JAVEX-formative marks*", except for the JAVALIN trade-mark.

[85] During the hearing, I invited the Opponent to tell me if it found that one of the Javex registrations for its JAVEX-formative marks was more relevant than another. Without hesitation, the Opponent responded that its strongest case is based on the comparison of the Mark with the JAVEX mark of registration No. TMA120,689. Thus, comparing the Mark with the JAVEX trade-mark will allow us to dispose efficiently of the ground of opposition based on the Javex registrations that the Opponent considers are JAVEX-formative marks. In other words, if it turns out that confusion is unlikely between the Mark and the JAVEX mark (TMA120,689), it would not be any more likely with one of the Javex Registrations for JAVEX-formative marks.

[86] Given the evidence of record and the Opponent's representations, I will gear my analysis of the probability of confusion by comparing the Mark with the Opponent's JAVALIN (UCA23533) and JAVEX (TMA120,689) trade-marks. Thus, I will continue by referring collectively to these two marks as "the Opponent's Marks", but I will make the distinction between the two as needed.

[87] In the *Masterpiece* case, supra, the Supreme Court of Canada reminds us that the degree of resemblance between trade-marks in the presentation or sound, or in the ideas they suggest, is often the factor that be the most important in the analysis regarding confusion; the Court decided to begin its analysis by examining this factor. Consequently, I will examine the factors set out in subsection 6(5) by beginning with the degree of resemblance between the Mark and the Opponent's Marks.

The degree of resemblance between the trade-marks in the presentation or sound, or in the ideas they suggest

[88] It is clearly established in case law that in the assessment of confusion, it is not appropriate to dissect trade-marks into their component parts. Trade-marks instead must be examined as a whole. It is nonetheless possible to bring out special features that could play a determining role in the public's perception [see *Pink Panther Beauty Corp v United Artists Corp* (1998), 80 CPR (3d) 247 (FCA), at paragr. 34].

[89] Also, while it is true that in certain cases the first word will be the most important element in establishing the distinctiveness of a trade-mark, the Supreme Court, examining the degree of resemblance, writes at paragraph 64 of the *Masterpiece* case that "a preferable approach is to first consider whether there is an aspect of the trade-mark that is particularly striking or unique."

[90] In the case at bar, each of the Opponent's Marks consists of an invented word. The JAVELO and JAVELO Drawing trade-marks also consist of an invented word. I previously indicated that, in my opinion, the word "javelo" is the dominant element of the JAVELO Drawing mark. In other words, I believe that the graphic element of the JAVELO Drawing mark,

i.e. the representation of a man throwing a javelin and the representation of what Mr. Manias describes as a shield, is not the dominant element of this mark.

[91] During the hearing, the Opponent reiterated the representations contained in its written argument concerning the degree of resemblance between the parties' trade-marks. I therefore reproduce below the relevant excerpt from the Opponent's written argument.

61. The Opponent's JAVEX and JAVEX-formative marks consist of a coined term that is both striking and unique.

62. The Applicant's [Mark] is very similar in appearance and sound to the Opponent's JAVEX and JAVEX-formative marks. The first portion of the Applicant's mark, « JAVE », is identical to the first portion of the Opponent's JAVEX marks. The sole difference between the marks is that the Applicant's mark ends with an « LO », rather than an « X ».

63. The Applicant's [Mark] is also very similar to the Opponent's JAVALIN trade-mark. The first portion of each mark is identical and both contain an "L" in the middle. This creates a similarity not only in appearance, but also in sound.

[92] I recognize a certain resemblance between the words "javelo" and "javex" due to their common prefix "jave". I also recognize a certain resemblance between the words "javelo" and "javalin" due to their common prefix "jav". However, the Opponent has not convinced me that each of the JAVELO and JAVELO Drawing marks is "very similar" to each of the Opponent's Marks.

[93] Indeed, considering each of the marks as a whole, it is my opinion that the JAVELO and JAVELO Drawing marks share only a low degree of resemblance with each of the Opponent's marks in terms of sound. Moreover, even if the graphic element of the JAVELO Drawing mark is not its dominant element, it cannot be ignored. Thus, considering the trade-marks as a whole, the graphic element of the JAVELO Drawing mark increases the differences between that mark and each of the Opponent's Marks in terms of the presentation.

[94] As for the ideas suggested by the parties' marks, the Opponent apparently has chosen to limit its position to submitting that its JAVEX mark is formed of a unique invented word.

