



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

Citation: 2016 TMOB 171
Date of Decision: 2016-10-18

IN THE MATTER OF AN OPPOSITION

Rab Design Lighting Inc.	Opponent
and	
Rab Lighting Inc.	Applicant
1,534,013 for VXLED	Application

Introduction

[1] Rab Design Lighting Inc. (the Opponent) opposes registration of the trade-mark VXLED (the Mark) that is the subject of application No. 1,534,013 by Rab Lighting Inc. (the Applicant).

[2] The application filed on June 30, 2011 claims the priority of a United States application filed on June 24, 2011. It is based on proposed use of the Mark in Canada in association with “Lighting fixtures; Electric lighting fixtures; LED (light emitting diode) lighting fixtures” (the Goods).

[3] Generally speaking, the grounds of opposition raised under section 38 of the *Trade-marks Act*, RSC 1985, c T-13 (the Act) allege that the Applicant is not the person entitled to registration of the Mark in view of confusion with the Opponent’s previously used and made known VX LED series of trade-marks for vapour proof lighting fixtures suitable for use in wet locations; the Mark is not registrable because it is clearly descriptive or deceptively misdescriptive of the character or quality of the Goods; the adoption of the Mark is prohibited

because the Mark by ordinary and *bona fide* commercial usage has become recognized in Canada as designating a kind or quality of lighting fixtures; and the Mark is not distinctive of the Goods.

[4] Although not related or affiliated companies, the parties are not strangers to one another. The record shows that the Opponent purchased lighting products from the Applicant in the United States for importation into Canada from 2002 to 2008. In addition, the Opponent unsuccessfully opposed registration of the trade-mark VXBRLLED (No. 1,534,012) by the Applicant in association with the same goods as the Goods [see *Rab Design Lighting Inc v Rab Lighting Inc*, 2014 TMOB 204, 128 CPR (4th) 457 (the VXBRLLED case)]. Finally, the parties are involved in an opposition proceeding pertaining to the Applicant's co-pending application No. 1,533,996 for the trade-mark FLED and for which a separate decision will be issued.

[5] For the reasons discussed below, I find that the opposition ought to be rejected.

The Record

[6] The Opponent filed its statement of opposition on March 4, 2014.

[7] The statement of opposition commences with a preamble consisting primarily of statements of facts. In particular, the Opponent states that it has sold in Canada vapour proof commercial and industrial lighting fixtures suitable for use in wet locations under the designations VX1, VX2, VXBR1 and VXBR2 since 2007, as well as a series of LED vapour proof commercial and industrial lighting fixtures suitable for use in wet locations under the designations VX1 LED and VX2 LED since 2010. In addition, the Opponent states that the designations VX1 LED and VX2 LED are referred to collectively as the "VX LED series of trade-marks" [para 2 of the statement of opposition].

[8] What follows is a summary of the pleaded grounds of opposition:

- (a) Sections 38(2)(c) and 16(3)(a) of the Act. The Applicant is not the person entitled to registration of the Mark since the Mark is, and was at the date of filing, confusing with the VX LED series of trade-marks previously used and made known in Canada by the Opponent since at least 2010 in association with its series of LED vapour proof commercial and industrial lighting fixtures.

- (b) Under sections 38(2)(b) and 12(1)(b) of the Act. In the alternative to the ground of opposition set out above, the Mark is not registrable since it is clearly descriptive or deceptively misdescriptive of the character or quality of the Goods. VXLED is a descriptive acronym that describes the product as a “vapour proof light emitting diode” lighting fixture. Each component of the VXLED acronym is descriptive and has a meaning: VX means vapour proof, and LED means light emitting diode.
- (c) Under section 38(2)(d) and 2 of the Act. The Mark cannot distinguish and is not adapted to distinguish the Goods from the LED vapour proof commercial and industrial lighting fixtures suitable for use in wet locations associated with the Opponent’s VX LED series of trade-marks. Alternatively, if the Opponent’s use of VX LED is not as a trade-mark but simply as a product designation, then the Mark is not distinctive and cannot be registered.
- (d) Under sections 3 and 10 of the Act. In the alternative, the Applicant is prohibited from adopting and using VXLED as a trade-mark. VXLED has by ordinary and *bona fide* commercial usage become recognized in Canada as designating a kind or quality of lighting fixtures, namely “vapour proof light emitting diode” lighting fixtures. The Applicant is further prohibited from adopting and using VXLED as a trade-mark as it is a mark that so nearly resembles the Opponent’s VXLED series of signs, devices, or marks as to be likely to be mistaken therefore.

[9] The Applicant filed and served its counter statement on May 8, 2014.

[10] The Opponent’s evidence consists of an affidavit of David Beron. The Applicant’s evidence consists of affidavits of Ross Barna and Camille Aubin. None of the affiants was cross-examined.

[11] Each party filed a written argument and was represented at the hearing.

The Material Dates

[12] The material dates that apply to the grounds of opposition are as follows:

- sections 38(2)(c)/16(3)(a) of the Act - the priority filing date of the application [see section 16(3) the Act];
- sections 38(2)(b)/12(1)(b) of the Act - the filing date of the application [see *Fiesta Barbeques Limited v General Housewares Corporation*, 2003 FC 1021, 28 CPR (4th) 60];
- 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]; and
- sections 38(2)(b)/12(1)(e) and 10 of the Act - the date of my decision [see *Olympus Optical Company Ltd v Canadian Olympic Association* (1991), 38 CPR (3d) 1 (FCA)].

The Parties' Respective Burden or Onus

[13] 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 FCA 29, 20 CPR (4th) 155; *Wangler Apparel Corp v The Timberland Company*, 2005 FC 722, 41 CPR (4th) 223].

The Evidence

[14] I will review the evidence filed by the parties. In doing so, I will disregard any assertions of an affiant equivalent to an opinion on questions of fact and law to be determined by the Registrar in the present proceeding.

The Opponent's Evidence

Affidavit of David Beron, including Exhibits 1 to 17

[15] At the time of his affidavit, sworn September 8, 2014, Mr. Beron was Vice-President Market Operations of the Opponent and had been since March 2008. His affidavit is divided into five parts.

[16] The first part of the affidavit provides background information. Mr. Beron states that the Opponent is a family-owned business. It designs, manufactures, assembles and distributes a broad line of commercial and industrial lighting and related products through a national network of over 700 Canadian electrical distributors and lighting showrooms [para 1].

[17] Based on information and belief, Mr. Beron makes a few assertions with respect to the business carried on by the Opponent's predecessors. Mr. Beron also states that the Opponent has carried on business in Canada "under the RAB brand" since December 2001 [para 3].

