IN THE MATTER OF AN OPPOSITION by Four Seasons Hotels Limited to application No. 550,154 for the trade-mark TELEVISION QUATRE SAISONS filed by Réseau de télévision Quatre Saisons Inc./ Four Seasons Television Network Inc.

On October 4, 1985, the applicant, Réseau de télévision Quatre Saisons Inc./ Four Seasons Television Network Inc., filed an application to register the trade-mark TELEVISION QUATRE SAISONS based upon proposed use of the trade-mark in Canada in association with the following services:

> Exploitation d'une entreprise de radiodiffusion;
>
> Production d'émissions de télévision de tous genres incluant des films et productions vidéo de longs métrages et courts métrages, de dessins animées, de spectacles et productions théâtrales, d'émissions d'information et de divertissement;
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> Production de messages publicitaires;
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> Distribution et location d'oeuvres audio-visuelles sous la forme de pellicules cinématographiques, rubans magnétoscopiques ou vidéo-cassettes;
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> Location de matériel audio-visuel et de studios pour enregistrement d'émissions télévisées, de messages publicitaires, de courts et longs métrages et de postsynchronisation;
>
> Transmission et réception d'émissions de télévision par l'intermédiaire d'un réseau de canaux de télévision.

and in association with the following wares:

> "films, cassettes magnétoscopiques pré-enregistrées, posters, affiches, collants et collants pour pare-chocs, livres, revues, calendriers, agendas, cartables, crayons, stylos, épinglettes, macarons, écussons, porte-clés, tasses, verres, contenants, chandails et casquettes".

The applicant disclaimed the right to the exclusive use of the word TELEVISION apart from its trade-mark.

The opponent, Four Seasons Hotels Limited, filed a statement of opposition on August 9, 1988 in which it alleged that the applicant's trade-mark is not registrable in that it is confusing with the opponent's registered trade-marks: LE QUATRE SAISONS, registration No. 208,487; FOUR SEASONS, registration No. 136,765; THE FOUR SEASONS & Design, registration No. 137,561; FOUR SEASONS HOTEL, registration No. 238,154; and FOUR SEASONS HOTELS & Design, registration No. 238,153. The opponent further alleged that the applicant is not the person entitled to registration of the trade-mark TELEVISION QUATRE SAISONS in that the applicant's trade-mark is confusing with the opponent's trade-name Four Seasons Hotels Limited and with the opponent's trade-marks LE QUATRE SAISONS, FOUR SEASONS and FOUR SEASONS HOTELS which had been previously used in Canada in association with hotel and restaurant services, and wares identified as "printed materials, magazines, calendars, pencils, pens, pins, cups, glasses, containers, food products and clothing". Further, the opponent alleged that the applicant's

trade-mark is not distinctive in that it does not distinguish, nor is it adapted to distinguish, the wares and services of the applicant from the opponent's hotel and restaurant services performed in association with the opponent's trade-marks LE QUATRE SAISONS, FOUR SEASONS and FOUR SEASONS HOTELS and the opponent's trade-name Four Seasons Hotel Limited, nor is it adapted to distinguish the applicant's wares and services from the wares associated with the opponent's trade-marks and trade-name, namely, "printed materials, magazines, calendars, pencils, pens, pins, cups, glasses, containers, food products and clothing".

The applicant served and filed a counterstatement in which it denied the allegations of confusion set forth in the statement of opposition.

The opponent filed as its evidence the affidavits of Griff Thompson and Tricia Wakelin while the applicant failed to file evidence in a timely manner in this opposition.

Both parties filed written arguments and both were represented at an oral hearing.

During the opposition proceeding, the applicant filed an amended application in which it deleted the wares set forth in its application.

The grounds of opposition relating to the registrability and distinctiveness of the applicant's trade-mark, as well as the applicant's entitlement thereto, turn on the issue of confusion between the applicant's trade-mark TELEVISION QUATRE SAISONS and one, or more, of the opponent's trade-marks and the opponent's trade-name. The most relevant of the opponent's trade-marks are its registered trade-marks: LE QUATRE SAISONS, registration No. 208,487 covering "Innkeeping services, namely: providing lodging and meals in hotels, motor inns, and inns; rendering technical advice and assistance to hotels in all phases of their business operations"; and FOUR SEASONS, registration No. 136,765 covering "Inn keeping services, namely, providing lodging and meals in hotels, motor hotels and inns". Accordingly, the determination of the issue of confusion between the applicant's trade-mark and the opponent's registered trade-marks FOUR SEASONS and LE QUATRE SAISONS will effectively resolve all the issues in this opposition.

