



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

Citation: 2013 TMOB 105
Date of Decision: 2013-06-12

**IN THE MATTER OF AN OPPOSITION
by Civitas Urban Design & Planning Inc.
to application No. 1,261,444 for the trade-
mark CIVITAS in the name of Civitas
Architecture Inc.**

[1] On June 16, 2005, Civitas Architecture Inc. (the Applicant) filed application no. 1,261,444 for the trade-mark CIVITAS (the Mark), based upon use in Canada since at least as early as 1996. The application currently covers “architectural services, namely commercial, institutional and residential building construction, excluding urban design and planning services”.

[2] The application was advertised for opposition purposes in the *Trade-marks Journal* of June 24, 2009. Civitas Urban Design & Planning Inc. (the Opponent) filed a statement of opposition against the application on August 21, 2009. The grounds of opposition allege, in summary, that:

- a) the application does not comply with the requirements of sections 30(a), (b) and (i) of the *Trade-marks Act*, RSC 1985, c T-13 (the Act);
- b) the Mark is not registrable under section 12(1)(d) of the Act because it is confusing with the trade-mark CIVITAS which is registered under no. TMA379,615 in the name of the Opponent and which covers “urban design and planning services”;

- c) the Applicant is not the person entitled to registration of the Mark under section 16(1)(a) of the Act because as at the claimed date of first use in the application, the Mark was confusing with the Opponent's trade-mark CIVITAS, which had been previously used in Canada by both the Opponent and its licensee, Civitas Architecture Inc. (previously known as Joseph C.V. Hruda Architect Inc.);
- d) the Applicant is not the person entitled to registration of the Mark under section 16(1)(c) of the Act because as at the claimed date of first use in the application, the Mark was confusing with the trade-name Civitas Urban Design & Planning Inc. which was previously used in Canada by the Opponent; and
- e) the Mark is not distinctive under section 2 of the Act.

[3] The Applicant denied all of the grounds of opposition in a counterstatement which was served and filed on January 7, 2010.

[4] In support of its opposition, the Opponent filed the affidavit of Joseph C.V. Hruda, President and Founder of Civitas Urban Design & Planning Inc. (the "first Hruda Affidavit"), sworn May 7, 2010 with Exhibits "A"- "T".

[5] In support of its application, the Applicant filed the affidavit of Douglas Rancier, a Principal of Civitas Architecture Inc., sworn January 14, 2011, with Exhibits "A"- "T".

[6] The Opponent cross-examined Mr. Rancier on his affidavit and filed a copy of the transcript on June 7, 2011.

[7] As reply evidence, the Opponent filed a second affidavit of Joseph C.V. Hruda (the "second Hruda Affidavit"), sworn October 24, 2011, with exhibit "A".

[8] On April 12, 2012, the application was amended to refer to use by a predecessor-in-title, namely, The Civitas Group, a sole proprietorship.

[9] Both of the parties filed written arguments.

[10] No oral hearing was held.

Onus and Material Dates

[11] The Applicant bears the legal onus of establishing on a balance of probabilities that its application complies with the requirements of the Act. However, there is an initial evidential burden on the Opponent to adduce sufficient admissible evidence from which it could reasonably be concluded that the facts alleged to support each ground of opposition exist [see *John Labatt Limited v The Molson Companies Limited* (1990), 30 CPR (3d) 293 (FCTD) at 298].

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

- (a) sections 38(2)(a)/30 - the date of filing the application [see *Georgia-Pacific Corp v Scott Paper Ltd* (1984), 3 CPR (3d) 469 at 475 (TMOB) and *Tower Conference Management Co v Canadian Exhibition Management Inc* (1990), 28 CPR (3d) 428 at 432 (TMOB)]
- (b) sections 38(2)(b)/12(1)(d) - 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)]
- (c) sections 38(2)(c)/16(1) - the claimed date of first use [see section 16(1) of the Act]
- (d) sections 38(2)(d)/2 - the date of filing of the opposition [see *Metro-Goldwyn-Mayer Inc v Stargate Connections Inc* (2004), 34 CPR (4th) 317 (FC)]

Preliminary Matter

[13] As a preliminary matter, I note that in its written argument, the Applicant took issue with the fact that the Opponent was granted a three-week extension of time on October 24, 2011, within which to file its reply evidence under section 43 of the *Trade-marks Regulations*, SOR/96-195 (the Regulations). Section 47 of the Act is discretionary, allowing the Registrar to grant extensions of time fixed prescribed by the Regulations if the Registrar is satisfied that the facts justify the need for an extension of time [see *Sandhu Singh Hamdard Trust v Canada (Registrar of Trade-marks)* (2007), 62 CPR (4th) 245 (FCA), affirming 47 CPR (4th) 373 (FC)].

