



LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADE-MARKS

Citation: 2018 TMOB 112

Date of Decision: 2018-09-28

IN THE MATTER OF AN OPPOSITION

Evonik Industries AG

Opponent

and

Evova Foods Inc.

Applicant

1,620,405 for EVOVA 80

Application

INTRODUCTION

[1] Evonik Industries AG (the Opponent) opposes registration of the trade-mark EVOVA 80 (the Mark), filed by Evova Foods Inc. (the Applicant).

[2] For the reasons that follow, I refuse the application.

THE RECORD

[3] On March 28, 2013 the Applicant filed the application bearing serial No. 1,620,405 for the registration of the Mark. The application covers:

Bulk protein, protein extracts and proteins derived from eggs; Protein based food products derived from eggs, namely protein based food bars, snack food, egg proteins for

use as a food additive, powered protein-based food beverages mixes, liquid pasteurized eggs, egg white and egg yolks (the Goods).

[4] The application is based on proposed use in Canada and was published on December 3, 2014 in the *Trade-marks Journal* for the purposes of opposition.

[5] On May 1, 2015 the Opponent filed a statement of opposition which was forwarded to the Applicant by the Registrar on May 26, 2015.

[6] The grounds of opposition pleaded are based on sections 30(e) and (i) (compliance), 16(3)(a), 16(3)(b) and 16(3)(c) (entitlement) and 2 (distinctiveness) of the *Trade-marks Act*, RSC 1985, c T-13 (the Act).

[7] The Applicant filed a counter statement on June 17, 2015 denying each ground of opposition pleaded.

[8] The Opponent filed as its evidence the affidavit of Dr. Roland Weiß dated November 23, 2015 and a certified copy of application 1,318,810 for the trade-mark EVONIK.

[9] The Applicant filed as its evidence the affidavits of Todd Lahti executed on June 28, 2016 and Sandra Ortiz executed on June 27, 2016.

[10] None of the deponents were cross-examined.

[11] Both parties filed written arguments and no hearing was held.

EVIDENTIARY BURDEN

[12] The legal onus is on the applicant to show that the application complies with the provisions 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. Once this initial burden is met, the applicant has to prove, on a balance of probabilities, that the particular ground of opposition should not prevent the registration of the Mark [see *Joseph E Seagram & Sons Ltd et al v Seagram Real Estate Ltd* (1984), 3 CPR (3d) 325 (TMOB), *John Labatt Ltd v Molson Companies Ltd* (1990), 30 CPR (3d)

293 (FCTD), and *Wrangler Apparel Corp v The Timberland Company* [2005] FCJ No 899, (FC)].

PRELIMINARY REMARKS

[13] In reaching my decision I have considered all the evidence in the file. However, I shall refer only to those portions of the evidence which are directly relevant to the issues discussed in the body of my decision.

[14] I should mentioned that I am disregarding the content of paragraphs 17 and 19 of Dr. Weiß's affidavit as it is an opinion on the issue of the likelihood of confusion between the Mark and the Opponent's EVONIK TRADE-MARKS (as defined below) and Evonik trade-names. Dr. Weiß is a chemist by training and possesses a Doctorate degree in Chemistry. He is not an expert in Canadian trade-mark law.

GROUND OF OPPOSITION SUMMARILY DISMISSED

Section 30(i) Ground of Opposition

[15] It is trite law that section 30(i) of the Act only requires an applicant to declare itself satisfied that it is entitled to use the mark applied for in Canada in association with the goods and services described in the application. Such a statement is included in the present application. An opponent may rely on section 30(i) in specific cases such as where bad faith on the part of the applicant is alleged [see *Sapodilla Co Ltd v Bristol Myers Co* (1974), 15 CPR (2d) 152 (TMOB)].

[16] There is no evidence in the record that could support such a ground of opposition. Consequently, this ground of opposition is dismissed as the Opponent failed to meet its initial evidential burden.

Section 30(e) Ground of Opposition

[17] The Opponent has not specifically addressed this ground of opposition in its written argument. There is no evidence in the record that supports an allegation that the Applicant did not have a bone fide intention to use the Mark in Canada.

[18] Consequently, this ground of opposition is also dismissed, as the Opponent failed to meet its initial burden.

GROUND OF OPPOSITION BASED ON SECTION 16(3)(A) OF THE ACT

[19] The relevant date for the ground of opposition based on section 16(3)(a) of the Act, is the filing date of the present application (March 28, 2013) [see section 16(3) of the Act].

[20] In order to succeed under this ground of opposition, the Opponent must establish first that it has used its trade-mark EVONIK prior to March 28, 2013 in Canada or that it was known in Canada in association with the goods and services described in Annex A as pleaded in its statement of opposition, and that it had not abandoned such use at the advertisement date of the present application (December 3, 2014) [see section 16(5) of the Act]. I shall therefore review the Opponent's evidence relating to its alleged use of the trade-mark EVONIK.

The Opponent's evidence

[21] Dr. Weiß is the Opponent's Intellectual property Manager. He states that the Opponent is the parent company of the EVONIK GROUP of companies (EVONIK GROUP). He affirms that the Opponent maintains control over the character and quality of the products sold by EVONIK GROUP under the EVONIK TRADE-MARKS (as defined below) in Canada.

[22] Dr. Weiß affirms that the Opponent was founded in 2007 and is based in Germany. It has activities all around the world. I shall concentrate my summary of his affidavit on the Opponent's activities in Canada, or those of its subsidiaries.

[23] Dr. Weiß explains that the Opponent's operations are divided into four segments, one of which is Consumer Health & Nutrition. I will focus on this particular segment as its activities are the most relevant ones for the purpose of this opposition. This segment produces specialty chemicals, principally for use in consumer goods for daily needs and in animal nutrition and healthcare products. Dr. Weiß adds that many of the products produced by the Opponent are used by its customers for further processing.

[24] Dr. Weiß affirms that the Opponent is the owner of application No. 1,318,810 for the trade-mark EVONIK covering the list of goods and services reproduced herewith as Annex A to this decision.

[25] Dr. Weiß adds that the Opponent is also the owner of the unregistered trade-marks EVONIK, EVONIK & Design and EVONIK INDUSTRIES all used in Canada for almost 10 years in association with amino acids and other chemicals used in the food, agricultural and pharmaceutical industries in Canada. I shall refer to these trade-marks together with the trade-mark EVONIK covered by application 1,318,810 as the EVONIK TRADE-MARKS.

[26] Dr. Weiß explains that the Opponent sells products and offers services in association with the EVONIK TRADE-MARKS in Canada directly to purchasers or to distributors, within or outside the EVONIK GROUP, who in turn sell them to other Canadian companies involved in the food, agriculture and manufacturing industries.

[27] To support his contention that the Opponent or its subsidiaries have used one or more of the EVONIK TRADE-MARKS, Dr. Weiß filed, as Exhibit A, samples of invoices pertaining to shipments to Canadian purchasers of goods from the Health & Nutrition business unit during the period of 2007 to 2012. I note, however, that some of these invoices were issued in 2013 and 2014.

[28] Dr. Weiß states that the invoices filed as Exhibit A represent sales of the Opponent's chemicals bearing the EVONIK TRADE-MARKS in Canada. He adds that other companies within the EVONIK GROUP are also referenced on these invoices, such as Evonik Canada Ltd, a Canadian distributor, Evonik Rexim S.A.S., an affiliated company, and another Canadian member of the EVONIK GROUP, Evonik Degussa Canada Inc. He asserts that in all cases the Canadian purchasers received goods bearing one or more of the EVONIK TRADE-MARKS and one or more of the Evonik trade-names.

