



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

Citation: 2011 TMOB 136
Date of Decision: 2011-07-26

**IN THE MATTER OF AN OPPOSITION
by London Drugs Limited to application
No. 1,280,469 for the trade-mark SMITH
& BARNES LONDON in the name of
International Clothiers Inc.**

[1] On November 22, 2005, International Clothiers Inc. (the Applicant) filed an application to register the trade-mark SMITH & BARNES LONDON (the Mark) based on proposed use in Canada in association with:


Ladies', men's and children's clothing, namely, suits, jackets, skirts, pants, dresses, coats, blouses, t-shirts, halter tops, tank tops, sweaters, sweater jackets, pullovers, cardigans, sweatsuits, swimwear, jeans; intimate apparel, namely, lingerie, pantyhose, hosiery, sleepwear, nightgowns, pajamas, robes, underwear, foundations, bras, camisoles; ladies' accessories, namely, hats, gloves, jewellery, socks, hair clips, scarves, handbags, belts; small leather goods, namely, wallets, purses, key chains, briefcases and eyeglass cases; housewares, namely, flatware, cookware, glassware, giftware and table top items, namely: dinnerware made of porcelain, fine or bone china, pottery or stoneware, coffee mugs, café au lait cups, espresso cups, beverage glassware, wine glasses, martini glasses, serving plates and platters, vegetable bowls, salad bowls, butter dishes, cream and sugar sets, sugar bowls, gravy boats, salt and pepper shakers, egg cups, ice cream dishes, onion soup bowls, pitchers, hors d'oeuvre plates, butter warmers, butter cups, tea and coffee pots, eating utensils (namely forks, knives, spoons, chop sticks, seafood forks, lobster tongs, cocktail forks, butter knives), cooking pots, stock pots, pans, skillets, roasting pans, crock pots, casserole dishes, woks, rice cookers, baking sheets, baking pans, muffin tins, pie plates and servers, quiche dishes, soufflé dishes, waffle irons, fondue sets, fondue plates, fondue forks, burners and ignition fuel in liquid or solid form for fondues, ramekins, tureens, colanders, rolling pins, cake plates and servers, milk frothers, paper towel holders, utensil holders, spoon rests, trivets, tongs, peelers, rotary cheese graters, rolling mincers, food slicers, graters, corers, zesters, pizza wheels, spaghetti measurers,

cheese plates, grapefruit trimmers, lemon squeezers, pie servers, jar openers, ice cream scoops, kitchen knives, bottle openers, can openers, scissors, candy thermometers, oven thermometers, garlic presses, turners, spatulas, cooking spoons, cooking forks, ladles, spoon rests, skimmers, strainers, corkscrews, spaghetti servers, potato mashers, whisks, measuring cups, measuring spoons, spice racks, canister sets, cookie jars, bread boxes, cutlery trays, jam jars, coaster sets, cheese boards, cutting boards, carving boards, lazy Susans, condiment sets, cookbooks, cookbook holders, wine racks, kitchen clocks, napkin holders, knife blocks, banana holders, nut crackers with picks, salad sets, chip and dip sets, dish racks, fruit bowls; home furnishings, namely: furniture for the kitchen, bedroom, bathroom, living room, dining room, rec room, office and outdoors, bedding, sheets, pillow cases, duvet covers, comforter covers, bed skirts, bedspreads, afghans, decorative pillow covers, pillow shams, pillows, mattress pads, mattress covers, quilts, quilt covers, duvets, hand and bath towels, wash cloths, bath mats and window treatments (the Wares).

[2] The application for the Mark was advertised on January 9, 2008.

[3] On February 5, 2008, London Drugs Limited (the Opponent) filed a statement of opposition. The grounds of opposition can be summarized as follows:

- The Mark is not registrable pursuant to s. 38(2)(a) and 12(1)(d) of the *Trade-marks Act*, R.S.C. 1985, c. T-13 (the Act) as the Mark is confusing with the Opponent's trade-mark registrations as set out in schedules to the statement of opposition (and attached hereto as Schedule A) (the Opponent's Marks).
- The Applicant is not the person entitled to registration of the Mark pursuant to s. 38(2)(c) and 16(3)(a) of the Act because at the date of filing the application the Mark was confusing with the Opponent's Marks which had previously been used in Canada by the Opponent for the goods and services set out in Schedule A and other goods and services which are of the same type as the Wares including clothing and clothing accessories, housewares, jewellery and home furnishings.
- The Applicant is not the person entitled to registration of the Mark pursuant to s. 38(2)(c) and 16(3)(b) of the Act because at the filing date of the application the Mark was confusing with the following trade-mark applications previously filed by the Opponent which were pending at the date of advertisement of the application for the Mark (the Opponent's Pending Applications), details of which are set out in Schedule B to my decision :
 - i. LONDON PREMIERE - 1,247,283 – filed February 15, 2005
 - ii. LONDON GOURMET – 1,204,476 – filed January 28, 2004

iii.  - 1,204, 845 – filed February 2, 2004

- The Applicant is not the person entitled to registration pursuant to s. 38(2)(c) and 16(3)(c) of the Act because at the date of filing the application the Mark was confusing with the Opponent's trade names London, London Drugs and London Drugs Limited (the Opponent's Trade Names) which had previously been used by the Opponent in Canada.
- The Mark is not distinctive pursuant to s. 38(2)(d) and 2 of the Act in view of the facts set out above because the Mark does not distinguish nor is it adapted to distinguish the wares and services of the Applicant from those of the Opponent.

[4] The Applicant served and filed a counter statement in which it denied the Opponent's allegations.

[5] In support of its opposition, the Opponent filed an affidavit of Grant Ball, sworn September 17, 2008, with Exhibits A through SS. Mr. Ball was not cross-examined on his affidavit.

[6] In support of its application, the Applicant filed the affidavit of Gay Owens, sworn January 15, 2009, with Exhibit A. Ms. Owens was not cross-examined on her affidavit.

[7] Both parties filed written arguments and were represented at an oral hearing.

Opponent's Evidence

Affidavit of Grant Ball

[8] Mr. Ball is the General Manager, General Merchandise for the Opponent. Mr. Ball states that he joined the Opponent in 1979 and has been employed there consistently ever since, holding various positions over the years. Mr. Ball states that by virtue of his almost 30 years of employment with the Opponent, over 10 years of which were spent overseeing general merchandising, he is familiar with the Canadian market for the products and services offered by the Opponent in association with the Opponent's Marks. Mr. Ball states that he is also aware of the volume of sales, dollar value of sales, and advertising expenditures made by Opponent in association with the Opponent's Marks.

[9] Mr. Ball states that the Opponent is a leading Canadian drugstore and retailer of general merchandise. Mr. Ball states that, on average, approximately three-quarters of a million customer transactions take place at the Opponent's retail locations each week. Mr. States that in addition to offering drugstore products and services, the Opponent offers a wide range of products and services relating to general merchandise, including but not limited to clothing, footwear, fashion accessories, cosmetics, health & beauty aids, photographic products, photographic development services, housewares, furniture, food, electronic equipment, audio-visual equipment, computers, stationery, books, magazines, jewellery, watches and optical products.

[10] Mr. Ball's affidavit provides substantial evidence of use in Canada of the Opponent's Marks in association with various wares and services. Mr. Ball's evidence will be discussed in further detail below in the analysis of the confusion-based grounds of opposition.

Applicant's Evidence

Affidavit of Gay Owens

[11] Ms. Owens is employed as a trade-mark searcher for the Applicant's agent.

[12] Ms. Owens states that on January 14, 2009 she conducted a state of the register search for trade-marks including the word "London" in the field of "clothing, housewares, home furnishings, retail clothing store services and or department store services". Ms. Owens attaches the results of her search to her affidavit (Exhibit A).

[13] I note that only the trade-marks which have proceeded to allowance or registration and belong to third parties (i.e. not the parties to the present opposition proceeding) will be relevant for an analysis of the state of the register.

