



LE REGISTRAIRE DES MARQUES DE COMMERCE

THE REGISTRAR OF TRADE-MARKS

Citation: 2017 TMOB 64

Date of Decision: 2017-06-08

IN THE MATTER OF AN OPPOSITION

Teaja Holdings Ltd.

Opponent

and

Jana Beverages Ltd.

Applicant

1,615,196 for TEANA

Application

[1] The Applicant has filed an application to register the trade-mark TEANA (the Mark). The application is based upon proposed use in Canada and it covers a variety of beverage related goods, including tea, as well as various other items. A list of the specific goods covered by the application is attached as Schedule "A" to this decision.

[2] The Opponent is the owner of registration No. TMA868,043 for the trade-mark TEAJA LOGO (shown below), which is registered for use in association with a variety of tea related goods and services. A list of the specific goods and services covered by the Opponent's registration is attached as Schedule "B" to this decision.



[3] The Opponent purports to have been using the trade-mark TEAJA LOGO, the word mark TEAJA and various trade-names consisting of or incorporating TEAJA, in association with tea related goods and services, since prior to the filing date of the application for the Mark.

[4] The Opponent alleges, *inter alia*, that there is a likelihood of confusion between its TEAJA trade-marks and trade-names and the Mark. It has therefore opposed the application for the Mark under section 38 of the *Trade-marks Act*, R.S.C. 1985, c. T-13 (the Act).

[5] For reasons that follow, the opposition is successful, in part.

FILE HISTORY

[6] The application for the Mark was filed on February 21, 2013.

[7] It was advertised for opposition purposes in the *Trade-marks Journal* dated November 27, 2013.

[8] On April 28, 2014, the Opponent opposed it, by way of filing a statement of opposition. The grounds of opposition are based upon sections 30(b), 12(1)(d), 16(3)(a), 16(3)(c) and 2 (distinctiveness) of the Act.

[9] The Applicant filed a counter statement on September 12, 2014, denying each of the allegations set out in the statement of opposition.

[10] As evidence in support of its opposition, the Opponent filed the affidavit of Jennifer Leah Stecyk, sworn January 8, 2015 (the Stecyk affidavit). Ms. Stecyk was cross-examined and the transcript of her cross-examination has been made of record.

[11] As evidence in support of its application, the Applicant filed the affidavit of Sandro Romeo, sworn January 28, 2016 (the Romeo affidavit). Mr. Romeo was not cross-examined.

[12] Neither party filed written arguments.

[13] A hearing was held on April 4, 2017. Only the Applicant attended.

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[14] 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 Ltd v Molson Companies Ltd* (1990), 30 CPR (3d) 293 (FCTD) at 298].

MATERIAL DATES

[15] The material dates that apply to the grounds of opposition are:

- sections 38(2)(a)/30(b) - the filing date of the application [*Georgia-Pacific Corp v Scott Paper Ltd* (1984), 3 CPR (3d) 469 (TMOB) at 475];
- sections 38(2)(b)/12(1)(d) - the date of my decision [*Park Avenue Furniture Corporation v Wickes/Simmons Bedding Ltd and The Registrar of Trade Marks* (1991), 37 CPR (3d) 413 (FCA)];
- sections 38(2)(c)/16(3)(a)/16(3)(c) – the filing date of the application [section 16(3) of the Act]; and
- sections 38(2)(d)/2 - the date of filing of the opposition [*Metro-Goldwyn-Mayer Inc v Stargate Connections Inc* (2004), 2004 FC 1185 (CanLII), 34 CPR (4th) 317 (FC)].

EVIDENCE

Opponent's Evidence

[16] The Opponent's evidence consists of the Stecyk affidavit. Ms. Stecyk is a trade-mark searcher employed by the agent for the Opponent [para 1]. Attached as Exhibit "A" to Ms. Stecyk's affidavit is a certified copy of the Opponent's registration No. TMA868,043 for TEAJA

LOGO [para 2]. Attached as Exhibit “B”, is a copy of a BC Company Summary report, showing that the Opponent was incorporated on November 2, 2011[para 3].