[14] The Registrar can only reconsider the ruling made in the Office letter of October 24, 2011, if that ruling was based on an error of law or an error in the interpretation of the facts before the Registrar when the ruling was made [see *Jalite Public Ltd v Lencina* (2001), 19 CPR

(4th) 406 (TMOB)]. As it has not been demonstrated that either type of error occurred, I am not prepared to reconsider the October 24, 2011 ruling.

Section 30 – Non-conformity

Non-compliance with section 30(a) of the Act

[15] The Opponent's initial evidential burden under section 30(a) is a light one. In fact, the Opponent may need only to present sufficient argument in order to meet its initial burden [see *McDonald's Corporation and McDonald's Restaurants of Canada Ltd v MA Comacho-Saldana International Trading Ltd carrying on business as Macs International* (1984), 1 CPR (3d) 101 at 104 (TMOB)].

[16] In the present case, the Opponent has provided neither evidence nor argument in support of this ground of opposition and as a result, the Opponent has failed to meet its evidential burden. The ground of opposition based on section 30(a) of the Act is therefore dismissed.

Non-compliance with section 30(i) of the Act

[17] The Opponent pleads that the application does not conform to the requirements of s. 30(i) of the Act because the Applicant could not have been satisfied that it was entitled to use the Mark having regard to the Opponent's prior rights and registration for the trade-mark CIVITAS. Even if the Opponent had plead that the Applicant was aware of the existence of the Opponent's trade-mark when it filed its application, being aware of the Opponent's mark would not necessarily have prevented the Applicant from being satisfied that it was entitled to use its mark, on the basis that the Applicant did not believe that the marks were confusing. I therefore dismiss this ground of opposition.

Non-compliance with section 30(b) of the Act

[18] The Opponent has pleaded that the application does not comply with section 30(b) of the Act in that the Applicant has not used the Mark in Canada for the services since the date alleged, namely, since at least as early as 1996.

[19] There is an initial evidential burden on the Opponent with respect to the issue of the Applicant's non-compliance with section 30(b). This burden can be met by reference not only to the Opponent's evidence but also to the Applicant's evidence [see *Labatt Brewing Company Limited v Molson Breweries, a Partnership* (1996), 68 CPR (3d) (FCTD) 216 at 230]. However, while the Opponent may rely upon the Applicant's evidence to meet its evidential burden in relation to this ground, the Opponent must show that the Applicant's evidence is clearly inconsistent with the Applicant's claims as set forth in its application [see *Ivy Lea Shirt Co v 1227624 Ontario Ltd* (1999), 2 CPR (4th) 562 at 565-6 (TMOB), affirmed 11 CPR (4th) 489 (FCTD)].

[20] In this case, the Opponent has primarily relied upon the Applicant's evidence to meet its initial burden. In its written argument, it raises the following points:

- the business name of the Applicant's predecessor-in-title, The Civitas Group, was registered by Douglas Rancier, sole proprietorship on October 10, 1997 and the Applicant, Civitas Architecture Inc. registered the business name The Civitas Group on August 2, 2001 (Rancier Affidavit, Exhibit "B")
- the Applicant was incorporated in 2001 and there is no evidence of any transfer of the rights in its CIVITAS trade-mark from its predecessor, nor is there any evidence of use of the trade-mark which might accrue to the Applicant which dates back as early as 1996 (Hruda Affidavit, Exhibit "I" and Rancier Affidavit, paragraph 17 and Exhibit "R")

[21] According to the Applicant, its predecessor, The Civitas Group, was founded in 1996 and operated as a sole proprietorship. The Civitas Group was registered under the *Business Names Act* on October 10, 1997. In 2001, the business was incorporated as "Civitas Architecture Inc." (Rancier Affidavit, paragraph 17, Exhibit "B"). Approximate annual revenues for The Civitas Group and Civitas Architecture Inc. for the years of 1996 to 2011 ranged from \$6400-\$1,455,000 (Rancier Affidavit, paragraph 26).