[14] Ms. Owens' affidavit will be discussed further in the analysis of the s. 12(1)(d) ground of opposition below.

Onus and Material Dates

[15] 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 C.P.R. (3d) 293 (F.C.T.D.) at 298].

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

- s. 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 C.P.R. (3d) 413 (F.C.A.)].
- s. 38(2)(c)/16(3)(a), (b) and (c) - the date of filing the application [see s. 16(3) of the Act].
- s. 38(2)(d)/2 - the date of filing of the opposition [see *Metro-Goldwyn-Mayer Inc. v. Stargate Connections Inc.* (2004), 34 C.P.R. (4th) 317 (F.C.)].

Non-registrability Ground of Opposition – s. 12(1)(d) of the Act

[17] The Registrar has the discretion, in view of the public interest, to check the register for registrations relied upon by an opponent [see *Quaker Oats Co. of Canada Ltd./Cie Quaker Oats du Canada Ltée v. Menu Foods Ltd.* (1986), 11 C.P.R. (3d) 410 (T.M.O.B.) [*Quaker Oats*]]. I have exercised my discretion to confirm that the Opponent's Marks are in good standing as of today's date.

[18] Since the Opponent has discharged its initial burden with respect to this ground of opposition, the burden of proof lies on the Applicant to convince the Registrar, on a balance of probabilities, that there is no reasonable likelihood of confusion between the Mark and the Opponent's Marks.

[19] The Opponent's Marks all feature the word "London" and many feature the LONDON DRUGS element. The registrations generally cover similar wares and/or services (as set out in Schedule A) with most covering services such as "operation of a drugstore and operation of a department store". The Applicant submits that only four of the Opponent's Marks cover limited wares which overlap with the Wares, specifically:

- LONDON GOLD MINE – TMA370,629 – Wares: Jewellery

- LONDON DRUGS JEWELLERY – TMA300,627 – Wares: Jewellery, watches, ornaments and giftware, namely clocks, brassware, crystal, figurines, lighters, pens, cutlery, cuff-links and costume jewellery.
- LONDON PREMIERE & DESIGN (shown below) – TMA581,005 – Wares: Small kitchen appliances namely, can openers, coffee makers, jug kettles, food steamers, hand mixers, mini choppers, popcorn makers, toasters; housewares, namely irons and steam irons; hair appliances, namely combo curl brush/iron, curling brushes, curling irons, hair dryers, hot air brushes, mini fold hair dryers; health and beauty aids, namely beard and moustache trimmers, hair clipper sets, hair clippers.



[20] I consider it appropriate in the circumstances, to consider the likelihood of confusion with respect to the Opponent’s registration No. TMA311,269 for LONDON DRUGS covering services “operation of a drugstore and the operation of a department store” as well as the above-noted registrations which cover relevant wares. Thus, the success or failure of this ground will turn on the issue of confusion with these registrations.

[21] 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.

[22] In applying the test for confusion, the Registrar must have regard to all the surrounding circumstances, including those specifically enumerated in s. 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 C.P.R. (4th) 321 (S.C.C.).]

[23] Recently, in *Masterpiece Inc. v. Alavida Lifestyles Inc.* 2011 SCC 27 (unreported) [*Masterpiece*], the Supreme Court of Canada discussed the importance of the s. 6(5)(e) factor in conducting an analysis of the likelihood of confusion between the parties' marks in accordance with s. 6 of the Act (see para 49):

...the degree of resemblance, although the last factor listed in s. 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...

[24] In most instances, the degree of resemblance between the trade-marks in appearance or sound or in the ideas suggested is the dominant factor and other factors play a subservient role in the overall surrounding circumstances [see *Beverly Bedding & Upholstery Co. v. Regal Bedding & Upholstery Ltd.* (1980), 47 C.P.R. (2) 145, conf. 60 C.P.R. (2d) 70 (F.C.T.D.)].

[25] Under the circumstances of the present case, I consider it appropriate to analyse the degree of resemblance between the parties' marks first.

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

[26] The law is clear that when assessing confusion it is not proper to dissect trade-marks into their component parts, rather, marks must be considered in their entirety [see *British Drug Houses Ltd. v. Battle Pharmaceuticals*, [1944] Ex. C.R. 239, at 251, affirmed [1946] S.C.R. 50 and *United States Polo Assn. v. Polo Ralph Lauren Corp.* (2000), 9 C.P.R. (4th) 51 at para 18, aff'd [2000] F.C.J. No. 1472 (C.A.)].

[27] The parties' marks all feature the word "London". However, as will be further discussed in the analysis of the s. 6(5)(a) factor, the word "London" possesses little inherent distinctiveness due to its geographical connotation.

[28] As noted in *United Artists Corp. v. Pink Panther Beauty Corp.* (1998), 80 C.P.R. (3d) 247 at 263 (F.C.A.),

While the marks [in issue] must be assessed in their entirety (and not dissected for minute examination), it is still possible to focus on particular features of the mark that may have a determinative influence on the public's perception of it.

[29] There is no similarity between the SMITH and BARNES elements of the Mark and the DRUGS element of the Opponent's LONDON DRUGS trade-mark in either appearance or sound. The same is true for the GOLD MINE, DRUGS JEWELLERY and PREMIERE elements of the Opponent's other marks.

[30] Furthermore, aside from the inclusion of the place name "London" there is no similarity in the ideas suggested by the Mark and the Opponent's LONDON DRUGS trade-mark. The Mark is suggestive of individuals by the names Smith and Barnes whereas the Opponent's LONDON DRUGS mark is suggestive of drugs.

[31] Confusion will be unlikely in situations where marks share common features but also feature dominant differences [see *Foodcorp Ltd. v. Chalet Bar B Q (Canada) Inc.* (1982), 66 C.P.R. (2d) 56 at 73 (F.C.A.)].

[32] Ultimately, when considering the marks as a whole, I am not convinced that the mere fact that the Mark contains the non-distinctive "London" element is sufficient to find that the parties' marks share any significant degree of similarity in either appearance, sound or ideas suggested.

[33] Having found that the parties' marks do not resemble each other to any significant extent, I must now assess the remaining relevant surrounding circumstances to determine whether any of them are sufficient to find a likelihood of confusion [see *Masterpiece, supra* at para 49].

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

[34] Both parties' marks feature the word "London" which has geographical significance as it is the name of a city in at least the United Kingdom and Ontario, Canada. Geographic designations, such as London, are not inherently distinctive [see *California Fashion Industries Inc. v. Reitmans (Canada) Ltd.* (1991), 38 C.P.R. (3d) 439 (F.C.T.D.) at para. 13].

[35] At the oral hearing the Opponent attempted to dispute the low inherent distinctiveness of the word "London" by relying on the Applicant's response to an Examiner's Report filed in the

context of the prosecution of the application for the Mark. In that response, the Applicant submitted that the word “London” has a number of different meanings, including geographical (e.g. London, Ontario and London, U.K.) and surname significance. I note that the Opponent did not file a certified copy of the file wrapper for the application for the Mark and as a result this response is not properly of record in the current opposition proceeding. In any event, I do not find that the Opponent’s submission changes anything and I remain of the view that the word “London” possesses very little inherent distinctiveness.

[36] The Mark also features the surnames “Smith” and “Barnes”, which also possess little inherent distinctiveness by virtue of their surname significance.

[37] The Opponent’s LONDON DRUGS trade-mark also features the word “drugs” which in light of the Opponent’s drugstore services is descriptive of the nature of the Opponent’s services and thus possesses little inherent distinctiveness. The Opponent’s LONDON DRUGS JEWELLERY and LONDON GOLD MINE trade-marks include the words DRUGS JEWELLERY and GOLD MINE which are suggestive of the associated jewellery wares. The Opponent’s LONDON PREMIERE & Design mark includes the laudatory word PREMIERE which again does not add to the inherent distinctiveness of that mark.

