



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

**Citation: 2012 TMOB 171**  
**Date of Decision: 2012-09-28**

**IN THE MATTER OF AN OPPOSITION**  
**by Gemological Institute of America, Inc.**  
**to application No. 1,289,031 for the trade-**  
**mark GHI in the name of Gemology**  
**Headquarters International, LLC**

[1] On February 7, 2006, Gemology Headquarters International, LLC (the Applicant) filed an application to register the trade-mark GHI (the Mark).

[2] The application is based on proposed use of the Mark in Canada in association with the following wares and services:

wares - Certificates of authenticity and certificates of grading of diamonds, gemstones and pearls; jewelry boxes; plastic and glass displays for exhibiting gems or jewelry; and gemological instruments, namely, Chelsea and colour filters, dichoscopes, electronic metal testers, electronic scales, fluorescence lamps, geiger counters, gravity liquids used to test specific gravity (which is ratio of an object weighted first in air and then in water) of gem stones, infrared reflectance meters, lens, diamond and Leveridge gauges, long wave and short wave UV lights, loupes, mag lights, master colored grading sets comprised of a set of stones (such as various grades of cubic zirconium or diamonds) used for accuracy of color grading of gem stones and diamond analysis including evaluating color, fluorescence and revealing fractures and other flaws in gem stones and diamonds, microscopes, optical fiber lamps, polariscopes, quartz-mercury lamps, refractometers, spectrosopes, tweezers, ultraviolet cabinets, and x-ray machines. (Wares1)

services - Educational services regarding gemology; gemological services, namely, providing identification, authentication, and grading of diamonds, gemstones and pearls and issuing certificates relating to such grading, inscriptions on diamonds and gemstones; appraisals of diamonds, gemstones, pearls and jewelry; precious metal assaying. (Services1)

[3] The application is also based on use and registration of the Mark in the United States of America in association with the following wares and services:

wares – Printed certificates of authenticity of diamonds, gemstones and pearls; printed certificates of grading of diamonds, gemstones and pearls. (Wares2)

services - Gemological services, namely, providing identification, authentication, and grading of diamonds, gemstones and pearls and issuing certificates relating to such grading; precious metal assaying. (Services2)

[4] A convention priority filing date of January 26, 2006 has been claimed with respect to Wares2 and Services2.

[5] The application was advertised for opposition purposes in the *Trade-marks Journal* of September 10, 2008.

[6] On November 6, 2008, Gemological Institute of America, Inc. (the Opponent) filed a statement of opposition against the application. The Applicant filed and served a counter statement denying the Opponent's allegations.

[7] In support of its opposition, the Opponent filed affidavits of Susan Johnson (the Opponent's Director of Education Administration), Susan Petrich (the Opponent's Director of Marketing Operations) and Sabra Norris (the Opponent's Chief Lab Business Operations Officer). In support of its application, the Applicant filed an affidavit of Linda Marie Sanchez (a paralegal) plus certified copies of eight Canadian trade-mark registrations/applications. No cross-examinations were conducted.

[8] Both parties filed a written argument.

[9] An oral hearing was held in which both parties participated. The Applicant wished to employ a court reporter to make an electronic recording of the oral hearing for its own purposes. The Opponent objected to having the hearing recorded. There is no legislative requirement, nor is it the practice, to record oral hearings in opposition proceedings before the Registrar, and I did

not allow the Applicant to electronically record the hearing. I note that the Registrar is master of opposition procedures, subject to the right of the parties to a fair hearing, and the refusal to allow the hearing to be recorded did not affect the Applicant's right to a fair hearing.

#### Grounds of Opposition/Material Dates/Onus

[10] The Opponent has pleaded grounds of opposition pursuant to sections 38(2)(b)/12(1)(d), 38(2)(c)/16(2)/16(3) and 38(2)(d)/2 of the *Trade-marks Act*, RSC 1985, c T-13 (the Act). Each of the grounds of opposition is premised on the allegation that there is a likelihood of confusion between the Mark and one or more trade-marks of the Opponent that comprise the letters GIA or GTL or the Opponent's trade-name GIA.