[17] In paragraph 4 of her affidavit, Ms. Stecyk states that she conducted an Internet search on January 8, 2015, “in order to obtain information about the Opponent and use of the trade-marks TEAJA and TEAJA LOGO, in association with the wares and services covered by the Opponent’s Canadian trade-mark registration No. TMA868,043”. Her search revealed approximately 183,000 “hits”. Attached as Exhibit “C” to her affidavit is a copy of the first two pages of these search results.

[18] In paragraph 5, Ms. Stecyk states that on January 8, 2015, she accessed and viewed each of the websites corresponding to the “hits” revealed in those first two pages of her search. She states that she downloaded and printed web pages from the websites which she considered the “most relevant and contained information about the Opponent’s use of the trade-marks TEAJA and TEAJA LOGO”.

[19] Attached as Exhibit “D” to Ms. Stecyk’s affidavit are copies of these web pages. Notably, all of them were printed after the material dates for assessing the sections 16 and 2 grounds of opposition. The web pages can be categorized as follows:

- pages from the Opponent’s website showing the trade-marks TEAJA LOGO and TEAJA. No information has been provided with respect to how long the website has been operational or how many Canadians have accessed it. Without any supporting testimonial evidence, it is also impossible to determine how or whether the Opponent’s trade-marks would have appeared on the website at any date other than the date on which the print-outs were obtained (January 8, 2015);
- pages from the blog/news section of the Opponent’s website showing references to TEAJA in news postings. Notably, only one posting appears to pre-date the material date for assessing the section 16 ground of opposition and 5 postings pre-date the material date for assessing distinctiveness. In total, 4 postings appear to have been made prior to the date of advertisement. One appears to provide a link to an article relating to tea (dated July 12, 2013), one discusses the differences between loose leaf tea and tea bags (March

13, 2013), one mentions TEAJA being featured by a Vancouver based writer/photographer (Mar 7, 2013), and one mentions TEAJA being featured in The Province (Feb 14, 2013). I note that there is no indication as to how many Canadians have visited this part of the Opponent's website. I further note that in the absence of any supporting testimonial evidence and complete copies of these postings, I am not prepared to conclude that they establish "use" as of the filing date of the application for the Mark (or non-abandonment as of the date of advertisement) of the Opponent's trade-marks or trade-names in connection with services, within the meaning of section 4 of the Act. There is no indication how this part or the remainder of the Opponent's website appeared at the filing date of the application for the Mark, no submissions have been made by the Opponent with respect to what services might be considered to be associated with the appearance of TEAJA in the postings, and it is unclear whether the manner in which TEAJA appears in the postings would amount to trade-mark use or trade-name use;

- pages from google maps showing pictures of what is presumably the Opponent's retail store with the TEAJA LOGO trade-mark on display;
- pages from the website located at *yelp.ca*, showing customer reviews for TEAJA, dating back to 2012;
- pages from the Opponent's Facebook page, showing the trade-marks TEAJA and TEAJA LOGO. None of the postings on the site appear to have been made prior to the material date for assessing the section 16 ground of opposition. While there is no indication as to when the Facebook page became active, I note that a few postings appear to have been made prior to the material date for assessing the section 2 ground of opposition. As of the date that the pages were printed (January 8, 2015), the page had received only 50 visits and 535 "likes";
- pages from the website located at *www.urbanspoon.com*, showing less than a handful of reviews for TEAJA, some of which date back to 2012.
- pages from the Opponent's Twitter page, showing the trade-marks TEAJA and TEAJA LOGO. The page indicates that there are 372 followers. None of the tweets appear to pre-

date the material dates for assessing the section 16 or 2 grounds of opposition. Although the Opponent has not provide any details in this regard, I note that the copyright notice appearing on the page is dated 2015;

- pages from the website located at *yaletowninfo.com*, which appear to provide information on TEAJA and a link to the Opponent's website.