[38] Ultimately, I assess the inherent distinctiveness of the parties’ marks as being essentially the same and I find that neither of the parties’ marks is inherently strong. The parties’ marks, being inherently weak, it is fair to say that even small differences will be sufficient to distinguish between them [see *Kellogg Canada Inc. v. Weetabix of Canada Ltd.* (2002), 20 C.P.R. (4th) 17 (F.C.); and *American Cyanimid Co. v. Record Chemical Co. Inc.* (1972), 7 C.P.R. (2d) 1 (F.C.T.D.)].

[39] As 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.

[40] The Applicant did not file any evidence directed to the use of the Mark subsequent to the filing of the application and as a result I am unable to conclude as to the extent to which the Mark has become known.

[41] The Opponent has filed significant evidence attempting to establish a reputation for the Opponent's Marks. Mr. Ball's affidavit establishes that the Opponent has been operating drugstore/general merchandise retail stores in the western provinces of Canada since approximately 1946 in association with the LONDON DRUGS trade-mark. Mr. Ball states that as of the date of swearing his affidavit the Opponent operated 69 stores in Canada, specifically 25 in British Columbia, 20 in Alberta, 3 in Saskatchewan and 1 in Manitoba. Mr. Ball provides sample flyers for the Opponent's services which display the LONDON DRUGS trade-mark which he states have been distributed in cities in which the Opponent operates stores from 1977 – 2008. The Applicant submits, and I agree, that the weight that can be placed on these flyers is diminished by virtue of the fact that the Opponent has not provided any detailed circulation figures for them. Mr. Ball provides photographs which display representative signage at the Opponent's retail stores. The signage features the LONDON DRUGS trade-mark. I note, however, that the photographs are not dated. The Opponent has provided sales figures for 2003-2007 in excess of one billion dollars for general merchandise and in excess of \$4 million for sales of clothing products. Mr. Ball states that the Opponent has spent in excess of \$50 million on advertising expenditures, including the flyers mentioned previously. Furthermore, the Opponent submits that it advertises its services on its website, a copy of which is attached to Mr. Ball's affidavit. I note that the website features the LONDON DRUGS trade-mark. Mr. Ball states that the number of hits to the website have been in excess of 2, 4, 6 and 8 million respectively in the years 2004 to 2007. Based on the foregoing, I am satisfied that the Opponent has established a significant reputation for the LONDON DRUGS mark in Canada in association with the claimed services.

[42] With respect to the Opponent's registrations for relevant wares, I note that the only evidence we have of the Opponent's Marks being used on relevant wares is the following:

- LONDON DRUGS & Design (TMA385,764) on knives and knife sets (Exhibit LL) – Mr. Ball states that the Opponent has sold knives and knife sets under this trade-mark since March 2003;
- LONDON PREMIERE & Design (TMA581,005) on kettles, toasters, corn poppers, coffee makers (Exhibit NN) – Mr. Ball states that the Opponent has sold kettles, mixers, choppers, popcorn makers, steam irons and toasters in association with this mark since January 2000, coffee makers since August 2000 and dinner napkins since March 2005; and

- LONDON DRUGS seen in association with furniture on the Opponent's website (Exhibit RR).

[43] Mr. Ball also provides evidence of advertisements for these products in the form of sample flyers (Exhibit QQ) displaying these products. I note that use of the marks in advertising does not qualify as use of the marks in association with wares pursuant to s. 4(1) of the Act.

[44] The Opponent provides sales figures for the "LD Products" which cover the above wares as well as others which he states are sold in association with the Opponent's Marks. Mr. Ball states that in the period from 2003-2007 sales of the LD Products amounted to in excess of 5 million units per year amounting to gross sales of \$20 million per year. The Applicant submits that without detailed sales figures for each of these categories of wares it is unclear what the total volume of sales is for clothing, housewares and home furnishings. The Applicant submits that since the Opponent is "in the business of operating drug stores, it is certainly plausible that certain categories of wares which do not overlap with the wares of the Applicant's, such as health and beauty products, may comprise a larger portion or even the majority of the overall sales as compared to other categories which do overlap with the wares of the Applicant." I agree.

[45] At the oral hearing, the Opponent submitted that the significant reputation it had developed in the Opponent's Marks should render the weak inherent distinctiveness of the Opponent's Marks irrelevant for the purposes of a confusion analysis. Specifically, the Opponent submitted that while the low inherent distinctiveness of the Opponent's Marks may have been relevant in 1946 when they were first introduced, the subsequent long use and alleged significant use in the five years prior to the material date have rendered the inherent distinctiveness no longer relevant. By contrast, the Applicant submitted that, while they were willing to concede that the Opponent's Marks have been in use for a number of years and have acquired some reputation, the inherent distinctiveness thereof remains a relevant consideration. Specifically, the Applicant submitted that s. 6(5)(a) of the Act clearly spells out both inherent and acquired distinctiveness as relevant circumstances when conducting an analysis of the likelihood of confusion. I agree with the Applicant's submission and note that, regardless of the extent to which parties' marks may have become known, the inherent distinctiveness of the marks remains a relevant surrounding circumstance that must be considered in the analysis of the likelihood of confusion between trade-marks [see s. 6(5)(a) of the Act].

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

[46] The Mark was applied for on November 22, 2005 on the basis of proposed use in Canada. The Applicant has not filed any evidence which is directed to the use of the Mark subsequent to the filing of the application.

[47] The Opponent's LONDON DRUGS trade-mark subject to registration No. TMA311,269 is registered based on use since 1946. The Ball affidavit establishes that the Opponent has used the LONDON DRUGS trade-mark in association with the operation of a drugstore and the operation of a department store since approximately 1977.

[48] The Opponent's LONDON GOLD MINE trade-mark subject to registration No. TMA370,629 is registered based on use since at least as early as October 4, 1988. However, the Ball affidavit does not provide any evidence of use of this trade-mark. I note that the mere existence of the registration for the LONDON GOLD MINE trade-mark can establish no more than *de minimis* use and cannot give rise to an inference of significant and continuous use of the mark [see *Entre Computer Centers, Inc. v. Global Upholstery Co.* (1991), 40 C.P.R. (3d) 427 (T.M.O.B.) [*Entre Computer*]].

[49] The Opponent's LONDON DRUGS JEWELLERY trade-mark subject to registration No. TMA370,627 is registered based on use since as early as June 1980. However, the Ball affidavit does not provide any evidence of use of this trade-mark. Again, the mere existence of a registration can establish no more than *de minimis* use [see *Entre Computer*].

[50] The Opponent's LONDON PREMIERE & Design trade-mark subject to registration No. TMA581,005 is registered based on use since at least as early as December 20, 1999. Mr. Ball states that the Opponent has used this mark since January 2000 in association with kettles, mixers, choppers, popcorn makers, steam irons and toasters; and since August 2000 in association with coffee makers and since March 2005 in association with dinner napkins.

6(5)(c)– *the nature of the wares and services*

[51] It is the Applicant’s statement of wares as defined in its application versus the Opponent’s registered wares and services that govern my determination of this factor [see *Esprit International v. Alcohol Countermeasure Systems Corp.* (1997), 84 C.P.R. (3d) 89 (T.M.O.B.)].

[52] The Applicant applied to register the Mark in association with the Wares.

[53] The Opponent’s LONDON DRUGS trade-mark is registered for “operation of a drugstore and the operation of a department store”.

[54] The Opponent has provided evidence that it sells small leather goods, clothing, headware, footwear, accessories, housewares, home furnishings, in its retail stores and as a result there is some similarity between the Applicant’s Wares and the Opponent’s “retail department store services”.

