

IN THE MATTER OF AN OPPOSITION by Canadian Olympic Association to application No. 554,902 for the trade-mark CEA CANADIAN ENTREPRENEURS ASSOCIATION & Design filed by G.A. Marton Enterprises Ltd.

On December 30, 1985, the applicant, G.A. Marton Enterprises Ltd., filed an application to register the trade-mark CEA CANADIAN ENTREPRENEURS ASSOCIATION & Design, a representation of which appears below, based upon use of the trade-mark in Canada since November 7, 1984 in association with services identified as "printing and distribution of brochures dealing with advertising, taxation, market research, career planning; lectures and seminars on how to start and operate a small business; publishing of business related statistical data and manuals dealing with accounting procedures and use of computers in business". During the prosecution of its trade-mark application, the applicant disclaimed the right to the exclusive use of CANADIAN ENTREPRENEURS ASSOCIATION and the eleven-point maple leaf apart from its trade-mark.

The opponent, Canadian Olympic Association, filed a statement of opposition on September 1, 1987. In its statement of opposition, the opponent alleged that the applicant's application is not in compliance with Section 29(i) (now Section 30(i)) of the Trade-marks Act in that the applicant was aware of the opponent's marks at the time of filing of its application. Further, the opponent alleged that the applicant has not used its trade-mark in Canada in association with the services identified in the application since the claimed date of first use. The opponent also claimed that the applicant is not the person entitled to registration in that it is not a proper applicant within the meaning of the Trade-marks Act. Next, the opponent alleged that the applicant's trade-mark is not registrable in view of the opponent's official marks, public notice of which had been given in the Trade-marks Journals of January 29, 1975, May 9, 1984, June 13, 1984 and December 10, 1986, copies of which are annexed to the statement of opposition. Finally, the opponent claimed that the applicant's trade-mark is not distinctive.

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

The opponent filed as its evidence the affidavit of John N. Allport while the applicant failed to file either evidence or a statement that it did not intend to file evidence in this opposition.

Neither party filed a written argument and the opponent alone was represented at an oral hearing.

As its first ground of opposition, the opponent has alleged that the applicant's application does not comply with Section 30(i) of the Trade-marks Act in that the applicant was, at the time of its application, aware of the opponent's marks and could not have been satisfied as to its entitlement to use the trade-mark which is the subject of the present opposition proceeding. With respect to this ground of opposition, there is an evidentiary burden on the opponent to establish the facts set forth in its statement of opposition. However, the opponent failed to file any evidence of use of any of its official marks being relied upon in this opposition and no evidence has been adduced that the applicant was aware of the publication of the opponent's official marks in the Trade-marks Journals identified in the statement of opposition. Accordingly, the opponent has failed to meet the evidentiary burden upon it in respect of this ground of opposition which I have therefore rejected.

As its second and third grounds of opposition, the opponent has alleged that the applicant has not used its trade-mark in association with the services covered in its application since the claimed date of first use and further that the applicant is not a proper applicant within the meaning of the Trade-marks Act. No evidence has been adduced by the opponent in respect of either of these grounds of opposition which I have also rejected.

The remaining grounds of opposition relate to the registrability and distinctiveness of the applicant's trade-mark in view of Sections 9(1)(n)(iii), 11 and 12(1)(e) of the Trade-marks Act as a consequence of public notices which have been given in the Trade-marks Journal of the four Canadian Olympic Association official marks represented below.

January 29, 1975

May 9, 1984

June 13, 1984

December 10, 1986

The only issue for determination is whether the applicant's trade-mark CEA CANADIAN ENTREPRENEURS ASSOCIATION & Design consists of or so nearly resembles as to be likely to be mistaken for one, or more, of the official marks relied upon by the opponent in its statement of opposition.

Section 9(1)(n)(iii) of the Trade-marks Act prohibits the adoption of a trade-mark which consists of or so nearly resembles as to be likely to be mistaken for an official mark in respect of which the Registrar has given public notice. In the present case, the applicant's trade-mark does not consist of any of the official marks relied upon by the opponent. In this regard, it is only when considering the second aspect of the test set forth in Section 9(1) that consideration is given to the issue as to whether the applicant's trade-mark so nearly resembles as to be likely to be mistaken for one, or more, of the opponent's official marks set out above.

Considering the resemblance between the applicant's trade-mark and the official marks relied upon by the opponent, I consider there to be a marked degree of similarity between the trade-mark CEA CANADIAN ENTREPRENEURS ASSOCIATION & Design and the opponent's official mark as published in the Trade-marks Journal of January 29, 1975 in that both marks prominently feature the circle design and the eleven-point maple leaf, as well as the words CANADIAN and ASSOCIATION. Accordingly, in my opinion, the average person would, as a matter of immediate impression, react to the applicant's trade-mark as so nearly resembling the opponent's official mark as to be likely to be mistaken for it.

In view of the above, I refuse the applicant's application pursuant to Section 38(8) of the Trade-marks Act.

DATED AT HULL, QUEBEC THIS 28th DAY OF September, 1990.

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