[20] Ms. Stecyk has not explained why information pertaining to the Opponent's use of its trade-marks and trade-names could not have been provided by an authorized representative of the Opponent's company, rather than by an employee of the agent for the Opponent. During cross-examination, Ms. Stecyk simply explained how she conducted her search and confirmed that the printouts in Exhibit "D" pertain only to the Opponent and not to any other entity. Not surprisingly, her cross-examination did not yield any additional useful information pertaining to the Opponent's promotion or use of its trade-marks and trade-names.

[21] My observations with respect to Ms. Stecyk's evidence are as follows:

- Her affidavit does not establish use of the Opponent's trade-marks in association with goods within the meaning of section 4 of the Act at any material date identified above;
- For the purposes of section 12(1)(d), I can take into account all of the evidence filed by Ms. Stecyk. I am therefore able to conclude that some use of the Opponent's TEAJA and TEAJA LOGO trade-marks has been shown in connection with services, within the meaning of section 4 of the Act, as of January 8, 2015 (the date of the print-outs from the Opponent's website). In view of its website, its Facebook and Twitter pages and the online reviews provided by Ms. Stecyk, I am also able to infer that by that date, the Opponent would have acquired at least some reputation. However, I am not prepared to infer that it had acquired any substantial reputation. This is because the Opponent has not provided any sales or advertising figures. In addition, it has not provided any information regarding how many Canadians have visited its stores or accessed its website, Facebook and Twitter pages, nor has it indicated how long they have been in operation. Furthermore, in view of their hearsay nature and very small number, I do not consider the online reviews to be a particularly reliable indicator of reputation;

- For the purposes of section 2(distinctiveness), I cannot take all of the evidence into account, as much of it post-dates the material date for assessing this ground of opposition. At most, I am able to infer that the Opponent had acquired very minimal reputation at the date of filing of the opposition;
- With respect to sections 16(3)(a) and 16(3)(c) of the Act, there is only a single posting made in the blog/news section of the Opponent’s website (Exhibit D) which predates the material date for assessing these grounds of opposition and which makes reference to TEAJA. The appearance of a mark/name in news/blog postings on a party’s website may arguably constitute “use” in the sense that it could be considered to be advertising. However, as previously discussed, given the provenance of this evidence, the fact that a complete copy of the posting has not been provided, and in view of the lack of any supporting testimonial evidence, I am not prepared to draw an inference of use in the present case.
- None of the evidence supports the Opponent’s section 30(b) ground of opposition, as it all relates to use of the Opponent’s trade-marks and trade-names, not use of the Mark.

Applicant’s Evidence

[22] The Applicant’s evidence consists of the Romeo affidavit. Mr. Romeo is a Research-Analyst employed by an intellectual property research firm (Thomson CompuMark) [para 1]. His affidavit consists of the results of a search he conducted of the Canadian trade-mark Register for “occurrences of the term “TEANA” and any confusingly similar trademarks” for the same goods which are covered in the application for the Mark [paras 3-6]. A copy of the search results is attached as Exhibit SR-1 to his affidavit.

[23] Since the Applicant did not file a written argument, no submissions were made in writing with respect to the search results. At the hearing, the Applicant simply noted that the marks located in the search were categorized by Thomson CompuMark into five groups, according to their similarity to the mark being searched. The Applicant directed my attention to the fact that the Mark appears in Group 1 of the search results, while the Opponent’s registered trade-mark appears in Group 4, suggesting that there are many other marks on the Register that rank higher

than the Opponent's in terms of confusion with the Mark. The Applicant submits that the search results support a conclusion that there is no likelihood of confusion between the parties' marks.

[24] First, I would like to note that the issue of whether there is a likelihood of confusion between the parties' marks is something that is to be determined by me, based upon a consideration of all of the relevant surrounding circumstances in this particular case. I do not consider the grouping in the search report to be particularly helpful in this regard. The fact that the Mark may be considered by a search entity to be more confusingly similar to other parties' trade-marks based on certain indicators, does not necessarily lead to a conclusion that there would be no likelihood of confusion between the Mark and one or more of the Opponent's trade-marks/trade-names.