[55] I note that in his affidavit Mr. Ball states that the Opponent sells various types of wares, counting those mentioned above, including small leather goods, housewares, jewellery, accessories and clothing and provides photographs showing these products for sale in the Opponent’s retail stores. I am satisfied that the Opponent has sold these various products in their stores; however, I note that the majority of these are third-party branded products which may or may not display other trade-marks. As a retailer, the Opponent is merely offering these third-party branded products for sale in its stores. This does not constitute use of the Opponent’s Marks in association with these products in accordance with s. 4(1) of the Act. That being said, I am willing to consider the fact that the Opponent sells products in its retail stores which overlap with the Wares as a relevant surrounding circumstance.

[56] In its written argument, the Applicant concedes to there being some overlap in the nature of the parties’ wares and services. There is indeed some overlap in the nature of the parties’ wares with respect to the trade-marks, LONDON GOLD MINE (TMA370,629); LONDON DRUGS JEWELLERY (TMA300,627); and LONDON PREMIERE & DESIGN (TMA581,005).

6(5)(d) – nature of the trade

[57] There is no evidence of record regarding the nature of the Applicant's trade.

[58] However, neither the Opponent's registrations, nor the Applicant's application includes any restriction on the channels of trade. As a result, given the direct overlap in the parties' wares, I may therefore conclude that the channels of trade associated with the Mark and the Opponent's Marks could also overlap.

[59] The Opponent submits that the Applicant's Wares are "generally low in value and subject to impulse purchases, or at least, purchases made without a great level of consideration and care." The Opponent submits that as a result, there is a greater opportunity for consumers to be confused between the parties' wares. No evidence has been adduced regarding the price of the Wares. As a result I cannot place any weight on the Opponent's submission on this point.

[60] The Opponent states that while goods are sold in its retail establishments, its registrations are not so restricted and thus the goods could be sold anywhere.

Additional Surrounding Circumstance – State of the Register

[61] The Applicant submitted the Owens affidavit as state of the register evidence. Ms. Owens attaches to her affidavit the results of a search of the CIPO Database for trade-marks including the word "London" in the field of "clothing, housewares, home furnishings, retail clothing store services and or department store services".

[62] When analyzing the relevance of state of the register evidence, it must be noted that such evidence will only be relevant insofar as one can make inferences from it about the state of the marketplace. Inferences about the state of the marketplace can only be drawn where large numbers of relevant registrations are located [see *Ports International Ltd. v. Dunlop Ltd.* (1992), 41 C.P.R. (3d) 432; *Del Monte Corporation v. Welch Foods Inc.* (1992), 44 C.P.R. (3d) 205 (F.C.T.D.); *Kellogg Salada Canada Inc. v. Maximum Nutrition Ltd.* (1992), 43 C.P.R. (3d) 349 (F.C.A.)].

[63] The parties have each presented different interpretations of the state of the register evidence in their respective written arguments.

[64] The Opponent submits that Ms. Owens' search results feature no registrations for housewares or home furnishings and only three relevant registrations for retail clothing store services and/or department store services. The Opponent submits that this represents "far too few similar trade-marks to permit the Opposition Board to make any inferences as to actual use of any of these trade-mark (sic) in the Canadian marketplace for these wares and services."

[65] I do not agree with the Opponent's analysis of the state of the register evidence.

[66] By contrast, the Applicant submits, and I agree, that the results of Ms. Owens' search of the register reveal over 50 trade-mark registrations for wares including clothing and/or accessories/headwear/footwear/leather goods/etc. A selection of the particulars of 20 such registrations found in Ms. Owens' search are attached my decision as Schedule C.

[67] I am satisfied that this constitutes a large number of relevant registrations and thus I am willing to infer that the word "London" is common to the trade for clothing, accessories, etc.

[68] Based on the foregoing, I am satisfied that this constitutes a factor in favour of the Applicant's position and thus serves to decrease the likelihood of confusion between the parties' marks.

Additional Surrounding Circumstance: Opponent's Alleged "Family" of LONDON Trade-marks

[69] In its statement of opposition, the Opponent alleges that it owns a "family" of LONDON trade-marks made up of the trade-marks: LONDON DRUGS, LONDON DEPARTMENT STORE, LONDON PREMIER, LONDON CUSTOM WORKS, LONDON COLOUR DIGITAL IMAGING, LONDON COLOUR PHOTODISK, LONDON & Design and LONDON GOLD MINE.

[70] In order to rely on a family of marks argument, one must prove use in Canada of each member of the family [see *McDonald's Corp. v. Yogi Yogurt* (1982), 66 C.P.R. (2d) 101 (F.C.T.D.)].

[71] In its written argument, the Opponent alleges that they have provided evidence of use of the trade-marks LONDON DRUGS, LONDON PREMIERE, LONDON GOURMET and LONDON HOME. As a result, the Opponent has succeeded in establishing its ownership of a family of four trade-marks which include the word “London”. I note that for each of the members of the Opponent’s family of “London” trade-marks, the additional elements are common words which are suggestive of the Opponent’s wares and services and thus possess little inherent distinctiveness.

[72] I am of the view that the Opponent’s ownership of a family of four “London” trade-marks is insufficient to overcome the fact that the word “London” possesses little inherent distinctiveness and is a geographical word for which the Opponent has not established sufficient reputation therein. Furthermore, I note that the Applicant’s state of the register evidence suggests that the word “London” is common to the trade.

Conclusion re s. 12(1)(d) of the Act

[73] Having considered all of the surrounding circumstances, in particular the fact that the parties’ marks share very little similarities in sound, appearance and ideas suggested, I am 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 Mark and the Opponent’s Marks.

[74] Having regard to the foregoing, I reject the ground of opposition based on s. 12(1)(d) of the Act.

Non-entitlement Grounds

Section 16(3)(a) of the Act


[75] Despite the burden of proof on the Applicant to establish, on a balance of probabilities, that there is no reasonable likelihood of confusion between the Mark and the Opponent’s Marks, the Opponent has the initial onus of proving that the trade-marks alleged in support of its ground of opposition based on s. 16(3)(a) of the Act were used or made known in Canada prior to the filing date for the Applicant’s application (November 22, 2005) and had not been abandoned at the date of advertisement of the application for the Mark (January 9, 2008) [s. 16(5) of the Act].

[76] As set out above in the analysis of the s. 12(1)(d) ground of opposition, the Opponent has provided sufficient evidence of use of the Opponent's Marks prior to the date of filing the application for the Mark, and demonstrated that the use had not been abandoned as of the date of advertisement for the Mark.

[77] The burden then shifts to the Applicant to establish on a balance of probabilities that there is no likelihood of confusion between the parties' trade-marks. Given that the considerations are the same, and the different material date does not materially affect my conclusion on the confusion issue, this ground of opposition is also dismissed.

Section 16(3)(b) of the Act

[78] The Opponent bases its s. 16(3)(b) ground of opposition on the following trade-marks owned by the Opponent:

- LONDON PREMIERE - 1,247,283 – filed February 15, 2005 – registered March 7, 2011
- LONDON GOURMET – 1,204,476 – filed January 28, 2004 – registered February 10, 2010
-  - 1,204,845 – filed February 2, 2004 – registered February 11, 2010

[79] Despite the burden of proof on the Applicant to establish, on a balance of probabilities, that there is no reasonable likelihood of confusion between the Mark and the Opponent's Pending Applications, the Opponent has the initial onus of proving that the trade-mark applications alleged in support of its ground of opposition based on s. 16(3)(b) of the Act were pending at the date of filing the Applicant's application, November 22, 2005, and remained pending at the date of advertisement of the application for the Mark, January 9, 2008 [s. 16(5) of the Act]. The Registrar has the discretion, in view of the public interest, to check the register for applications relied upon by an opponent [see *Royal Appliance Mfg. Co. v. Iona Appliance Inc.* (1990), 32 C.P.R. (3d) 525 (T.M.O.B)]. I have exercised my discretion to check the status of the applications cited by the Opponent.

[80] The Opponent has satisfied its evidential burden with respect to the Opponent's Pending Applications.

