

**IN THE MATTER OF AN OPPOSITION by  
Clearnet Communications Inc. and TELUS Corporation to application No. 864,305  
for the trade-mark THE FUTURE'S BRIGHT, THE FUTURE'S ORANGE  
filed by Orange Personal Communications Services Limited**

**On December 15, 1997, Orange Personal Communications Services Limited, the applicant, filed an application to register the trade-mark THE FUTURE'S BRIGHT, THE FUTURE'S ORANGE. The application is based upon proposed use of the trade-mark in Canada in association with the following wares and services:**

**Wares:**

**(1) Telephone handsets; parts and fittings for telecommunications apparatus and instruments, namely, batteries, chargers, adapters, in car phone cradles, in car charging cradles, antennae kits for use with mobile telephones and with the provision of mobile telephone services; fax and data magnetic cards; magnetic cards for use with mobile telephone apparatus; computer software for facilitating the transfer of information to a personal computer via a mobile telephone link; adapters allowing connection to a personal computer; answerphones, pagers; visual display units, namely computer monitors; liquid crystal display units; visual display units for use in telephone handsets, palm top computers, lap top computers, desk top computers, fax machines, and radio paging equipment; microphones with loud speaker units all for use with telephone handsets; computers; discs, tapes and wires, all being magnetic data carriers; computer programs and computer software for use in connection with the provision of telecommunications services and the operation of telephone equipment; micro-processors; magnetic cards; keyboards; satellite transmitters and receivers; part and fittings for all the aforesaid wares; telephones and mobile telephones; radio pagers, radio telephones, radios, televisions; computerized personal organizers; blank and pre-recorded video cassettes containing films; aerials.**

**(2) Printed matter, namely, magazines, periodicals, booklets, leaflets, books, journals, handbooks, pens, pencils, crayons, writing paper, envelopes, notebooks, addressbooks, diaries, books of personal record use, bookmarks, calendars, posters, planners, photographs, pictures; studybooks, workbooks, coursebooks, printed publications,**

namely, manuals, books, charts, guides and instruction booklets.

**Services:**

**(1) Installation, maintenance and repair of telecommunications apparatus and systems, namely, telephones, mobile telephones and telephone handsets, paging apparatus, radio paging apparatus, radio telephone apparatus, computers and personal organisers, computers, satellite transmitters and receivers; telecommunications, and communications, namely, the provision of a mobile telephone network; provision of services to subscribers to a mobile telephone network namely help desk services, customer care services, answerphone services, text messaging services, group messaging services, international roaming and network selection services, personalized phone book/directory services, alarm call services, fax and data services, call diversion services, message storage and retrieval services, conference call services, call waiting advisory services, memo recording and retrieval services, personalized operator answering services, personalized operator message receiving and transmission services, fax diversion and retrieval services; text and voice information services relating to topics of general daily interest, namely financial data, national and international news, sports news, weather reports, traffic news, horoscopes, and tourist guides; security monitoring services, management of security services all for security of telecommunications networks and equipment, telecommunications information services and rental of telephone apparatus, facsimile, telex, radio paging and electronic mail, data-interchange services; satellite communication services; broadcasting or transmission of radio or television programmes; transmission, reception, storage or processing of data and of information; and advisory, information and consultancy services relating to all the aforementioned services.**

**The application was advertised for opposition purposes in the Trade-marks Journal of September 29, 1999. The opponent, Clearnet Communications Inc., filed a statement of opposition on November 25, 1999. The applicant filed and served a counter statement in which it denied the opponent's allegations.**

**On February 23, 2001, the opponent filed a request for leave to amend its statement of**

**opposition. Leave was granted by letter dated May 15, 2001.**

**The opponent filed as its rule 41 evidence certified copies of registrations Nos. TMA 538,858, 537,359, 530,498, 523,315, 521,083, and 521,078, as well as the affidavits of Wade Oosterman, Cynthia Fleming, John Leung and Robert W. White. As rule 42 evidence, the applicant filed the affidavits of Ellen Anastacio and A. Louise McLean.**

