

IN THE MATTER OF AN OPPOSITION by  
Canadian Olympic Association to application No.  
705,434 for the mark OLYMKIDS filed by  
A. Croteau Ltée

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On May 25, 1992, the applicant, A. Croteau Ltée, filed an application to register the mark OLYMKIDS, based on proposed use in Canada in association with

vêtements pour enfants nommément chapeaux, bonnets, écharpes, foulards, cache-nez, t-shirts, sweatshirts, blouses, chemises, chemisettes, chemisiers, combinaisons, salopettes, tabliers, vestes, vestons, jaquettes, manteaux, coupe-vent, imperméables, gants, mitaines, tuques, ensembles de jogging, tenues de jogging, robes, blazers, chandails, débardeurs, pantalons courts, pantalons longs, bermudas, caleçons, slips, jupes, jupes-culottes, bas, tuniques, pullovers, cardigans, robes de chambre, ceintures, bretelles, tricot, jeans, pyjamas, peignoirs, sous-vêtements, camisoles, boléros, maillots de bain, espadrilles.

The subject application was advertised for opposition purposes in the Trade-marks Journal issue dated January 20, 1993, and was opposed by Canadian Olympic Association on January 27, 1993. The applicant responded by filing and serving a counter statement.

Included among the grounds of opposition is that the applied for mark is not registrable, pursuant to Sections 9, 11, and 12(1)(e) of the Trade-marks Act, in view of the opponent's official marks including OLYMPIC GAMES, OLYMPIAD, OLYMPIAN, OLYMPIC, OLYMPIQUE, SUMMER OLYMPICS, WINTER OLYMPICS, OLYMPIA, and OLYMPUS, and that the applied for mark is not adapted to distinguish the applicant's wares.

The opponent's evidence consists of the affidavit of John N. Allport, a lawyer with the firm representing the opponent. His affidavit serves to introduce into evidence, among other things, copies of extracts from the Trade-marks Journal showing that the Registrar has given public notice of the opponent's marks in accordance with Section 9(1)(n)(iii) of the Act. The applicant's evidence consists of the affidavit of André Croteau, President of the applicant company. Mr. Croteau was cross-examined on his affidavit and the

transcript thereof, and one exhibit thereto, forms part of the evidence of record. Neither party filed a written argument and only the opponent was represented at an oral hearing.

The evidence of each party is rather scant. Mr. Croteau's testimony satisfies me that the mark OLYMKIDS was adopted in good faith for use on clothing to be sold through the applicant's several retail clothing outlets. The applicant had not commenced use of its mark OLYMKIDS at the time of Mr. Croteau's cross-examination and, as I understand Mr. Croteau's testimony, did not plan to do so until a favourable ruling was obtained in this proceeding. The opponent's evidence establishes that it is a public authority entitled to rely on the official marks pleaded in the statement of opposition. The opponent has not evidenced any use of its marks, however, I have taken judicial notice that summer and winter OLYMPIC GAMES, and their attendant publicity in Canada, are regular events of the twentieth century. Further, following the principle of *stare decisis*, I am obliged to take into consideration the opponent's "family" of official marks: in this regard, see *Canadian Olympic Association v. Express Services, Inc.* (1993), 51 C.P.R.(3d) 102 (TMOB) and *Canadian Olympic Assn. v. Schwauss* (1995), 61 C.P.R.(3d) 104 (TMOB).

In view of the above, I am satisfied that the opponent has met the onus on it to put into issue the likelihood that the public will assume the applicant's goods are approved, licensed, or sponsored by the owner of the above-mentioned family of marks. On the other hand, there is nothing in the applicant's evidence, and no argument from the applicant, to counter the opponent's position. In view of the above, I find that the applicant has not met the legal onus on it to establish, on a balance of probabilities, that its mark OLYMKIDS is adapted to distinguish its wares from the wares and services of

the opponent: see, for example, *Glen-Warren Productions Ltd. v. Gertex Hosiery Ltd.*  
(1990), 29 C.P.R.(3d) 7 at 12 (F.C.T.D.).

In view of the above, the applicant's application is refused.

DATED AT HULL, QUEBEC, THIS 21 DAY OF MAY, 1997.

Myer Herzig,  
Member,  
Trade-marks Opposition Board