[81] The facts are similar to those considered in the s. 12(1)(d) ground of opposition for the Opponent's Pending Applications. With respect to the s. 6(5)(c) and (d) factors, there is a direct overlap in the nature of the parties' wares with respect to each of the three pending applications of the Opponent cited in support of this ground of opposition.

[82] Despite the overlap in the nature of the parties' wares, however, I find that the differences in the parties' marks in terms of sound, appearance and idea suggested is sufficient to shift the burden in favour of the Applicant.

[83] Based on the foregoing, the ground of opposition based on s. 16(3)(b) is also dismissed.

Section 16(3)(c) of the Act

[84] Despite the burden of proof on the Applicant to establish, on a balance of probabilities, that there is no reasonable likelihood of confusion between the Mark and the Opponent's Trade Names, the Opponent has the initial onus of proving that the trade names alleged in support of its ground of opposition based on s. 16(3)(a) of the Act were used or made known in Canada prior to the filing date for the Applicant's application (November 22, 2005) and had not been abandoned at the date of advertisement of the application for the Mark (January 9, 2008) [s. 16(5) of the Act].

[85] Based on my review of the Opponent's evidence, I am satisfied that the Opponent has met its burden under this ground of opposition.

[86] As I came to the conclusion that, based on the evidence of record, there is no likelihood of confusion between the Mark and the Opponent's Marks, and because the difference in relevant dates does not affect my analysis, this non-entitlement ground is therefore also dismissed.

Non-distinctiveness Ground – s. 38(2)(d) of the Act

[87] 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 C.P.R. (3d) 272 (T.M.O.B.)], there is an initial evidential burden on the Opponent to establish the facts relied upon in support of the ground of non-distinctiveness.

[88] Pursuant to its evidential burden, the Opponent is under an obligation to show that, as of the filing of the statement of opposition, one or more of the Opponent's Marks had become known sufficiently to negate the distinctiveness of the Mark [see *Bojangles' International, LLC v. Bojangles Café Ltd.* (2004), 40 C.P.R. (4th) 553, affirmed (2006), 48 C.P.R. (4th) 427 (F.C.T.D.)].

[89] Based on my review of the Opponent's evidence, I am satisfied that the Opponent has provided sufficient evidence to support a finding that one or more of the Opponent's Marks had become known sufficiently to negate the distinctiveness of the Mark as at the date of filing the statement of opposition (February 5, 2008).

[90] As I came to the conclusion that, based on the evidence of record, the Mark is not confusing with the Opponent's Marks, and because the difference in relevant dates does not affect my analysis, the non-distinctiveness ground of opposition based on s. 38(2)(d) and 2 therefore is also dismissed.

Disposition

[91] Pursuant to the authority delegated to me under s. 63(3) of the Act, I reject the opposition pursuant to s. 38(8) of the Act.

Andrea Flewelling
Member
Trade-marks Opposition Board
Canadian Intellectual Property Office

Schedule A


Trade-mark Reg. No.	Wares/Services	Reg. Date
LONDON DRUGS TMA238,839	Services: Operating modern day drug stores featuring all of the services offered by such establishments with which the public is familiar, including the operation of dispensaries; Operation of a retail outlet dealing in optical accessories.	Jan. 4, 1980
LONDON DRUGS TMA297,076	Services: Drugstore and department stores; Operation of a retail outlet dealing in optical accessories; Operation of a retail outlet dealing in the sale of watches and jewellery and repairing watches and jewellery; Operation of a retail outlet dealing in the sale and rental of video tapes, video equipment and all services and accessories related thereto; Operation of a retail outlet dealing in computer repairs, computer education programs, customer training in the use of computer software, consulting services to purchasers of computer software; Operation of a retail outlet providing photofinishing, photographic equipment, cameras, accessories and camera store services.	Nov. 16, 1984
LONDON DRUGS TMA311,269	Services: Operation of a drugstore and the operation of a department store.	Feb. 14, 1986
LONDON DRUGS TMA538,386	Wares: Dental hygiene products, namely interdental stimulators, dental tape, dental floss, fluoride drops; vitamin and mineral supplements; anti-nausea tablets; body cream, namely vitamin E cream; oral hygiene products, namely mouthwash and antiseptic rinse; baby care products, namely baby oil, baby shampoo; Baby care products, namely baby powder, baby lotion; hydrogen peroxide; isopropyl rubbing alcohol; petroleum jelly; shampoo; creams and lotions, namely collagen elastin cream, cold cream, cocoa butter, aloe vera cream, hand cream; car care products, namely windshield cleaning and antifreeze solution; Baby care products, namely baby wipes; household cleaning products, namely dishwashing liquid detergent, dishwasher detergent, liquid toilet bowl cleaner, window cleaning liquid, all purpose liquid cleaner,	Dec. 6, 2000

	<p>disinfectant liquid cleaner, all purpose spray cleaner, drain opener; Thermometers; hot water bottles; elasticated fabric bandages; plastic bandages; rubber gloves; make-up removal pads; cotton facial pads; Disposable diapers; antibiotic topical ointment; cough syrup; enteric-coated acetaminophen tablets; acetylsalicylic acid tablets; cotton swabs; absorbent cotton balls; motor oil; household products, namely plastic sandwich bags, plastic food wrap; plastic drawstring garbage bags, plastic garbage bags for household use, plastic gardening garbage bags, aluminum foil; air fresheners; school and stationery supplies, namely maths sets, pencils, rulers, tape; Dental hygiene products, namely children's and adult toothbrushes; travel kits, namely toothbrush and toothpaste sets; laxatives; sunscreen lotion, sunburn relief gel; sunless tanning lotion; feminine hygiene products, namely panty liners, sanitary napkins; men's and women's deodorants; clothes' hangers; reusable kitchen cloths; household ammonia; laundry cleaning products, namely fabric softener, bleach, stain remover; Oral hygiene products, namely breath spray; absorbent roll bandages; liquid antacid; glycerin suppositories; children's acetaminophen tablets, adult's acetaminophen tablets; cold remedies, namely hot lemon decongestant liquids, cold capsules, nose drops, nasal decongestants; mineral oil; antihistamines; artificial sweeteners; facial tissues; toilet tissues; Oral hygiene products, namely dental rinse; baby care products, namely disposable baby bottle liners; petroleum jelly; hairspray, hair conditioner; bath oil, plastic and wooden bath brushes; loofah bath sponges, loofah bath gloves, loofah bath brushes, loofah body and facial pads; bath sea sponges; liquid soap; razor blade cartridges; disposable razors; shaving brushes; cosmetic implements and accessories, namely sponge tip eye shadow brushes, cosmetic sponges and facial puffs; powder puffs; tweezers, eyelash curlers, eyelash curler refills, cosmetic pencil sharpeners; makeup sponges; mirrors; cosmetic brushes; nail care products, namely nail polish remover, cuticle scissors, nail scissors, nail</p>	
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	<p>clippers, toe nail clippers, cuticle nippers, nail nippers, nail files, emery boards, nail pencils, cuticle pushers, cuticle trimmers, manicure sticks, manicure brushes; personal grooming implements, namely barber scissors, thinning scissors, mustache scissors; pumice stones, pumice sponges, corn plane removers, corn plane blades; bingo markers; gardening tools, namely forks, rakes, trowels and hoes; lunch bags; stationery products, namely envelopes, stationery paper, writing blocks, blank video cassettes; photographic film; Clumping cat litter; Pregnancy tests; Aerosol lint remover for electronic equipment; Stepping stools.</p> <p>Services: Operation of a retail and general merchandise store; the operation of a drugstore; photofinishing services; the operation of a retail photographic equipment and photographic accessories outlet; camera store services; Operation of a retail store specializing in the sale of cosmetics, hair care products, skin care products, perfumery products and toilet preparations; Operation of a retail store specializing in the sale of radio and sound reproduction equipment, audio reproduction equipment, video reproduction equipment, electrical and electronic devices and instruments, telephones, clocks, audio and video accessories; Operation of retail and wholesale outlets dealing in computer software, computer hardware and computer related accessories; computer services, namely customer training, computer repairs, computer education services, computer systems integration and computer programming; Operation of a retail business dealing in the sale, distribution, installation, delivery and system balancing and assembly of sound, projection and audio and video hardware equipment and products.</p>	
<p>LONDON DRUGS TMA423,787</p>	<p>Wares: Dental hygiene products, namely interdental stimulators, dental tape, dental floss, fluoride drops; vitamin and mineral supplements; anti-nausea tablets; Body cream, namely vitamin E cream; Oral hygiene products, namely</p>	<p>Feb 25, 1994</p>