[25] Second, I note that search results of this nature are most often relied upon to demonstrate that due to the existence of many similar marks or marks containing a particular element on the Register, one particular mark should not be entitled to a broad scope of protection. The inference that can be drawn from the existence of a large number of similar marks on the Register is that at least some of them are likely to be in use in the marketplace. Thus, consumers will presumably already be accustomed to having to distinguish between them and small differences will be sufficient to enable them to do so.

[26] In the present case, I note that not all of the marks located in Mr. Romeo's search are registered, and many have been abandoned or expunged. I further note that a number of the marks are associated with goods or services which are unrelated to those of the parties. If I exclude those marks, and those of the parties, I am left with approximately 15 marks which include "tea" as a component, and which cover goods and services that may be said to overlap with or relate to those of the parties. Of those marks, 9 appear to be owned by the same entity. Interestingly, the search results also show that the Applicant already owns a registration for the trade-mark TEANA (no. TMA736,117), which covers "carbonated iced tea soft drinks". In addition, the search results show that the Opponent owns a registration for TEAJA (no. TMA924,547), which covers a variety of tea related goods and services. Notably, the Opponent has not relied upon this registration in its statement of opposition in support of its section

12(1)(d) ground. It has relied solely upon its TEAJA LOGO trade-mark. However, it has relied upon the word mark TEAJA in support of its section 16(3)(a) and 2 grounds of opposition.

[27] I will discuss the relevance of the search results as a surrounding circumstance later on in my decision.

ANALYSIS OF GROUNDS OF OPPOSITION

Sections 30(b), 16(3)(a), 16(3)(c) and 2

[28] The Opponent has failed to meet its evidential burden in respect of the grounds of opposition based upon sections 30(b), 16(3)(a), 16(3)(c) and 2 of the Act.

[29] With respect to section 30(b), there is no evidence to suggest that the Applicant used the Mark in Canada prior to the filing date of the application, as alleged by the Opponent in the statement of opposition. The Opponent has therefore not met its evidential burden in respect of the section 30(b) ground of opposition.

[30] With respect to the sections 16(3)(a) and 16(3)(c), the Opponent was required to file sufficient evidence to show that one or more of its trade-marks/trade-names were used in Canada (within the meaning of section 4 of the Act) prior to the filing date of the application for the Mark and had not been abandoned at the date of advertisement. Exhibit B to Ms. Stecyk's affidavit establishes only that the company Teaja Holdings Ltd. was incorporated on November 2, 2011. It does not establish that the Opponent's trade-marks and/or trade-names were in use as of that date or at the filing date of the application for the Mark. The bulk of the Internet search results attached as Exhibits "C" and "D" to the Stecyk affidavit post-dates the filing date of the application for the Mark. As previously discussed, the evidence which does pre-date the Applicant's filing date is not sufficient to enable me to conclude that the Opponent's trade-marks and/or trade-names were in use within the meaning of section 4 of the Act prior to the filing date of the application for the Mark or non-abandonment at the date of advertisement. Accordingly, the Opponent has not met its evidential burden in relation to the section 16(3)(a) and 16(3)(c) grounds of opposition.

[31] With respect to section 2 (distinctiveness), the Opponent was required to show that as of April 28, 2014, one or more of its trade-marks/trade-names had substantial, significant or sufficient reputation in Canada to negate the distinctiveness of the Mark [*Motel 6, Inc v No 6 Motel Ltd* (1981), 1981 CanLII 2834 (FC), 56 CPR (2d) 44 (FCTD); and *Bojangles' International LLC v Bojangles Café Ltd* (2006), 2006 FC 657 (CanLII), 48 CPR (4th) 427 (FC)]. As previously discussed, the Opponent has failed to establish such reputation as of that material date. The Opponent has therefore not met its evidential burden in relation to the section 2 ground of opposition.