[11] The material date for assessing each ground of opposition varies as follows: section 38(2)(b) ground - today's date [*Park Avenue Furniture Corporation v Wickes/Simmons Bedding Ltd and The Registrar of Trade Marks* (1991), 37 CPR (3d) 413 (FCA)]; section 38(2)(c) ground - February 7, 2006 (re Wares1 and Services1) and January 26, 2006 (re Wares2 and Services2); section 38(2)(d) ground - November 6, 2008 [*Metro-Goldwyn-Mayer Inc v Stargate Connections Inc* (2004), 34 CPR (4th) 317 (FC)].

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

[13] The Opponent's case regarding confusion is strongest under the section 38(2)(b)/12(1)(d) ground of opposition because its later material date allows all of the Opponent's evidence concerning its reputation to be considered. If the Opponent is not successful under section 38(2)(b), then it will not be successful under either section 38(2)(c) or (d).

Section 38(2)(b)/12(1)(d) Ground of Opposition

[14] The Opponent has pleaded that the Mark is not registrable pursuant to section 12(1)(d) of the Act because it is confusing with one or more of the following trade-marks that have been registered by the Opponent:

1. GIA - registration No. TMA268,985

services: educational services, namely courses in gemology.

2. GIA - registration No. TMA564,243

wares: (1) Pre-recorded videotapes, CD-ROMs, and audiotapes featuring educational materials in the field of gemology and telephonic and digital transmitters of information in the field of gemology. (2) Paper articles, cardboard articles and printed matter, namely, magazines, journals and newsletters in the field of gemology, books in the field of gemology, instructional and teaching materials in the field of gemology, reference materials, namely, manuals, handbooks, printed charts and printed tables, all in the field of gemology, testing materials, namely, test booklets, score sheets and answer sheets, unmounted photographs, stationery, note paper, printed diplomas, posters, gemological grading reports and cardboard.

services: Mail order catalog services and computerized on-line ordering services for purchasing products in the field of gemology.

3. GIA - registration No. TMA561,195

services: Gemological services, namely, grading precious gems and registering precious gems.

4. GIA - registration No. TMA583,034

wares: Scientific instruments and apparatus, namely microscopes, measuring instruments, scales, refractometers, lamps, tubes, filters, colour testing equipment, colour comparators, ultraviolet and fluorescent testing equipment, photo-optical instruments, spectrosopes, grading equipment, and portable gemological instruments, namely, microscopes, refractometers, polarisopes, spectrosopes, dichrosopes, loupes, dial gages, lights; scientific instruments and apparatus for examining, testing, evaluating and appraising gems, pearls and jewellery; computer software for data carriers featuring educational materials; pre-recorded videotapes, CD-Roms and audiotapes featuring educational materials (the CD-Roms are not computer software); transmitters and reproducers of sound,

images, or data namely telephonic and digital transmitters of information in the field of gemology, pearls, and jewellery; jewellery, jewellery boxes, jewellery cases, pearls, gems, gem replicas, gem boxes, gem cases, beads, pins, lapel pins, rings, ring strands; clothing namely jackets, windbreakers, sweaters, pants, shorts, skirts, sweat shirts, sweat pants, shirts, tee-shirts, socks, accessories, and hats, including canvas caps and baseball caps.

5. GIA GEM TRADE LABORATORY INTEGRITY & Design - registration No. TMA580,549



services: Gemological services namely, identifying, grading, registering and inscribing precious gems; pearl identification.

6. GIA GEM TRADE LABORATORY & Design - registration No. TMA561,012



services: Gemological services, namely, grading precious gems and registering precious gems.

7. GIA GEMOLOGICAL INSTITUTE OF AMERICA & Design - registration No. TMA596,705



wares: Floppy disks, magnetic tapes recorded with computer programs, magnetic disks recorded with computer programs, compact disks, digital video disks, minidisks, computer software and computer programs all related to the field of gems, jewelry, gemological, gemological training and gem and jewelry evaluations; slides, transparencies, video disks used to transmit or reproduce information and data relating to the field of