	<p>mouthwash and antiseptic rinse; baby care products, namely baby oil, baby shampoo; Baby care products, namely baby powder, baby lotion; hydrogen peroxide; isopropyl rubbing alcohol; petroleum jelly; shampoo; creams and lotions, namely collagen elastin cream, cold cream, cocoa butter, aloe vera cream, hand cream; car care products, namely windshield cleaning and antifreeze solution; Baby care products, namely baby wipes; household cleaning products, namely dishwashing liquid detergent, dishwasher detergent, liquid toilet bowl cleaner, window cleaning liquid, all purpose liquid cleaner, disinfectant liquid cleaner, all purpose spray cleaner, drain opener; Thermometers; hot water bottles; elasticated fabric bandages; plastic bandages; rubber gloves; make-up removal pads; cotton facial pads; acetaminophen tablets; acetylsalicylic acid tablets; cotton swabs; absorbent cotton balls; motor oil; household products, namely plastic sandwich bags, plastic food wrap, plastic drawstring garbage bags, kitchen catcher plastic garbage bags, plastic gardening garbage bags, aluminum foil; air fresheners; school and stationery supplies, namely maths sets, pencils, rulers, tape; Dental hygiene products, namely children's and adult toothbrushes; travel kits, namely toothbrush and toothpaste sets; laxatives; sunscreen lotion, sunburn relief gel; sunless tanning lotion; feminine hygiene products, namely panty liners, sanitary napkins; men's and women's deodorants; clothes' hangers; reusable kitchen cloths; household ammonia; laundry cleaning products, namely fabric softener, bleach, stain remover; Oral hygiene products, namely breath spray; absorbent roll bandages; liquid antacid; glycerin suppositories; children's acetaminophen tablets, adult's acetaminophen tablets; cold remedies, namely hot lemon decongestant liquids, cold capsules, nose drops, nasal decongestants; mineral oil; antihistamines; artificial sweeteners; facial tissues; toilet tissues; Oral hygiene products, namely dental rinse; baby care products, namely disposable baby bottle liners; petroleum jelly; hairspray, hair conditioner; bath</p>	
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	<p>oil, plastic and wooden bath brushes; loofah bath sponges, loofah bath gloves, loofah bath brushes, loofah body and facial pads; bath sea sponges; liquid soap; razor blade cartridges; disposable razor; shaving brushes; cosmetic implements and accessories, namely sponge tip eyeshadow brushes, cosmetic sponges and facial puffs; powder puffs; tweezers, eyelash curlers, eyelash curler refills, cosmetic pencil sharpeners; makeup sponges; mirrors; cosmetic brushes; nail care products, namely nail polish remover, cuticle scissors, nail scissors, nail clippers, toe nail clippers, cuticle nippers, nail nippers, nail files, emery boards, nail pencils, cuticle pushers, cuticle trimmers, manicure sticks, manicure brushes; personal grooming implements, namely barber scissors, thinning scissors, mustache scissors; pumice stones, pumice sponges, corn plane removers, corn plane blades; bingo markers; gardening tools, namely forks, rakes, trowels and hoes; lunch bags; stationery products, namely envelopes, stationery paper, writing blocks; video cassettes; photographic film.</p> <p>Services: Operation of a drug and general merchandise store, namely retail store services incorporating the marketing of merchandise of various kinds and sundry household and consumer products.</p>	
<p>THE MANY FACES OF LONDON DRUGS</p> <p>TMA516,099</p>	<p>Services: Operation of a drug and general merchandise store; operation of a retail business dealing in sale, distribution, installation, delivery, repair and system balancing and assembly of sound, projection and audio and video hardware equipment and products; operation of a retail outlet dealing in the sale of watches and jewellery and repairing watches and jewellery; operation of a retail outlet dealing in hearing aid batteries and optical accessories; operation of retail and wholesale outlets dealing in computer software, computer hardware and computer related accessories; computer services, namely customer training, computer repairs, computer education services, computer systems integration, computer programming, computer networking; operation of a retail outlet providing</p>	<p>Sept. 9, 1999</p>

	photofinishing, photographic equipment, cameras, accessories and camera store services.	
THE COSMETICS DEPARTMENT OF LONDON DRUGS TMA427,029	Services: Operation of a retail store specializing in the sale of cosmetics, hair care products, skin care products, perfumery products and toilet preparations.	May 6, 1994
THE MANY FACES OF LONDON DRUGS TMA517,132	Services: Operation of a drug and general merchandise store; operation of a retail business dealing in sale, distribution, installation, delivery, repair and system balancing and assembly of sound, projection and audio and video hardware equipment and products; operation of a retail outlet dealing in the sale of watches and jewellery and repairing watches and jewellery; operation of a retail outlet dealing in hearing aid batteries and optical accessories; operation of retail and wholesale outlets dealing in computer software, computer hardware and computer related accessories; computer services, namely customer training, computer repairs, computer education services, computer systems integration, computer programming, computer networking; operation of a retail outlet providing photofinishing, photographic equipment, cameras, accessories and camera store services.	Sept. 28, 1999
THE OPTICAL DEPARTMENT OF LONDON DRUGS TMA300,626	Wares: Eyeglass frames, contact lenses, optical lenses and optical accessories, namely eyeglass and contact lens cases, contact lens solutions, eyeglass chains and cords, eyeglass head bands for sports users, repair kits, nose pads, temple tites, eyeglass cleaners, magnifying glasses; lens cleaner and hearing aid batteries. Services: Operation of a retail outlet in applicant's drugstores dealing in eyeglass frames, contact lenses, hearing aid batteries and optical accessories; filling eyeglass and contact lens prescriptions and grinding optical lenses to specification.	Mar. 8, 1985
 TMA385,764	Services: Operation of a drug store and department store.	June 14, 1991

<p>LONDON CustomWorks</p> <p>TMA657,323</p>	<p>Services: Retail and commercial sale of audio and video equipment; audio and video system design, engineering, sales, consultation and installation services; audio and video repair and maintenance services; audio, video and home networking system pre-wire services; lighting system sale, design, engineering and installation services; home automation and integration system design, engineering and installation services; audio, video, networking and lighting system design, engineering, sales, consultation and installation services with respect to multi-media presentation rooms and board rooms, community theatre systems for condominium buildings, apartment buildings and resorts, retail sales environment systems, environmental acoustic systems for executive offices, and restaurants, sports bars and night clubs.</p>	<p>Jan. 25, 2006</p>
<p>LONDON CUSTOM WORKS</p> <p>TMA656,757</p>	<p>Services: Retail and commercial sale of audio and video equipment; audio and video system design, engineering, sales, consultation and installation services; audio and video repair and maintenance services; audio, video and home networking system pre-wire services; lighting system sale, design, engineering and installation services; home automation and integration system design, engineering and installation services; audio, video, networking and lighting system design, engineering, sales, consultation and installation services with respect to multi-media presentation rooms and board rooms, community theatre systems for condominium buildings, apartment buildings and resorts, retail sales environment systems, environmental acoustic systems for executive offices, and restaurants, sports bars and night clubs.</p>	<p>Jan. 18, 2006</p>
<p>LONDON CustomWorks audio/video by design</p> <p>TMA657,303</p>	<p>Services: Retail and commercial sale of audio and video equipment; audio and video system design, engineering, sales, consultation and installation services; audio and video repair and maintenance services; audio, video and home networking system pre-wire services; lighting system sale, design, engineering and installation services; home automation and integration system design, engineering and installation services; audio, video, networking and lighting</p>	<p>Jan. 25, 2006</p>