[22] I am not satisfied that the Opponent has met its evidential burden either by way of filing its own evidence or by virtue of having established an inconsistency in the Applicant's evidence.

[23] There is nothing in the Opponent's evidence (the Hruda Affidavit), which causes me to doubt that the Applicant's trade-mark was in use as at the claimed date of first use. The fact that the Applicant was incorporated in 2001, subsequent to the 1996 claimed date of first use is irrelevant, as the application has now been amended to refer to use by the Applicant's predecessor-in-title, namely The Civitas Group, as a sole proprietorship.

[24] Moreover, I do not find any of the Applicant's evidence to be clearly inconsistent with its use claim. The registration of a business name is not a necessary precondition to providing services in association with a trade-mark. It is conceivable that the Applicant's predecessor did, in fact, operate as a sole proprietorship in 1996 prior to later registering its business name in 1997.

[25] Although it may have been preferable for the Applicant to provide details pertaining to the transfer of rights from its predecessor and additional evidence of use dating back as far as 1996, the fact that it may not have done so does not amount to an inconsistency. I am therefore unable to conclude that the Opponent has met its initial evidential burden.

[26] Accordingly, this ground of opposition is rejected.

Section 12(1)(d) – Non-registrability

[27] The Opponent has pleaded that the Applicant's trade-mark is not registrable because it is confusing with its trade-mark CIVITAS, which is the subject of registration no. TMA379,615. I have exercised my discretion and checked the register to confirm that the Opponent's registration is extant [see *Quaker Oats Co of Canada v Menu Foods Ltd* (1986), 11 CPR (3d) 410 (TMOB)]. Therefore, the Opponent has met its initial burden with respect to this ground.

[28] As the Opponent's evidentiary burden has been satisfied, the Applicant must therefore establish on a balance of probabilities, that there is no reasonable likelihood of confusion between its trade-mark and the Opponent's trade-mark.

[29] The test for confusion is one of first impression and imperfect recollection. Section 6(2) of the Act indicates that use of a trade-mark causes confusion with another trade-mark if the use of both trade-marks in the same area would be likely to lead to the inference that the wares or

services associated with those trade-marks are manufactured, sold, leased, hired or performed by the same person, whether or not the wares or services are of the same general class.

[30] In applying the test for confusion, the Registrar must have regard to all the surrounding circumstances, including those specifically enumerated in section 6(5) of the Act, namely: (a) the inherent distinctiveness of the trade-marks and the extent to which they have become known; (b) the length of time each has been in use; (c) the nature of the wares, services or business; (d) the nature of the trade; and (e) the degree of resemblance between the trade-marks in appearance or sound or in the ideas suggested by them. These enumerated factors need not be attributed equal weight [see, in general, *Mattel, Inc v 3894207 Canada Inc* (2006), 49 CPR (4th) 321 (SCC) and *Masterpiece Inc v Alavida Lifestyles Inc* (2011), 92 CPR (4th) 361 (SCC)].

[31] In most instances, the dominant factor in determining the issue of confusion is the degree of resemblance between the trade-marks in their appearance or sound or in the ideas suggested by them, and other factors play a subservient role in the overall surrounding circumstances [see *Beverly Bedding & Upholstery Co v Regal Bedding & Upholstery Ltd* (1980), 47 CPR (2d) 145, conf. 60 CPR (2d) 70 (FCTD)].

[32] In *Masterpiece* the Supreme Court of Canada considered the importance of section 6(5)(e) in conducting an analysis of the likelihood of confusion (see para 49):

...the degree of resemblance, although the last factor listed in section 6(5) is the statutory factor that is often likely to have the greatest effect on the confusion analysis ... if the marks or names do not resemble one another, it is unlikely that even a strong finding on the remaining factors would lead to a likelihood of confusion. The other factors become significant only once the marks are found to be identical or very similar... As a result, it has been suggested that a consideration of resemblance is where most confusion analyses should start.

[33] Bearing this in mind, I have elected to begin my analysis by considering section 6(5)(e).

Section 6(5)(e) – degree of resemblance between the trade-marks

[34] The parties' trade-marks are identical. This factor therefore favors the Opponent.