[32] In view of the foregoing, the grounds of opposition based upon sections 30(b), 16(3)(a), 16(3)(c) and 2 of the Act are all rejected.

Section 12(1)(d)

[33] An opponent's initial evidential burden is met with respect to a section 12(1)(d) ground of opposition if the registration relied upon in the statement of opposition is in good standing as of the date of the decision. The Registrar has discretion to check the register in order to confirm the existence of a registration relied upon by an opponent [*Quaker Oats of Canada Ltd/La Compagnie Quaker Oats du Canada Ltée v Menu Foods Ltd* (1986), 11 CPR (3d) 410 (TMOB)]. I have exercised the Registrar's discretion and confirm that the Opponent's registration No. TMA868,043 is extant. The Opponent has therefore met its initial evidential burden in respect of this ground. I must therefore determine whether the Applicant has met the legal onus upon it to establish that there is no likelihood of confusion between the parties' trade-marks.

Test for Confusion

[34] The test for confusion is one of first impression and imperfect recollection. 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 goods or services associated with those trade-marks are manufactured, sold, leased, hired or performed by the same person, whether or not the goods or services are of the same general class.

[35] 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 goods, 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) and *Masterpiece Inc v Alavida Lifestyles Inc* (2011), 92 CPR (4th) 361 (SCC)]. Finally, the test under section 6(2) of the Act does not concern the confusion of the marks themselves, but confusion of goods or services from one source as being from another source.

Consideration of Section 6(5) Factors

Inherent Distinctiveness and the Extent to which the Trade-marks have Become Known

[36] Both of the parties' marks incorporate the word TEA (an ordinary dictionary term) and both are associated with tea related goods/services. To the extent that they are both suggestive of their associated goods/services, they may be said to lack inherent distinctiveness. However, given their coined nature, I still consider them to be somewhat inherently distinctive. Furthermore, although relatively simplistic in nature, and not particularly dominant, I find that the design element in the Opponent's trade-mark does add some distinctiveness to it.

[37] Insofar as acquired distinctiveness is concerned, I note that the Mark is a proposed use mark and there is no evidence that it has acquired any distinctiveness. By contrast, there is evidence to suggest that the Opponent has acquired at least some minimal reputation in its registered TEAJA LOGO trade-mark as of today's date. In this regard, I note, for example, the print-outs in Exhibit D to the Stecyk affidavit which show the presence of the TEAJA LOGO trade-mark on the Opponent's website, storefront signage, Facebook and Twitter pages, and the fact that there have been some online reviews. Although I'm not prepared to conclude that the Opponent has acquired a substantial reputation, when the evidence is considered in its totality, I do consider it reasonable to infer that it would have acquired at least some reputation in its TEAJA LOGO trade-mark.

[38] The first factor in section 6(5), which is a combination of inherent and acquired distinctiveness, therefore favours the Opponent, but not to a great extent.

Length of Time the Marks have been in Use

[39] The length of time the marks have been in use also favours the Opponent, but once again, given that the evidence is somewhat lacking, I am unable to infer that it favours the Opponent to a significant extent.

The Nature of the Parties' Goods, Services or Business and Trades

[40] It is the Applicant's statement of goods as defined in its application versus the Opponent's registered goods and services that governs my determination of these factors [*Henkel Kommanditgesellschaft auf Aktien v Super Dragon Import Export Inc* (1986), 12 CPR (3d) 110 (FCA); *Mr. Submarine Ltd v Amandista Investments Ltd* (1987), 19 CPR (3d) 3 (FCA); *Miss Universe Inc v Bohna* (1994), 58 CPR (3d) 381 (FCA)].

[41] With the exception of "golf balls, golf caps, caps, key rings, and aprons", there is either direct overlap or a close relationship between the parties' respective goods and services. Both the application for the Mark and the Opponent's registration cover tea and tea or beverage related goods or services.