[29] Dr. Weiß states that the specialty chemicals that were the subject of the sales demonstrated by the invoices at Exhibit A include amino acid, dipeptide and amino-acid derivative chemicals. They are the sorts of chemicals that would be purchased by manufacturers

of food and animal feed, but also by manufacturers involved in the cosmetic or pharmaceutical industries.

[30] Dr. Weiß provides an estimate of the Opponent's annual Canadian sales, since 2010 up to September 2015, of goods in the health care, pharma polymers, farm foods ingredients and exclusive synthesis business segments in association with one or more of the EVONIK TRADE-MARKS and Evonik trade-names. They range from 1 million euros to close to 3 million euros.

[31] Dr. Weiß affirms that the Opponent's EVONIK TRADE-MARKS branded products are advertised to prospective Canadian purchasers through a variety of means including brochures available online and advertisement on the Opponent's website. He filed, as Exhibit B, photocopies of some of the brochures available to Canadian companies and entities.

[32] Dr. Weiß states that egg proteins and other related products (without identifying them) could be sold to the same customers within that the same industries the Opponent sells its specialty chemicals that include amino acid products and other specialty chemicals used in research or in the manufacture of food, animal feed, cosmetics, pharmaceuticals and other similar products. He adds that the parties' goods could be sold to the same research facilities or medical facilities or laboratories that purchase or would be likely to purchase goods and services sold under the EVONIK TRADE-MARKS or associated with the Evonik trade-name.

The Applicant's contentions concerning the Opponent's evidence

[33] The Applicant has raised several issues with respect to the Opponent's evidence. It argues that the Opponent has not discharged its initial burden of proof. I will limit my analysis of its arguments to those related to the use of the Opponent's trade-mark EVONIK in Canada.

[34] The Applicant contends that:

- the Opponent has only provided evidence of use of the trade-name Evonik Industries in association with specialty chemicals;
- The Weiß affidavit provides a generalized estimate of annual sales for the years 2010-2015. This estimate lumps the sales to include "health care, pharma polymers, farm food ingredients and exclusive synthesis business segments";

- The Weiß affidavit attests that the trade-mark EVONIK is “recognized” in Canada and throughout the world, but does not provide any substantive evidence to corroborate the statement that EVONIK is well known.

[35] All the invoices filed as Exhibit A bear the inscription EVONIK INDUSTRIES & Design reproduced below and located alone on the top right corner of each invoice:



[36] There is no reference to the trade-mark EVONIK on any of the invoices filed. The inscription reproduced above does not constitute use of the trade-mark EVONIK in association with goods in accordance with 4(1) of the Act. It could constitute use of the trade-name Evonik Industries, which I will discuss under the ground of opposition based on section 16(3)(c) of the Act. There is no mention of the trade-mark EVONIK in the “material description” of each invoice.

[37] Moreover, as argued by the Applicant, there is no evidence in the record that the invoices filed accompanied the goods sold. The Registrar cannot presume such fact [see *Riches, McKenzie & Herbert v Peper King Ltd* (2000), 2000 CanLII 16133 (FC), 8 CPR (4th) 471]. Finally, there is no photographic evidence of goods bearing the trade-mark EVONIK marked directly on the goods or their packaging. In all, there is no evidence in the record of any goods bearing the EVONIK trade-mark at the time of their transfer, within the meaning of section 4(1) of the Act.

[38] There is no need at this stage to discuss the other arguments raised by the Applicant concerning the content of Dr. Weiß’s affidavit to determine whether the Opponent has met its initial burden.

[39] Under section 16(3)(a) of the Act, the Opponent had to establish prior use of its trade-mark EVONIK in Canada or that it has been made known in Canada by any other person. The Opponent failed to meet that initial burden.

[40] Consequently, this ground of opposition is dismissed.

GROUND OF OPPOSITION UNDER SECTION 16(3)(B) OF THE ACT

The Opponent's evidence

[41] In order for the Opponent to discharge its initial burden under this ground of opposition, it had to prove that the application, on which it relies, was filed prior to the filing date of the present application (March 28, 2013), and that it was still pending at the advertisement date of this application (December 4, 2014) [see section 16(4) of the Act].

[42] I note that, as part of its evidence, the Opponent filed a certificate of authenticity (commonly known as a “certified copy”) for application 1,318,810. I used my discretion and checked the register. This application was still pending on December 4, 2014. Consequently, the Opponent has met its initial burden.

[43] The list of goods appearing on the certificate of authenticity corresponds to the list enumerated in the original application, filed on October 6, 2006. It has subsequently been amended, and approved by the Registrar on July 30, 2012, to particularize the original list of goods. This amended list, which corresponds to what appears on the register, is reproduced as Annex A to this decision. I shall refer to that list as the Opponent's application was amended prior to the filing of the present application [see *Jarrow Formulas, Inc v Canada Bread Co* 2015 TMOB 67].

The issue of likelihood of confusion

[44] The test for confusion is outlined in section 6(2) of the Act. Some of the surrounding circumstances to be taken into consideration when assessing the likelihood of confusion between two trade-marks are described in section 6(5) of the Act: the inherent distinctiveness of the trade-marks and the extent to which they have become known; the length of time the trade-marks or trade-names have been in use; the nature of the goods, services, or business; the nature of the trade; and the degree of resemblance between the trade-marks in appearance, or sound or any ideas suggested by them. Those criteria are not exhaustive and it is not necessary to give each one of them equal weight [see *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée et al* (2006), 49 CPR (4th) 401 (SCC), *Mattel Inc v 3894207 Canada Inc* (2006), 49 CPR (4th) 321 (SCC) and *Masterpiece Inc v Alavida Lifestyles Inc et al* (2011), 96 CPR (4th) 361 (SCC)].

[45] 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. In the instant case, the question posed by section 6(2) is whether a consumer, with an imperfect recollection of the Opponent's trade-mark EVONIK, who sees the Applicant's Goods in association with the Mark, would think they emanate from, or are sponsored by, or approved by the Opponent.

Degree of resemblance

[46] As indicated by the Supreme Court of Canada in *Masterpiece*, in most instances, the degree of resemblance between the marks in issue is the most important relevant factor. Therefore, I shall start my analysis of the relevant criteria with this one.

[47] The Applicant contends the Mark is a coined word to which has been added the number 80. That number, by itself is not inherently distinctive, but adds an element to aurally and visually distinguish the coined term EVOVA from the Opponent's trade-mark EVONIK, which is also unique and distinctive.

[48] The Opponent argues that there is an oral similarity in the marks in issue, which is as relevant as visual similarity.

[49] I agree that there are some similarities in sound and visually between the parties' marks as they both begin with "EVO".

[50] I conclude that, despite some differences between the marks in issue, this factor slightly favours the Opponent.

The inherent distinctiveness of the marks and the extent to which the marks have become known

[51] As mentioned previously, both marks are inherently distinctive being coined words.

[52] The degree of distinctiveness of a trade-mark can be enhanced through use and promotion in Canada.

[53] I have already described the evidence of alleged use of the Opponent's mark EVONIK in Canada since at least 2007 within the meaning of section 4(1) of the Act and concluded that there was no evidence of that nature in record.

[54] However, Dr. Weiß makes reference to promotional activities in Canada in association with the Mark. As detailed above, he makes reference to brochures filed as Exhibit B and advertisement on the Opponent's website. Finally, Dr. Weiß provides an estimate of the Opponent's sales in association with one or more of the EVONIK TRADE-MARKS and Evonik trade-names. Also those figures relate to sales of goods in the health care, pharma polymers, farm foods ingredients and exclusive synthesis business segments. They have not been broken down by segments.