Section 6(5)(a) – inherent distinctiveness and the extent to which the marks have become known

[35] As noted above, the parties' CIVITAS trade-marks are identical. The term CIVITAS has been defined as "a body of citizens who constitute a state" and "citizenship, esp. as imparting shared responsibility, a common purpose, and sense of community" (Rancier Affidavit, paragraph 35, Exhibit "S").

[36] The Applicant submits that the trade-mark CIVITAS is not inherently distinctive because it has this dictionary definition and because the term has been used by many businesses for a variety of services. In that latter regard, the Applicant primarily relies upon the results of a NUANS corporate and trade name search report (Rancier Affidavit, paragraph 34, Exhibit "R"), a search of the publicly available CIPO trade-mark database (Rancier Affidavit, paragraphs 30-33, Exhibit "P") and an internet search (Rancier Affidavit, paragraph 36, Exhibit "T").

[37] I am not satisfied that the search results relied upon by the Applicant assist it in establishing that the term CIVITAS lacks inherent distinctiveness in the context of the services which are associated with the parties' marks.

[38] The trade-marks identified in the CIPO trade-mark database search results which are attached as Exhibit "P" to the Rancier Affidavit, appear to relate to entirely different industries. Likewise, many of the NUANS search results which are attached as Exhibit "R" to the Rancier Affidavit also appear to relate to different industries and I am unable to determine the precise nature of the businesses or services which are associated with others with any degree of certainty. The Applicant has not provided any further evidence in this regard, nor has it explained the relevancy of the results in any detail. The same applies to the internet search results for CIVITAS which are attached as Exhibit "T". In addition, I note that not all of the internet search results appear to relate to Canadian entities.

[39] Although the term CIVITAS may have a dictionary definition, I do not consider it to be a particularly common term and there is no evidence to support a finding that the average Canadian would be aware of the meaning of the word or associate it with the particular services which are associated with the parties' marks.

[40] Based on the foregoing, I find it reasonable to conclude that both of the parties' marks possess a fair degree of inherent distinctiveness in the context of their respective services.

[41] The strength of a trade-mark may be increased by means of it becoming known in Canada through promotion or use. I will now turn to the extent to which the trade-marks have become known in Canada.

[42] According to the Rancier Affidavit:

- The Applicant was founded in 1996 as The Civitas Group, a sole proprietorship. In 2001, Mr. Rancier incorporated the business as Civitas Architecture Inc. (paragraph 17)
- Approximate annual gross revenues for The Civitas Group and Civitas Architecture Inc. from 1996 to 2011 ranged from \$6400 to \$1,455,000 (paragraph 26)
- The Applicant has worked on a wide variety of projects for a range of clients including colleges, universities and schools and Municipal, Provincial and Federal institutional clients. The project span across several different industries including medical, scientific, healthcare, industrial, commercial, education, hospitality, financial and others (paragraph 21, Exhibit "D")
- The Applicant has been advertising its services through its own website since 2001(paragraph 28)

[43] According to the first Hrudu Affidavit:

- Mr. Hrudu is the President and Founder of the Opponent, Civitas Urban Design & Planning Inc. and also the President of the company Civitas Architecture Inc., a company which is licensed by the Opponent to use the trade-mark CIVITAS (paragraphs 1, 3 and 4)
- Civitas Architecture Inc. was incorporated in 1980 in Alberta and continued as a B.C. company in 1994 under the name of Joseph C.V. Hrudu Architect Inc. It changed its

name to Civitas Architecture Inc. in 1999. Civitas Architecture Inc. has been providing architectural services to the Opponent since 1994 (paragraph 4)

- The Opponent was initially incorporated in Alberta in 1980 and continued under that name as a B.C. company in 1989 (paragraph 2). Mr. Hruda founded the Opponent and started operating under the name CIVITAS in 1988 (paragraph 3). It began work on its first project (Coal Harbour in downtown Vancouver) in late 1988 or early 1989 (paragraph 9)
- The Opponent has been involved in a wide range of projects both internationally and nationally and been the recipient for several awards relating to these projects (paragraphs 5 and 8)
- The Opponent's annual revenues in association with the trade-mark CIVITAS averaged approximately two million dollars every year in the seven years preceding the swearing of the affidavit (paragraph 11)
- The Opponent promotes its services in association with its CIVITAS trade-mark through its website and has done so since 2001 (paragraph 14)

[44] Based on the foregoing, I conclude that the marks of both parties are fairly well known in Canada.