**Each party filed a written argument and an oral hearing was held at which both parties were represented.**

**The day before the oral hearing, the opponent requested leave to amend its statement of opposition to add TELUS Corporation as an opponent. TELUS Corporation is the current owner of the marks which form the basis of the opposition. According to the Canadian Intellectual Property Office's records, Clearnet Communications Inc. became Clearnet Inc. through an amalgamation on December 30, 2001. On December 12, 2002, there was a transfer from Clearnet Inc. to TELUS Communications Inc. On November 6, 2003, there was an assignment from TELUS Communications Inc. to TELUS Corporation. These changes were recorded March 1, 2002, January 16, 2003 and January 8, 2004, respectively.**

**At the oral hearing, the applicant's agent submitted that the amendment to the statement of opposition should not be allowed for the following reasons. The applicant argued that the delay in requesting the amendment should result in the opponent bearing any resulting prejudice, not the applicant. The applicant indicated that it might have considered filing**

further evidence if the amendment had been made earlier. It commented that perhaps the new owner has changed the way it uses the mark, if it is in fact still using it. However, most of the material dates in these proceedings predate the change in ownership and a change in the way a mark is used or whether it is in fact still used after the evidence stage is passed are possibilities in every case, regardless of whether there is a change in ownership.

The applicant also submitted that it is possible that the original opponent no longer exists. Again, this speculation is one that could be submitted in every case, regardless of whether there was a change in ownership.

In response, the opponent's agent pointed out that it was not necessary for the new owner to be added in order to maintain the paragraph 12(1)(d) ground of opposition. With regard to the other grounds of opposition, it pointed out that it matters not what occurred after their material dates.

In view of the fact that the agent representing the applicant had been unable to obtain instructions from its overseas client concerning the extremely short notice given of the request to amend the statement of opposition, I granted the applicant two weeks for the purpose of filing further written submissions, if any. The applicant's agent advised by letter that no additional submissions would be made.

If the opponent had requested leave to replace the opponent Clearnet Communications Inc. with the opponent TELUS Corporation, I would have granted leave as the case law

supports the right of an assignee of trade-marks that are relied upon in an opposition to step in to the shoes of its predecessor [see *United Artists Corp. v. Pink Panther Beauty Corp.* (1996), 67 C.P.R. (3d) 216 (F.C.T.D.), reversed 80 C.P.R. (3d) 247; *Clarco Communications Ltd. v. Sassy Publishers Inc.* (1994), 54 C.P.R. (3d) 418 (F.C.T.D.)] I do not know why TELUS Corporation wishes to be added as an opponent, as opposed to being substituted as the opponent, but I do not consider this to be a significant difference. Although there is no excuse given for the failure to reflect the two earlier changes in title, there has not been significant delay in recording the most recent assignment. I am prepared to grant leave as I do not see that the delay overall has caused the applicant any real prejudice. I note that the denial of leave would not diminish the alleged prejudice given that the change in ownership is a fact that has occurred, regardless of whether or not the amendment is made.

The applicant did not request an opportunity to request leave to amend its counter statement, if need be, and the nature of the amendment does not require a responsive amendment.

I turn now to the ground of opposition that is based on paragraph 12(1)(d) of the *Trade-marks Act*. The opponent has pleaded that the applicant's mark is confusing with the following registered trade-marks:

1. **FUTURE FRIENDLY** registered under No. 523,315 for:  
- Telecommunication equipment, namely; telephone, radios, pagers and accessories therefor, namely; chargers, batteries, aerials, carrying cases, microphones, cradles, speakers, racks and memo pads; messaging equipment, namely; computers and computer software to record, receive transmit disseminate voice and data messages; and computer software; used to code and decode telecommunication transmissions; user manuals.

**- Telecommunication services, namely the wholesale and retail sale and resale of data and voice telecommunication services; message relay service to deaf persons; the operation of telecommunication transmissions; the operation of telecommunications networks, the wholesale and retail sale, leasing, rental, maintenance, repair, refurbishing and repurchase of telecommunications equipment and accessories; the operation of retail outlets for the provision of telecommunications services and telecommunications equipment and accessories; and the operation of distribution centres and wholesale facilities for the support of retail outlets and the performance of such activities; the operation of client care, information help-lines and operation services in connection with the provision of telecommunications services and telecommunication equipment and accessories; coin, credit card, pay and similar telephone and mobile radio services namely payment plans; information encryption services; telecommunication consulting services, telecommunication engineering services; message relay services; the development, wholesale and retail sale through transmission in a narrow-casted format of customized news, entertainment (such as sports, music, interactive games) and information of interest to subscribers of the applicant's telecommunications services.**