	system design, engineering, sales, consultation and installation services with respect to multi-media presentation rooms and board rooms, community theatre systems for condominium buildings, apartment buildings and resorts, retail sales environment systems, environmental acoustic systems for executive offices, and restaurants, sports bars and night clubs.	
LONDON COLOUR DIGITAL IMAGING TMA596,467	<p>Wares: Computer software for organizing, sorting, accessing, retrieving, manipulating, editing and retouching digital photographs and other graphic images and for creating screensavers, computer wallpaper, calendars and virtual albums; digital storage devices, namely memory cards for digital cameras; blank disks, compact disks and video tapes, recordable digital photofinishing disks; digital storage media containing photographic images.</p> <p>Services: Placing photographic images on standard computer, magnetic or optical media; manipulation and restoration of images provided by customers; placement of digital images on promotional items; internet photofinishing services; creating photographic prints from digital image files.</p>	Dec. 4, 2003
LONDON DRUGS PHOTO STATION TMA557,245	<p>Wares: Blank disks and blank recordable compact disks, recordable digital photofinishing disks.</p> <p>Services: Placing photographic images on standard computer, magnetic or optical media; manipulation and restoration of images provided by customers; placement of digital images on promotional items; internet photofinishing services.</p>	Jan. 31, 2002
LONDON COLOUR PHOTODISK TMA510,245	<p>Wares: Disks, compact discs and tape, excluding disks, compact discs and tapes which contain stock photographs, archival photographs, art, illustrations and graphic designs.</p> <p>Services: Placing photographic images provided by customers on standard computer, magnetic or optical media.</p>	Mar. 29, 1999
PCC – THE PERSONAL COMPUTER CENTER	Wares: Computers, computer peripherals, namely monitors, printers, auxiliary disk devices, disk	Mar. 15, 1985

<p>OF LONDON DRUGS</p> <p>TMA300,796</p>	<p>drives, keyboards, cables, expansion boards, modems, graphics input generators, and other related accessories, namely diskettes, diskette storage containers, paper products, computer furniture, computer covers, computer ribbons, cassettes, reference guides and manuals, memory boards, computer keyboard templates and computer software.</p> <p>Services: Computer repairs, computer education services and programs, customer training in the use of computer software and consulting services to purchasers of computer software.</p>	
<p>LONDON DRUGS 1 HOUR PHOTO FINISHING</p> <p>TMA662,529</p>	<p>Wares: Photographic film; Computer software for organizing, sorting, accessing, retrieving, manipulating, editing and retouching digital photographs and other graphic images and for creating screensavers, computer wallpaper, calendars and virtual albums; digital storage devices, namely memory cards for digital cameras; blank disks, compact disks and video tapes, recordable digital photofinishing disks; digital storage media containing photographic images.</p> <p>Services: Photofinishing services; Placing photographic images on standard computer, magnetic or optical media; manipulation and restoration of images provided by customers; placement of digital images on promotional items; internet photofinishing services; creating photographic prints from digital image files.</p>	<p>April 11, 2006</p>
<p>COSMETICS DEPARTMENT OF LONDON DRUGS</p> <p>TMA427,029</p>	<p>Services: Operation of a retail store specializing in the sale of cosmetics, hair care products, skin care products, perfumery products and toilet preparations.</p>	<p>May 6, 1994</p>
<p>ELECTRONICS DEPARTMENT OF LONDON DRUGS</p> <p>TMA427,335</p>	<p>Services: Operation of a retail store specializing in the sale of radio and sound reproduction equipment, audio reproduction equipment, video reproduction equipment, electrical and electronic devices and instruments, telephones, clocks, audio and video accessories.</p>	<p>May 13, 1994</p>
<p>THE JEWELLERY DEPARTMENT OF LONDON DRUGS</p>	<p>Wares: Jewellery, watches, ornaments and giftware, namely clocks, brassware, crystal, figurines, lighters, pens, cutlery, cuff-links and</p>	<p>Mar. 8, 1985</p>

TMA300,628	costume jewellery. Services: Repairing watches and jewellery.	
LONDON DRUGS JEWELLERY TMA300,627	Wares: Jewellery, watches, ornaments and giftware, namely clocks, brassware, crystal, figurines, lighters, pens, cutlery, cuff-links and costume jewellery. Services: Repairing watches and jewellery.	Mar. 8, 1985
AUDIO-VIDEO SYSTEMS DEPARTMENT LONDON DRUGS TMA427,026	Services: Operation of a retail business dealing in the sale, distribution, installation, delivery, repair and system balancing and assembly of sound, projection and audio and video hardware equipment and products.	May 6, 1994
 TMA298,030	Wares: Baby wipes; dental floss; shampoo; household products, namely window cleaner; and all purpose spray cleaner, cosmetic products, namely cotton puffs, skin cream; first aid products namely plastic bandages and bulk cotton rolls; hot water bottles; personal hygiene products, namely sanitary napkins and tampons of all types; carbonated non-alcoholic beverages. Services: Drug store and department store services.	Dec. 14, 1984
LONDON GOLD MINE TMA370,629	Wares: Jewellery Services: Operation of a retail jewellery store.	July 13, 1990
THE COMPUTER DEPARTMENT OF LONDON DRUGS TMA291,940	Wares: Computers, computer peripherals, computer software. Services: Computer repairs, computer education programs, customer training in the use of computer software and consulting services to purchasers of computer software.	June 15, 1984
LONDON DRUGS COMPUTERS TMA300,602	Wares: Computers, computer peripherals, namely monitors, printers, auxiliary disk devices, disk drives, keyboards, cables, expansion boards, modems, graphics input generators, computer software. Services: Computer repairs, computer education programs, customer training in the use of computer software, consulting services to purchasers of computer software.	Mar. 8, 1985

<p>PC – THE PERSONAL COMPUTER CENTER OF LONDON DRUGS</p> <p>TMA300,604</p>	<p>Wares: Computers, computer peripherals, namely monitors, printers, auxiliary disk devices, disk drives, keyboards, cables, expansion boards, modems, graphics input generators, and other related accessories, namely diskettes, diskette storage containers, paper products, computer furniture, computer covers, computer ribbons, cassettes, reference guides and manuals, memory boards, computer keyboard templates and computer software.</p> <p>Services: Computer repairs, computer education services and programs, customer training in the use of computer software and consulting services to purchasers of computer software.</p>	<p>Mar. 8, 1985</p>
<p>LONDON <i>Premiere</i></p> <p>TMA581,005</p>	<p>Wares: Small kitchen appliances namely, can openers, coffee makers, jug kettles, food steamers, hand mixers, mini choppers, popcorn makers, toasters; housewares, namely irons and steam irons; hair appliances, namely combo curl brush/iron, curling brushes, curling irons, hair dryers, hot air brushes, mini fold hair dryers; health and beauty aids, namely beard and moustache trimmers, hair clipper sets, hair clippers.</p>	<p>May 8, 2003</p>

