

IN THE MATTER OF AN OPPOSITION by Everything for a Dollar Store (Canada) Inc. to application No. 709,585 for the trade-mark MORE THAN A DOLLAR STORE filed by Dollar Plus Bargain Centre Ltd.

On July 23, 1992, the applicant, Dollar Plus Bargain Centre Ltd., filed an application to register the trade-mark MORE THAN A DOLLAR STORE based on use of the trade-mark in Canada since at least as early as February, 1990 in association with services identified as: “operating discount sales outlets for merchandise”. The applicant disclaimed the right to the exclusive use of DOLLAR STORE apart from its trade-mark.

The present application was advertised for opposition purposes in the *Trade-marks Journal* of October 6, 1993 and the opponent, Everything for a Dollar Store (Canada) Inc., filed a statement of opposition on March 7, 1994, a copy of which was forwarded to the applicant on April 6, 1994. The opponent submitted as its evidence the Tammy Cook and M. Q. Choksi while the applicant filed as its evidence the affidavit of Stephen Dilworth. Mr. Dilworth was cross-examined on his affidavit, the transcript of the cross-examination forming part of the opposition record. As evidence in reply, the opponent filed certified copies of extracts of records maintained by the Trade-marks Office. Both parties submitted written arguments and both were represented at an oral hearing.

The first three grounds of opposition are based on Subsections 30(a), 30(b) and 30(i) of the *Trade-marks Act*. While the legal burden is upon the applicant to show that its application complies with Section 30 of the *Trade-marks Act*, there is an initial evidential burden on the opponent to establish the facts relied upon by it in support of its Section 30 grounds [see *Joseph E. Seagram & Sons Ltd. et al v. Seagram Real Estate Ltd.*, 3 C.P.R. (3d) 325, at pp. 329-330; and *John Labatt Ltd. v. Molson Companies Ltd.*, 30 C.P.R.(3d) 293]. The material time for considering the circumstances respecting the issues of non-compliance with Section 30 of the *Act* is the filing date of the application [see *Georgia-Pacific Corp. v. Scott Paper Ltd.*, 3 C.P.R.(3d) 469, at p. 475].

The first ground is based on Subsection 30(a) of the *Trade-marks Act*, the opponent alleging that the applicant’s statement of services is not described in ordinary commercial terms and that the

application does not accurately describe the specific services with which the mark is alleged to be used. As for the test to be applied under Subsection 30(a) of the *Act*, the former Registrar of Trade-marks stated in *Dubiner and National Yo-Yo and Bo-Lo Ltd. v. Heede Int'l Ltd.*, 23 C.P.R. (2d) 128 that an applicant in its application “must clearly set forth wares or services as they are customarily referred to in the trade (emphasis added).” In *McDonald's Corporation and McDonald's Restaurants of Canada Ltd. v. M. A. Comacho-Saldana International Trading Ltd. carrying on business as Macs International*, 1 C.P.R. (3d) 101, at p. 104, the Hearing Officer concluded that it was only necessary for the opponents to present sufficient argument in order to meet the initial burden on the opponents in respect of a Subsection 30(a) ground of opposition.