**2. THE FUTURE IS FRIENDLY registered under No. 538,858 for:**

**- Telecommunication equipment, namely; telephones and accessories therefor, namely; chargers, batteries, carrying cases; messaging equipment, computers and computer software to record, receive, transmit or disseminate voice and data messages; and computer software used to code and decode telecommunication transmissions; user manuals.**

**- Telecommunication services, namely the wholesale and retail sale and resale of data and voice telecommunication services; message relay service to deaf persons; the operation of telecommunication transmissions; the operation of telecommunications networks; the wholesale and retail sale, leasing, rental, maintenance, repair, refurbishing and repurchase of telecommunications equipment and accessories; the operation of retail outlets for the provision of telecommunications services and telecommunications equipment and accessories; and the operation of distribution centres and wholesale facilities for the support of retail outlets and the performance of such activities; the operation of client care, information help-lines and operation services in connection with the provision of telecommunications services and telecommunication equipment and accessories; the wholesale and retail sale and resale of credit card, debit card, smart card and calling card services relating to data and voice telecommunications services; coin, credit card, pay and similar telephone and mobile radio services namely payment plans; information encryption services; telecommunication consulting services, telecommunication engineering services; message relay services; the development, wholesale and retail sale through transmission in a narrow-casted format of customized news, entertainment (such as sports, music, interactive games) and information of interest to subscribers of the applicant's**

telecommunications services.

3. **THE PHONE WITH A FUTURE** registered under No. 521,083 for:
  - Telecommunications services.
  
4. **Chinese Characters Design (translated as THE FUTURE IS FRIENDLY)** registered under No. 521,078 for:
  - Telecommunication equipment, namely telephone; messaging equipment namely; computers and computer software to record, receive, transmit or disseminate voice and data messages; computer software used to code and decode telecommunication transmissions; user manuals.
  - Telecommunication services, namely the provision, wholesale and retail sale and resale of data voice telecommunications services; the operation of telecommunication transmissions; the operation of telecommunications networks; the wholesale and retail sale, leasing, rental, maintenance, repair, refurbishing and repurchase of telecommunications equipment; the operation of retail outlets for the provision of telecommunications services and telecommunications equipment; the operation of distribution centres and wholesale facilities for the support of retail outlets and the performance of such activities; the compilation, distribution and sale of information to others regarding telecommunication services and equipment; information encryption services; telecommunication consulting services, telecommunication engineering services; message relay services; the development, wholesale and retail sale through transmission in a narrow-casted format of customized news, entertainment programs (such as sports, music, interactive games), and information of interest to subscribers of the applicant's telecommunication services.
  
5. **LE FUTUR EST SIMPLE** registered under No. 530,498 for:
  - Telecommunication equipment, namely telephones, radios, pagers and accessories therefor namely chargers, batteries, aerials, carrying cases, microphones, cradles, speakers, racks and memo pads; messaging equipment, namely computers and computer software to record, receive transmit or disseminate voice and data messages; and computer software used to code and decode telecommunication transmissions; user manuals; and credit, debit, smart and calling cards.
  - Data and voice telecommunication services.
  
6. **LE TÉLÉPHONE DU FUTUR SIMPLE** registered under No. 537,359 for:
  - Telecommunication equipment, namely; telephones and accessories therefor, namely; chargers, batteries, carrying cases; messaging equipment, computers and computer software to record, receive, transmit or disseminate voice and data messages; and computer software used to code and decode telecommunication transmissions; user manuals.
  - Telecommunication services, namely the wholesale and retail sale and resale of data and voice telecommunication services; message relay service to deaf persons;

**the operation of telecommunication transmissions; the operation of telecommunications networks; the wholesale and retail sale, leasing, rental, maintenance, repair, refurbishing and repurchase of telecommunications equipment and accessories; the operation of retail outlets for the provision of telecommunications services and telecommunications equipment and accessories; and the operation of distribution centres and wholesale facilities for the support of retail outlets and the performance of such activities; the operation of client care, information help-lines and operation services in connection with the provision of telecommunications services and telecommunication equipment and accessories; the wholesale and retail sale and resale of credit card, debit card, smart card and calling card services relating to data and voice telecommunications services; coin, credit card, pay and similar telephone and mobile radio services namely payment plans; information encryption services; telecommunication consulting services, telecommunication engineering services; message relay services; the development, wholesale and retail sale through transmission in a narrow-casted format of customized news, entertainment (such as sports, music, interactive games) and information of interest to subscribers of the applicant's telecommunications services.**