[42] In view of the overlap and close relationship between the parties' goods and services (excluding golf balls, golf caps, caps, key rings, and aprons) and in the absence of any evidence to the contrary, I consider it reasonable to conclude that there would also be some overlap in the parties' respective channels of trade. In view of the foregoing, except in relation to golf balls, golf caps, caps, key rings, and aprons, I find that these factors also favour the Opponent.

Degree of Resemblance

[43] The marks TEANA and TEAJA LOGO are both coined in nature and are similarly constructed with the component TEA at the forefront. Aside from the design component in the Opponent's trade-mark, the marks differ by only one letter. I therefore consider them to be

highly visually similar and quite similar phonetically. In terms of connotation, both of the marks are suggestive of tea. Overall, I find that this factor strongly favours the Opponent.

Surrounding Circumstances – State of the Register

[44] As previously mentioned, state of the Register evidence is sometimes introduced by a party to show the commonality or distinctiveness of a mark or portion of a mark in relation to the register as a whole. In this case, the Applicant, through the Romeo affidavit (Exhibit SR-1), has identified approximately 15 marks which include “tea” as a component, and which cover goods and services that may be said to overlap with or relate to those of the parties. However, of those marks, 9 appear to be owned by the same entity. The search results also located the marks of the parties, including a registration that the Applicant already owns for the trade-marks TEANA (no. TMA736,117), which covers “carbonated iced tea soft drinks” and a registration owned by the Opponent for TEAJA (no. TMA924,547), which covers a variety of tea related goods and services.

[45] It has been held that 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 [*Ports International Ltd. v Dunlop Ltd.* (1992), 41 C.P.R. (3d) 432 (TMOB); *Welch Foods Inc. v Del Monte Corp* (1992), 44 C.P.R. (3d) 205 (FCTD); and *Kellogg Salada Canada Inc v Maximum Nutrition Ltd* (1992), 43 CPR (3d) 349 (FCA)].

[46] The Applicant has not located a large number of relevant active registrations standing in the name of different parties. Accordingly, I do not consider the state of the register evidence to be particularly useful to the Applicant in the present case.

[47] I further note that I do not find that the existence of the prior registration for TEANA (no. TMA736,117) assists the Applicant in demonstrating that there is no likelihood of confusion between the Mark and the Opponent’s TEAJA LOGO trade-mark. An applicant’s ownership of one or more other trade-marks does not give it the automatic right to obtain a further registration [*Coronet-Werke Heinrich Schlerf GmbH v Produits Ménagers Coronet Inc* (1984), 4 CPR (3d) 108 at 115 (TMOB); *385229 Ontario Limited v ServiceMaster Company*, 2012 TMOB 59

(CanLII) at para 47]. Given that there is no evidence of use of TEANA for the goods which are covered in registration no.TMA736,117 or those covered in the application for the Mark, I am of the view that the circumstances in this case do not support a finding that the existence of the Applicant's prior registration should be considered to be a relevant surrounding circumstance [Caesarstone Sdot-Yam Ltd v Ceramiche Caesar S.P.A 2016 FC 895 at paras 50-56].

Conclusion Regarding Likelihood of Confusion

[48] Section 6(2) of the Act does not concern confusion of the marks themselves, but confusion of goods and services from one source as being from another source. The test to be applied is a matter of first impression in the mind of a casual consumer somewhat in a hurry who sees the Mark in association with the goods and/or services at a time when he or she has no more than an imperfect recollection of the Opponent's trade-mark and does not pause to give the matter any detailed consideration or scrutiny [Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée 2006 SCC 23 (CanLII) at para 20].

[49] The goods identified as "golf balls, golf caps, caps, key rings, and aprons" in the application for the Mark are vastly different from the remainder of the Applicant's goods and from the goods/services associated with the Opponent's trade-mark. I am therefore of the view that despite the high degree of similarity between the parties' marks, and the fact that the remaining factors set out under section 6(5) of the Act somewhat favour the Opponent in this case, such a consumer would not, as a matter of first impression, be likely to believe that such goods were manufactured, licensed or performed by the Opponent. Thus, I find that the balance of probabilities shifts in favour of the Applicant for these particular goods.