While a statement of services may be more difficult to define in terms of the specific services as contrasted to a statement of wares, Subsection 30(a) of the *Trade-marks Act* does require a measure of specificity in respect of the services covered in a trade-mark application where it is reasonable to expect that a specific statement of services in ordinary commercial terms can be provided by an applicant [see *Sentinal Aluminium Products Co. Ltd. v. Sentinel Pacific Equities Ltd.*, 80 C.P.R. (2d) 201]. Thus, in *Stanhope Inc. v. Les Encheres Stanley Inc.*, 82 C.P.R. (2d) 20, it was found that the applicant's statement of services of “operating a business specializing in the retail sale of classes of household and commercial wares” sufficiently defines the nature of the services being rendered without the necessity of the applicant delimiting the products being sold either in specific terms or by way of general categories. Likewise, in *S.C. Johnson & Son, Inc. and S.C. Johnson and Son, Limited v. Peerless Carpet Corporation/ La Corporation des Tapis Peerless, and presently standing in the name of Future Step Technologies Inc./ Les Technologies Future Step Inc.*, a yet unreported Opposition Board decision dated September 25, 1997, it was concluded that the “Operation of a business dealing in the manufacture, marketing, distribution and sale of floor coverings, carpets, adhesives and carpet installation systems” by itself sufficiently defines the nature of the services being rendered without the necessity of the applicant delimiting the “floor covering” in specific terms. Also, in *Pro Image Sportswear, Inc. v. Pro Image, Inc.*, 42 C.P.R.(3d) 566, it was concluded that the applicant is not required to identify in its application the nature of the “sporting goods” associated with its services in order to meet the requirements of Subsection 30(a) of the *Trade-marks Act*.

In the present proceeding, the opponent has argued that the applicant's services which are described as "operating discount sales outlets for merchandise" are overly broad and therefore contrary to Subsection 30(a) of the *Act* in that they contemplate the sale of all manner of goods whereas paragraphs 13 to 16 of the Choksi affidavit establish that the applicant is a dollar store selling household needs and that it advertises itself as such. On the other hand, the applicant submitted that its trade-mark MORE THAN A DOLLAR STORE limits its services to those associated with the operation of a dollar store and therefore its statement of services is not unduly broad. In effect, the applicant has argued that a trade-mark can be relied upon to limit the scope of the wares or services covered in an application in assessing whether a particular statement of wares or services complies with Subsection 30(a) of the *Act*. However, the wording of Subsection 30(a) does not support the applicant's argument and, in my view, it is not reasonable that the statement of wares or services in one application can be found to comply with Subsection 30(a) of the *Trade-marks Act* while the identical wares or services covered in another application could be found to be contrary to Subsection 30(a), depending upon the trade-mark covered in the application.

As noted above, Subsection 30(a) of the *Trade-marks Act* does require a measure of specificity in respect of the services covered in a trade-mark application. However, in the present case, I agree with the opponent that the applicant's statement of services is unduly broad in that it fails to limit the merchandise sold through the applicant's discount sales outlets to any extent. As a result, I have concluded that the applicant's statement of services does not comply with Subsection 30(a) of the *Act* and that the first ground of opposition is successful.

The second ground of opposition is based on Subsection 30(b) of the *Trade-marks Act*, the opponent alleging that the present application does not accurately state the date of first use of the alleged trade-mark and, secondly, that the applicant has not used the mark MORE THAN A DOLLAR STORE as a trade-mark in association with the services described in the application. The first allegation is directed to the accuracy of the applicant's claimed date of first use of February 1990 and no evidence has been furnished by the opponent directed to this issue. The second allegation relates to the manner of use of the mark MORE THAN A DOLLAR STORE and whether

such use constitutes use as a trade-mark as contemplated by the definition of “trade-mark” in Section 2 and use in association with services as per Subsection 4(2) of the *Trade-marks Act*. In my view, this issue is addressed by the opponent’s evidence and, in particular, paragraph 16 of the Choksi affidavit and Exhibit 7 to his affidavit.

While the legal burden is upon the applicant to show that its application complies with Subsection 30(b), there is as noted above an initial evidential burden on the opponent to establish the facts relied upon by it in support of this ground. Furthermore, the evidential burden on the opponent respecting the issue of the applicant’s non-compliance with Subsection 30(b) of the *Act* is a light one [see *Tune Masters v. Mr. P's Mastertune*, 10 C.P.R.(3d) 84, at p. 89]. With respect to its evidential burden, the opponent has, in part, relied upon paragraph 16 of the Choksi affidavit and Exhibit 7 to the affidavit. In paragraph 16 of his affidavit, Mr. Choksi states as follows:

16. I am aware that Dollar Plus displays two exterior signs bearing the phrase “Dollar Plus More Than A Dollar Store” at its Finchdale Shopping Centre location near the intersection of Finch Street West and Weston Road in Metropolitan Toronto, Ontario. The two signs are virtually identical in terms of size and colour. I am not aware of any other instances where Dollar Plus is using the phrase including the words “More Than A Dollar Store”. I have attached a photo showing one of the exterior store signs at that location as Exhibit 7 to this affidavit.