[18] Mr. Beron references Canadian trade-mark registrations owned by the Opponent, including registration Nos. TMA234,450 for RAB and TMA753,611 for RAB DESIGN [para 4, Exhibits 1 and 2]. Each registration covers "electrical lighting fixtures and electrical lighting fixture parts for interior and exterior use"; the registration for the trade-mark RAB DESIGN also covers "the operation of a business which designs, manufactures, assembles, imports and distributes electrical lighting products".

[19] The second part of the affidavit, entitled "The Opponent and its series of Vapour Proof Lighting Fixtures", starts with Mr. Beron explaining that a vapour proof lighting fixture or weather proof fixture is one that is sealed against moisture and vapours. Mr. Beron states that the Opponent "and its predecessors have been selling and manufacturing vapour proof lighting fixtures for more than 40 years, and since 2006 under the brand and product designation VX" [para 5].

[20] Afterwards, Mr. Beron introduces evidence with respect to the Opponent's vapour proof commercial and industrial lighting fixtures suitable for use in wet locations. For ease of

reference, I will subsequently refer to these products of the Opponent as “vapour proof lighting fixtures”.

[21] What follows is a summary of Mr. Beron’s testimony with respect to the Opponent’s VX series of vapour proof lighting fixtures [paras 6 to 17]:

- The Opponent began the manufacture and sale in Canada of a series of vapour proof lighting fixtures in 2006. The mark VX was selected by the Opponent to identify its series of vapour proof lighting fixtures.
- VX is used at the start of each of the product designations for the Opponent’s VX1, VX2, VXBR1 and VXBR2 vapour proof lighting fixtures. The “VX” component of the product designations indicates the product is a vapour proof fixture; the numeral “1” or “2” indicates the size of the fixture; and the inclusion of “BR” indicates it is a wall mounted fixture.
- Since 2006, the VX1 and VX2 products have been available as compact fluorescent ceiling mount fixtures designated the VX1F and VX2F products, and high-intensity discharge lamps (HID) designated the VX2 HID products. The VXBR1 and VXBR2 products have been available as compact fluorescent wall mount fixtures designated the VXBR1F and VXBR2F products, and high-intensity discharge lamps designated the VXBR2 HID products.
- In 2010, the Opponent introduced LED versions of its VX series of vapour proof lighting fixtures under the product designations VX1 LED for the smaller size and VX2 LED for the larger size.
- The VX series of vapour proof lighting fixtures have been advertised in the Opponent’s product catalogue since September 2008 and in the Opponent’s online catalogue, at www.rabdesign.ca. I note that while Mr. Beron states that the online catalogue “is updated regularly”, he does not indicate the date on which the online catalogue became available.
- The Opponent provides the product spec sheets, product catalogue and samples of the VX series of vapour proof lighting fixtures to its national network of Canadian

electrical distributors and lighting showrooms, who in turn provide the spec sheets and catalogue to their customers and display the Opponent's vapour proof lighting fixtures at their premises.

- The Opponent receives telephone orders from its customers who order products based on the spec sheets or catalogue, either print or online version, referencing the product designation or product number. Some of the Opponent's distributors permit online ordering of the Opponent's VX series of vapour proof lighting fixtures.
- At the time of the affidavit, the Opponent offered approximately 115 SKUs for its VX series of vapour proof lighting fixtures. The VX series of vapour lighting fixtures are sold in plain brown packaging bearing a label marked with the product designation, as well as in coloured packaging.
- From the launch of the VX1, VX2, VXBR1 and VXBR2 vapour proof lighting fixtures in 2006 up to June 2011, the Opponent's sales in Canada of its VX series of vapour proof lighting fixtures have exceeded \$200,000. From July 2011 through to the end of January 2014, the sales in Canada have exceeded \$300,000.
- Since 2006, the Opponent's VX series of vapour proof lighting fixtures have been displayed at trade-shows held in Montreal and in Moncton, as well as numerous customer marketing events.

[22] In support of his testimony, Mr. Beron files the following as exhibits to his affidavit:

- Product spec sheets used since 2006 for the VX1F CFL, VX2F CFL, VXBR1F CFL, VXBR2F CFL, VX2 HID and VXBR2 HID products [Exhibits 4 to 9].
- A sales sheet used since 2010 for LED versions of the Opponent's VX vapour proof lighting fixtures [Exhibit 10].
- Copy of the product catalogue of September 2008 [Exhibit 11] and relevant pages of the online catalogue, as it existed in April 2011 [Exhibit 12].
- Representative examples of labels for the Opponent's VX series of vapour proof lighting fixtures, namely:

- labels used on packaging since 2008 [Exhibit 13A]. I note that these appear to be labels for the fluorescent and HID versions;
 - labels used on packaging for the LED versions since 2010 [Exhibit 13B]; and
 - labels that appear on the base for the LED versions and used since 2010 [Exhibit 13C].
- Coloured packaging for the LED versions of the VX1 and VXBR1 products, and used since 2010 [Exhibit 14].
 - Representative sales invoices for the years 2007 to 2011 and 2013 to 2014, with the pricing information redacted [Exhibit 15].

[23] The third part of the affidavit concerns the parties' past business relationship. I will summarize Mr. Beron's testimony in this regard by reproducing part of paragraph 18 of his affidavit:

18. From 2002 through to the end of 2008, in addition to the design, manufacture, and assembly of commercial and industrial lighting products, the Opponent also purchased products from the Applicant in the US, as one manufacturer of its suppliers of its vapour proof commercial and industrial lighting fixtures, and imported them into Canada. These products were marketed and sold in association with the Opponent's trademarks and the VX product designation. [...] None of the fixtures purchased in the US by the Opponent from the Applicant were LED lighting fixtures. The Opponent ceased sourcing product from the Applicant in 2008.

[24] Finally, the fourth and fifth parts of the affidavit mostly contain assertions of Mr. Beron that I consider opinions on questions of fact and law to be determined in this case. Accordingly, I will not summarize these parts of the affidavit, except to note two aspects of Mr. Beron's testimony.

[25] First, Mr. Beron states that the Applicant's lighting products are sold in Canada by RC Lighting, a subsidiary of the Applicant, to many of the same distributors and lighting showrooms that purchase the Opponent's products. He states that attached as Exhibit 16 to his affidavit are copies of pages from the website of RC Lighting Inc. for the advertisement of "vx" and "vxled" light fixtures [paras 20 and 22].

[26] Second, Mr. Beron states that the letters VX in the acronym VXLED means vapour proof, and LED means light emitting diode; he files an extract from the *Webster's Ninth Collegiate Dictionary* for the definition of "LED" as Exhibit 17 to his affidavit [para 24].

The Applicant's Evidence

Affidavit of Ross Barna, including Exhibits RB-1 to RB-8

[27] At the time of his affidavit, sworn March 9, 2015, Mr. Barna was CEO of the Applicant and had been since 2009. Prior to that, he was Chief Operating Officer of the Applicant from approximately 2006 to 2009, although he has been employed by the Applicant in various capacities since 2001.