Section 6(5)(b) – the length of time each has been in use

[45] As indicated above, the Opponent has been using its trade-mark since sometime in 1988 or 1989. The Applicant began use in 1996. This factor therefore somewhat favors the Opponent.

Sections 6(5)(c) and (d) – the nature of wares, services or business and trade

[46] It is the Applicant's statement of wares and services as defined in its application versus the Opponent's registered wares that govern my determination of this factor [see *Esprit International v Alcohol Countermeasure Systems Corp* (1997), 84 CPR (3d) 89 (TMOB)].

[47] The Opponent's services are described as "urban design and planning services". The Applicant has amended the services in its application to exclude those particular services. The Applicant's services are therefore now defined as: "architectural services, namely commercial, institutional and residential building construction, excluding urban design and planning services".

[48] Although the parties' services may well differ, the Opponent asserts that they are closely intertwined. I agree.

[49] The Opponent is a multi-disciplinary consulting practice specializing in major land planning, urban design, resort and town planning. The professional members of the Opponent are qualified as city planners, landscape architects and architects and the Opponent's services involve the services of architects in order to prove out feasibility, site planning studies and programming (see paragraphs 5 and 6 of the first Hrudá Affidavit). Mr. Hrudá himself has provided architectural services to the Opponent through a separate related company, Civitas Architecture Inc., since 1994 and he is both an architect and an urban planner (see paragraph 6 of the first Hrudá Affidavit and paragraph 5 of the second Hrudá Affidavit).

[50] The Opponent contends that there are many individuals in Canada who are qualified as both architects and urban designers and planners (see second Hrudá Affidavit, paragraphs 4 and 5). In support of this contention, Mr. Hrudá references third party websites. I note that the actual website content has not been provided, but even if it had been, I would not be willing to rely upon it as evidence of truth of the content [see *Candrug Health Solutions Inc v Thorkelson* 207 FC 411 (CanLII), (2007), 60 CPR (4th) 35 (FCTD), reversed 2008 FCA 100 (CanLII), (2008), 64 CPR (4th) 431 (FCA)]. I am, however, prepared to accept Mr. Hrudá's statement that there are individuals who are qualified as both, as I note that he is, himself, both an architect and urban designer and planner.

[51] According to the Rancier Affidavit, the Applicant provides professional architectural services including building project design. Its services include building project design including programming, feasibility and pre-planning studies, conceptual design, design development, preparation of contract documents, tendering and construction review and administration. It specializes in design build and construction management methodologies and also procures and

oversees architectural and construction teams on building projects (see Rancier Affidavit, paragraph 20, Exhibit “C”).

[52] In his affidavit, Mr. Rancier attempted to draw a distinction between architectural services and urban planning and design in his Affidavit. He states that a client would obtain the services of an urban planner or designer to develop a design for overall development sites and locales. This would encompass the open space between buildings, including pedestrian and automotive circulation, parks and open space, building uses, massing and some aesthetics (see paragraph 11). The approvals are at the level of municipal or regional planning authorities (see paragraph 16). By contrast, he states that if the client requires a building to be constructed they would usually engage an architect. The architect is generally hired for services from the inception of design, building permit application through to the final building construction and closeouts and the approvals are at the level of Building Code authorities (see paragraph 15).

[53] It is worth noting that the Applicant’s own website also references urban planning and indicates that it has “a wealth of institutional and municipal project design including urban open space or park projects...” (see Rancier Affidavit, Exhibit “N”). Although Mr. Rancier suggested during cross-examination that this reference to “urban planning” differs from the type of urban planning and design services which the Opponent is engaged in, I am not sure that this distinction would be readily appreciated by the public.

[54] It is clear from the evidence that architectural services and urban design and planning services are not completely unrelated. The Opponent’s urban planning services appear to involve the services of architects. Nothing prevents an urban designer/planner from designing a building and conversely, an architect can also provide designs for the urban environment (see Rancier Affidavit, paragraph 12). Moreover, Mr. Rancier has stated that where the urban design planner’s role ends, the architect’s role begins (see Rancier Affidavit, paragraph 13). It is therefore conceivable that such services could potentially be utilized at different stages in the same project for different purposes, particularly since the parties’ services appear to be directed to at least some of the same kinds of customers.