The applicant has argued that the words DOLLAR PLUS would be perceived as a common law trade-mark as they appear in at least three instances in the exterior signs of its Finchdale Shopping Centre store [see Exhibit 7, Choksi affidavit]. Further, since these signs are situated in close proximity to the two signs bearing the wording DOLLAR PLUS MORE THAN A DOLLAR STORE, the public would perceive DOLLAR PLUS and MORE THAN A DOLLAR STORE as separate trade-marks. However, the words MORE THAN A DOLLAR STORE do not stand out from the overall wording of the two signs and, in my view, would not, as a matter of first impression, be perceived by the average consumer or user of the applicant’s services as a separate trade-mark. Consequently, I find that the opponent has met the evidential burden upon it in respect of this ground. Moreover, since the applicant’s evidence does not address the Section 30 grounds, the applicant has failed to meet the legal burden upon it. Thus, the Subsection 30(b) ground of opposition is also successful.

As its third ground, the opponent alleged that the application does not conform to the requirements of Subsection 30(i) of the *Act* in that the applicant could not have been satisfied that it was entitled to use the trade-mark MORE THAN A DOLLAR STORE in Canada in association with the services described in the application. Even were the applicant aware of the opponent's trade-marks and trade-names, no evidence has been adduced to show that the applicant could not properly have been satisfied that it was entitled to use its trade-mark MORE THAN A DOLLAR STORE in Canada on the basis *inter alia* that its trade-mark is not confusing with the opponent's trade-marks and trade-names. Thus, the success of this ground would be contingent upon a finding that the applicant's trade-mark is confusing with one, or more, of the opponent's trade-marks or trade-names [see *Consumer Distributing Co. Ltd. v. Toy World Ltd.*, 30 C.P.R. (3d) 191, at p. 195; and *Sapodilla Co. Ltd. v. Bristol-Myers Co.*, 15 C.P.R. (2d) 152, at p. 155].

The fourth ground of opposition is based on Paragraph 12(1)(b) of the *Trade-marks Act*, the opponent alleging that the applicant's trade-mark is not registrable in that the trade-mark MORE THAN A DOLLAR STORE has been employed as a slogan and is either clearly descriptive or deceptively misdescriptive of the character or quality of the applicant's services. The material date for considering a Paragraph 12(1)(b) ground of opposition is as of the date of decision [see *Lubrication Engineers, Inc. v. The Canadian Council of Professional Engineers*, 41 C.P.R. (3d) 243 (F.C.A.)] and, while the legal burden is upon the applicant to show that its trade-mark MORE THAN A DOLLAR STORE is registrable, there is an initial evidential burden upon the opponent in respect of this ground to adduce sufficient evidence which, if believed, would support the truth of its allegations that the trade-mark is clearly descriptive or deceptively misdescriptive of the character or quality of services identified as: "operating discount sales outlets for merchandise".

The issue as to whether the applicant's trade-mark is clearly descriptive of the character or quality of its services must be considered from the point of view of the average user of those services. Further, in determining whether the trade-mark MORE THAN A DOLLAR STORE is clearly descriptive of the character or quality of the services of operating discount sales outlets for merchandise, the trade-mark must not be dissected into its component elements and carefully analyzed, but rather must be considered in its entirety as a matter of immediate impression [see *Wool*

Bureau of Canada Ltd. v. Registrar of Trade Marks, 40 C.P.R. (2d) 25, at pp. 27-28 and *Atlantic Promotions Inc. v. Registrar of Trade Marks*, 2 C.P.R. (3d) 183, at p. 186)].