[55] As pointed out by the Applicant, the Weiß affidavit does not provide any information or figures with respect to advertising or marketing expenditures in Canada. Moreover there is no information on the number of brochures, Exhibit B, that have been distributed in Canada and since when. Finally, concerning the Opponent's website, there is no information provided by Dr. Weiß on the number of Canadians who visited that website prior to the relevant date.

[56] Consequently, it is difficult to determine the extent to which the Opponent's mark EVONIK is known in Canada.

[57] The application is based on proposed use. At the relevant date, there was no use of the Mark. In fact Mr. Lahti, the Applicant's President does state that none of the Goods have been sold yet in Canada in association with the Mark.

[58] Overall, this factor does not favour any of the parties.

The length of time the marks have been used

[59] As explained previously, there is no evidence of use of the Opponent's trade-mark EVONIK in Canada in association with goods within the meaning of section 4(1) of the Act.

[60] The application is based on proposed use. Accordingly, this factor favours neither party.

The nature of the goods, services or business

[61] I must compare the Goods to those as listed in the Opponent's application at the relevant date (March 28, 2013). I will therefore compare the Goods to the Opponent's goods and services listed in Annex A. Given the nature of the Goods, the goods and services that appear to be relevant to this case are:

enzymes for industrial purposes, namely, enzymes for use in baking, dairy and food industries, enzymes for use in the processing of sugar cane and food by-products, enzymes for use in the manufacture of nutraceuticals, fruit juices and pet foods; proteins, vitamins, minerals, keto acids, amino acids, the salts thereof and dipeptides for use in dietetic substances and food supplements for medical purposes, nutritional supplements for building body mass; food for babies.

Technical consultancy in the field of developing technologies and technical components for food; technical consultancy in the field of developing technologies and technical components for the food and beverage processing and producing industries; technical consulting in the fields of implementation and operation of food processing and beverage processing technologies; technical consultancy in the field of food and beverage research; technical consultancy and research in the fields of foods and dietary supplements.

(the Opponent's relevant goods and services).

[62] The Opponent argues that some the Opponent's relevant goods and the Goods are identical since both, the Opponent's application and the Applicant's application, cover protein for use in the manufacture of food products.

[63] The Applicant argues that none of the Opponent's relevant goods and services are ready-to-eat food products derived of eggs. The Applicant adds that the Goods are very specific, being food products derived of eggs while the Opponent's goods are specialty chemicals for the production of agricultural, cosmetics and pharmaceutical products. They do not include egg-based food products which would be directly overlapping with the Goods of the Applicant.

[64] The Applicant is focussing on the fact that its proteins are derived from egg. I do not consider the origin of the proteins to be sufficient to avoid any overlap in the parties' goods. Both parties have under their respective applications "proteins" that are used in the manufacture of food. As it appears from the list of the Opponent's relevant goods and services they are clearly related to the food industry.

[65] In all, this factor favours the Opponent.

The nature of the trade

[66] Mr. Lathi, the Applicant's President, since 2012, states that the Applicant was incorporated in 2011 and is a 100% owned subsidiary of the Commercial Egg Producers' Trust Fund, which itself is a statutory Trust created by The Commercial Egg Marketing Plan Regulations (Saskatchewan). He explains that the purpose of the Trust is to assist research connected with the production and marketing of eggs, including studies and research in consumer demand for eggs, and to support and conduct activities and develop the production and marketing of eggs in Saskatchewan.

[67] Mr. Lahti states that in 2011 the Applicant began researching development of food products to be derived from eggs, egg protein, egg whites and egg yolks. He adds that the Goods are still in the research and development stage.

[68] Mr. Lahti does not state in his affidavit to which specific market(s) the Applicant intends to sell the Goods.

[69] In its written argument, the Applicant submits that, from a reading of the Opponent's goods and services and from the invoices filed by Dr. Weiß, those goods and services are sold to pharmaceutical companies for the manufacture of pharmaceutical products. However, the Opponent's goods and services listed in its original application have been particularized and is detailed in the form reproduced in Annex A.

[70] From a fair reading of the list of Goods and the Opponent's relevant goods and services, there appears to be an overlap or a potential overlap in the nature of the parties' trade in so far as the sale of proteins is concerned. Both parties' market for those goods includes the food manufacturers.

[71] Consequently, this factor also favours the Opponent.

Additional surrounding circumstances

State of the Register evidence

[72] The Applicant filed the affidavit of Sandra Ortiz, a trade-mark paralegal. She conducted a search of the Canadian Trade-marks Database for active trade-marks on the Canadian Trade-marks Register for “EVO*”, in classes 1, 2, 3, 5, 6, 7, 9, 16, 17, 19, 35, 37, 39, 40, 41 and 42. She does not state when she conducted the searches. From the results attached to her affidavit, I was able to determine that they were performed on June 22, 2016 and therefore after the relevant date.

[73] She filed a summary of the marks located, which comprises more than 150 citations. She filed, as Exhibits 2 to 18, the results for each of the classes identified in the previous paragraph.

[74] No analysis of the state of the register evidence has been provided by the Applicant. In its written argument, the Applicant simply states that “As outlined in the Ortiz Affidavit, there are multiple trademarks on the Register which contain the pre-fix “EVO”.”

[75] On the other hand, the Opponent argues that there are only three relevant classes to consider namely, classes 1, 5 and 29. I agree with the Opponent.

[76] I checked Exhibit 5 which consists of the search results under class 5 and only three relevant citations are registered trade-marks namely, EVOLUTION BY PRO-AMINO, EVOGEN and EVOTEST. All the other citations were either pending applications when the search was conducted or are not relevant citations. This number of relevant citations is insufficient to draw from the state of the register an inference on the state of the marketplace at the relevant date [see *Ports International Ltd v Dunlop Ltd* (1992), 41 CPR (3d) 432 (TMOB); *Welch Foods Inc v Del Monte Corp* (1992), 44 CPR (3d) 205 (FCTD); and *Maximum Nutrition Ltd v Kellogg Salada Canada Inc* (1992), 43 CPR (3d) 349 (FCA)].

[77] I also checked Exhibit 2, which are the search results under class 1. However none of the citations are relevant as they relate to chemical products.

[78] Ms. Ortiz did not conduct a search of the register for class 29 which I also consider relevant.

[79] As for the other classes and their results, given their large number and the fact that the burden is on the Applicant to prove that it is entitled to register the Mark, if the Applicant

wanted to rely on them, it had to present an argument to convince the Registrar of their relevancy.

[80] For all these reasons, the state of the register evidence filed by the Applicant is of no assistance to its case.

No instances of confusion

[81] The Applicant argues that the Opponent has not adduced any evidence of instances of confusion. The Opponent did not have to prove actual cases of confusion. The test is “likelihood of confusion” between the marks in issue.

[82] Moreover, as stated by Mr. Lahti, the Applicant has not used the Mark yet. It is, therefore, not surprising that the Opponent has not reported any cases of confusion.

Registration of the trade-mark EVOVA

[83] In his affidavit, Mr. Lahti makes reference to an earlier application filed by the Applicant for the registration of the trade-mark EVOVA, application No. 1,541,012. He adds that this application was allowed for registration and not opposed by the Opponent.

[84] The fact that the Applicant obtained the registration of a trade-mark (as argued by the Applicant in its written argument) does not necessarily give it the right to obtain the registration of a similar trade-mark [see *Groupe Lavo Inc v Procter & Gamble Inc* (1990), 32 CPR (3d) 533 (TMOB)].