[50] With respect to the remaining goods in the application, I find that the Applicant has not met its legal onus of demonstrating that there is no reasonable likelihood of confusion, on a balance of probabilities. This is because there is either overlap or a close relationship between the remaining goods in the application for the Mark and the goods/services of the Opponent and it is reasonable to infer that there would also be some overlap in their channels of trade. In addition there is a high degree of resemblance between the parties' marks and only the Opponent has evidenced any reputation or use of its mark.

[51] The ground of opposition based upon section 12(1)(d) of the Act is therefore successful in part.

DISPOSITION

[52] In view of the foregoing, pursuant to the authority delegated to me under section 63(3) of the Act, I refuse the application with respect to: “tea, tea extracts, tea-based beverages, namely liquid tea and iced tea; carbonated and non-carbonated tea-based beverages, namely liquid tea and iced tea; carbonated and non-carbonated, non-alcoholic fruit-flavoured and fruit-based beverages; powders and essences for making carbonated and non-carbonated, non-alcoholic fruit-flavoured and fruit-based beverages; fruit syrups; fruit juices. Non carbonated iced tea drink, tea bags, powdered tea mix, herbal tea, organic tea and soft drinks; carbonated and non-carbonated soft drinks”, and I reject the opposition with respect to the remainder of the goods, namely, “golf balls, golf caps, caps, key rings, and aprons”, pursuant to section 38(8) of the Act [see *Produits Ménagers Coronet Inc v Coronet-Werke Heinrich Schlerf GmbH* (1986), 10 CPR (3d) 482 (FCTD) as authority for a split decision].

Lisa Reynolds
Member
Trade-marks Opposition Board
Canadian Intellectual Property Office

**TRADE-MARKS OPPOSITION BOARD
CANADIAN INTELLECTUAL PROPERTY OFFICE
APPEARANCES AND AGENTS OF RECORD**

HEARING DATE: 2017-04-04

APPEARANCES

No one appearing

FOR THE OPPONENT

Steven Nemetz

FOR THE APPLICANT

AGENT(S) OF RECORD

Osler Hoskin Harcourt LLP

FOR THE OPPONENT

Reiter-Nemetz

FOR THE APPLICANT

Schedule "A"

Application no. 1,615,196

Goods:

(1) Tea, tea extracts, tea-based beverages, namely liquid tea and iced tea; carbonated and non-carbonated tea-based beverages, namely liquid tea and iced tea; carbonated and non-carbonated, non-alcoholic fruit-flavoured and fruit-based beverages; powders and essences for making carbonated and non-carbonated, non-alcoholic fruit-flavoured and fruit-based beverages; fruit syrups; fruit juices. Non carbonated iced tea drink, tea bags, powdered tea mix, herbal tea, organic tea and soft drinks; carbonated and non-carbonated soft drinks

(2) golf balls, golf caps, caps, key rings, and aprons

Schedule “B”

Registration No. TMA868,043

Goods:

(1) Loose leaf and packaged tea; tea infusers; tea sets and mugs; teapots; tins and bags for packaging of tea; baskets containing tea; tea bowls; brewing baskets; tea strainers; tea balls; tea infusers; tea sets; cups; drinking glasses; tea kettles; tea cozies, tea trivets, tea filters and sacs; tea products, namely, herbal tea; wellness products, namely, botanical and herbal supplements for general health and well-being; cold packaged beverages, namely, non-alcoholic tea-based beverages.

Services:

(1) Operation of a retail store featuring loose leaf and packaged teas, tea accessories, cups, mugs, glasses, tea pots, gift boxes containing tea; Retail store services specializing in the sale of tea beverages for consumption on or off the premises and accessories for use in the preparation and serving of tea beverages; operating a website providing information in the field of teas, including tea bags, dried tea and loose tea, tea-based beverages and herbal tea; franchise services, namely, offering business management assistance in the establishment and operation of retail stores featuring tea.