In the present case, the applicant's disclaimer of the words DOLLAR STORE apart from its trade-mark is arguably an admission by the applicant that the words DOLLAR STORE are either clearly descriptive of the character or quality of such services, or otherwise are common to the trade or are the name of such wares [see *Andres Wines Ltd. v. Les Vins La Salle Inc.*, 3 C.P.R. (3d) 272, at p. 275]. In any event, Mr. Choksi, President of the opponent, states in his affidavit that there are many "dollar store" operations carrying on business in Canada in which goods are sold at \$1.00 per item or group of items, and some goods at \$2.00, \$3.00, and so on, and that there is a difference between a "dollar store" and a "one dollar store" in which the items and groups of items are priced at the \$1.00 price point although the two types of stores compete. Further, according to Mr. Choksi, there are many merchants who identify themselves as a "dollar store" even though they sell various consumer products at different dollar price points. Also, in paragraphs 13 and 14 of his affidavit, Mr. Choksi states as follows:

13. The "dollar store" business in Canada has grown substantially over the fast few years. There are many "dollar store" operations carrying on business in Canada. I understand that Dollar Plus Bargain Centre Ltd. have identified themselves to the public as a "dollar store" operation. I am aware that this company's stores sell many items of merchandise at the one dollar price point. Many of these goods are similar to the merchandise sold in other dollar store operations in Canada.

14. Although Dollar Plus Bargain Centre Ltd. identify themselves as dollar stores, they do sell many items individually marked at prices which are more than one dollar. Merchandise is displayed and sold within the company's Dollar Plus stores in a manner which is common to the dollar store industry in Canada.

While the trade-mark MORE THAN A DOLLAR STORE relates the applicant's services to the operation of a dollar store, it does not as a matter of immediate impression clearly describe the character or quality of the applicant's services. Rather, the mark MORE THAN A DOLLAR STORE may suggest to some consumers that the applicant's services are better than one would receive in other dollar stores or that the applicant provides a wider variety of goods than may otherwise be available in other sales outlets. As well, the applicant's mark might suggest to some consumers that everything in the store sells for more than one dollar. However, a mark which is suggestive, or even highly suggestive, is not objectionable under Paragraph 12(1)(b). Consequently,

I find that the opponent has not met its initial burden in respect of the Paragraph 12(1)(b) ground and have therefore rejected the fourth ground of opposition.

The opponent has also alleged that the applicant's trade-mark is not registrable in view of Paragraph 12(1)(d) of the *Trade-marks Act* in that the applicant's mark is confusing with its registered trade-marks EVERYTHING FOR A DOLLAR STORE & Design, registration Nos. 335,647, 404,847, 407,737 and 408,329. 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 Subsection 6(5) of the *Trade-marks Act*. Further, the Registrar must bear in mind that the legal burden is upon the applicant to establish that there would be no reasonable likelihood of confusion between the trade-marks at issue as of the date of decision, the material date with respect to the Paragraph 12(1)(d) ground of opposition [see *Park Avenue Furniture Corp. v. Wickes/Simmons Bedding Ltd. et al*, 37 C.P.R. (3d) 413 (F.C.A.)].

Considering initially the inherent distinctiveness of the trade-marks at issue, the applicant's trade-mark MORE THAN A DOLLAR STORE is suggestive of the applicant's services and therefore is a weak mark possessing little inherent distinctiveness. As the only evidence furnished in relation to the applicant's use of its trade-mark fails to show use of the mark, I have concluded that the applicant's trade-mark has not become known to any extent in Canada. As for the opponent's EVERYTHING FOR A DOLLAR STORE & Design marks, I consider the wording portion of these marks to be highly suggestive, if not descriptive, of the applicant's services, that is, that all the merchandise associated with the opponent's retail store services sells for a dollar. However, the design features associated with the opponent's trade-marks covered by registration Nos. 335,647 and 404,847 add some measure of inherent distinctiveness to these marks. According to Mr. Choksi, President of the opponent, there are 34 stores operating in Canada in association with the EVERYTHING FOR A DOLLAR STORE & Design trade-marks with sales from 1989 to 1994 exceeding \$78,000,000. Thus, the opponent's EVERYTHING FOR A DOLLAR STORE & Design trade-marks must be considered as having become known in Canada. Accordingly, both the extent to which the trade-marks at issue have become known and the length of time the marks have been