gemology, sound recording disks, pre-recorded video tapes, pre-recorded audio tapes and CD-ROMS containing software and information relating to the field of gemology, jewelry, jewelry manufacturing, jewelry design; jewelry sales, jewelry appraisal, insurance appraisal, watches and horology, crystals, beads, pearls, jade, silverware, science, management and sales, gem cutting, gem grading, and gem inscribing; diamond and gemological grading reports, pearl and gem identification reports, handbooks, office paper, colored paper, paperboards, gem papers, craft paper, wrapping paper, waxed paper, typing paper, drawing paper, fax paper, permanent paper, face tissue paper, towels of paper, table cloth and handkerchiefs, plastic stickers for decoration, magazines, cards, namely playing cards and cards containing gem and jewelry identification, grading, and analysis, envelopes, letter paper, greeting cards, bookmarks, maps, catalogues, notes, identity cards, member cards, plastic cards, periodicals, dictionaries, photo albums, calendars, posters, labels, stickers, paper boxes, loose-leaf binders, note cases, self adhesive labels, slogan banners made of paper for decoration, paper banners, teaching materials namely, textbooks, studying materials and notes, visual aids, diagrams, models, pre-recorded tapes, transparencies, reference materials in the fields of gemology, jewelry, jewelry manufacturing, gem analysis, gem cutting, gem inscribing, gem grading, jewelry design, sale and promotion of gems, pearls, and jewelry, valuation and appraisal of gems, pearls and jewelry, and identification of pearls and gems; education materials in the fields of gemology, jewelry, jewelry manufacturing, gem analysis, gem cutting, gem inscribing, gem grading, jewelry design, sale and promotion of gems, pearls, and jewelry, valuation and appraisal of gems, pearls and jewelry, and identification of pearls and gems, namely course books, reference books, exams, scientific charts and graphs, tests, textbooks, courses, booklets, note cards, study guides, course outlines, exam booklets and information pamphlets and guides, reference materials, manuals, answer sheets, printed charts and printed tables; testing materials in the fields of gemology, jewelry, jewelry manufacturing, gem analysis, gem cutting, gem inscribing, gem grading, jewelry design, sale and promotion of gems, pearls and jewelry, valuation and appraisal of gems, pearls and jewelry, and identification of pearls and gems, test booklets score sheets, unmounted photographs, note pads, printed cards, printed diplomas, posters, and cardboard.

services: In-residence, on-site and correspondence courses in gemology including jewelry design, sale and promotion of gems, pearls and jewelry, investigation of genuineness of gems and valuation of gems and pearls.

8. GTL – registration No. TMA572,882

services: Gemological services; identifying, grading, registering and inscribing precious gems; pearl identification.

[15] The first seven marks listed above will be referred to collectively as the GIA Marks. Use of the design marks identified as Nos. 6 and 7 above would also qualify as use of GIA [see *Nightingale Interloc Ltd v Prodesign Ltd* (1984), 2 CPR (3d) 535 at 538-9].

[16] As each of the above registrations is extant, the Opponent has met its initial burden under section 12(1)(d).

[17] I consider the Opponent's mark GIA to most closely resemble the Mark and so I will focus my analysis on the likelihood of confusion between the Mark and GIA, which is the subject of four registrations. If the Opponent is not successful based on GIA, then it will not be successful based on any of its other marks since GIA has a greater degree of resemblance to the Mark than do GTL or the marks of the Opponent that incorporate designs.

[18] 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. Section 6(2) does not concern the confusion of the marks themselves, but confusion of goods or services from one source as being from another source.

[19] The test for confusion is one of first impression and imperfect recollection. The Opponent has correctly pointed out that the fact that a consumer might not be confused by the time he/she makes a purchase is not relevant [*Masterpiece Inc v Alavida Lifestyles Inc* (2011), 92 CPR (4th) 361 (SCC)].

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

321 (SCC), *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée* (2006), 49 CPR (4th) 401 (SCC) and *Masterpiece*.]

*inherent distinctiveness of the marks*

[21] Trade-marks consisting only of letters lack inherent distinctiveness and are therefore characterized as weak marks [*GSW Ltd v Great West Steel Industries Ltd et al* (1975), 22 CPR (2d) 154 (FCTD)]. Accordingly, both parties' marks are inherently weak.

*the extent to which each mark has become known*

[22] A mark's distinctiveness can be enhanced through use and promotion. There is no evidence that the Mark has been used or promoted in Canada, but there is evidence that GIA has been used and promoted in Canada, as detailed further below.