[28] Mr. Barna states that the Applicant is a leading manufacturer of sustainable outdoor lighting fixtures. Founded in 1946, the Applicant has been involved for many years in the sale and distribution of its lighting products in the United States and Canada, including lighting products featuring a display of the letters VX since at least the 1970's [paras 4 and 5].

[29] Mr. Barna references the Applicant's ownership in the United States of trade-mark registrations for VXLED and VRBRLED [para 5]. He also references the Applicant's ownership in Canada of trade-mark registrations for RC LIGHTING and RC LIGHTING & Design and trade-mark application No. 1,534,012 for VXBRLED, the latter having been allowed for registration subsequent to an unsuccessful opposition by the Opponent [para 6]. The particulars of the referenced registrations and application are attached as Exhibit RB-1 to the affidavit.

[30] The alphanumeric combinations VX100DG, VX200DG, VX100DG-3/4 and VXBR100dg are identified by Mr. Barna as examples of the Applicant's lighting products featuring the letters VX sold in Canada since the 1970's [para 7].

[31] Mr. Barna files as Exhibit RB-2 to his affidavit samples of packaging for the Applicant's lighting products sold in the United States prior to March 23, 2011. He states that such samples are identical or very similar to the packaging for the products sold by the Applicant to the Opponent in the United States between 2002 and 2008 for distribution in Canada [para 8].

[32] Paragraphs 9 to 17 of the affidavit contain statements relating to the parties' past business relationship. Included in those statements are statements whereby Mr. Barna either disagrees with, or opines on, some of Mr. Beron's assertions concerning: the nature of the relationship between the parties; the rights to the letters VX as a trade-mark or product designations; and the meaning of VX as an acronym. There are three notable aspects of Mr. Barna's testimony in this part of his affidavit.

[33] First, Mr. Barna confirms that from approximately 2002 until November 2008 the Opponent purchased lighting products (including vapour proof lighting fixtures suitable for use in wet locations) from the Applicant in the United States and imported them into Canada. However, Mr. Barna asserts that the lighting products featuring a display of the letters VX or VXBR were purchased by the Opponent as a *distributor* of the Applicant's lighting products in Canada; the Applicant ceased selling *its* VX and VXBR lighting products to the Opponent in the United States for distribution in Canada in November 2008.

[34] Second, Mr. Barna provides a listing of the VX and VXBR lighting products which the Opponent purchased from the Applicant in 2006 and 2007 for importation into Canada. He also provides the estimated value of the sales of the Applicant's VX and VXBR lighting products to the Opponent for importation into Canada from 2006 through 2008.

[35] Third, Mr. Barna affirms that "VX" is not an acronym for "vapour proof".

[36] Mr. Barna concludes his affidavit by introducing evidence concerning the manufacturing and distribution of lighting products in Canada by the Applicant, including evidence concerning the use in Canada by the Applicant of both the Mark and the trade-mark VXBRLLED in association with lighting products.

[37] Mr. Barna states that the Applicant's lighting products are manufactured outside of Canada. He also states that since April 2010 to the date of his affidavit, the Applicant's lighting products have been sold in Canada under the trade-name RC Lighting. Mr. Barna explains that the Applicant's lighting products are sent to the RC Lighting warehouse in Canada and sold from there to Canadian distributors of the Applicant [para 18]. Mr. Barna states that the trade-name RC Lighting was registered in Ontario on June 5, 2009 [para 19, Exhibit RB-3].

[38] Mr. Barna briefly references RC Lighting, LLC and explains that it is a wholly owned subsidiary of the Applicant that was organized in the United States on July 26, 2012 [para 19, Exhibit RB-4].

[39] According to Mr. Barna's testimony, the Applicant commenced use of both the Mark and the trade-mark VXBRLLED in Canada sometime after June 30, 2011 and was still using these trade-marks at the time of his affidavit [paras 20 and 21]. Between this time and up until March 4, 2014, the value of sales of lighting products associated with the Applicant's Mark as sold to Canadian distributors was no less than \$100,000 [para 22]. The same goes for the value of sales of lighting products associated with the Applicant's trade-mark VXBRLLED as sold to Canadian distributors [para 23].

[40] Finally, in support of his testimony regarding the use of both the Mark and the trade VXBRLLED in Canada, Mr. Barna attaches the following as exhibits to his affidavit:

- Reproduction of the packaging design used in Canada for the Applicant's vapour proof lighting products [Exhibit RB-5].
- Photographs of actual packaging for the Applicant's vapour proof lighting products sold in Canada in association with the Mark and the trade-mark VXBRLLED [Exhibits RB-6 and RB-7].
- Representative invoices dated between September 8, 2011 and March 3, 2014 for Canadian sales of lighting products associated with the Mark and the trade-mark VXBRLLED [Exhibit RB-8].

Affidavit of Camille Aubin, including its Exhibits CA-1 to CA-4

[41] At the time of her affidavit, sworn March 6, 2015, Ms. Aubin was a student at law with the firm acting as trade-marks agent for the Applicant.

[42] Ms. Aubin puts into evidence the results of her web-based searches conducted on the GOOGLE search engine in order to identify the possible meanings of the "VX" acronym.

[43] In summary, Ms. Aubin files the screenshots of the websites she selected [paras 4 to 6, Exhibits C-1 to CA-4]. Furthermore, Ms. Aubin includes in her affidavit a table in which she compiled the results of her searches on the selected websites [para 7]. I note that the table shows several different meanings for the acronym VX, none of which are “vapour proof”.

Preliminary Remarks

[44] To the extent that the testimony of Mr. Barna conflicts with the testimony of Mr. Beron, I stress that neither was challenged through cross-examination. Therefore, caution should be exercised in deciding whether one testimony may be preferred over the other, if necessary.

[45] As I am on the subject of the reliability of the affiants’ written testimony, I wish to address submissions of the Opponent seemingly aimed at discrediting the testimony of Mr. Barna concerning the use of the Mark in Canada by the Applicant.

[46] The Opponent contends that Mr. Barna’s statement that the Applicant commenced use of the Mark in Canada *sometime after June 30, 2011* [para 20 of the affidavit] actually contradicts his statement that the Applicant’s lighting products, with the packaging design and in the actual packaging illustrated in Exhibits RB-5 and RB-6, are sold in Canada *since April 2010* under the trade name RC Lighting [para 18 of the affidavit]. I disagree. Based on a fair reading of the affidavit as a whole, I rather agree with the Applicant that Mr. Barna’s reference to April 2010 is solely a reference to the first use of the Applicant’s *trade-name* RC Lighting in Canada.