in use favour the opponent. However, while the opponent's evidence establishes that its registered trade-marks have become known in Canada, I am of the view that they should only be accorded a narrow ambit of protection in view of their inherent weakness.

The services associated with the trade-marks at issue are essentially the same and the respective channels of trade of the parties could potentially overlap.

As for the degree of resemblance between the trade-marks of the parties, I consider there to be some similarity in appearance and little similarity in sounding between the trade-marks EVERYTHING FOR A DOLLAR STORE & Design and MORE THAN A DOLLAR STORE when the marks are considered in their entireties as a matter of immediate impression and imperfect recollection. However, to the extent that the marks suggest an association with the operation of a dollar store, the trade-marks at issue do suggest similar ideas although the opponent has not established that it is entitled to a monopoly in respect of such an idea.

As a further surrounding circumstance in respect of the issue of confusion, the applicant relied upon the evidence of Stephen Dilworth, trade-mark searcher employed by the trade-mark agents for the applicant. Mr. Dilworth conducted two CD-ROM database searches, one of the database entitled 11 Million Business Phone Book and a second of the records of the Canadian Trade-marks Office, and has adduced the results of the searches as exhibits to his affidavit. During his cross-examination, Mr. Dilworth was questioned concerning the following notice appearing at the top of each page of the search results of the first CD-ROM database search:

“This information may not be sold or otherwise provided to any party other than the Licensee. Data has been seeded to detect unauthorized use.”

Mr. Dilworth indicated that he was not sure of the meaning of the data being seeded and did not contact American Business Information to determine what the term meant. In any event, I assume that incorrect data has been added to the database by American Business Information in order to detect unauthorized use of the database information. I have therefore accorded less weight to the results of the first database search. Further, the trade-marks database search includes incomplete particulars relating to the marks disclosed and it also has been accorded diminished weight. As well,

the results included trade-marks which have been abandoned and these marks have been ignored for the purposes of assessing the weight to be accorded this evidence. In any event, this evidence merely confirms that the opponent's trade-marks are inherently weak and this was already taken into consideration when assessing the inherent distinctiveness of the marks of the parties.

Having regard to the fact that the opponent's registered trade-marks are inherently weak and have not been shown to have become known in Canada to such an extent as to justify my according to them anything other than a narrow ambit of protection, and bearing in mind that the degree of resemblance between the trade-marks at issue is limited, I have concluded that there would be no reasonable likelihood of confusion between the applicant's trade-mark MORE THAN A DOLLAR STORE and the opponent's registered trade-marks EVERYTHING FOR A DOLLAR STORE & Design. I have therefore rejected the Paragraph 12(1)(d) grounds of opposition.

The opponent also relied upon several pending applications which had been allowed between June 12, 1992 and June 12, 1993 under the Paragraph 12(1)(d) ground. As the Registrar can only have regard to the opponent's registrations being relied upon in the statement of opposition, or any amended statement, I do not intend to have regard to the opponent's applications even should these applications mature to registration prior to the issuance of this decision.

The opponent also alleged that the applicant is not the person entitled to registration in view of Paragraph 16(1)(a) of the *Trade-marks Act* in that the applicant's trade-mark MORE THAN A DOLLAR STORE is confusing with its registered trade-marks EVERYTHING FOR A DOLLAR STORE & Design which had been previously used in Canada. However, having concluded that the applicant's trade-mark is not confusing with the opponent's registered trade-marks, I am equally satisfied that the applicant's mark would not be confusing with the opponent's registered trade-marks as of either the applicant's claimed date of first use or the filing date of the present application. I have therefore dismissed this ground of opposition.

