

IN THE MATTER OF AN OPPOSITION  
by Glen-Warren Productions Limited  
to application No. 571,779 for the  
trade-mark MISS DOMINION OF CANADA  
filed by John Charles Bruno

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On October 28, 1986, the applicant, John Charles Bruno, filed an application to register the trade-mark MISS DOMINION OF CANADA based on use in Canada since April 22, 1960 with the following services:

operating a beauty pageant, the carrying on of business and talent contests, pageants and spectacles, along with the promotion of study in the field of drama, arts, elocution and modelling, and the arranging of sales promotion services by way of personal appearances of successful contestants through contracts between contestants and commercial firms.

The application was advertised for opposition purposes on May 27, 1987.

The opponent, Glen-Warren Productions Limited, filed a statement of opposition on June 26, 1987, a copy of which was forwarded to the applicant on August 11, 1987. The grounds of opposition include one based on Section 38(2)(d) of the Trade-marks Act, namely that the applicant's trade-mark does not distinguish his services from those of the opponent performed in association with its trade-marks MISS CANADA and MISS TEEN CANADA.

The applicant filed and served a counter statement. As its evidence, the opponent filed the affidavit of Elaine Anisman. The applicant did not file evidence. Only the opponent filed a written argument and no oral hearing was conducted.

As for the opponent's ground of non-distinctiveness, the material time for considering the circumstances respecting this issue is as of the filing of the opposition. Furthermore, the onus or legal burden is on the applicant to show that its trade-mark actually distinguishes or is adapted to distinguish its services from the opponent's services throughout Canada.

The Anisman affidavit evidences extensive and longstanding use of the opponent's two trade-marks MISS CANADA and MISS TEEN CANADA in association with the same type of services as set forth in the applicant's application. From a review of that affidavit, it is apparent that the opponent's marks had become well known throughout Canada as of the material time.

Paragraphs 30 to 33 of the Anisman affidavit establish that the marks of both parties are not only all used in association with beauty pageants but that they are also exploited in the same manner. For example, both the opponent's marks and the applicant's mark are commercially exploited by having the reigning pageant winners appear at various functions. In her affidavit, Ms. Anisman points to incidents where such exploitation has resulted either in the applicant's mark being mistakenly replaced by one of the opponent's marks or in a situation where both marks are being commercially exploited at the same function.

Although the opponent's marks are inherently weak when used for services related to beauty pageants, they have become very well known throughout Canada. Furthermore, the

opponent's marks are very similar to the applicant's mark and the parties are engaged in the same field of enterprise. Given that the onus is on the applicant and given that the applicant has failed to file evidence, I find that the applicant has failed to satisfy the legal burden on him to show that his mark is distinctive. The opponent's ground of non-distinctiveness is therefore successful and the remaining ground need not be considered.

The opponent also relied on the Trade-marks Office file history respecting the applicant's expunged registration No. 117,678 for his trade-mark MISS DOMINION OF CANADA. That registration was expunged in view of a decision rendered pursuant to Section 45 of the Trade-marks Act in which it was found that the evidence of use of the mark showed use by Mr. Bruno's company rather than Mr. Bruno himself. His company was not a registered user of the mark. This suggests that the applicant's mark is also non-distinctive by virtue of the activities of the applicant's own company. However, I need not consider this issue further since it was not specifically pleaded in the statement of opposition.

In view of the above, I refuse the applicant's application.

DATED AT HULL, QUEBEC, THIS 30th DAY OF November, 1990.

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