Analysis of the Issues Arising from the Grounds of Opposition

[47] The issues arising from the grounds of opposition, although not in their order of pleading, are:

1. Was the Mark clearly descriptive or deceptively misdescriptive of the character or quality of the Goods as of June 30, 2011?
2. Has the Mark by ordinary and *bone fide* commercial usage become recognized in Canada as designating a kind or quality of lighting fixtures?

3. Was the Applicant the person entitled to the registration of the Mark in Canada as of June 24, 2011?
4. Was the Mark distinctive of the Applicant's Goods as of March 4, 2014?

[48] I will analyze these issues in turn.

1. Was the Mark clearly descriptive or deceptively misdescriptive of the character or quality of the Goods as of June 30, 2011?

[49] This issue arises from the ground of opposition alleging that the Mark is not registrable under section 12(1)(b) of the Act and premised on the following allegations: "VXLED is a descriptive acronym that describes the product as a 'vapour proof light emitting diode' lighting fixture. Each component of the VXLED acronym is descriptive and has a meaning: VX means vapour proof, and LED means light emitting diode."

[50] The test to be applied when assessing whether a trade-mark violates section 12(1)(b) of the Act has been summarized as follows by the Federal Court of Appeal in *Ontario Teachers' Pension Plan Board v Canada*, 2012 FCA 60, 99 CPR (4th) 213:

[29] It is trite law that the proper test for a determination of whether a trade-mark is clearly descriptive is one of first impression in the mind of a normal or reasonable person. If such a person is unclear or uncertain as to the significance of the trade-mark in relation to the wares or services or if the trade-mark is suggestive of a meaning other than one describing the wares or services, then the word is not clearly descriptive. One should not arrive at a determination of the issue by critically analyzing the words of the trade-mark, but rather by attempting to ascertain the immediate impression created by the trade-mark in association with the wares or services with which it is used or proposed to be used. In other words, the trade-mark must not be considered in isolation, but rather in its full context in conjunction with the wares and services [...].

[51] The word "character" in section 12(1)(b) of the Act has been held to mean a feature, trait or characteristic of the goods or services and the word "clearly" has been held to mean "easy to understand, self-evident or plain" [*Drackett Co of Canada Ltd v American Home Products Corp* (1968), 55 CPR 29 (Ex Ct) at 34].

[52] Further, it has been held that one must also have regard to common sense when assessing the first impression of the trade-mark having regard to the goods or services in question [see

Neptune SA v Canada (Attorney General), 2003 FCT 715, 29 CPR (4th) 497 (FCTD); *Ontario Teachers' Pension Plan Board, supra*].

[53] Bearing the above in mind, I will summarize in turn both the oral and written submissions of the Opponent and the Applicant, and thereafter conclude with my findings on the issue.

[54] The Opponent's submissions are three-pronged.

[55] Firstly, the Opponent submits that the evidence establishes that the letters VX when used with lighting fixtures are a short form to identify the fixtures as being vapour proof. In this regard, in addition to relying on Mr. Beron's statements as to the meaning of VX in association with lighting fixtures, the Opponent contends that the evidence shows that both parties have used the letters VX to designate vapour proof lighting fixtures.

[56] Secondly, the Opponent submits that the evidence establishes that the letters LED when used with lighting fixtures are a short form to identify the fixtures as having light emitting diodes. The Opponent points to the extract from the *Webster's Ninth Collegiate Dictionary* for the definition of "LED" filed by Mr. Beron.

[57] Thirdly, the Opponent submits that since the letters VX for lighting fixtures are a short form to identify the fixtures as being vapour proof, and the letters LED for lighting fixtures are a short form to identify the fixtures as having light emitting diodes, then the "inevitable conclusion" is that the letters VXLED are descriptive of lighting fixtures that are vapour proof and having light emitting diodes.

[58] For its part, the Applicant first and foremost submits that there is no evidence that VXLED as a whole is an acronym in and of itself. Second, the Applicant submits that since an acronym is a word formed by combining the initial letters of a series of words, the acronym for "vapour proof light emitting diodes" would be VPLED not VXLED. For these reasons alone, the Applicant contends that the ground of opposition must be rejected.

[59] In the alternative, the Applicant invites me to reject the Opponent's quantum leap that the Mark must be viewed as an acronym combining VX and LED. The Applicant submits that the combination of VX and LED "does not an acronym make" simply because the Opponent is

inviting the [Registrar] to incorrectly dissect the [Mark] into component elements which do not exist”.

[60] The Applicant appears not to dispute that LED means “light emitting diode”. However, the Applicant submits that the letters “VX” for lighting fixtures have no discernable meaning. The Applicant also disputes that the Opponent’s evidence supports the allegation that “VX” means “vapour proof”. The Applicant’s submissions in that regard may be best summarized by the following passage of its written argument:

57. [...] The only evidence adduced by the Opponent purporting to prove VXLED is descriptive is at paragraph 24 of Mr. Biron’s *[sic]* affidavit and Exhibit 17 related thereto which is a dictionary definition of “LED” referring to LED as a noun for “light emitting diode”. There is no corresponding document regarding the letters “VX”. Instead, there are statements by Mr. Beron at paragraphs 6 and 7 of his affidavit that the ***opponent itself has allegedly chosen to ascribe to the letters*** “VX” the meaning “vapour proof” within the product designations VX1 or VX2 (and other such designations starting with “VX”).

[61] Having considered the parties’ submissions, I note at the outset that in my view the fate of the section 12(1)(b) ground of opposition in the present case does not rest on whether the Opponent has properly pleaded that VXLED *is an acronym*. Rather, it rests on whether the Opponent first discharged its evidential burden of showing that the Mark clearly describes or deceptively misdescribes the Goods as “vapour proof light emitting diode” lighting fixtures, and thus violates section 12(1)(b) of the Act. I find that the Opponent did not do so.

[62] Indeed, in my view the Opponent’s evidence purportedly establishing the meaning of the letters VX for lighting fixtures consists of self-serving statements of Mr. Beron, including statements as to the Opponent’s self-attributed meaning of VX for its VX series of vapour proof lighting fixtures. I do not consider such evidence as sufficient to reasonably conclude that the letters VX when used in association with lighting fixtures *plainly and evidently* mean “vapour proof”.

[63] Thus, considering the Mark as a whole, I find that it was not clearly descriptive or deceptively misdescriptive of the character or quality of the Goods as of June 30, 2011. At most, the Mark was suggestive of a type of lighting fixtures, in particular lighting fixtures having light

emitting diodes. It is trite law that a suggestive trade-mark does not violate section 12(1)(b) of the Act.

[64] Accordingly, the section 12(1)(b) ground of opposition is unsuccessful.

2. Has the Mark by ordinary and *bona fide* commercial usage become recognized in Canada as designating a kind or quality of lighting fixtures?