**The material date with respect to paragraph 12(1)(d) is the date of my decision [see *Park Avenue Furniture Corporation v. Wickes/Simmons Bedding Ltd. and The Registrar of Trade Marks*, 37 C.P.R. (3d) 413 (FCA)]. There is a legal burden on the applicant to establish on a balance of probabilities that there would be no reasonable likelihood of confusion between the marks in issue.**

**The test for confusion is one of first impression and imperfect recollection. In applying the test for confusion set forth in subsection 6(2) of the *Trade-marks Act*, the Registrar must have regard to all the surrounding circumstances, including those specifically enumerated in subsection 6(5) of the Act. Those factors specifically set out in subsection 6(5) are: the inherent distinctiveness of the trade-marks and the extent to which they have become known; the length of time each has been in use; the nature of the wares, services or business; the nature of the trade; and the degree of resemblance between the trade-marks**



in appearance or sound or in the ideas suggested by them. The weight to be given to each relevant factor may vary, depending on the circumstances [see *Clorox Co. v. Sears Canada Inc.* 41 C.P.R. (3d) 483 (F.C.T.D.); *Gainers Inc. v. Tammy L. Marchildon and The Registrar of Trade-marks* (1996), 66 C.P.R. (3d) 308 (F.C.T.D.)].

The opponent believes that its strongest case is based on its trade-mark **THE FUTURE IS FRIENDLY**. I agree and shall therefore first focus on that mark. I note that in its statement of opposition and written argument, the opponent claims that it has a family of **FUTURE** marks but the presumption of the existence of a family is rebutted where there is evidence that the alleged family's common feature is registered and used by others and, as discussed later, that is the case here. [*Thomas J. Lipton Inc. v. Fletcher's Fine Foods Ltd.* (1992), 44 C.P.R. (3d) 279 (T.M.O.B.) at 286-7]

Both parties' marks are inherently distinctive. However, I believe that the applicant's mark has a slightly greater degree of inherent distinctiveness because of the somewhat mysterious meaning of **THE FUTURE'S BRIGHT, THE FUTURE'S ORANGE**.

There is no debate that the length of time the marks have been used and the extent to which they have become known favour the opponent. The opponent's mark has been used since 1997 and the sales and promotion figures are impressive, although it appears to me that they are not attributable in full to any single trade-mark as opposed to all six of the opponent's marks. (Not all of the materials display **THE FUTURE IS FRIENDLY**, e.g. the two last items in Oosterman's Exhibit "4".) I further note that in some instances, the

opponent uses the words “the future is friendly” in a way that would likely be interpreted as mere ad copy, rather than trade-mark use, for example the heading “Clearnet PCS – the future is friendly” in Exhibit “2” to the Oosterman affidavit. That piece of promotional material starts off with the heading “a future friendly company” and states in the text, “At Clearnet, we have a Future Friendly philosophy. This simply means that we are committed to making technology easy to use and making sure that all of our interactions with clients are straightforward and fair.” I also note that in the excerpts from promotional welcome packages given to new clients from 1997 to 2000 (Oosterman’s Exhibit “8”), the 1997 and 1999/2000 welcome letters start off “Dear Client, Welcome to Clearnet, where the future is friendly. We....” The 1999/2000 letter also has the heading “in a future that’s friendly everybody saves every month.” Another example of this sort of use is presented in the brochure identified as Exhibit “16”, of which 88,000 were mailed out in 1999. One of the headings on that brochure reads, “the lucent-clearnet partnership: high tech meets future friendly”. The paragraph under that heading ends with the sentence: “Together, Clearnet and Lucent have taken advanced high tech innovations and turned them into future friendly and affordable PCS phone services.” True, some of these materials may display the trade-mark THE FUTURE IS FRIENDLY on its own and followed by the letters TM, with a suitable trade-mark notice elsewhere, but the simultaneous non-trade-mark use of the words that make up the trade-mark necessarily weakens the trade-mark by counteracting the trade-mark sense of the phrase.

There is no evidence that the applicant’s mark has been used or promoted at all.

The parties' wares and services overlap and it is likely that their channels of trade would also overlap. Mr. Oosterman attests that the opponent sells its telecommunication equipment at retail outlets such as Blockbuster Video, Canadian Tire, Zellers, Wal-Mart, Business Depot, Grand & Toy, London Drugs, Sony Stores, The Telephone Booth, specialty independent dealers, and university book and computer stores, in addition to its own retail locations and kiosks.