As its next ground, the opponent alleged that the applicant is not the person entitled to registration in view of Paragraph 16(1)(b) of the *Trade-marks Act* in that the applicant's trade-mark

MORE THAN A DOLLAR STORE is confusing with its previously filed applications for registration of the trade-marks: EVERYTHING FOR A DOLLAR OR MORE & Design, application Nos. 672,825, 672,828 and 672,838; EVERYTHING FOR A DOLLAR OR MORE Design, application No. 672,822; EVERYTHING FOR A DOLLAR OR MORE STORE Design, application No. 672,844; and EVERYTHING FOR A DOLLAR OR MORE STORE & Design, application Nos. 672,848, 672,852 and 673,369. Each of the opponent's applications was filed December 19, 1990, that is, subsequent to the applicant's alleged date of first use of February 1990, but prior to the applicant's filing date of July 23, 1992. As noted above, the opponent has successfully challenged the applicant's claimed date of first use under the Subsection 30(b) ground. Consequently, the material date for assessing this ground is the applicant's filing date [see *American Cyanamid Co. v. Record Chemical Co. Inc.*, 6 C.P.R. (2d) 278]. Further, as the opponent's applications are still pending and therefore were pending as of the date of advertisement of the present application [October 6, 1993], the opponent has therefore met the initial burden upon it under Subsection 16(4) of the *Trade-marks Act*. Thus, this ground remains to be decided on the issue of confusion between the applicant's trade-mark and one, or more, of the opponent's trade-marks covered by its pending applications. The most relevant of the pending applications relied upon by the opponent is, in my view, its pending application for the trade-mark EVERYTHING FOR A DOLLAR OR MORE STORE Design, application No. 672,844, filed December 19, 1990, and covering "Retail store services namely, marketing of discount merchandise of various kinds and sundry household and consumer products".

In determining whether there would be a reasonable likelihood of confusion between the applicant's trade-mark and the opponent's pending trade-mark application within the scope of Subsection 6(2) of the *Trade-marks Act*, the Registrar must have regard to all the surrounding circumstances, including those which are specifically enumerated in Subsection 6(5) of the *Act*. Further, the Registrar must bear in mind that the legal burden is upon the applicant to establish that there would be no reasonable likelihood of confusion between the trade-marks of the parties as of the applicant's filing date which, as noted above, is the material date for considering the non-entitlement ground in this case.

Considering initially the inherent distinctiveness of the trade-marks at issue, the applicant's trade-mark MORE THAN A DOLLAR STORE, as noted above, is suggestive of the applicant's services and therefore possesses little inherent distinctiveness. As the only evidence furnished in relation to the applicant's use of its trade-mark fails to show use of the mark, I have concluded that the applicant's trade-mark has not become known to any extent in Canada. As for the opponent's EVERYTHING FOR A DOLLAR OR MORE STORE Design trade-mark, I consider the wording portion of the marks to be highly suggestive, if not descriptive, of the applicant's services, that is, that all the merchandise associated with the opponent's retail store services sells for a dollar or more. Further, the design of the lettering of the words EVERYTHING FOR A DOLLAR OR MORE STORE does not add to the inherent distinctiveness to the trade-mark. Moreover, no evidence has been furnished by the opponent to establish that its trade-marks covered by its pending applications, including the trade-mark EVERYTHING FOR A DOLLAR OR MORE STORE Design, have yet been used in Canada. Accordingly, neither the applicant's trade-mark nor the opponent's trade-mark EVERYTHING FOR A DOLLAR OR MORE STORE Design can be considered as having become known in Canada. As a result, the extent to which the trade-marks at issue have become known and the length of time the marks have been in use do not favour either party.