[65] This issue arises from the two-pronged ground of opposition raised under sections 3 and 10 of the Act, the validity and sufficiency of which has been raised by the Applicant in its written argument.

[66] I agree with the Applicant that section 3 of the Act, which sets out the different circumstances when a person is deemed to have adopted a trade-mark, does not form the basis of a ground of opposition as defined in section 38(2) of the Act. I would add that the Opponent did not make any representations at the hearing to explain its reliance on section 3 of the Act. Therefore, to the extent that the ground of opposition is raised under section 3 of the Act, it is dismissed as an invalid ground of opposition.

[67] However, I disagree with the Applicant that the section 10 ground of opposition has been improperly pleaded because there is no reference to section 12(1)(e) of the Act. Clearly, the ground of opposition is set out in sufficient detail to enable the Applicant to reply, which is all that is required by section 38(3) of the Act.

[68] I now turn to the Applicant's contention that the second prong of the pleading does not form a proper ground of opposition under section 10 of the Act. The pleading alleges that the Applicant is prohibited from adopting and using VXLED as a trade-mark as it is a mark that so nearly resembles the Opponent's VXLED series of signs, devices, or marks as to be likely to be mistaken therefor.

[69] Section 10 of the Act reads as follows:

10 Where any mark has by ordinary and *bona fide* commercial usage become recognized in Canada as designating the kind, quality, quantity, destination, value, place of origin or date of production of any goods or services, no person shall adopt it as a

trade-mark in association with such goods or services or others of the same general class or use it in a way likely to mislead, nor shall any person so adopt or so use any mark so nearly resembling that mark as to be likely to be mistaken therefor.

[70] To best reflect the Applicant's submissions in support of its contention, I reproduce the following passage of the Applicant's written argument:

109 [...] the Opponent has dissected section 10 of the Act into two sections but the prohibition is all encompassing in that it applies whether subject mark misleads or so nearly resembles *a mark used by others* such that through ordinary and bona fide commercial usage, that mark has become recognized in Canada as designating the kind or quality etc. of any goods and/or services. The Opponent cannot rely solely on its *own alleged use* of the alleged mark VXLED series of marks to support this ground of opposition (even if the opponent considers having proven extensive use which is in any event categorically denied by the Applicant) as the reason for the [Mark] being a prohibited mark under section 10 of the Act.

[71] I am in substantial agreement with the Applicant's above submissions. I would add that based on a fair reading of the Opponent's written argument, it does not contain substantial submissions with respect to the second prong of the pleading.

[72] Accordingly, I dismiss the section 10 ground of opposition to the extent that it alleges that the adoption and use of VXLED as a trade-mark is prohibited because it so nearly resembles the Opponent's VXLED series of signs, devices, or marks as to be likely to be mistaken therefor.

[73] In view of all of the above, the issue under consideration solely arises from the first prong of the ground of opposition pleading that the Applicant is prohibited from adopting and using VXLED as a trade-mark, in that VXLED has by ordinary and *bona fide* commercial usage become recognized in Canada as designating a kind or quality of lighting fixtures, namely "vapour proof light emitting diode" lighting fixtures. The pleading is premised on the allegations that VX has by ordinary and commercial use become recognized as designating "vapour proof" lighting fixtures, and LED has by ordinary and commercial use become recognized as designating "light emitting diode" lighting fixtures.

[74] The Federal Court in *ITV Technologies Inc v WIC Television Ltd*, 2003 FC 1056, 29 CPR (4th) 182 discusses as follows the relevant test set out by section 10 of the Act:

[88] [...] Pursuant to section 10, a mark may become a prohibited mark if as a result of ordinary and bona fide commercial usage, it has become recognized in Canada as designating the kind, quality, quantity, destination, value, place or origin or date of production of any wares or services. The statutory prohibition requires that the use of the mark in question be in Canada and that the mark must have been commonly used in Canada at the relevant time as designating an aspect of the wares or services which are the subject of the mark [...].

[75] In turning to the parties' submissions, I stress that when reviewing the affidavit of Mr. Beron, I disregarded his statement that VXLED has by ordinary and *bona fide* commercial usage become recognized in Canada as designating a kind or quality of lighting fixtures, namely "vapour proof light emitting diode" lighting fixtures. This statement amounts to an opinion on questions of fact and law to be determined by the Registrar in this case.

[76] The Opponent submits that even if the letters VXLED are not considered descriptive, the letters VX and LED may still have been used in a manner that by ordinary and *bona fide* commercial usage they have become recognized in Canada as designating a kind or quality of lighting fixtures, namely "vapour proof light emitting diode" lighting fixtures. The Opponent submits that this is the case.

[77] In summary, the Opponent submits that the evidence establishes that both parties have been using in Canada product designations including the letters VX and LED to identify vapour proof LED lighting fixtures. By virtue of the parties' use of these product designations, the letters VX and LED used together have by ordinary and *bona fide* commercial usage become recognized in Canada as designating a kind or quality of lighting fixtures, namely "vapour proof light emitting diode" lighting fixtures.

[78] The Applicant submits that even if the Opponent considers having proven extensive use of product designations including the letters VX and LED to identify vapour proof LED lighting fixtures (which is denied by the Applicant), the Opponent's own use of these product designations is insufficient to support the ground of opposition. The Applicant submits that to discharge its evidential burden, the Opponent was required to prove that the Mark as a whole has been used by many Canadian lighting manufacturers and retailers for many years such that VXLED has become recognized as designating a kind and/or quality of lighting fixtures.

[79] I conclude that the Opponent did not discharge its evidential burden to establish that the Mark falls within the prohibition of section 10 of the Act.

[80] Indeed, as indicated before, the statutory prohibition requires that the Mark *must have been commonly used* in Canada. Yet, the Opponent has only provided evidence of its own use in Canada of product designations including the letters VX and LED to identify vapour proof LED lighting fixtures. In other words, the evidence falls short of what is required to establish that the average Canadian would recognize VXLED as designating a kind or quality of lighting fixtures.

[81] Accordingly, the section 10 ground of opposition is unsuccessful.

3. Was the Applicant the person entitled to the registration of the Mark in Canada as of June 24, 2011?

[82] This issue arises from the ground of opposition raised under section 16(3)(a) of the Act and premised on an allegation of confusion between the Mark and the VX LED series of trade-marks used and made known in Canada by the Opponent since at least 2010 in association with its series of LED vapour proof lighting fixtures.

[83] As indicated before, it is specifically stated in the preamble of the statement of opposition that the designations VX1 LED and VX2 LED are referred to collectively as the “VX LED series of trade-marks” [para 2 of the statement of opposition]. The Federal Court has directed that an opposition is to be assessed in view of the ground of opposition as pleaded [see *Le Massif Inc v Station Touristique Massif du Sud (1993) Inc*, 2011 FC 118, 95 CPR (4th) 249].