[95] I agree with the Opponent that its JAVEX trade-mark is formed of an invented word. However, when considered in association with the goods regarding which it is registered, in my opinion, the JAVEX mark, for a Francophone consumer, evokes the term "Javel" and thus suggests the idea of Javel water. This is not the case for the JAVALIN trade-mark.

[96] Regarding the Mark, I recall Mr. Manias' testimony, according to which the Applicant adopted the word "javelo" for two reasons: 1) to evoke the idea of a javelin, "*standing for the quality of the Applicant's product*"; and 2) to skillfully suggest the nature of the Goods.

[97] Personally, I do not see the connection between a javelin and the quality of the Goods. Whatever the case may be, I agree that the word "javelo" may evoke the idea of a javelin for a Francophone or bilingual consumer. Furthermore, considering the JAVELO Drawing mark as a whole, I find that a Francophone or bilingual consumer is more likely to respond to the JAVELO Drawing mark by thinking of a javelin than by thinking of the nature of the Goods.

[98] Considering the JAVELO mark in association with the Goods, in combination with the fact that the word "javelo" is the only element of the JAVELO mark, I believe that a Francophone or bilingual consumer is likely to respond to the JAVELO mark by thinking of the nature of the Goods. This having been said, I do not exclude the possibility that the first idea suggested by the JAVELO mark for a Francophone or bilingual consumer is that of a javelin. In other words, the nature of the Goods is not the only idea suggested by the JAVELO mark.

[99] Ultimately, in the absence of representations by the Opponent to convince me to the contrary, I conclude that there are differences between the ideas suggested by the Mark and the Opponent's Marks.

[100] Consequently, it is my opinion that the overall assessment of the factor set out in paragraph 6(5)(e) of the Act favours the Applicant.

***The inherent distinctiveness of the trade-marks and the extent to which they
have become known***

[101] This factor, stated in paragraph 6(5)(a) of the Act, is a combination of the inherent distinctiveness of the trade-marks and the distinctiveness acquired by the marks due to their use or promotion in Canada.

[102] In my opinion, the inherent distinctiveness of the JAVEX Mark is mitigated by the fact that it evokes the word "Javel". This having been said, I agree with the Opponent that its JAVEX and JAVALIN marks both have an inherent distinctiveness in that each is formed of an invented word. However, the Opponent has not filed any evidence to substantiate its claim that the Opponent's Marks have acquired distinctiveness due to their use in Canada.

[103] Moreover, the mere existence of registrations for the Opponent's Marks cannot establish anything more than a minimal use and does not allow the conclusion of a continuous major use of the Opponent's Marks [see *Entre Computer Centers, Inc v Global Upholstery Co* (1991), 40 CPR (3d) 427 (TMOB)].

[104] Although the inherent distinctiveness of the JAVELO and JAVELO Drawing marks is mitigated by the fact that the word "javelo" skillfully suggests the nature of the Goods, these marks are not devoid of inherent distinctiveness. The graphic element of the JAVELO Drawing mark accentuates its inherent distinctiveness.

[105] Moreover, the Applicant has filed enough evidence to allow me to conclude that the Mark has acquired distinctiveness due to its promotion and use in Canada.

[106] I do not intend to discuss at length the Opponent's oral representations concerning the promotion of the Mark. It is sufficient to say that I recognize there are deficiencies in this evidence. For example, there is no information in Mr. Manias' affidavit concerning: the extent of the circulation in Canada of the magazines in which the Mark has been publicized; the number of participants in the trade shows in which UBA has participated over the years; and the number of Canadians who have visited the website *www.javelo.ca*. This having been said, a reasonable reading of Mr. Manias' affidavit as a whole leads me to conclude that UBA has continuously promoted the Goods associated with the Mark since September 29, 2011.

[107] Finally, apart from the fact that the evidence proves the use of the Mark in association with the Goods according to subsection 4(1) of the Act, I conclude from the evidence presented by Mr. Manias that the first sales by UBA of the Goods associated with the Mark date back to March 2012. Apart from the evidence according to which the sales by UBA total over \$5,314,405, the invoices filed as Exhibit DM-7 to Mr. Manias' affidavit show sales by UBA to customers domiciled in the provinces of Ontario, Alberta and Quebec.

[108] Consequently, the overall assessment of the factor set out in paragraph 6(5)(a) of the Act favours the Applicant.