Conclusion

[85] Taking in consideration all of the relevant factors and applying them to the test of first impression and the imperfect recollection of the Opponent’s trade-mark EVONIK by a consumer who sees the Goods in association with the Mark, it is reasonable to conclude that consumer is likely to think that they originate from the Opponent.

[86] Therefore, the Applicant has not discharged its onus to prove, on a balance of probabilities, that it is entitled to the registration of the Mark. Consequently, this ground of opposition is maintained.

GROUND OF OPPOSITION BASED ON SECTION 16(C) OF THE ACT

[87] The Opponent alleges that the Applicant is not the person entitled to the registration of the Mark because at the filing date of the application, the Mark was confusing with the trade-names of the Opponent including Evonik Industries AG, Evonik Industries and Evonik, previously and currently used in Canada by the Opponent in association with the carrying on of business related to, inter alia, the promotion and sale of chemicals and chemical goods in the fields of food and agriculture.

[88] As mentioned earlier, each invoice filed as Exhibit A to Dr. Weiß's affidavit contains the mention Evonik Industries & Design as illustrated above. I consider such representation on the invoices to be use of the trade-name Evonik Industries [see *Road Runner Trailer Manufacturing Ltd v Road Runner Trailer Co* (1984), 1 CPR (3d) 443 (FCTD)]. I do not have to determine if there is in the record evidence of use of the other trade-names allegedly used by the Opponent in support of this ground of opposition, since the Opponent's best case scenario is with Evonik Industries.

[89] Therefore, the Opponent has met its initial burden with respect to this ground of opposition. The Applicant had to prove, on a balance of probabilities, that the Mark was not confusing with the trade-name Evonik Industries at the relevant date (March 28, 2013).

[90] In order to determine such issue, I must apply the criteria enumerated in section 6(5) of the Act. I already did such analysis under the previous ground of opposition. However there are some differences in the facts applicable to this ground and I will point out those differences.

[91] As for the degree of resemblance, I must compare the Mark with Evonik Industries. I do not consider the addition of the word "Industries" to change my conclusion on the degree of resemblance. Still, the dominant portion of the trade-name is "Evonik". As discussed previously, there are some similarities and differences between the Mark and the Opponent's dominant

portion of its trade-name namely, Evonik. However, there is a difference in the parties' respective second component namely, "80" versus "Industries".

[92] This factor favours slightly the Opponent.

[93] On the inherent distinctiveness of the trade-name Evonik Industries, I consider it to be slightly less inherently distinctive than the trade-mark EVONIK since the word "Industries" is descriptive. However, given the volume of invoices filed, all bearing the trade-name Evonik Industries, that trade-name was more known than the Mark at the relevant date.

[94] Overall, this factor would slightly favour the Opponent.

[95] The main issue is the nature of the goods sold by the Opponent under the trade-name Evonik Industries. As mentioned by the Applicant, some of the invoices contain a warning that the goods sold are "ENVIRONMENTALLY HAZARDOUS SUBSTANCE" and "Dangerous goods according to transport regulations". They are in fact chemical products.

[96] Dr. Weiß attests that they are chemical products "that would be purchased by manufacturers of food and animal feed, but also manufacturers involved in the cosmetic or pharmaceutical industries". The products sold by the Opponent and described in the invoices (chlorhexidine-digluconate, L-tert.-Leucin, L-Alanyl-L-Glutamine, D-4-CIS-HYDROXYPROLINE, LISINOPRIL DIHYDRATE to name a few at random) do not appear to be in the same general class of the Goods. Even if they are used in the food industry, they appear to be chemicals used in that industry. Without more details on their use by the food industry, I infer that the nature of these goods (chemicals) differs from the nature of the Goods.

[97] As for the channels of trade of the parties, it would appear that they would be similar as the parties' goods are sold to the food industry.

[98] In conclusion, despite some resemblance between the trade-name Evonik Industries and EVOVA 80, I find that the Applicant has met its burden to prove that the Mark was not confusing with the Opponent's trade-name Evonik Industries given the difference in the nature of the goods sold by the parties and the differences between the Mark and the Opponent's trade-name. If I had more information on the use of the chemicals described in the invoices and sold

by the Opponent with regards to their use in the food industry, perhaps I could have reach a different conclusion.

[99] Consequently, this ground of opposition is dismissed.

GROUND OF OPPOSITION BASED ON LACK OF DISTINCTIVENESS OF THE MARK

[100] As for the ground of opposition based on lack of distinctiveness of the Mark, the Opponent alleges that the Mark is not distinctive within the meaning of section 2 of the Act in that the Mark is not adapted to distinguish the Goods from the goods and services of others and in particular from the goods, services and business in association with which the Opponent has previously applied for and used its EVONIK trade-marks. It adds that the Mark “is also not distinctive in that it will not distinguish as it is not adapted to distinguish the Applicant’s wares, as claimed, from the goods sold and services provided in association with the trade-names of the Opponent...”.

[101] The Opponent had to establish that the mark EVONIK and/or its trade-name Evonik Industries were known in Canada to some extent as of the filing date of the statement of opposition (May 1, 2015) so as to negate the distinctiveness of the Mark [see *Bojangles’ International, LLC v Bojangles Café Ltd* (2004), 40 CPR (4th) 553, affirmed 2006 FC 657].

[102] As concluded before, there is no evidence of use of the mark EVONIK in Canada by the Opponent within the meaning of section 4 of the Act. Therefore, that mark was not known to any extent in Canada at the relevant date.

[103] With respect to the trade-name Evonik Industries, as discussed previously, there is evidence of its use in Canada. The invoices filed as Exhibit A to Dr. Weiß’s affidavit establish that the Opponent’s trade-name Evonik Industries was known to some extent in Canada in association with the sale of chemicals. As such, the Opponent has met its initial burden.

[104] However, I arrive at the same conclusion reached under the ground of opposition under section 16(3)(c) for similar reasons. The difference in the relevant dates would not alter those reasons.

[105] Consequently, I dismiss this ground of opposition.

DISPOSITION

[106] Pursuant to the authority delegated to me under section 63(3) of the Act, I refuse the application pursuant to section 38(8) of the Act.

Jean Carrière
Member
Trade-marks Opposition Board
Canadian Intellectual Property Office