[84] Accordingly, in order to meet its evidential burden under the pleaded ground of opposition, the Opponent must show that its alleged trade-marks VX1 LED and VX2 LED were used and made known in Canada in association with vapour proof lighting fixtures prior to June 24, 2011. Further, the Opponent must show that it had not abandoned these trade-marks at the date of advertisement of the application, namely January 8, 2014 [section 16(5) of the Act].

[85] I find from the outset that there is no evidence establishing that either one of the Opponent’s alleged trade-marks has been made known in Canada pursuant to the definition of “made known” set out in section 5 of the Act. Thus, what remains to be considered is whether

the Opponent has discharged its evidential burden of establishing that its alleged trade-marks were used in Canada prior to June 24, 2011 pursuant to the relevant definition of “use” set out in section 4(1) of the Act.

[86] To begin, I note that the Opponent made several representations to distinguish the evidence it filed in the present case from the evidence it had filed in the VXBRLLED case. In that case, the non-entitlement ground of opposition was dismissed for the Opponent’s failure to show use of its alleged trade-marks *prior* to the material date. For its part, the Applicant submitted that if it is concluded that the Opponent’s evidence shows use of either of its alleged trade-marks VX1 LED and VX2 LED (which is denied by the Applicant), the Opponent’s evidence still does not show its *prior use* of these trade-marks.

[87] As it is trite law that each case must be decided based upon its own merit, and further to my reading of the VXBRLLED case, it seems to me that some evidence provided by Mr. Beron in the present case was not before the Registrar in the VXBRLLED case. However, I do not consider it necessary to further discuss the parties’ submissions with respect to the evidence filed by the Opponent in the present case concerning the prior use of its alleged trade-marks.

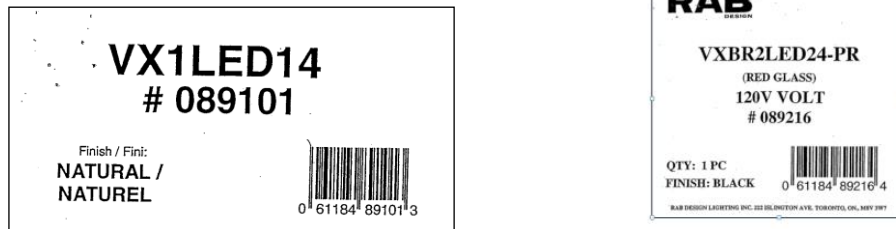
[88] Indeed, in my view, the Applicant’s alternative submissions with respect to the section 16(3) ground of opposition are determinative of the issue. These alternative submissions are that the Opponent has not used VX1 LED and VX2 LED as trade-marks (i.e. source identifiers), but rather, simply as a component of various different alphanumeric combinations referring to particular model numbers associated with the Opponent’s vapour proof lighting fixtures (i.e. product identifiers). (These alternative submissions were made by the Applicant in the VXBRLLED case as well, but were not addressed by the Registrar because of the primary basis on which the ground of opposition was dismissed.)

[89] To better understand the Applicant’s alternative submissions, I reproduce images from paragraphs 40 to 42 of the Opponent’s written argument, which itself reproduces images from Exhibits 14, 13B and 13C to the affidavit of Mr. Beron:

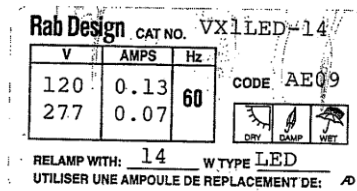
(a) coloured packaging [Exhibit 14]



(b) labels representative of labels affixed on plain box packaging [Exhibit 13B]



(c) label representative of labels on the base of lighting fixtures [Exhibit 13C]



[90] In its written argument, the Opponent particularly, but not exclusively, relied upon the above as evidence of its trade-mark use of the letters VX and LED in association with vapour proof lighting fixtures since 2010. At the hearing, the Opponent confirmed that it was relying on the above illustrated packaging and labels as evidence showing use of its alleged trade-marks VX1 LED and VX2 LED within the meaning of section 4 of the Act. That said, more often than not, the Opponent throughout its oral representations referenced the use of VX and LED as product designations. In fact, at one point during the hearing, I pointed out to the Opponent that its own references to product designations seemingly lend support to the Applicant's contention. In reply, the Opponent acknowledged its references to product designations.

[91] In my view, it emerges from the Opponent's oral representations that it is not adamantly disputing the Applicant's submissions that the Opponent has used VX1 LED and VX2 LED as product identifiers, not source identifiers. Under these circumstances, I do not consider it necessary to discuss at length the Applicant's thorough analysis of each of Exhibits 4 to 15 to the affidavit of Mr. Beron. Indeed, I find it sufficient to reproduce the following overall submissions of the Applicant in its written argument:

83. In the alternative, if the [Registrar] is prepared to consider the "VX LED series of trademarks" are displayed in some of these exhibits, they have not been used as trademarks, ie. as source identifiers such that the requisite notice of association has not been made. There is no message to the consuming public that the Opponent's alphanumeric combinations are trademarks rather than particular model numbers associated with the Opponent's lighting products.
84. By the opponent's own admission, customers would refer to the "VX LED series of trademarks" in the Opponent's spec sheets and/or catalogues to order its lighting products by either product designation or product number.
paragraph 11 and Exhibits 4-12 of Beron affidavit
85. Based on the foregoing, a review of the evidence filed by the Opponent does not support the conclusion that the "VX LED series of trademarks" are used as trademarks, i.e. as source identifiers. Instead, the evidence illustrates that the overall context of their display is such that they would be perceived by the consuming public as references to particular models of the Opponent's lighting products associated with the Opponent's *RAB trademark*. It is the Opponent's **RAB** trademark, displayed in its spec sheets, sales sheet, catalogues or product packaging which would be recognized as indicating the source of its goods, that is, a trademark used to distinguish the Opponent's goods from those of others.
86. The Opponent's assertions of use of the "VX LED series of trademarks" made by the Opponent's affiant are not supported by his documentary evidence. The Applicant invites the [Registrar] to consider the accompanying documentary evidence as a whole and to contemplate the message that is conveyed to the public, despite the Opponent's assertions that it has proprietary rights in the "VX LED series of trademarks" which even if displayed in any of the exhibits on record, are a series of alphanumeric arrangements used to identify the opponent's products.

[92] I agree with the Applicant that the Opponent's evidence does not establish trade-mark use of VX1 LED or VX2 LED in association with vapour proof lighting fixtures. Indeed, in the circumstances of this case, I find that it may reasonably be concluded that the evidence rather shows that the Opponent, as of June 24, 2011, was using either VX1 and LED or VX2 and LED as components of a series of various different alphanumeric combinations that would have been

purely perceived as product identifier for its vapour proof lighting fixtures associated with its RAB brand.