The period during which the trade-marks have been in use

[109] The JAVALIN trade-mark has been registered on the basis of its use in Canada since July 1937. According to the goods covered by the registration of the JAVEX mark, it has been registered on the basis of statements of use or the claim of its use in Canada since April 1945.

[110] However, as indicated previously, the mere existence of the registrations for the Opponent's Marks does not allow the conclusion of their continuous use in Canada. Moreover, there is no evidence in the case at bar proving the use of the Opponent's Marks in Canada at any time.

[111] On the other hand, following my review of the Applicant's evidence, I conclude that the Mark has been used continuously in Canada in association with the Goods since at least March 2012.

[112] Consequently, the factor set out in paragraph 6(5)(b) of the Act, favours the Applicant.

The nature of the goods, services or business; the nature of the trade

[113] In the analysis of the question arising from the ground of opposition raised pursuant to paragraph 12(1)(d) of the Act, I must compare the statements of wares covered by the applications under opposition with the statement of wares covered by the alleged registrations for the assessment of the factors set out in paragraphs 6(5)(c) and 6(5)(d) of the Act [see *Mr.*

Submarine Ltd v Amandista Investments Ltd (1987), 19 CPR (3d) 3 (FCA); and *Miss Universe, Inc. v Bohna*, (1994), 58 CPR (3d) 381 (FCA)].

[114] Although it acknowledges the overlap between the nature of the goods associated with the parties' marks, the Applicant submits that it is favoured by the assessment of the factors set out in paragraphs 6(5)(c) and 6(5)(d) of the Act.

[115] As for the nature of the goods, the Applicant submits that the Goods are different from the Opponent's goods. In this regard, the Applicant argues that the Goods are industrial goods sold in different concentrations and manufactured exclusively to order according to the needs of the clientele, whereas the Opponent's goods are mass-produced goods for domestic use.

[116] As for the nature of the trade, the Applicant primarily argues that it is not consumers of domestic goods who purchase the Goods, but rather municipalities and companies in the mining, sanitary, food and beverage industries and water treatment centres; its target clientele is sophisticated and accustomed to placing orders with care and precision to meet very specific needs based on the concentration of the Goods. The Applicant submits that the Opponent's goods for domestic use are sold to average consumers on the retail market.

[117] The Applicant has not convinced me that the assessment of the nature of the goods and the nature of the trade favours it in the case at bar.

[118] I note that the Opponent has not filed any evidence allowing me to conclude that the goods associated with the Opponent's Marks are goods for domestic use, sold to average consumers on the retail market. Moreover, the Applicant's representations concerning the goods and the nature of the Opponent's trade are apparently based on Mr. Manias' assertions after visiting the Opponent's website.

[119] Whatever the case may be, the statement of registration for each of the Opponent's Marks does not specify any restriction for accepting the Applicant's claims regarding differences between the nature of the goods and the nature of the trade of the parties. Thus, I completely agree with the following representations of the Opponent:

52. *The Opponent's registrations do not contain any restrictions and, in particular, do not contain any restrictions as to the intended use, the targeted consumers, the concentration levels, the manner of sale or the channels of trade of its bleach products.*

[120] In the case at bar, I conclude that there is essentially no difference between the Goods and the "*liquid and solid bleaches*" goods identified in the registration of the JAVEX mark. I also conclude there is an overlap between the other goods identified in this registration and the Goods, as well as an overlap between the other goods identified in this registration and the "*concentrated javel (laundry bleach)*" goods identified in the registration of the JAVALIN mark. Finally, I conclude there is a possible overlap of the marketing channels of the goods associated with the parties' marks.

[121] Consequently, the factors set out in paragraphs 6(5)(c) and 6(5)(d) of the Act favour the Opponent.

Additional circumstance in the case at bar – Evidence of the state of the register

[122] Evidence of the state of the register serves to show the common nature or the distinctiveness of a mark or part of a mark in relation to the register as a whole. The evidence regarding the state of the register is relevant only insofar as one can draw conclusions from it concerning the state of the market, and conclusions regarding the state of the market can only be drawn if a large number of relevant registrations are identified [see *Ports International Ltd v Dunlop Ltd* (1992), 41 CPR (3d) 432 (TMOB); *Welch Foods Inc v Del Monte Corp* (1992), 44 CPR (3d) 205 (FCTD); and *Maximum Nutrition Ltd v Kellogg Salada Canada Inc* (1992), 43 CPR (3d) 349 (FCA)].