ANNEX A

(1) chemicals for use in the manufacture of pharmaceuticals, cosmetics, paper, pulp, textiles, plastics, rubber and tires, paints, pigments; chemicals for use in the mining industry, for photography, for agriculture, namely, fertilizers, growth regulators for plants, amino acids for livestock breeding, chemicals for fermenting wine, chemicals used in textile and paper industries, namely, precipitated and fumed silica, hydrogen peroxides, stage and sizing compounds; chemicals for used in the construction industry, namely, fumed and precipitated silica, silages, polymer foundations, adhesives and soil stabilizers; unprocessed artificial resins, unprocessed plastics, fertilizers; plant growth regulators, flame protection preparations, namely, flame retardant compositions and fire extinguishing compositions; metal tempering chemicals and soldering chemicals; enzymes for industrial purposes, namely, enzymes for use in the alcohol, detergent, brewing, baking, textile, dairy and food industries, enzymes for use in the processing of sugar cane and food by-products, enzymes for use in the tanning of leather; enzymes for use as an oxidant, enzymes for use in the manufacture of nutraceuticals, fruit juices and pet foods; odour inhibitors for organic waste, namely, odour eliminating tablets comprised of micro organisms and enzymes to be dissolved in water and used to digest waste; tanning substances, namely, for use in the manufacture of leather; adhesives for use in the automotive, aerospace, shipbuilding, building, construction, consumer packaging, furniture, wood processing, textile, dental and surgical industries, general-use adhesives, synthetic resin adhesives for use in lamination, thermoplastic and thermosetting adhesives, polyurethane adhesives used in the automotive, aerospace, shipbuilding, building, construction, consumer packaging, dental, surgical, furniture, textile and wood processing industries; technical gases, namely, noble gases and gases being raw materials for industrial purposes, chemical purposes, catalytic purposes, for inserting, for drying and gases for freezing agents, namely, helium, hydrogen, nitrogen, oxygen, argon, neon, krypton, methane, ethane, carbon monoxide, carbon dioxide, propane and butane; varnishes, lacquers, color dispersions for graphical use, inorganic substances as colorant and pigment; specialty chemicals for use in the manufacture of coatings, namely for paints, for buildings, for road markings, for tiles, for pharmaceuticals; paints, namely, bactericidal paints, enamel paints, exterior paints, fabric paints, fire retardant paints, fire proof paints, fluorescent paints, house paints, interior paints, ready-mixed paints for interior and exterior use, oil paints, paints for artists, paints for concrete floors, paints for industrial equipment and machinery, paints

for arts and crafts, paints for pavement marking, synthetic resin paints, water repellent paints, water color paints, water proof paints; coatings for buildings, namely, paints, clear and pigmented coatings, concrete moisture barrier coatings, corrosion inhibitors, elastomeric-based coatings for use on roofs, walls, and building foundations, resin-based coatings for use on roofs, walls and pavements, rust preventatives, rust preservatives, sealer coatings for use in the building industry, shellac for use as a surface coating, tints for architectural paints and pigmented coatings for interior and exterior use, water-based fire-retardant coatings for building construction materials, water-based roof coatings; rust and corrosion preventative coatings against the deterioration of wood; colorants for use in the manufacture of beverages, cosmetics, food, paint, paper, pharmaceuticals, plastic molding compounds, printing ink, soap and hair, food colorants; mordants for use in the metal processing industry and for the textile industry, mordants for etching and for dyeing natural fibres, mordant dyes; raw natural resins; metals in foil and powder form for painters, decorators, printers and artists; cleaning preparations, namely, alcohol for cleaning purposes, all purpose cleaning preparations, ammonia for cleaning purposes, automotive cleaning preparations, canned pressurized air and gases for dusting and cleaning preparations, carpet cleaning preparations, cleaning and polishing paper for household purposes, dry cleaning fluids, floor stripper, foam cleaning preparations, glass cleaning preparations, hair cleaning preparations, hand cleaners, hand cleaning preparations, household cleaning preparations, preparations for cleaning, protecting and preserving vehicle surfaces, waterless spray for the cleaning and waxing of vehicles, general purpose cleaning, polishing and abrasive liquids and powders, polishing preparations; polishing powders, scouring preparations, namely, general purpose scouring liquids and scouring powders; specialty chemicals for use in the manufacture of all purpose cleaning preparations, scouring preparations, bleaching preparations, soaps, hair lotions, cosmetics, creams, dentifrices and perfumery; dentifrices, hair lotions, perfumery; industrial oils and greases; all purpose lubricants; gases for warming, heating and cooling, namely, natural gas, petroleum, propane and coal gas; gases for lighting, namely, natural gas, petroleum, propane and coal gas; gases being driving gases, namely, natural gas, petroleum, propane and coal gas; gases for energy generation, namely, natural gas, petroleum, propane and coal gas; gases for combustion, namely, natural gas, petroleum, propane and coal gas; coal gas, namely, methane and radon, coke oven gases; dust absorbing, wetting and binding compositions for use road building; dust absorbing, wetting and binding compositions for general use; fuels,

namely, alcohol and mixed alcohol fuel, aviation fuel, benzene fuel, bio diesel fuel, chafing dish fuel, charcoal, diesel, ethanol fuels, bio-fuels, fuel for aircrafts and ships, fuel for lighters, fuel for motor vehicles, namely, gasoline and diesel, fuel from crude oil, fuel oil, fuel pellets, gaseous fuels, lamp fuels, liquid fuels, methylated spirits for fuel, renewable fuels, shelled corn for fuel, solid fuels, wood chips for fuels; illuminants, namely, oil lamps and scented candles; candles, wicks; anti-diabetic pharmaceuticals, cardiovascular pharmaceuticals, dermatological pharmaceutical preparations for the treatment of respiratory diseases and disorders, namely, tuberculosis, lung cancer and pneumonia; injectible pharmaceuticals for the treatment of respiratory diseases and disorders, ocular pharmaceuticals, pharmaceutical antidepressants, pharmaceutical anticoagulants, pharmaceutical appetite suppressants, pharmaceutical preparations for the treatment of infectious diseases, namely, malaria and typhoid fever; pharmaceuticals for wounds, namely, solutions, lotions, salves, creams, ointments, pastes, oils, powders and gels, pharmaceutical skin lotions, pharmaceuticals anti-infective, pharmaceutical astringent, drug delivery agents consisting of compounds that facilitate delivery of a wide range of pharmaceuticals; veterinary preparations, namely, veterinary vaccines; sanitary preparations, namely sanitary preparations for sterilizing, disinfection sanitary preparations; proteins, vitamins, minerals, keto acids, amino acids, the salts thereof and dipeptides for use in dietetic substances and food supplements for medical purposes, nutritional supplements for building body mass; food for babies; medical plasters; materials for dressings, namely, burn dressings; dressings for wounds, burns and surgery, self adhesive dressings, wound dressings, namely, pledgets; material for stopping teeth, dispel wax; disinfectants for hygienic purposes, household disinfectants, disinfectants for medical instruments; all- purpose disinfectants; disinfectants for bathrooms; contact lens disinfectants; disinfectants for toilet bowls and chemical toilets; preparations for destroying vermin; fungicides, herbicides; gases for medical use, gases for respiration; common metals and their alloys; metal building materials, namely, soffits, flashing, fascia, cable trace used in building construction, cladding for constructions and building, metal roof vents for heating, cooling and ventilation in residential and commercial buildings, metal trim for buildings, portable mobile metal office buildings; materials of metal for railway tracks, namely, tracks and ties; non-electric cables, namely, single strand, multi-strand and uninsulated wire of common metal; foils of metal for wrapping and packaging pipes and tubes; tinplay packings, namely, industrial metal packaging containers; metallic pipes and tubes, namely, metal sewer