[93] For one thing, none of the labels and invoices shows VX1 LED or VX2 LED on its own. VX1 LED or VX2 LED appears juxtaposed with additional numbers and/or letters presented in the same manner (same font, same size). Furthermore, I am of the view that where the words RAB DESIGN appear on labels and packaging, as shown by the images reproduced from Exhibits 14, 13B and 13C to the affidavit of Mr. Beron, it is RAB DESIGN that would be perceived as the trade-mark being used [see para 89 of my decision]. This conclusion is even more likely where the word RAB is followed by the ® symbol, as the use of such symbol draw the purchaser's attention to the fact that RAB DESIGN, if not RAB, is being used and is functioning as a trade-mark.

[94] Ultimately, I am not satisfied that the Opponent's evidence satisfactorily establishes that as of June 24, 2011, a consumer would likely have perceived the use of the letters VX and LED with the intervening numeral 1 or 2, combined with other letters and/or numerals as use of the trade-marks VX1 LED or VX2 LED.

[95] In view of the above, I find that the Opponent did not discharge its burden of evidencing use of either of its alleged trade-marks VX1 LED or VX2 LED prior to June 24, 2011.

[96] Accordingly, the section 16(3)(a) ground of opposition is unsuccessful.

4. Was the Mark distinctive of the Applicant's Goods as of March 4, 2014?

[97] This issue arises from the two-pronged ground of opposition raised under section 2 of the Act.

[98] The first prong of the ground of opposition revolves around the issue of confusion between the Mark and the Opponent's alleged VX series of trade-marks as specifically defined in the statement of opposition, namely VX1 LED and VX2 LED.

[99] Because the difference in material dates does not have an impact on my findings with respect to the section 16(3)(a) ground of opposition, I conclude that the Opponent has failed to

discharge its evidential burden to show that either of its alleged trade-marks VX1 LED or VX2 LED had a substantial, significant or sufficient reputation in Canada in association with vapour proof lighting fixtures, as of March 4, 2014, so as to negate the distinctiveness of the Mark [see *Motel 6, Inc v No 6 Motel Ltd*, (1981), 56 CPR (2d) 44 (FCTD); and *Bojangles' International, LLC and Bojangles Restaurants, Inc v Bojangles Café Ltd*, 2006 FC 657, 48 CPR (4th) 427].

[100] Thus, what remains to be considered is the second prong of the ground of opposition reading as follows: “Alternatively, if the Opponent’s use of VX LED is not as a trade-mark but simply as a product designation, then the Applicant’s proposed mark VXLED is not distinctive and cannot be registered.”

[101] To begin, I note that the Opponent submits that the alternative pleading serves to distinguish the present case from the VXBRLED case. In that case, the Registrar found that the Opponent could not argue that the applied for mark was not distinctive based on its use of the letters “VX” and “VXBR” other than as a trade-mark, as the pleading was clearly based upon trade-mark use. The Opponent submits that in the present case, the alternative pleading clearly sets out that the Opponent is relying on its use of the letters VX and LED as a product designation for its vapour proof lighting fixtures to support the non-distinctiveness ground of opposition.

[102] Given its submissions, at the hearing I did ask the Opponent to explain the reason for the allegation “cannot be registered” as part of the pleading. In reply, the Opponent argued that allowing the Mark to proceed to registration would open the door to the Applicant claiming a monopoly in Canada on the letters VX and LED for the Goods to then unfairly challenge the Opponent’s legitimate use of the letters VX and LED as product designations for its vapour proof lighting fixtures, for instance by bringing a trade-mark infringement action against the Opponent.

[103] The impact the registration of the Mark would ultimately have on the Opponent’s entitlement to use VX and LED as a product designation for its vapour proof lighting fixtures in Canada is not what is at issue in the present proceeding. The issue to be decided under this

ground and within the context of this opposition is whether the Mark, as of March 4, 2014, was distinctive of the Applicant's Goods pursuant to section 2 of the Act.

[104] Thus, I shall turn to the assessment of the second prong of the non-distinctiveness ground of opposition, starting with the Applicant's submissions as to the scope of the pleading.

[105] The Applicant first and foremost submits that the language of the pleading makes it clear that the Opponent is relying on the use of the term VX LED *on its own* as a product designation for its vapour proof lighting fixtures and *not* some other use, including the term VX or VX LED as a component of alphanumeric combinations for its vapour proof lighting fixtures.

[106] Furthermore, the Applicant submits that the documentary evidence filed by Mr. Beron does not show the term VX LED on its own. The term VX LED only appears juxtaposed with intervening additional numbers and/or letter presented in the same font and same size. There is nothing in the evidence which allows consumers to identify the term VX LED on its own as indicative of a product designation. For these reasons alone, the Applicant submits that the second prong of the ground of opposition must be rejected.

[107] In my view, the Applicant rightly submits that the evidence does not show use of the term VX LED *per se* as a product designation for the Opponent's vapour proof lighting fixtures. The question becomes whether the Applicant rightly submits that the pleading is restricted to an allegation of the Opponent's use of the term VX LED *per se* as a product designation, which is disputed by the Opponent.

[108] Indeed, at the hearing the Opponent argued that the pleading must be considered as part of the statement of opposition as a whole, and so the allegations in its preamble are relevant. Accordingly, the Opponent submitted that the second prong of the ground of opposition must be read as being based on the premise that the Mark cannot function as a source identifier for the Applicant's Goods in view of the Opponent's use in Canada of VX1, VX2, VXBR1 and VXBR2 as product designations for its vapour proof lighting fixtures.

[109] I pause to point out that at the hearing the Opponent noted that the product designations displayed on the labels and invoices filed as Exhibits 13A, 13B and 15 to the affidavit of Mr. Beron had been properly listed in tables incorporated in the Applicant's written argument

[paras 26, 27 and 30 of the written argument]. For ease of reference, I have reproduced these tables at Schedule “A” to my decision.

[110] It is trite law that the sufficiency of the pleading should be assessed having regard to the evidence of record [see *Novopharm Ltd v Astrazeneca AB*, 2002 FCA 387, 21 CPR (4th) 289]. Considering the Opponent’s evidence and the allegations contained in the statement of opposition, it seems not without merit for the Opponent to submit that the pleading encompasses an allegation of use of VX1, VX2, VXBR1 and VXBR2 as product designations for its VX series of vapour proof lighting fixtures. However, it remains that the pleading alleges the Opponent’s use of VX **LED** (my emphasis).

[111] In view of the above, at best for the Opponent, I consider that the pleading could be read as encompassing an allegation of the Opponent’s use of VX1, VX2, VXBR1 and VXBR2 as product designations *for the LED version of its vapour proof lighting fixtures*. In such a case, since the LED versions of the Opponent’s products were introduced in 2010, any evidence purportedly showing use of VX1, VX2, VXBR1 and VXBR2 as product designations prior to 2010 is of no significance.