[23] The Opponent is a non-profit institution that is involved in education, research, laboratory services and instrument development, all with respect to the gems and jewelry trade. I summarize below the key evidence regarding the extent of the Opponent's use and promotion of GIA in Canada:

- The Opponent's gem grading services involve generating reports which display GIA, as part of GIA GEMOLOGICAL INSTITUTE OF AMERICA & Design [paragraph 4, Exhibits 4 and 5, Norris affidavit]. In the years 2003 to 2008, the annual number of reports invoiced to Canada varied annually from 913 to 2,858, for a total of approximately 10,000 gems. Ms. Norris also provides "[t]he revenue that was generated from the reports, by customers in Canada"; it ranged annually from \$85,720 to \$275,198 US. [paragraph 8, Norris affidavit]
- Ms. Norris attests at paragraph 11 that the Opponent publishes brochures designed to help members of the public understand diamond grading. Exhibit 7 is a representative brochure, which displays GEMOLOGICAL INSTITUTE OF AMERICA & Design; Ms. Norris attests that it is available online to residents in Canada, but she provides no evidence that any Canadians have viewed or requested such brochure.



- Ms. Petrich attests that the Opponent advertises its wares and services in a variety of forms, such as in magazines, by direct mailing of postcards and brochures, and on its website and that virtually every advertisement displays one or more of the GIA Marks. In particular, she discusses ads placed in trade publications that she says have subscribers in Canada. She attests that the Opponent advertised in the Canadian publications *Jewellery Business* (seven times per annum in 2006, 2007 and 2008) and *Canadian Jeweller* (in 2008 and seven times per annum in 2004, 2005 and 2006), as well as in two U.S. publications in 2006 that are available in Canada, namely *JCK* and *Modern Jeweler*. Ms. Petrich says that *Jewellery Business* is described as having over 8,000 subscribers and *Canadian Jeweller* is reported as having more than 10,000 subscribers. While I agree with the Applicant that these figures are hearsay, in view of the fact that Ms. Petrich was not cross-examined, I have accorded some weight to them.
- Ms. Petrich has provided copies of representative promotional pieces displaying one or more of the GIA Marks that have been sent to Canadians [Exhibit 9]; between 2003 and 2008 the number of promotional pieces mailed annually to Canadian addresses varied from 1335 to 5584 (it is unknown to what extent the mailing lists differed from year to year).
- The Opponent promotes its educational services, instruments, and publications by participating in international trade shows, including a trade show in Vancouver in 2009, but attendance figures have not been provided [paragraph 14, Petrich affidavit].
- The Opponent publishes a quarterly journal entitled *Gems & Gemology* that features the GIA Marks in each issue; in each of the years 2003 through 2008 there were more than 200 subscribers to the journal who had Canadian mailing addresses [paragraphs 16-19, Petrich affidavit].
- The Opponent also publishes a quarterly newsletter entitled *The Loupe* that displays the GIA Marks; although Ms. Petrich says that it is distributed throughout the world, including to Canadian residents, we are only provided with the worldwide distribution figures.

- In addition, the Opponent publishes a bi-weekly electronic bulletin entitled *GIA Insider* which displays the GIA Marks; it is stated to be available worldwide, including in Canada, but no viewership figures are provided [paragraph 22, Petrich affidavit].
- In the years 2003 through 2008, the Opponent annually sold between 221 and 466 “publications, instruments and other merchandise” directly to Canadian residents [paragraphs 25 and 26, Petrich affidavit]. Specimens have not been provided but Ms. Petrich’s Exhibit 17 is a chart that provides details of the sales including invoice date, item category and quantity, as well as the “logo type” displayed on each of the specific items. Some of the items are identified as having displayed the GIA trade-mark.
- The Opponent publishes textbooks in the field of gemology and Ms. Petrich says that these are available to Canadians both through Canadian booksellers and by orders placed directly with the Opponent; Ms. Petrich’s Exhibit 17 indicates that there have been small sales of books (e.g. 1 in 2003 and at least 11 in 2008) but it is not clear that the trade-mark GIA appears on the books.
- The Opponent does not have a campus in Canada, but the Opponent’s distance education courses have been available to residents in Canada since at least as early as 1969; the number of Canadian residents enrolled in distance education courses administered in association with the GIA Marks between 2003 and 2008 varied annually from 307 to 470. In order to complete a program, individuals must attend and complete required laboratory classes in addition to their distance education courses; the number of individuals who attended laboratory classes provided by the Opponent in Canada between 2003 and 2008 varied annually from 91 to 153. Various materials displaying the GIA Marks are sent to Canadian residents who either express an interest in or are enrolled in the Opponent’s distance education programs. [paragraphs 6 - 13, Johnson affidavit]