There is a fair degree of resemblance between THE FUTURE'S BRIGHT, THE FUTURE'S ORANGE and THE FUTURE IS FRIENDLY, partly because of their emphasis on the future and partly because they are both suggesting a positive idea about the future. Although the first component of a mark is often considered more important for the purpose of distinction, when that portion is common to the trade, or descriptive or suggestive, the significance of the first component decreases [see *Conde Nast Publications Inc. v. Union des Editions Modernes* (1979), 46 C.P.R. (2d) 183 (F.C.T.D.); *Park Avenue Furniture Corp. v. Wickes/Simmons Bedding Ltd.* (1991), 37 C.P.R. (3d) 413 (F.C.A.); *Phantom Industries Inc. v. Sara Lee Corp.* (2000), 8 C.P.R. (4<sup>th</sup>) 109 (T.M.O.B.)]. In addition, the general assumption that the first part of a trade-mark is the more dominant part, does not apply well in the present case because the latter portion of the applicant's mark is more memorable than its first portion.

An important factor in this case is a surrounding circumstance that is not specifically listed in the Act, namely the state of the register and the state of the marketplace. This factor is the focus of the applicant's evidence. Ms Anastacio provides the results of a search that she

conducted of the Canadian Trade-marks Register in October 2001. Ms McLean provides pages from two web sites and four advertising flyers. Both aim to show that others use FUTURE marks that dilute the scope of protection to which the opponent might otherwise be entitled.

State of the register evidence is only relevant insofar as one can make inferences from it about the state of the marketplace [*Ports International Ltd. v. Dunlop Ltd.* (1992), 41 C.P.R. (3d) 432; *Del Monte Corporation v. Welch Foods Inc.* (1992), 44 C.P.R. (3d) 205 (F.C.T.D.)]. Inferences about the state of the marketplace can only be drawn from state of the register evidence where large numbers of relevant registrations are located [*Kellogg Salada Canada Inc. v. Maximum Nutrition Ltd.* (1992), 43 C.P.R. (3d) 349 (F.C.A.)].

The trade-mark register search located 210 active applications or registrations for trade-marks that incorporate the word “future” for wares in international class 9 or services in international class 38. It is not surprising that many would want to use this common dictionary word as a part of a trade-mark or slogan. I will focus on those that were the subject of registrations and list below those that I consider to be the most pertinent.

1. FUTURE GENERATIONS registered by Future Shop Ltd. for, *inter alia*, telecommunication and computer services providing education and leisure programs to children and adolescents
2. FUTURE PAGE & Design registered by Instant Page Inc. for rental and leasing of pagers and paging equipment; paging services
3. FUTURE SHOP registered by Future Shop Ltd. for, *inter alia*, operation of retail outlets for the sale of ... cellular phones
4. FUTURE SHOP EXPRESS registered by Future Shop Ltd. for, *inter alia*, operation of retail outlets for the rental, leasing and sales of ... cellular phones
5. FUTURE SHOP LTD. registered by Future Shop Ltd. for, *inter alia*, operation of retail outlets for the sale of ... cellular phones

6. **FUTURE WORLD** official mark adopted by Canadian Broadcasting Corporation
7. **FUTUREKIDS** registered by Futurekids, Inc. for telecommunications services
8. **FUTURELINK** registered by Futurelink Distribution Corporation for Internet access and customer support services for Internet access
9. **FUTURESERVE** registered by Futurelink Distribution Corporation for Internet access and customer support services for Internet access
10. **FUTURETEL** registered by Telus Communications Inc. for provision of telephonic services which include visual communication systems and the installation, maintenance and repair of electronic and telephonic apparatus for such systems
11. **FUTUREWAY** registered by Futureway Communications Inc. for business of retail selling and retail leasing of telecommunications and broadcast equipment...
12. **THE FUTURE IS CALLING** registered by Metrowide Telesystems Inc. for telecommunication services, namely long-distance telephone calling services
13. **THE FUTURE IS HERE** registered by MPR Teltech Ltd. for telecommunications equipment, namely computer boards containing imaging circuitry
14. **THE FUTURE SHOP** registered by Future Shop Ltd. for, *inter alia*, retail outlets featuring consumer electric and electronic products in the ... telephone and telecopier fields
15. **THE WIRELESS FUTURE IS NOW** registered by Glentel Inc. for, *inter alia*, telecommunications products... voice and data transmission services... operation of a business dealing in cellular and satellite radios, voice and data pagers, mobile and telecommunications equipment of others; leasing, installation and servicing of... telecommunications equipment
16. **WELCOME TO THE FUTURE** Design registered by Manitoba Telecom Services Inc. for telecommunications services