pipes, metal water pipes, drain pipes made of metal, metal gutter pipes, metal pipes for liquid and gas transfer; caverns or containers of steel used for transporting goods, industrial packaging, chemicals, compressed gases and liquids; safes; goods made of metal, namely, crash barriers of metal for roads, fixed towel dispensers of metal, metal beverage cans, metal containers for the transportation of goods, general-purpose metal storage bins; ores; machines for environmental technology, namely, machines for removing, shredding and compressing of garbage and waste, briquetting machines, spiral presses, press containers for pressing and storage of garbage and waste and for weighing and accounting delivered portions of garbage and waste; machines for waste disposal, namely, waste compactors, waste crushing machines, waste compacting machines; waste material conveying machines, machine tools for removing waste material; machines for power engineering, namely, deflection rollers and guide wheels; machines for processing engineering, namely, disintegrators, dissolving machines, extracting machines, granulating machines, grinding mills, kneading machines, separating machines, sintering machines and sorting machines for the chemical processing industry; semiconductor wafer processing equipment and machines, namely, epitaxial reactors, chemical vapour deposition reactors, chemical vapour deposition reactors, physical vapour deposition reactors; machines for automobile engineering, namely, for diagnostics and testing; continuous-flow machines, namely, continuous metal and copper casting machines; mining machines, namely, centrifugal concentrators, gravity concentrators, shaking tables, drills and truck mills; hoisting machinery, namely, hoisting block, hoisting bucket, hoisting cable, hoisting chain, hoisting clevis, hoisting crab, hoisting crane, hoisting drum, hoisting gear train, hoisting hook, hoisting jack, hoisting magnet, hoisting engine, hoisting winch and conveyors; construction equipment, namely, power sweepers, drilling machines, concrete construction machines; tire chains and over-the-tire tracks for skid steer loaders; transport machines equipment, namely, power-operated lift used to transport and place portable storage containers; casting machines, namely, metal and copper casting machines; machine tools, namely, broaches, chasers, milling cutters, electro-chemical discharge machine tools for metalworking, gear cutters, grinding tools for grinding machines, machine tools for removing waste material, machine tools, namely, rotary dies for cutting boxes for the packaging industry, machine tools, namely, cutting machine tools, forming machine tools for the cutting and forming of materials, metal clamps used for holding piece parts on machine tool tables, metalworking machine tools, thread milling cutters, tool bits and tool grinding

machines; motors and engines (except for land vehicles), namely, motors and engines for airplanes, boats, power tool motors, electric motors for machines, outboard motors, engine motors, engines for industrial machinery, rocket engines; machine coupling and transmission components (except for land vehicles); agriculture implements other than hand-operated, namely, rotary cutters, hay spears, hay lifters, seed drills, cultivators, harvesters, disc harrows, seeders, combines, threshers, tillers, windrowers, planting machines, balers, reapers, plows, harrows, mowers, tractor towed hay rakes, hay balers, broadcast seeders, manure spreaders, fertilizer distributors, huskers, and rollers; catalytic converters; machine and machine parts for generating gas, namely, gas compressors, gas liquefiers and gas splitters as well as valves and pumps; machines and parts therefore for generating and distributing energy, heat, steam and electricity, namely, steam engines, steam marine engines, steam pressure variation engines, steam turbines, solar powered electricity generators, wind powered electricity generators, fuel cell electrical power generators, photovoltaic energy generating systems; centrifugal, dust, oil, cyclone and vibrator screen separators; steam condensers as part of machines; and parts of the aforementioned goods; scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, supervision, checking, life-saving and teaching apparatus and instruments, namely, glass tubes for scientific purposes, glass ware for scientific experiments in laboratories, plates, glass slides or chips having multi-well arrays that can be used in chemical analyses, biological analyses or patterning for scientific, laboratory or medical research use, prisms for scientific purposes, satellites, scientific and technical apparatus, namely optical mirrors, scientific apparatus, namely, sensors for measurement and quality control of material processing by laser, sensors for determining the water content in petroleum products, scientific instruments, namely, fluorescents detector for crime scene investigations, scientific measuring instruments, namely, conductivity meters; electrical and scientific apparatus, namely, global positioning system (GPS) comprising computers, computer software, transmitters, receivers and network interface devices, nautical instruments, namely, gyroscopes, marine depth finders, compasses; level measuring machines for surveying, levelling rods for surveying, magnetic compasses for surveying, surveying chains, surveying compass needles, surveying machines and instruments, namely, surveying transits, surveying tripods; photographic bags for cameras and photographic equipment, cases for photographic apparatus, dryers for photographic prints, exposure meters, photographic cameras, exposure meters, filters, flash units, flashbulbs,

projectors, slide transparencies and viewfinders; cinematographic cameras, film, cinematographic projectors, cinematographic exposed film; optical cables, blank optical discs, cables for electrical or optical signal transmission, dispersion shifted optical fibres, electronic and optical communications instruments and components, namely, radio and video transmitters, optical transmitters, optical receivers, optical data links, optical transceivers, cable television transmitters, digital transmitters and communication link testers for testing communication links, filters for optical devices, lasers for cutting, drilling, marking, engraving and shaping optical lenses for eyeglasses, lasers for engraving and tinting optical lenses for eyeglasses, nonlinear optical fibres, optical cables, optical character readers, optical disc drives, optical disk readers, optical fiber cables, optical fibers sold as a component of fiber optical cables, optical filters, optical filters for screens, optical frames, optical glasses, optical lens sights, optical lenses, optical or telescopic lens sights, computer scanner devices, namely, optical readers, optical solar reflectors, scientific apparatus components, namely, optical reflectors, optical scanners, optical semiconductor amplifiers, optical shutters and scientific and technical apparatus, namely, optical mirrors; weighing equipment, namely, scales, balances and weighing platters sold as a component of scanner scales; measuring machines, namely, level measuring machines for surveying, length measuring gauges, lasers for measuring purposes, laser Doppler for measuring purposes; sensors for measuring milk and quality parameters, detectors for measuring two-dimensional distribution of force and pressure, gas sensors for measuring gas concentration, electronic-based instruments for measuring environmental parameters, namely, humidity, mold, bacteria, air quality and water quality, electronic sensors for measuring solar radiation, clinical laboratory analyzers for measuring, testing, and analyzing blood and bodily fluids, automotive measuring instruments, namely, water temperature gauges, air fuel ratio gauges, boost gauges, vacuum gauges and exhaust gas temperature gauges, electrical control systems for heating and air conditioning systems, sensors for temperature and humidity levels in gases, and solid substances, measuring bevels, rain gauges, measuring buckets, cups, fluorometers, digitizers, rulers, spoons, tapes and pocket calipers, radiation detectors, ohmmeters, rheometers for measuring the viscosity and visco-elasticity of fluids, signalling rotating lights, signalling buoys, traffic light signalling devices, airplane control panels, electronic controllers for flight control systems; life saving and teaching apparatus, namely, rafts, life belts, jackets, nets and preservers, life buoys, medical teaching mannequins; apparatus and instruments for conducting, switching,

transforming, accumulating, regulating or controlling electricity, namely, electricity conduits, electricity adapters, electricity winding wires; apparatus for recording, transmission or reproduction of sound or images, namely, airplane cockpit recorders, audio tape recorders and recordings, video tape recorders and recordings, CD music recordings, phonograph record players, phonograph records; pre-recorded audio cassettes, pre-recorded audiotapes, pre-recorded video cassettes, pre-recorded videotapes, pre-recorded videodiscs, pre-recorded compact discs, pre-recorded digital versatile discs, pre-recorded digital videodiscs, pre-recorded floppy discs, pre-recorded optical discs and pre-recorded laser disks, all the foregoing containing data for the scientific analysis of chemical, medical, diagnostic biological and bio-chemical data; pre-recorded DVD's featuring movies, electronic databases containing chemical, medical, diagnostic, biological and bio-chemical data for scientific analysis; blank recording discs for sound or video recording; automatic vending machines; mechanisms for coin-operated apparatus, cash registers, calculating machines, namely calculators; computers; computer software and firmware for use in database management, use as a spreadsheet, word processing, process control software, lab data management software, computer software used in the scientific analysis of chemical, medical, diagnostic, biological and bio-chemical data; computer software for business process management, namely, automating, systemizing, structuring the administration and management of large industrial enterprises and public authorities; electrically-controllable liquids for screens, namely, liquid crystal displays, liquid level sensors, liquid analyzers; fire-extinguishing apparatus, namely, fire extinguishers, fire-extinguishers for automobiles, fire hydrants, fire sprinklers; controls and regulating apparatus, namely, metered valves, gas meters, gas valves, gas sensors, and gas analyzers for generating gas; measuring and monitoring apparatus for generating gas, namely, metered valves, gas meters, gas valves, gas sensors, and gas analyzers; electricity conduits; apparatus for lighting, namely, electric lighting fixtures and sconces, electric torches for lighting, electric track lighting units, fiber optic lighting fixtures used in conjunction with electrical illuminators, fluorescent lighting tubes, infrared lighting fixtures, landscape lighting installations, fluorescent lights for showcases, lighting fixtures, lighting fixtures for use in parking decks and garages, lighting fixtures for use in parking lots and walkways, lighting fixtures that integrate natural daylight and fluorescent lighting into the fixture, lighting tracks, lighting tubes, outdoor lighting, namely, paver lights, solar light fixtures, namely, indoor and outdoor solar powered lighting units and fixtures; apparatus for heating, namely, chemically