Schedule B

Trade-mark and Appl. No.	Wares/Services	Appl. Date
<p>LONDON PREMIERE 1,247,283</p>	<p><u>Wares</u>: Cosmetic applicators, namely, cotton swabs, cotton balls, brushes, beauty implements, namely, eyelash curlers, tweezers, men's toiletries, namely, facial and body cleansers, electric shavers and accessories, hair accessories, namely, brushes, combs, barrettes, hair pins, clasps, hair ornaments, hair rollers, footwear accessories, namely, heel cushions, cushioning pads; foot care materials, namely, corn cushions, callous cushions, bunion cushions; toasters, counter top ovens, griddles, fry pans, coffee grinders, coffee makers, electric kettles, kitchen appliances, namely, mixers and hand mixers, electric food processors, can openers, clothing irons and steamers, water fountains.</p>	<p>February 15, 2005</p>
<p>LONDON GOURMET 1,204,476</p>	<p><u>Wares</u> (as set out in statement of opposition; only the italicized wares remain as of the date of my decision) <i>Cookware, namely, boxed cookware sets, open stock cookware, fry pans</i>; dinnerware, namely open stock dinnerware, boxed dinnerware; kitchen linens; stove top kettles; bake wares; mixing bowls; serving dishes; glass ware; drink ware; kitchen gadgets, namely can openers, wine openers and corkscrews, wine accessories, namely, wine glasses, wine racks, drip stop rings, bottle sealers, stemware charms in the nature of a metallic ring with an attached miniature ornament for the purpose of identifying a user of a wine glass, corks, wine bottle foil cutters, carafes, decanters, coolers for wine, coasters, measuring spoons, measuring cups, garlic presses, potato peelers, pairing knives, scissors, cheese graters, ice cream scoops, pizza cutters, pepper mills, diet scales, scrapers, basters, whisks, citrus zesters, potato mashers; flatware; kitchenware, namely paper towel holders, napkin holders, fruit bowls, recipe card holders; knives, soup ladles, spatulas (metal/rubber), tongs, slotted spoons, serving spoons, serving forks, cake lifters, pasta forks, spice containers, spice racks, trivets, cake decorating items, cookie presses, spoon rests</p>	<p>January 28, 2004</p>
	<p><u>Wares</u>: (as set out in statement of opposition; only the italicized wares remain as of the date of my decision) <i>Cookware, namely, boxed cookware sets, open stock</i></p>	<p>February 2, 2004</p>

1,204, 845	<p><i>cookware, fry pans</i>; dinnerware, namely open stock dinnerware, boxed dinnerware; kitchen linens; stove top kettles; bake wares; mixing bowls; serving dishes; glass ware; drink ware; kitchen gadgets, namely can openers, wine openers and corkscrews, wine accessories, namely, wine glasses, wine racks, drip stop rings, bottle sealers, stemware charms in the nature of a metallic ring with an attached miniature ornament for the purpose of identifying a user of a wine glass, corks, wine bottle foil cutters, carafes, decanters, coolers for wine, coasters, measuring spoons, measuring cups, garlic presses, potato peelers, pairing knives, scissors, cheese graters, ice cream scoops, pizza cutters, pepper mills, diet scales, scrapers, basters, whisks, citrus zesters, potato mashers; flatware; kitchenware, namely paper towel holders, napkin holders, fruit bowls, recipe card holders; knives, soup ladles, spatulas (metal/rubber), tongs, slotted spoons, serving spoons, serving forks, cake lifters, pasta forks, spice containers, spice racks, trivets, cake decorating items, cookie presses, spoon rests</p>	
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Schedule C

Trade-mark	Relevant Wares	Registration/Appl'n No.
BOY LONDON	Watches; Belts; Wallets, organizers and coin purses.	TMA438,285
FOR HER LONDON	Clothing, namely, suits, coats, jackets, vests, sweaters, shirts, ties, t-shirts, pants, shorts, dresses, skirts, blouses, belts, scarves, cravats, hats, sweatshirts, and socks.	1,344,537 (allowed)
LETT'S OF LONDON	Diaries, jotters, appointment books, address books, expense account record books, and wallets.	TMA309,365
LIBERTY OF LONDON	Ties and shirts; fabric piece goods.	TMA208,285
LONDON ALL STAR	...workout clothing	1,291,850 (allowed)
LONDON BLUES	Children's wearing apparel, namely jackets, t-shirts, pants and shorts; Children's jeans, jean jackets, overalls and shortalls; Ladies' jeans; Children's shirts, skirts and sweatshirts and ladies' pants, shirts, skirts, overalls, sweatshirts, T-shirts, jean jackets.	TMA454,067
LONDON CALLING	Mens and ladies clothing namely jackets, coats, raincoats, suits, skirts, blouses, t-shirts, slacks, shirts, blazers.	TMA682,774
LONDON FOG	Outer coats for men and women, outer jackets for men and women, and hats for men; Shoes; Clothing, namely, outerwear and rainwear, namely, coats, jackets and raincoats, golf jackets, suits, leisure suits, sports coats; Slacks, pants and shorts; Hosiery; Women's tailored suits and blazers, skirts, pants, blazers, blouses and knit tops; sweaters; shirts; Ties.	TMA292,535
LONDON KNIGHTS	...Clothing namely T-shirts, sweatshirts, jackets and hats...	TMA477,807
LONDON SLIM	Jeans, slacks, jackets, shirts.	TMA313,932
MELT LONDON	... Women's fashion clothing, namely jackets, skirts, pants and tops, namely blouses and shirts;	TMA638,380

	Women's fashion clothing, namely jackets, skirts, shorts, pants and tops, namely halter tops, tank tops, blouses, sweaters and shirts.	
NEW LONDON	Men's and ladies' clothing, namely: shirts, T-shirts, sweat-shirts, polo-shirts, knit-shirts, sweaters, pull-overs, vests, blouses, skirts, dresses, woven-shirts, shorts, short-sets, bermuda-shorts, jeans, trousers, pants, sweat-pants, casual and sport blazers, coats, raincoats, jackets, underwear, top and bottoms, gloves, suits, track suits, jogging suits, tank tops, hooded tops, athletic T-shirts, football T-shirt, baseball T-shirt; and accessories, namely: bags, socks, caps, hats, ties and belts.	TMA691,011
NOUGAT LONDON	Knitwear namely sweaters, skirts, dresses, pants, tunics, waistcoat, trousers, leggings, vests, jackets and wovens namely bodysuits, coats skirts, dresses, pants, sweaters, vests, tunics, waistcoats, blouses, leggings, trousers, jackets, t-shirts and fashion accessories namely capes, scarves and handbags.	TMA566,951
RUSK LONDON I.N.T.	Chandails, robes, jeans, pantalons, blouses, vestons, costumes, jupes, camisoles, chemises, salopettes, shorts, bermudas.	TMA425,493
SACHA LONDON	Footwear, namely shoes, boots, slippers and sandals.	TMA390,097
SEVEN LONDON	Jewellery, clocks and watches; costume jewellery.	TMA707,818
SOUL LONDON	Vêtements, nommément: costumes, complets, robes, blazers, manteaux, vestes, vestons, pantalons, anoraks, pardessus, blousons, imperméables, cabans, sahariennes, bermudas, jeans, chemisiers, chemises, polos, t-shirts, sweat-shirts, sweat-pants,	TMA629,591

	pull-overs, chandails, gilets, costumes de bain, bikinis, maillots, robes de nuit, chemises de nuit, robes de chambre, pyjamas, bas, bas nylon, chaussettes ; sous-vêtements, nommément: caleçons, brassières, jupons ; accessoires, nommément: bonnets de bain, cravates, noeuds papillon; gants, boutons de manchettes, pinces à cravates, bretelles, ceintures, écharpes, foulards, casquettes, chapeaux ; parapluies, sacs, pochettes, bagages ; bijouterie, nommément: bagues, bracelets, colliers, broches; souliers.	
FOUR SEASONS OF LONDON	Rainwear and outerwear, namely coats, jackets, hats, umbrellas, gloves and scarves.	TMA498,873
MAAC LONDON Design MAAC LONDON	Men's and women's woven cotton short and long sleeve shirts, men's knitted wool and cotton garments (knitwear in wool/cashmere/cotton), men's cotton jersey t-shirts in knitted cotton and woven cotton, polo shirts and sweatshirts made from cotton.	TMA722,037
WHISPERING SMITH LONDON	Clothing, namely, coats, jackets, vests, suits, pants, jeans, shorts, skirts, dresses, shirts, blouses, t-shirts, sweaters, ties, hats, socks, shoes, boots and gloves.	TMA692,673