[123] The Applicant submits that the evidence of the state of the register presented by Mr. Romeo shows the adoption and use by third parties in Canada of trade-marks containing the prefix "jav" for cleaning products. I disagree with the Applicant for the following reasons.

[124] First of all, the Applicant has not convinced me that the JAVELIN trade-mark that is the object of application for registration No. 1,507,256 accepted by the Registrar must be taken into consideration. In this regard, I note that the application in question is based on a proposed use of the JAVELIN mark.

[125] In fact, only seven trade-marks identified by the search are the object of registrations held by third parties, namely: JAVELIN (TMA845,753); JAVELIN (TMA832,907); JAVELLISANT ÉPAIS (TMA670,344); PARISIAN, JAVEL WATER, WOMAN & Drawing (NFLD2640); LA PARISIENNE & Drawing (TMAD22540); JAVA PRINCESS (TMA622,292); and JAVA BEARS (TMA588,630).

[126] I agree with the Opponent that not all the above-mentioned registrations are relevant. In this regard, I notice that:

- the PARISIAN, JAVEL WATER, WOMAN & Drawing (NFLD2640) and LA PARISIENNE & Drawing (TMAD22540) marks undoubtedly were identified due to the word "javel" found in the drawing of the marks question instead of the fact that they contain the prefix "jav";
- the JAVELIN mark (TMA845,753) is associated with "*ski waxes, hockey waxes*"). These goods are irrelevant in the case at bar; and
- none of the goods associated with the JAVA BEARS mark (TMA588,630) seems to correspond to cleaning products.

[127] Ultimately, I conclude that the evidence of the state of the register does not show a sufficient number of relevant registrations to draw a conclusion favourable to the Applicant.

Additional circumstance of the case at bar – No actual case of confusion

[128] An opponent is not bound to prove cases of confusion. The Applicant bears the evidentiary burden regarding the absence of likelihood of confusion. The fact that no evidence of confusion exists does not in any way release an applicant from its evidentiary burden. Nonetheless, an adverse conclusion can be drawn from the absence of evidence of actual cases of confusion when there is evidence of significant simultaneous use of the marks in question [see *Mattel Inc*, supra at page 347].

[129] Since the evidence does not allow a conclusion of significant use in Canada of the Opponent's Marks, I do not attach any significance to the testimony of Messrs. Demers and

Manias, according to which no case of confusion has been brought to their attention. Thus, it is unnecessary for me to rule on the probative value of their testimony.

Conclusion on the likelihood of confusion

[130] I remind the parties that the test for confusion consists in asking whether an individual with an imperfect recollection of the Opponent's Mark could conclude, on the basis of a first impression, that the Goods associated with the Mark come from the same source or are otherwise related to or associated with the Opponent's goods.

[131] Further to my assessment of all of the factors set out in subsection 6(5) of the Act and their materiality, it is my opinion that the Applicant has discharged its legal onus of establishing, according to the balance of probabilities, that there is no confusion between each of its JAVELO and JAVELO Design marks and each of the Opponent's JAVELIN (UCA23533) and JAVEX (TMA120,689) trade-marks.

[132] Indeed, in the case at bar, I find that the factors set out in paragraphs 6(5)(a) and 6(5)(b) of the Act, which favour the Applicant, are sufficient to counterbalance the factors set out in paragraphs 6(5)(c) and (d) of the Act, which favour the Opponent. Moreover, considering the trade-marks as a whole, I find that the overall assessment of the factor set out in paragraph 6(5)(e) of the Act favours the Applicant. Given the importance of the factor set out in paragraph 6(5)(e) of the Act in the analysis regarding confusion, I conclude that this factor definitely tilts the balance of probabilities in favour of the Applicant.

[133] Finally, I remind the parties that I indicated that while it turns out that confusion is unlikely between the Mark and the JAVEX mark (TMA120,689), it would not be any more likely with one of the Javex Registrations the Opponent considers to be JAVEX-formative marks. Consequently, I also conclude that the Applicant has discharged its ultimate onus of establishing, according to the balance of probabilities, that there is no likelihood of confusion between the Mark and the trade-marks covered by the Javex Registrations Nos. TMA150,067; TMA544,592; TMA544,551; TMA203,852; TMA544,593; TMA175,755; and TMA148,045.

[134] Given the above, I completely reject the ground of opposition based on paragraph 12(1)(d) of the Act.

IX Decision






[135] In exercising the authority delegated to me pursuant to subsection 63(3) of the Act, I reject the opposition to each of applications for registration Nos. 1,561,391 and 1,561,417 in application of subsection 38(8) of the Act.