activated heating packs for providing warmth to the body not for medical purposes, electric heating fans, electric radiators for heating buildings, electrical heating cables, electrical heating tapes, electrical induction heaters for heating metal work pieces, heat sinks for use in heating and ventilating apparatus, non-medical heating packs for warming the body, electric and chemically activated heating cushions not for medical purposes, heating furnaces for industrial purposes, electric and chemically activated heating pads not for medical purposes, heating systems composed primarily of tubes, pipes and pre-assembled manifolds through which cold or low temperature water circulates, industrial hot-air space heaters, industrial hot water space heaters, induction heaters for heating thermal insulated delivery bags designed to keep food warm during transport, industrial dryers for heating and dehumidifying, non-electric pocket warmers, namely, chemically activated heating packets for warming hands, pavement heaters, Peltier heaters, pipes for heating boilers, portable thermal self-heating pouch for the purposes of heating food; portable thermoelectric cooling and heating unit for food and beverages, industrial steam heaters, steam radiators for heating buildings, thermostatic valves for heating installations; steam generating products, namely, steam generators and steam heaters for heating buildings, steam super heaters for industrial purposes; cooking apparatus, namely, commercial cooking ovens, liners for conventional ovens, namely, heat transmitting containers for providing uniform heat and humidity during cooking, cooking ranges, domestic cooking ovens, electric cooking ovens, pots, stoves, gas cooking ovens and industrial cooking ovens, Japanese charcoal cooking stoves for household purposes, microwave ovens, oil cooking stoves for household purposes; refrigerators; drying apparatus, namely, clothes dryers, dryers for the removal of water vapour from compressed air and gases, dryers used for the removal of solid, liquid and vapour containments from compressed air and gases, electric hot air hand dryers, hair dryers for household purposes, hand held electric hair dryers, industrial dryers for heating and dehumidifying, stationary hair dryers for commercial and domestic use; ventilating apparatus, namely, exhaust fans, ventilating fans for commercial and industrial use and ventilating louvers; water supply apparatus, namely, electronic generator for use in controlling the amount of humidity in the air by creating, removing or circulating small water particles or water vapour in the air, flow restrictors for reverse osmosis water purification units, gas water heaters, hot water heaters, hot water tanks, industrial water purifiers, machine that generates purified water from the atmosphere and simultaneously purifies the air, oxygen generator for processing water by increasing oxygen

content in the water, ozone sanitizers for water, solar water heaters, tap water faucets, tap water purifiers, thickening and dewatering machines for use in the treatment of liquids, namely, water, industrial effluent and sewage; waste water purification units, water bed heaters, water cooling towers, water desalination plants, water distillation units, water faucet spout, water filtering devices, namely, water purification installations for waste water and sewage consisting of curtains and textile fabrics, water filtering units for domestic, commercial and industrial use, water filters, water fountains, water heaters for domestic, commercial and industrial use, water ionizers for household purposes, water purification tanks, water purification units, water purifiers, water purifying units for potable water for domestic, commercial and industrial use, water softening units, water treatment equipment, namely, cartridge filtration units, chemical sterilization units, reverse osmosis filtration units and ultraviolet sterilization units; sanitary pipes for sanitary purposes; purification installations for sewage; reactors for the chemical industry, namely, continuous stirred-tank-reactors, plug-flow reactors, semi-batch reactors and catalytic reactors, nuclear reactors; safety fittings for gas apparatus and gas pipes; cooling devices for storing and transporting gases, namely cooling domes and cooling evaporators; paper goods, namely, absorbent pads of paper and cellulose for use in feed packaging, print substrate, namely transparent, opaque and translucent films for use with ink jet copies and laser printers, advertising boards of paper or cardboard, advertising signs of paper or cardboard, aluminum foil laminated paper for printing purposes, art paper, automatic paper clip dispensing machines for office or stationery use, babies' diapers of paper, book-cover paper, computer paper, construction paper, copier paper, copy paper, digital printing paper, directory paper, drawing paper, envelope paper, facsimile transmission paper, laser print paper, laser printing paper, letterhead, offset paper, copy paper, paper diapers, paper for recording machines, paper for use in the graphic arts industry, photocopy papers, printing paper, publication paper, reel paper for printers, semi-processed paper for office use, synthetic paper; cardboard goods, namely, advertising boards, boxes, cardboard, cardboard backing for binding books, carriers for foods and beverages, cartons, cardboard storage containers, floor displays, hang tags, mailing tubes, cardboard packaging, containers for ice, linerboard, packaging containers, packing cardboard, picture mounts and placards; printed matter, namely, brochures, booklets and newsletters; bookbinding material, namely, book bindings, book binding tape, bookbinding wire and cloth for bookbinding; photographs; stationery, namely, paper, envelopes, pens and pencils; adhesives for

stationery for household purposes; artists' materials, namely, brushes, pastels, pencils, pens, canvas and molds for modeling clay; paint brushes; typewriters, namely, electronic typewriters, typewriter paper, print balls, typewriter ribbons, office machine ribbons, type balls, and typing elements; office requisites, namely, staplers, rubber bands, envelope sealing machines, adhesive tape dispensers, adhesive applying machines for home and office use, automatic adhesive dispensers for office use, automatic paper clip dispensing machines for office or stationery use, binders, CD shredders, collators, correcting fluid for type, document binding machines for office use, document laminators for office use, electric staplers for offices, finger stalls, glue, imprinters, ink rollers for office machines, laminating machines for home and office use, letter inserter machines for office use, office check writing and engraving machines, decollating machines, hole punchers, labelling machines, lettering machines, ribbons, paper drill machines, type composing machines, embossers, paper folding machines, paper shredders, paper feeding machines, protractors, punches, rubber bands, seals and spiral binding machines; instructional and teaching publications in the fields of telecommunications and education; plastic materials for packaging, namely, plastic bags and plastic bubble packs; packaging material of paper and cardboard, namely, paper boxes, cardboard boxes, plastic boxes, absorbent pads of paper and cellulose for use in food packaging, industrial packaging containers of paper, packaging and containers comprising starch-based materials, namely, a paper substitute for food packaging, beverages and consumer products, paper for wrapping and packaging, paper packaging and containers for food and beverages comprised of materials designed to lessen adverse effects on the environment; specialty papers, namely, vegetable parchment, for use in food wrapping, preparation, processing and packaging applications; paper bags, paper pouches for packaging, paper envelopes, cardboard packaging, plastic in bag and bubble pack form for packaging; rubber, gutta-percha, gum, asbestos, mica and goods made from these materials and not included in other classes, namely, rubber and plastics with fillers for use in the manufacture of tires and mechanical rubber goods; synthetic rubber, synthetic rubber for use in the manufacture of tires, uncured synthetic rubber for use in the manufacture of a wide variety of goods, chlorinated rubber, crude rubber, cushioning of rubber for the inner packing of packaging, electrical insulation rubbers, figurines made of rubber, fluoro rubber, foam rubber, general purpose silicone rubber sealant, hydro chlorinated rubber, industrial packaging containers of rubber, isobutylene-isoprene rubber, liquid rubber, natural rubber, packing and padding of rubber for

