

**IN THE MATTER OF AN OPPOSITION  
by Arpi Magyar and Paolo Paolino carrying  
on business as Splendido Bar and Grill to  
application No. 685,550 for the trade-mark  
SPLENDIDO filed by Loblaws Inc.**

**On July 9, 1991, the applicant, Loblaws Inc., filed an application to register the trade-mark SPLENDIDO for "Italian style flat bread" based on use in Canada since June 1, 1991. The application was advertised for opposition purposes on February 26, 1992.**

**The opponents, Arpi Magyar and Paolo Paolino carrying on business as Splendido Bar and Grill, filed a statement of opposition on July 27, 1992 and a revised statement on September 21, 1992. A copy of the revised statement was forwarded to the applicant on October 30, 1992. The first ground of opposition is that the application does not comply with the provisions of Section 30(i) of the Trade-marks Act. The opponents alleged that the applicant could not have been satisfied that it was entitled to use the applied for mark because it was aware of the opponents' use of its trade-name.**

**The second ground of opposition is that the applied for trade-mark is not registrable pursuant to Sections 10 and 12(1)(e) of the Act because it has become recognized as designating the kind, quality and value of the applied for wares. The third ground is that the applicant is not the person entitled to registration pursuant to Section 16(1) of the Act because, as of the applicant's claimed date of first use, the applied for trade-mark was confusing with the trade-name Splendido Bar & Grill previously used in Canada by the opponents in association with a restaurant and a catering service. The fourth ground is that the applied for mark is not distinctive because it is confusing with the opponents' trade-name.**

**The applicant filed and served a counter statement. Neither party filed evidence. Both parties filed a written argument and an oral hearing was conducted at which both parties were represented.**

**As for the opponent's first ground of opposition, the onus or legal burden is on the applicant to show its compliance with the provisions of Section 30(i) of the Act: see the opposition decision in Joseph Seagram & Sons v. Seagram Real Estate (1984), 3 C.P.R.(3d) 325**

at 329-330. There is, however, an evidential burden on the opponents respecting their allegations of fact in support of that ground. Since the opponents have failed to file any evidence, I find that the first ground of opposition is unsuccessful. The opponents' agent submitted that I could take judicial notice of the registration of the opponents' trade-name in Ontario on October 1, 1990. I disagree; a provincial trade-name registration is not a matter which is so generally known that it cannot be reasonably questioned. But even if I could take judicial notice of that registration, it would not assist the opponents' case since they have not evidenced the applicant's awareness of that registration as of the filing date of the present application.

As for the second ground of opposition, again there is an evidential burden on the opponents to prove the supporting allegations of fact. Since the opponents did not file evidence, I find that the second ground is also unsuccessful.

As for the third ground of opposition, Sections 16(1)(c) and 16(5) of the Act require the opponents to evidence use of their trade-name prior to the applicant's claimed date of first use and non-abandonment of that name as of the applicant's advertisement date. Since the opponents did not file evidence, they have failed to meet those two burdens and the third ground is therefore unsuccessful.

As for the fourth ground of opposition, the opponents have failed to evidence any use of their trade-name. Thus, the fourth ground is also unsuccessful.

In view of the above, I reject the opponents' opposition.

**DATED AT HULL, QUEBEC, THIS 31<sup>st</sup> DAY OF MARCH, 1995.**

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