

IN THE MATTER OF AN OPPOSITION
by Reitmans (Canada) Limited to
application No. 584,467 for the
trade-mark RUGGED WEAR BY/PAR ARROW
filed by Cluett, Peabody Canada Inc.

On May 20, 1987, the applicant, Cluett, Peabody Canada Inc., filed an application to register the trade-mark RUGGED WEAR BY/PAR ARROW based on proposed use in Canada for "clothing namely shirts, sweaters, jackets, pants and coveralls." The application was amended to include a disclaimer to the words RUGGED WEAR and was subsequently advertised for opposition purposes on April 27, 1988.

The opponent, Reitmans (Canada) Limited, filed a statement of opposition on May 18, 1988 and a revised statement of opposition on July 27, 1988. A copy of the revised statement was forwarded to the applicant on August 11, 1988. The first ground of opposition is that the application does not comply with the provisions of Section 30(i) of the Trade-marks Act in that the applicant could not have been satisfied that it was entitled to use its trade-mark because it was aware of the opponent's trade-mark RUGGED WEAR & Design illustrated below.

The second ground of opposition is that the applicant is not the person entitled to registration pursuant to Section 16(3) of the Act because, as of the applicant's filing date, the applied for trade-mark was confusing with the trade-mark RUGGED WEAR & Design previously used in Canada by the opponent in association with "outerwear, namely woven jackets and coats." The third ground reads as follows:

Under the provisions of Paragraph 37(2)(d), the Trade Mark is not distinctive by reason of the fact that the Trade Mark does not actually distinguish the wares in association with which it is proposed to be used by the applicant from the wares of others, including the wares of the Opponent offered in association with the Opponent's trade mark RUGGED WEAR & Design.

The applicant filed and served a counter statement. As its evidence, the opponent filed the statutory declaration of Stephen F. Reitman. Mr. Reitman was cross-examined on his statutory declaration and the transcript of that cross-examination forms part of the record of this opposition.

The opponent was subsequently granted leave pursuant to Rule 46(1) of the Trade-marks Regulations to file a second statutory declaration of Stephen F. Reitman. As its evidence, the applicant filed the affidavit of Alan Riddell. Both parties filed written arguments but no oral hearing was conducted.

As for the first ground of opposition, there was an evidential burden on the opponent to adduce some evidence in support of the allegation of fact underlying this ground, namely, that the applicant was aware of the opponent's trade-mark. Since the opponent failed to file evidence directed to this point, the first ground is unsuccessful.

As for the second ground, there was an evidential burden on the opponent to evidence use by it of its trade-mark prior to the applicant's filing date. This the opponent has failed to do. In his first statutory declaration, Mr. Reitman states that sales of wearing apparel in association with the trade-mark RUGGED WEAR & Design were made by Reitmans Inc., a wholly owned subsidiary of the opponent Reitmans (Canada) Limited. On cross-examination, Mr. Reitman confirmed that the use of the trade-mark was by Reitman's Inc. and not by the parent company. In the absence of a registration for the opponent's trade-mark and a registered user registration in favor of its subsidiary prior to the applicant's filing date, the use of the trade-mark by the subsidiary does not accrue to the benefit of the opponent. Thus, the second ground is also unsuccessful.

As for the third ground of opposition, it is restricted to an allegation of non-distinctiveness in view of the opponent's alleged use of its trade-mark. The ground does not rely on use of the mark by the opponent's subsidiary Reitmans Inc. As discussed, the opponent has failed to evidence any use by itself of its trade-mark. Thus, the third ground is also unsuccessful.

In view of the above, I reject the opponent's opposition.

DATED AT HULL, QUEBEC, THIS 30th DAY OF APRIL 1991.

David J. Martin,
Member,
Trade Marks Opposition Board.