[24] Based on the foregoing summary, I find that the Opponent’s GIA trade-mark is currently more known in Canada than is the Mark, i.e. the Opponent’s mark has acquired some distinctiveness whereas the Mark has not. However, based on the figures provided I cannot conclude that the Opponent’s mark is well known.

[25] Before proceeding, I will note that Ms. Norris attests at paragraph 5: “[The Opponent] is considered by many to be the world’s most trusted name in diamond grading and gemstone identification, and the GIA Diamond Grading Report, Diamond Dossier, and Gemological Identification Report are considered the world’s premier gemological credentials. Marked as Exhibit 3 to my affidavit are printouts from third party websites describing the reputation of [the Opponent].” However, the Opponent’s reputation and use in other countries are not relevant in this proceeding. In addition, copies of third party websites are only evidence that such a page existed at the time that it was printed – they are not evidence of the truth of their contents [*Candrug Health Solutions Inc v Thorkelson* (2007), 60 CPR (4th) 35 (FCTD)].

*the length of time the marks have been in use*

[26] The Opponent was founded in 1931 in the United States, but its affiants have only provided details concerning use of its marks in Canada from 2003. As the Applicant has not evidenced any use of its Mark, the length of time the marks have been in use favours the Opponent.

*the nature of the wares, services, business and trade*

[27] When considering the wares, services and trades of the parties, it is the statement of wares or services in the parties’ trade-mark application and registrations that govern in respect of the issue of confusion arising under section 12(1)(d) [*Mr Submarine Ltd v Amandista Investments Ltd* (1987), 19 CPR (3d) 3 (FCA); *Miss Universe, Inc v Dale Bohna* (1984), 58 CPR (3d) 381 (FCA)].

[28] The parties appear to be in agreement that their respective wares, services, business and trade are the same or overlap [paragraphs 51-53 of Opponent’s written argument and paragraphs 50-51 of Applicant’s written argument].

[29] Ms. Norris states at paragraph 9 of her affidavit, “[The Opponent] offers services to the public, as well as to government and law enforcement agencies, however the gross majority of its business and revenue comes from companies in the manufacturing and retail sector of the diamond and jewelry trade. This would be the exact client base, or prospective client base, for

any business engaged in providing diamond grading or gem identification services to the jewelry business.” The Applicant has not contradicted this, but instead has submitted that the dominant consumer, “companies in the manufacturing and retail sector of the diamond and jewelry trade”, is sophisticated and knowledgeable.

*the degree of resemblance between the marks*

[30] There is no idea suggested by either GIA or GHI. When one considers the two marks as a whole in appearance and sound, I find that there are significant differences between them. While it is true that they share two of the same three letters, the different positioning of the letter “I” results in a significantly different sound and appearance, and the common use of the letter G as the first component of each mark should not be given undue weight as a letter is inherently weak.

[31] The words of Cattnach, J. in *GSW* at page 163 are applicable to the case at hand:

In short, where a trader has appropriated letters of the alphabet as a design mark without accompanying distinctive *indicia*, and seeks to prevent other traders from doing the same thing, the range of protection to be given that trader should be more limited than in the case of a unique trade mark and comparatively small differences are sufficient to avert confusion and a greater degree of discrimination may fairly be expected from the public in such instances...

*other surrounding circumstances*

[32] A number of other surrounding circumstances have been raised by the parties.

[33] Ms. Sanchez evidenced that both the Mark and GIA have been registered as trade-marks in the United States of America. However, the mere coexistence of marks on foreign registers is not relevant to the issue of the likelihood of confusion in Canada [*Vivat Holdings Ltd v Levi Strauss & Co* (2005), 41 CPR (4th) 8 (FC)].