In determining whether there would be a reasonable likelihood of confusion between the trade-marks at issue, the Registrar must have regard to all the surrounding circumstances, including those specifically enumerated in Section 6(5) of the Trade-marks Act. Further, the Registrar must bear in mind that the legal burden is on the applicant to establish that there would be no reasonable

likelihood of confusion between the trade-marks at issue. With respect to the ground of opposition based on Section 12(1)(d) of the Trade-marks Act, the material date would appear to be as of the date of my decision in view of the recent decision of the Federal Court of Appeal in Park Avenue Furniture Corporation v. Wickes/Simmons Bedding Ltd. and The Registrar of Trade Marks, (1991), 37 C.P.R. (3d) 413 and the recent decision of the Opposition Board in Conde Nast Publications, Inc. v. The Canadian Federation of Independent Grocers, (1991), 37 C.P.R. (3d) 538. Further, the material date in respect of the non-entitlement and non-distinctiveness grounds of opposition are the applicant's filing date (October 4, 1985) and the date of opposition (August 9, 1988) respectively.

Considering the inherent distinctiveness of the trade-marks at issue, both the applicant's trade-mark TELEVISION QUATRE SAISONS and the opponent's registered trade-marks FOUR SEASONS and LE QUATRE SAISONS are inherently distinctive as applied to the respective services of the parties.

The opponent's trade-mark FOUR SEASONS is well known in Canada in association with services related to the operation of a hotel and particularly so in those cities (Montreal, Toronto, Ottawa and Vancouver) where the opponent's hotels are located. Further, the opponent's trade-mark LE QUATRE SAISONS has also become known in this country although to a lesser extent than its trade-mark FOUR SEASONS in that the opponent's evidence indicates that only one of its hotels located in Montreal is carrying on business in Canada under the trade-mark LE QUATRE SAISONS. On the other hand, the applicant failed to adduce any evidence in a timely manner in this opposition. While Exhibits I-8 and I-16 to the Wakelin affidavit, referred to below, constitute some evidence that the trade-mark QUATRE SAISONS was being used in Canada as of the date of the Wakelin affidavit (April 17, 1989) in association with broadcasting of television programs, there is no evidence that the trade-mark TELEVISION QUATRE SAISONS has become known to any extent in Canada.

The length of time that the trade-marks at issue have been in use also favours the opponent. In particular, the opponent's evidence establishes that its trade-mark FOUR SEASONS has been in use in Canada since at least 1963 while its trade-mark LE QUATRE SAISONS has been used in Canada since at least July of 1975, both in association with services related to the operation of a hotel. Exhibits I-8 and I-16 to the Wakelin affidavit would appear to indicate that use has commenced of the trade-mark QUATRE SAISONS in Canada in association with television broadcasting although there is no evidence from which it could be concluded that the applicant has commenced use of its trade-mark TELEVISION QUATRE SAISONS in this country subsequent to the filing of its proposed use trade-mark application.

Sections 6(5)(c) and (d) of the Trade-marks Act requires that the Registrar have regard to the nature of the services associated with the trade-marks at issue and the respective channels of trade associated with these services.

The opponent submitted that its services related to the operation of its hotels include the provision of restaurant and catering services, parking services, valet services, providing exercise and sports facilities, receiving and communicating messages, drycleaning and laundry services, and consulting services in respect of planning and conducting conventions. The opponent also pointed out that it communicates with its patrons by way of magazines available in its hotel rooms and that it could provide its patrons with information about the hotel, services available in the hotel or information concerning attractions in the city where the hotel is located by way of one or more television channels specifically directed to patrons of the hotel. As a result, the opponent argued that the ordinary Canadian of average intelligence staying in one of its hotels, upon seeing the applicant's trade-mark TELEVISION QUATRE SAISONS associated with the applicant's television broadcasting services, might assume that the opponent had licensed television rights associated with the trade-mark TELEVISION QUATRE SAISONS for the benefit of its patrons.

In response to the above, the applicant argued that the ordinary Canadian of average intelligence would be aware of the fact that the television business in Canada is regulated by the CRTC, such that the average person would not assume that a hotel would be offering such services as those covered in the applicant's application. However, no evidence has been adduced by the applicant that certain businesses in Canada are restricted from broadcasting television programs or from distributing audio visual works. Rather, and in the absence of any evidence to the contrary, I would assume that the ordinary Canadian of average intelligence, even if he or she were aware that television broadcasting is controlled in Canada, might well conclude that an entity such as the opponent could obtain a license which would permit it to provide some form of television communications to patrons in its hotels.