Céline Tremblay
Member
Trade-marks Opposition Board
Canadian Intellectual Property Office

Certified true translation
Arnold Bennett

Appendix A

Javex Registrations

<u>Reg. No.</u>	<u>Trade-mark</u>	<u>Goods</u>
TMA150,067		<i>(1) Javel water concentrate.</i>
TMA544,592		<i>(1) Liquid bleach for laundry and household use for cleaning and disinfecting.</i>
TMA544,551		<i>(1) Liquid bleach for laundry and household use for cleaning and disinfecting.</i>
TMA203,852		<i>(1) Bleach. (2) Laundry products for application to soil and stains before [sic] main wash.</i>
UCA23533	“JAVALIN”	<i>(1) Concentrated javel (laundry bleach).</i>
TMA120,689	JAVEX	<i>(1) Liquid and solid bleaches. (2) Liquid detergent, liquid fabric brightener, dry fabric brightener, fabric conditioner, wax cleaner, window cleaner, liquid all purpose cleaner, dry all purpose cleaner, liquid starch, spray starch, liquid fabric softener, dry fabric softener, powdered cleanser, toilet bowl cleaner, drain cleaner, ammonia, floor wax, furniture wax. (3) Room sanitizer. (4) Laundry products for application to soil and stains before main wash.</i>
TMA544,593		<i>(1) Liquid bleach for laundry and household use for cleaning and disinfecting.</i>
TMA492,104	JAVELLISANT POUR NON-JAVELLISABLES	<i>(1) Liquid and powder laundry detergents and liquid and dry laundry bleach.</i>
TMA175,755	JAVELLISANT POUR LES NON- JAVELLISABLES	<i>(1) Liquid and powdered laundry detergents. (2) Dry bleach product.</i>
TMA148,045	JAVEXTRA	<i>(1) Liquid and powdered bleach.</i>

Appendix B

SOCIÉTÉ EN COMMANDITE CHLORETEC S.E.C.

RÉSOLUTIONS adoptées en date du 22 février 2012

ATTENDU QUE la société est titulaire de tous les droits, titres et intérêts dans les marques de commerce JAVELO (déposée sous le numéro 1581391 depuis le 2012-01-28) et JAVELO & DESSIN (déposée sous le numéro 1581417, depuis le 2012-01-28) utilisées en association à de l'eau de javel auprès de l'Office de la propriété intellectuelle du Canada (ci-après nommées les « Marques »);

ATTENDU QUE UBA inc. (« UBA ») exploite une entreprise de distribution de produits chimiques;

ATTENDU QUE UBA désire employer les Marques au Canada, en liaison avec la distribution d'eau de Javel, fabriquée par la société, (« Produits ») et dans sa publicité, dans son matériel promotionnel, etc.;

ATTENDU QUE la société et UBA reconnaissent la nécessité de coopérer ensemble afin d'utiliser et de protéger les Marques;

ATTENDU QU'en considération des engagements de UBA, la société concède à UBA une licence non exclusive d'emploi des Marques;

PROPRIÉTÉ LICENCIÉE. UBA reconnaît que la société est le titulaire exclusif des Marques et il reconnaît que tous les droits, titres et intérêts reliés aux Marques et de tout achalandage y relié sont réservés à la société.

OCTROI DE LA LICENCE. Sous réserve des termes, conditions et autres dispositions prévues aux présentes résolutions, la société octroie par la présente à UBA une licence non exclusive d'emploi des Marques au Canada en association aux Produits.

VÉRIFICATION : UBA reconnaît que la société aura en tout temps le contrôle et le droit de vérifier la manière dont les Marques seront utilisées et s'engage à respecter et à suivre à la lettre les spécifications, normes ou exigences que la société pourra lui communiquer de temps à autre.

CONTREPARTIE. La présente licence est octroyée en faveur de UBA pour et en considération d'une redevance forfaitaire d'un dollar (1,00 \$).

DURÉE. À la condition que UBA ne soit pas en défaut de respecter quelque engagement ou obligation en vertu de ce qui est mentionné aux présentes résolutions, la présente licence sera à durée indéterminée.

TERMINAISON. L'octroi non exclusif d'utilisation de la licence de Marques au Canada par la société à UBA se terminera par l'envoi d'un avis de la société à UBA à cet effet. Dès la terminaison, UBA s'engage à cesser l'utilisation des Marques, incluant et sans limiter la généralité de ce qui précède, l'usage de tout papier à lettres et autre matériel imprimé se rapportant aux Marques ou affichant celles-ci.