[112] Furthermore, despite its representations, the Opponent did not convince me that the product designations VX1 LED, VX2 LED, VXBR1 LED or VXBR2 LED are either displayed on the labels [Exhibit 13B] or referenced in the invoices relevant to the sales of LED versions of the Opponent’s products [Exhibit 15]. Rather, I agree with the Applicant that the designations displayed on the labels and referenced in the invoices neither show use of VX1 LED, VX2 LED, VXBR1 LED or VXBR2 LED *per se* as product designations, nor use of VX1, VX2, VXBR1 or VXBR2 *per se* as product designations. Rather, they show use of VX1, VX2, VXBR1 or VXBR2 as a *component* of alphanumeric combinations also comprising the term LED.

[113] That said, I agree with the Opponent that the display of VXBR1 and VX1 on the coloured packaging [Exhibit 14] show use of VXBR1 and VX1 *per se* as product designations for the LED versions of its products. However, this does little to assist the Opponent’s case.

[114] Indeed, Mr. Beron provides evidence pertaining to the *total* sales of the Opponent VX series of vapour proof lighting fixtures in Canada. No breakdown has been provided with

respect to which portion of these sales is directly attributable to sales of the LED versions of the Opponent's products sold either under the designation VXBR1 or VX1. Therefore, I cannot draw any meaningful conclusion with respect to the extent to which the Opponent had used either the designation VXBR1 *per se* or the designation VX1 *per se* for the LED versions of its products as of March 4, 2014.

[115] I wish to add that even if I were wrong in finding that the labels used since 2010 and the relevant invoices do not show use of the product designations VX1 LED, VX2 LED, VXBR1 LED or VXBR2 LED, I would still have been unable to draw any inferences with respect to the extent of the Opponent's use of these product designations in Canada as of March 4, 2014. Indeed, because the sales figures do not distinguish between sales of non-LED versions and LED versions of the Opponent's products, I have no information with respect to which portion of these sales is directly attributable to sales of the LED versions of the vapour proof lighting fixtures.

[116] To summarize, if the Applicant rightly argues that the pleading is restricted to an allegation of the Opponent's use of VX LED on its own as a product designation, the ground of opposition must be dismissed for the Opponent's failure to establish the extent to which VX LED on its own had become known in Canada as a product designations for its vapour proof lighting fixtures as of March 4, 2014.

[117] Alternatively, if the Opponent rightly submits that the pleading is not restricted as argued by the Applicant, at best the pleading would be based on an allegation of use of VX1, VX2, VXBR1 and VXBR2 as product designations for the LED versions of the Opponent's vapour proof lighting fixtures. Still, the ground of opposition must be dismissed for the Opponent's failure to establish that its use of any of these product designations had been significant enough to negate the distinctiveness of the Mark as of March 4, 2014.

[118] Accordingly, the non-distinctiveness ground of opposition is unsuccessful.

Disposition

[119] In view of the foregoing, pursuant to the authority delegated to me under section 63(3) of the Act, I reject the opposition to application No. 1,534,013 under section 38(8) of the Act.

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

Schedule “A”

Labels used on packaging since 2008 - Exhibit 13A

<ul style="list-style-type: none"> • VX1F26-CFL • VX2F42-CFL • VX1F42-CFL • VX2F32-CFL • VX2SH100-TT-3/4” • VX1F26-CFL-3/4” • VX2F32-CFL-3/4” • VX1F26-CFL • VX2F42-CFL-3/4 • VX2F42-CFL-3/4 • VX2F32-CFL • VX2SH100-TT-PA • VX2HH100-TT-CL • VX2SN50 • VX2HH50-TT • VX2HH100-TT • VX1F13-CFL • VX2SN70 • VX2HH70-TT • VX1F26-CFL-PG • VXBR2F32-CFL-3/4” • VXBR1F13B • VXBR1F26B-CFL • VXBR2H50-TT-3/4” • VXBR2F42-CFL 	<ul style="list-style-type: none"> • VXBR1F26-CFL • VXBR2F32-CFL-3/4” • VXBR2F2-CFL • VXBR1F26-CFL-3/4 • VXBR2HH70-TT • VXBR2HH50-TT • VXBR25N70 • VXBR25N35 • VXBR2F32-CFL • VXBR2F42-CFL-3/4 • VXBR1F13-CFL • VXBR1F26-CFL • VXBR2F32-CFL • VXBR1F26CFL • VBXR2H100-TT-3/4 • VXBR1F26-CFL 3/4 • VXBR2F32-CFL-3/4 • VXBR2F32-CFL • VXBR1F13-CFL • VXBR1F13-CFL • VXBR2F42-CFL-CL • VXBR2F42-CFL-CL-3/4 • VXBR2F32-CFL-3/4 • VXBR2F32-CFL • VXBR1F26-CFL
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Labels used on packaging for the LED versions since 2010 – Exhibit 13B

<ul style="list-style-type: none"> • VX2LED24-RGL • VX2LED24 • VX1LED14-PR • VX2LED24-RGL • VX1LED14 • VX1LED14-PRC • VXBR1LED14 • VXBR1LED14 • VXBR2LED24-PRC • VX1LED14-PG-NA • VX1LED14-PA-NA • VX1LED14-PRC • VX1LED14 • VXBR1LED14-R-PRC • VX2LED24-PRC-NA • VX2BR2LED24-PR
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Schedule "A" (Cont'd)

Invoices for 2007-2011 and 2013-2014 – Exhibit 15

<ul style="list-style-type: none">• VXBR1F13-120V• VX1F26-120V• VX2F32-120V• VXBR2F26-120V-PGC SILVER• VXBR200DG/F22-120V• VXBR2F42-120V• VX1F26-120V• VX2F42-120V-NATURAL ³/₄• VXBR2F32-120V• VXBR1F13-120V	<ul style="list-style-type: none">• VX1LED14-120V-PRC-NA• VXBR1LED14-120V-PRC-NA• VX1F26-120V NATURAL• VXBR2F32-120V NATURAL• VX2LED24-120V-PRC-NA• VX1LED14R-120V-PRC-NA• VXBR1LED14R-120V-PRC-NA• VXBR1F26-120V NATURAL• VXBR2F42-120V NATURAL
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**TRADE-MARKS OPPOSITION BOARD
CANADIAN INTELLECTUAL PROPERTY OFFICE
APPEARANCES AND AGENTS OF RECORD**

HEARING DATE: 2016-08-23

APPEARANCES

James W. Carson

FOR THE OPPONENT

Stella Syrianos

FOR THE APPLICANT

AGENTS OF RECORD

Blaney McMurtry LLP

FOR THE OPPONENT

ROBIC

FOR THE APPLICANT