The services associated with the trade-marks at issue are essentially the same and the respective channels of trade of the parties could potentially overlap.

As for the degree of resemblance between the trade-marks of the parties, I consider there to be some similarity in appearance and little similarity in sounding between the trade-marks EVERYTHING FOR A DOLLAR OR MORE STORE Design and MORE THAN A DOLLAR STORE when the marks are considered in their entireties as a matter of immediate impression and imperfect recollection. However, to the extent that the marks suggest an association with the operation of a dollar store, the trade-marks at issue do suggest similar ideas although the opponent has not shown that it is entitled to a monopoly in respect of such an idea.

As the searches undertaken by Stephen Dilworth were conducted in September of 1995, more than three years subsequent to the material date for considering this ground, the results of these

searches are of limited value in assessing the likelihood of confusion in relation to this ground. In any event, and as noted above in relation to the Paragraph 12(1)(d) ground, this evidence merely confirms that the trade-marks at issue are inherently weak and this has already been taken into consideration when assessing the inherent distinctiveness of the marks of the parties.

Having regard to the fact that the opponent's trade-mark EVERYTHING FOR A DOLLAR OR MORE STORE Design is inherently weak and has not been shown to have become known in Canada to any extent, and bearing in mind that the degree of resemblance between the trade-marks at issue is limited, I have concluded that there would be no reasonable likelihood of confusion between the applicant's trade-mark MORE THAN A DOLLAR STORE and the opponent's trade-mark EVERYTHING FOR A DOLLAR STORE OR MORE Design. Further, as the degree of resemblance between the applicant's trade-mark and the remaining trade-marks covered by the opponent's pending applications is even less than in the case of the opponent's EVERYTHING FOR A DOLLAR STORE OR MORE Design mark, I have rejected the Paragraph 16(3)(b) ground of opposition.

The opponent also alleged that the applicant's trade-mark is not distinctive in that it has licensed others to use the alleged trade-mark and variations thereof, without adequate control of the character or quality of the services under the license, contrary to Section 50 of the *Trade-marks Act*. As no evidence has been furnished by the opponent in support of this ground, the opponent has failed to meet its initial evidential burden and I have therefore dismissed this ground of opposition.

The opponent next alleged that the applicant's trade-mark is not distinctive in view of the opponent's use of EVERYTHING FOR A DOLLAR STORE, EVERYTHING FOR A DOLLAR STORE & Designs and EVERYTHING FOR A DOLLAR STORE (CANADA) INC. and the opponent's other trade-marks, trade-names and slogans referred to in the previous grounds and used by the opponent and its licensees in association with similar services in Canada. However, I have concluded that there would be no reasonable likelihood of confusion between the applicant's trade-mark MORE THAN A DOLLAR STORE and the opponent's trade-marks EVERYTHING FOR A DOLLAR STORE & Designs. Further, for the reasons noted above and, in particular, the inherent

weakness of the opponent's mark and name and the limited degree of resemblance between the applicant's trade-mark and the opponent's trade-marks and trade-names, I do not consider that there would be any reasonable likelihood of confusion between the trade-mark MORE THAN A DOLLAR STORE and the opponent's mark EVERYTHING FOR A DOLLAR STORE or its trade-name EVERYTHING FOR A DOLLAR STORE (CANADA) INC. as of the date of opposition, the material date for considering this ground. I have therefore rejected this ground of opposition.

In view of the above, and having been delegated by the Registrar of Trade-marks by virtue of Subsection 63(3) of the *Trade-marks Act*, I refuse the applicant's application pursuant to Subsection 38(8) of the *Trade-marks Act* for failure to comply with Subsections 30(a) and 30(b) of the *Act*.

DATED AT HULL, QUEBEC, THIS 5th DAY OF MAY, 1998.

G.W. Partington
Chairperson
Trade-marks Opposition Board