Each of the above registrations was issued on the basis of use of the mark in Canada and registrations numbers 1-5, 7, 10, 12 and 13 each claim a date of first use earlier than that of the opponent. There are many other marks that include the word “future” for computer related wares and services but I consider the relevant field with respect to this opposition to be the narrower field of telecommunications.

Ms McLean provides evidence of use of the **FUTUREWAY** trade-mark in Canada by providing pages from a web site that offers, among other things, digital telephone services

to Canadians. She also provides evidence of use of FUTURE SHOP by providing pages from a web site, as well as flyers, that offer for sale, among other things, various communication products including telephones and cellular phone plans.

At the oral hearing, the opponent responded to the applicant's dilution argument by arguing that it is not trying to monopolize the word FUTURE but rather trade-marks beginning with the phrase THE FUTURE IS or its grammatical equivalent THE FUTURE'S. Clearly, the opponent is not entitled to monopolize the word FUTURE. However, I conclude that it also is not entitled to monopolize the words THE FUTURE IS or THE FUTURE'S. When determining matters of confusion, marks should be assessed in their entirety. When considered in their entirety, I am satisfied that it is more probable than not that consumers will not believe that wares/services associated with THE FUTURE'S BRIGHT, THE FUTURE'S ORANGE share the same source as wares/services associated with THE FUTURE IS FRIENDLY. Despite its extensive use, I do not believe that the opponent's trade-mark is entitled to a scope of protection that is broad enough to prevent the registration of the applicant's mark.

The section 12(1)(d) ground of opposition therefore fails to the extent that it relies on the registration for THE FUTURE IS FRIENDLY. Furthermore, given that the opponent's other registered marks are less similar to THE FUTURE'S BRIGHT, THE FUTURE'S ORANGE, than is THE FUTURE IS FRIENDLY, the remaining section 12(1)(d) grounds of opposition fail for similar reasons.

The opponent has pleaded two other grounds that turn on the likelihood of confusion between the applied-for mark and the above-mentioned marks of the opponent. The material dates with respect to these grounds of opposition are as follows: entitlement under section 16 - the filing date of the applicant's application; non-distinctiveness - the date of filing of the opposition [see *Re Andres Wines Ltd. and E. & J. Gallo Winery* (1975), 25 C.P.R. (2d) 126 at 130 (F.C.A.) and *Park Avenue Furniture Corporation v. Wickes/Simmons Bedding Ltd.* (1991), 37 C.P.R. (3d) 412 at 424 (F.C.A.)].

The opponent's case regarding confusion is strongest as of the material date relevant to its section 12(1)(d) ground of opposition. Therefore, for reasons similar to those set out with respect to the registrability ground of opposition, the non-entitlement and distinctiveness grounds of opposition fail.

The opponent has pleaded two grounds of opposition based on section 30 of the Act. Both of these fail because the opponent has not met its initial burden in respect thereof. While the legal burden is upon the applicant to show that its application complies with section 30, there is an initial evidential burden on the opponent to establish the facts relied upon by it in support of its section 30 ground [see *Joseph E. Seagram & Sons Ltd. et al. v. Seagram Real Estate Ltd.*, 3 C.P.R. (3d) 325 at 329-330; and *John Labatt Ltd. v. Molson Companies Ltd.*, 30 C.P.R. (3d) 293]. In the present case, the opponent has not filed any evidence which would lead one to believe that the applicant was or should have been aware of the opponent's alleged family of "future" trade-marks. Nor is there any evidence that suggests that the applicant did not intend to use the applied for mark.

**Having been delegated by the Registrar of Trade-marks by virtue of subsection 63(3) of the *Trade-marks Act*, I reject the opposition pursuant to subsection 38(8) of the Act.**

**DATED AT TORONTO, ONTARIO, THIS 24th DAY OF FEBRUARY, 2004.**

**Jill W. Bradbury  
Member  
Trade-marks Opposition Board**