SIGNÉ à Trois-Rivières, ce 22 février 2012.

Le commandité :

9228-8081 QUÉBEC INC.

Par : Marc Péquin

Appendix C

UBA INC.

RÉSOLUTIONS de l'unique administrateur de la société en titre.

ADOPTÉES en date effective du 22 février 2012.

ATTENDU QUE la société en commandite Chloretec S.E.C. (« Chloretec ») est titulaire de tous les droits, titres et intérêts dans les marques de commerce JAVÉLO (déposée sous le numéro 1561391 depuis le 2012-01-26) et JAVÉLO & DESSIN (déposée sous le numéro 1561417, depuis le 2012-01-26) utilisées en association à de l'eau de Javel auprès de l'Office de la propriété intellectuelle du Canada (ci-après nommées les « Marques »);

ATTENDU QUE la société exploite une entreprise de distribution de produits chimiques;

ATTENDU QUE la société désire employer les Marques au Canada, en liaison avec la distribution d'eau de Javel, fabriquée par la Chloretec, (« Produits ») et dans sa publicité, dans son matériel promotionnel, etc.;

ATTENDU QUE Chloretec et la société reconnaissent la nécessité de coopérer ensemble afin d'utiliser et de protéger les Marques;

ATTENDU QU'en considération des engagements de la société, Chloretec concède à la société une licence non exclusive d'emploi des Marques;

PROPRIÉTÉ LICENCIÉE. La société reconnaît que Chloretec est le titulaire exclusif des Marques et il reconnaît que tous les droits, titres et intérêts reliés aux Marques et de tout schémalogage y relié sont réservés à Chloretec.

OCTROI DE LA LICENCE. Sous réserve des termes, conditions et autres dispositions prévues aux présentes résolutions, Chloretec octroie par la présente à la société une licence non exclusive d'emploi des Marques au Canada en association aux Produits.

VÉRIFICATION : la société reconnaît que Chloretec aura en tout temps le contrôle et le droit de vérifier la manière dont les Marques seront utilisées et s'engage à respecter et à suivre à la lettre les spécifications, normes ou exigences que Chloretec pourra lui communiquer de temps à autre.

CONTREPARTIE. La présente licence est octroyée en faveur de la société pour et en considération d'une redevance forfaitaire d'un dollar (1,00 \$).

DURÉE. À la condition que la société ne soit pas en défaut de respecter quelque engagement ou obligation en vertu de ce qui est mentionné aux présentes résolutions, la présente licence sera à durée indéterminée.

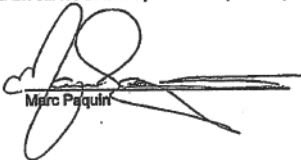
TERMINAISON. L'octroi non exclusif d'utilisation de la licence de Marques au Canada par Chloretec à la société se terminera par l'envoi d'un avis de Chloretec à la société à cet effet. Dès la terminaison, la société s'engage à cesser l'utilisation des Marques, incluant et sans limiter la généralité de ce qui précède, l'usage de tout papier à lettres et autre matériel imprimé se rapportant aux Marques ou affichant celles-ci.

INSERTION DANS LE LIVRE

Il est résolu d'insérer et de conserver un exemplaire signé des résolutions ci-dessus énoncées dans le livre des procès-verbaux des administrateurs de la société, conformément à la *Loi sur les sociétés par actions* (Québec).

VALIDITÉ

Je, soussigné, déclare être l'unique administrateur habile à voter lors des assemblées du conseil d'administration de la société. En conséquence, les résolutions ci-dessus énoncées, signées par moi-même, ont la même valeur que si elles avaient été adoptées lors d'une assemblée des administrateurs, conformément à la *Loi sur les sociétés par actions* (Québec).


Marc Prquin

**TRADE-MARKS OPPOSITION BOARD
CANADIAN INTELLECTUAL PROPERTY OFFICE
APPEARANCES AND AGENTS REGISTERED IN THE CASE**

DATE OF HEARING: 2015-11-26

APPEARANCES

Sanjukta Tole

FOR THE OPPONENT

Richard S. Levy

FOR THE APPLICANT

AGENTS IN THE CASE

SIM & MCBURNEY

FOR THE OPPONENT

DE GRANPRÉ (sic) CHAIT

FOR THE APPLICANT