With respect to the opponent's submission that it could provide patrons with information regarding its hotel services or community activities by way of a television channel, I consider such a submission to be highly speculative, there being no evidence of any intention on the part of the opponent to provide a service of this kind or, indeed, to diversify beyond the providing of services related to the operation of a hotel. With respect to the issue of expansion into a new area of business, I would note the following comments of Mr. Justice MacKay in Joseph E. Seagram & Sons Ltd. et al v. Registrar of Trade Marks et al, 33 C.P.R. (3d) 454, at page 467:

> "The appellants argued before me that corporate diversification would be a significant consideration in the mind of an average Canadian who, because of the well-known nature of the SEAGRAM'S mark, is likely to infer some connection between the appellant and respondent even though the wares in question may be very different. I do not agree with this proposition. In my view, consideration of future events and possibilities of diversification is properly restricted to the potential expansion of existing operations. It should not include speculation as to diversification into entirely new ventures, involving new kinds of wares, services or businesses: see Cochrane-Dunlop Hardware Ltd. v. Capital Diversified Industries Ltd. (1976), 30 C.P.R. (2d) 176 at p. 188 (Ont. C.A., per Blair J.A.)."

The submissions of the opponent at the oral hearing were directed to the issue of confusion between the applicant's trade-mark as applied to broadcasting of television programs and the opponent's trade-marks. However, the applicant's application covers a number of services in addition to the transmission of television broadcasts although these services bear no relationship whatsoever to the opponent's services related to the operation of a hotel.

As for the degree of resemblance between the trade-marks at issue, the applicant's trade-mark TELEVISION QUATRE SAISONS is very similar in appearance, sounding and ideas suggested to the opponent's trade-mark LE QUATRE SAISONS. However, the trade-marks TELEVISION QUATRE SAISONS and FOUR SEASONS differ both visually and phonetically although the marks are quite similar in ideas suggested in that "four seasons" would translate into French as "quatre saisons". In this regard, at least in respect of the ideas suggested, the question of resemblance between marks when assessing the question of confusion between marks comprising words of everyday speech must be assessed from the point of view of the average bilingual Canadian (see Ferraro S.p.A. v. Les Produits Freddy Inc., 22 C.P.R. (3d) 346, at page 354 (F.C.A.)) and Kiddie Products Inc. v. The Proctor & Gamble Company, application No. 591,967, decision of the Opposition Board dated November 29, 1991, yet unreported).

As a further surrounding circumstance, Exhibits I-8 and I-16, reduced size representations of which appear below, constitute some evidence that the trade-mark QUATRE SAISONS was being used in Canada in association with television broadcasting. Certainly, the opponent is free to elect to oppose the applicant's application for registration of the trade-mark TELEVISION QUATRE SAISONS while appearing to not only condone but to concurrently use its own trade-mark LE QUATRE SAISONS on materials which it distributes to its patrons and which appears to include use of the trade-mark QUATRE SAISONS for broadcasting services. However, the opponent failed to adduce any evidence of actual confusion between its trade-marks LE QUATRE SAISONS and the trade-mark QUATRE SAISONS, the distinctive element of the trade-mark sought to be registered, even though both trade-marks are used on materials which are being distributed to that segment of the Canadian public which the opponent has asserted would be likely to be confused by

the concurrent use of the trade-marks at issue.

Exhibit I-8

Exhibit I-16

I would also note the following paragraphs from the Wakelin affidavit:

19. Because of the extensive use and advertising of the trade marks across Canada, the marks FOUR SEASONS and LE QUATRE SAISONS have become famous trade marks both in the hotel industry and to Canadians in general. Canadians familiar with the operation of Four Seasons Hotels have become familiar with the use of the trade marks FOUR SEASONS and LE QUATRE SAISONS on a large number of items in the guest rooms and throughout the hotels.

20. I note from reviewing the applicant's list of wares that the trade marks FOUR SEASONS and LE QUATRE SAISONS appear on each of the following wares referred to by the applicant: posters, stickers, magazines, pencils, pens and

containers.

21. In addition, I verily believe that a member of the public seeing the trade-mark TELEVISION QUATRE SAISONS displayed on any of the wares listed in the applicant's application would be likely to assume some connection or affiliation with Four Seasons Hotels.

From the above paragraphs, it would appear as if Ms. Wakelin considers there to be a likelihood of confusion between the applicant's trade-mark as applied to the wares previously covered in the applicant's application and the trade-marks of the opponent. However, I would note that the affiant is silent as to there being, at least in her opinion, a reasonable likelihood of confusion between the trade-mark TELEVISION QUATRE SAISONS as applied to the services covered in the applicant's application and one, or more, of the opponent's trade-marks.

The opponent has argued that there would be a likelihood of confusion between the trade-marks at issue only to the extent that patrons of its hotels who might view the applicant's TELEVISION QUATRE SAISONS broadcasting services might be lead to believe that such services were connected or otherwise sponsored by the opponent. However, having regard to the above, and bearing in mind that the services of the applicant including its television broadcasting services differ considerably from the opponent's hotel related services, I have concluded that there would be no reasonable likelihood of confusion between the trade-marks and trade-name at issue. As a result, I reject the opponent's opposition pursuant to Section 38(8) of the Trade-marks Act.

DATED AT HULL, QUEBEC THIS 30th DAY OF APRIL 1992.

G.W. Partington,
Chairman,
Trade Marks Opposition Board.