[55] In that latter regard, I note that the Applicant’s clients include public sector institutions, such as federal, provincial and municipal governments, public school boards, colleges and

universities and some private real estate or facility management companies (see Rancier Affidavit, paragraphs 21 and 22, Exhibit “D”). Likewise, the Opponent’s customers are also typically governments and private development companies (see paragraph 10, exhibit “B” of the first Hruda Affidavit).

[56] Mr. Rancier has indicated that his company typically engages clients by responding in writing to Requests for Proposal (RFP’s) or Requests for Qualification (RFQ’s), which are posted on nationally available procurement websites. In another scenario, a Standing Offer Agreement may be in place whereby his company is notified by customers of projects due to being prequalified. Mr. Rancier states that a thorough review of any submissions is undertaken by clients prior to awarding any commissions. Mr. Rancier further states that he has never encountered a situation where a customer has issued an RFP, an RFQ or another expression of interest or contacted his office for a project where both his company and the Opponent were included in the same event for projects (see Rancier Affidavit, paragraph 23 -25). Although this may well be the case, it is not surprising given that the Applicant is primarily operational in Ontario and the National Capital Region and the Opponent is a B.C. company. Since there are no geographic restrictions in the Applicant’s application or the Opponent’s registration, there is nothing precluding either of the parties from expanding territorially in the future.

Other Surrounding Circumstances

[57] Mr. Hruda states that there have been actual instances of confusion between the Opponent’s services and those of the Applicant (see first Hruda Affidavit, paragraphs 15, 16 and 17 and second Hruda Affidavit, paragraph 6). The instances of confusion relate to telephone calls and misdirected mail. Since no details have been provided with respect to the nature of the telephone calls, I cannot determine whether they would constitute instances of actual confusion or not. With respect to the misdirected mail, I am not prepared to conclude that this amounts to source confusion. Rather, it appears to be more indicative of clerical error [see *385229 Ontario Ltd v ServiceMaster Co* (2012), 101 CPR (4th) 380 (TMOB)].

Conclusion

[58] Having considered all of the surrounding circumstances, I find that the Applicant has not met its burden to show that, on a balance of probabilities, confusion between its trade-mark and the Opponent's registered trade-mark is not likely. Although the Applicant's services are clearly not the same as the Opponent's, there is a nexus between them and they are both directed to at least some of the same types of customers. Moreover, the parties' trade-marks are identical.

[59] This ground of opposition is therefore successful.

Section 2 – Non-Distinctiveness

[60] While there is a legal onus on the Applicant to show that the Mark is adapted to distinguish or actually distinguishes its Wares from those of others throughout Canada [see *Muffin Houses Incorporated v The Muffin House Bakery Ltd* (1985), 4 CPR (3d) 272 (TMOB)], there is an initial evidential burden on the Opponent to establish the facts relied upon in support of the ground of non-distinctiveness.

[61] Pursuant to its evidential burden, the Opponent is under an obligation to show that, as of the filing of the statement of opposition, its CIVITAS mark had become known sufficiently to negate the distinctiveness of the Applicant's trade-mark [see *Bojangles' International, LLC v Bojangles Café Ltd* (2004), 40 CPR (4th) 553, affirmed (2006), 48 CPR (4th) 427 (FC)].

[62] As discussed more fully in the analysis of the section 12(1)(d) ground of opposition, the Opponent was successful in establishing that the CIVITAS mark had become fairly well known in association with its services as of the date of filing the statement of opposition and as a result the Opponent has met its evidential burden.

[63] The difference in material dates is insignificant and thus for the same reasons as identified above in the analysis of the section 12(1)(d) ground of opposition, I am not satisfied that the Applicant has discharged its burden of showing, on a balance of probabilities that there is no reasonable likelihood of confusion between the parties' marks. Accordingly, the non-distinctiveness ground is also successful.

Sections 16(1)(a) and 16(1)(c) – Non-Entitlement

[64] Since the opposition has already succeeded under two grounds, I will not address these remaining grounds of opposition.

Disposition

[65] Pursuant to the authority delegated to me under section 63(3) of the Act, I refuse the application pursuant to section 38(8) of the Act.

Cindy R. Folz
Member,
Trade-marks Opposition Board
Canadian Intellectual Property Office