[34] The Applicant filed certified copies of seven third party Canadian trade-mark registrations and one pending application; the subject marks are AGS GEMOLOGICAL LABORATORIES & Design, AMERICAN GEM SOCIETY LABORATORIES, CI CANADIAN INSTITUTE OF GEMMOLOGY & Design, GS LABORATORIES & Design, I.G.I., INTERNATIONAL GEMOLOGICAL INSTITUTE, UGS, and UNIVERSAL

GEMOLOGICAL SERVICES. These marks are not similar to the ones at issue but presumably were presented as analogous cases since they comprise initials or the words for which the initials stand.

[35] State of the register evidence is only relevant insofar as one can make inferences from it about the state of the marketplace, and inferences about the state of the marketplace can only be drawn where large numbers of relevant registrations are located. Seven registered marks, in the name of four companies, are insufficient to draw any inferences. [*Ports International Ltd v Dunlop Ltd* (1992), 41 CPR (3d) 432; *Del Monte Corporation v Welch Foods Inc* (1992), 44 CPR (3d) 205 (FCTD); *Kellogg Salada Canada Inc v Maximum Nutrition Ltd* (1992), 43 CPR (3d) 349 (FCA)]

[36] Ms. Sanchez has also provided printouts from 11 websites, but only one of these is a “.ca” site and there is no evidence that Canadians have viewed any of these pages.

[37] The Applicant submits that the certified copies and the websites introduced by Ms. Sanchez show that “the Canadian public is well used to distinguishing between and among various marks or names containing words such as GEMOLOGICAL or GEMOLOGY, INSTITUTE, INTERNATIONAL, or LABORATORIES and acronyms derived from marks or names containing such words” [paragraph 57, Applicant’s written argument]. However, the evidence is insufficient to support such a conclusion.

*conclusion re section 12(1)(d) ground*

[38] Having considered all of the surrounding circumstances, I have concluded that, on a balance of probabilities, there is not a reasonable likelihood of confusion between the marks at issue. While it is true that most of the circumstances listed under section 6(5)(a) through (d) favour the Opponent, the assessment of the likelihood of confusion is not an arithmetical process. In most instances it is the degree of resemblance between the trade-marks that is the most crucial factor in determining the issue of confusion [*Masterpiece; Beverley Bedding & Upholstery Co v Regal Bedding & Upholstery Ltd* (1980), 47 CPR (2d) 145 (FCTD) at 149, affirmed 60 CPR (2d) 70]. When confronted with letters of the alphabet that are being used as trade-marks, it may

fairly be expected that consumers would exercise a greater degree of discrimination as a matter of first impression. Here, the differences between the marks are sufficient to avert confusion.

[39] The Opponent seems most concerned that confusion might arise in the mind of an unsophisticated individual consumer of a gem grading report or certificate. There is very little evidence concerning this portion of the parties' trade/clientele. Ms. Norris has indicated that such a consumer is a very minor portion of the Opponent's clientele and the Opponent has submitted at paragraph 58 of its written argument, "It is important to realize that the consumer may focus more on the trade-marks of the manufacturer or retailer of the jewelry and, while recognizing the need for a grading report, may pay less attention to [the] entity behind the grading report."

[40] Regardless of whether I consider a manufacturer, retailer or individual, I am satisfied that confusion is not likely. My conclusion regarding the likelihood of confusion was not predicated on a consumer being sophisticated or knowledgeable in the trade, but on there being significant differences between two inherently weak marks. Insufficient evidence has been presented to lead me to conclude that I should reach a different conclusion regarding an individual consumer as opposed to a corporate consumer.

[41] For the foregoing reasons, the section 12(1)(d) ground of opposition is dismissed in its entirety.

#### Other Grounds of Opposition

[42] As indicated earlier, the section 12(1)(d) ground presented the Opponent's strongest case. Therefore the remaining grounds fail for reasons similar to those set out with respect to the section 12(1)(d) ground.

#### Disposition

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

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Jill W. Bradbury  
Member  
Trade-marks Opposition Board  
Canadian Intellectual Property Office