Shipping containers, padding of rubber for shipping containers, polysulfide rubber, raw rubber, semi-worked rubber, rubber bands for commercial and industrial uses, rubber bars and rods, rubber bottle stoppers, rubber bumpers for loading docks, rubber packing for shipping containers, rubber sheets, rubber shock absorbers for industrial machinery, rubber sleeves for protecting parts of machinery, rubber stoppers for industrial packaging containers, rubber thread not for textile use, rubber tubes and pipes, rubber wheel chocks, sealing plugs made primarily from rubber, shock absorbing rubber buffers for industrial machinery, shock buffers of rubber for industrial machinery, silicone rubber, sleeves of rubber for protecting parts of machinery, stuffing of rubber, styrene- butadiene rubber, valves of rubber or vulcanized fiber; gutta-percha pellets and granules for use in the manufacture of a wide variety of industrial products, for use as padding material and cushioning and for tires; gum in pellet and granule form for use in the manufacture of a wide variety of industrial products, for use as padding material and cushioning and for tires; asbestos boards, cords, strings and felt, asbestos fabric for use as cable insulation, asbestos fire curtains, asbestos for use in the manufacture of brake linings, asbestos nets, asbestos packing for valves and pistons, asbestos paper, powder and yarn; mica; plastics in extruded form for use in manufacture; packing, stopping and insulating materials, namely, graphite packing for gaskets, graphite packing for pumps, gaskets, and valves, insulated molded foam packing containers, packing material for forming seals for food and beverages and for medical and pharmaceutical packaging, packing padding of plastic for shipping containers, packing padding of rubber for shipping containers, plastic packing for shipping containers, rubber packing for shipping containers, electrical insulating tape, electrical insulation, electrical mica insulation, electrical rubber insulation, electrical insulating tapes, glass fiber electrical insulating tape, insulating and protective interlayer dielectric materials and coatings for use in integrated circuits, semiconductor devices, computer disk drives and other computer hardware, insulating blankets for hot water heaters, insulating blankets made of silica fibers, insulating film for use in the manufacture of semiconductors, insulating gloves, insulating materials, namely, polyurethane foam and polyethylene foam, insulating oil for transformers, insulating paint, insulating plaster, insulating refractory materials, namely, insulating castable mixes, insulating refractory mortar, insulating refractory plates and insulating refractory shapes, insulating sleeves for power lines, insulating sleeves for water heaters, insulating splice cover for electrical cable, insulating structural panels for placement on edifices, insulating ceiling, floor, paving, roofing

and wall tiles, insulating water proofing membranes, insulating water proofing ceiling, floor, paving, roofing and wall tiles, polyurethane film for use in sealing and insulating buildings; non-metal flexible pipes for plumbing and sewage; non-metal building materials, namely, adhesive mortar for building purposes, asphalt, asphalt felt, asphalt based mastics for foundations of buildings, building material, namely, plastic webbing material used to reinforce bituminous waterproofing sheets, semi-worked woods used in construction, namely, beams, boards, planks, panels, plates and strips; hardwood, wood and particle boards, plastic pipe supports, cellular PVC trim, fly ash, building stone, coloured sheet glass, common sheet glass for use in the construction trade, concrete blocks, bricks, posts, slabs and panels, concrete walls, glass blocks, glass panels, glass powder, laminated flat glass for use in the construction trade, logs for use in the construction trade, namely, wall logs, log siding, marble, mineral pellets for use in the construction trade, modified sheet glass for use in the construction trade, non-metal cable trays, flashing, fascia, soffits, shutters, shingles, siding, trim, cladding, decorative mouldings and decorative trim, non-metallic minerals for use in the construction trade, non-metallic reinforcements for concrete and wood building construction, namely, plates, rods and bars, plaster, reinforcing materials not of metal for building purposes, safety glass and stone for building and construction; non-metallic rigid drain pipes, gutter pipes and sewer pipes; asphalt, pitch and bitumen; asphalt, bitumen sealant for roofing and driveways; scaffolding, not of metal; ceiling tiles, clay roofing tiles, floor tiles, wall tiles, acoustic tiles and paving tiles, paving stones, paving blocks, not of metal; artificial stones used in construction; coatings, namely, asphalt-based coatings and sealants for use on roofs, walls, and pavements; non-metallic tubing, namely, plastic pipes for use in the construction trade; caverns and containers of concrete used for transporting goods and industrial packaging.

▼ Services

Help □

(1) the manufacture of sophisticated chemicals for use in the chemical industry; advertising agencies, namely, promoting the services of others through the distribution of printed and audio

promotional material and by rendering sales promotion advice; placing advertisement for others; preparing advertisements for others; business management; business administration and organizational project development for others in the chemical industry, the energy sector and the real estate field; business consultancy in the field of residue disposal of power plants and residue disposal of waste incineration plants; secretarial work; compilation of statistics for business purposes; accounting; auctioneering; business investigations; business marketing, namely, consulting for strategic planning, marketing strategies, promotions, advertising and promotional sponsorship; market research and market analysis; business consulting services in the field of product distribution, operations management services, logistics, reverse logistics, supply chain, production systems and distribution solutions; business information, planning and supervision in the field of product distribution, operations management services, logistics, reverse logistics, supply chain, production systems and distribution solutions; business management consulting in the field of strategy, marketing, production, personnel and retail sale matters, consulting services in the field of implementing sustainable business solutions, providing business management information in connection with consulting and advisory services in the field of strategic planning; business administrative consultancy in the field of strategic planning, professional business consultancy in the field of strategic planning, personnel management consultancy, rental of office machinery and equipment, arranging and concluding business negotiations for others; mediation of contracts for the buying and selling of goods for others; reproduction of documents; mediating contracts with electric power suppliers; buildings construction; installation services in the field of building scaffolds, working and building platforms; plant construction in the fields of clean room, air-conditioning, energy, heat and environmental technology; demolition; damp-proofing; the supply, installation, repair and maintenance of commercial roofing systems; insulating work, namely, installation of insulating materials; installation of electrical systems; building facade cleaning; fireplace construction; tile laying; floor laying; dehumidification of buildings; installation services in the field of building scaffolding; scaffolding repair and construction; glasswork glazing; structural engineering design, drawing and planning services; civil engineering design, drawing and planning services; plastering and tiling; road building, tunneling; water engineering; industrial building construction; installation and fitting of lighting equipment, lightning protectors, installation of earth works, namely, roads, railways, dams, dikes, canals, bunding and berms; installation of radio and telecommunication

transmitters; installation of ventilating, heating and air-conditioning equipment and systems; installation of refrigerators, installation of refrigeration units in buildings and trucks; construction of acoustical, electrical or thermal insulation; plumbing; installation of gas and water equipment and systems; painting, lacquering and wallpapering; parquet floor laying; pipeline laying; cleaning of buildings, chimneys, drains, motor vehicles and textiles; repairs to buildings; repair or maintenance of electrical wiring, electrical outlets, electric lights and light fixtures, electrical panels, electric motors and electric generators; repair or maintenance of machinery; repair or maintenance of chemical plant installations, thermo-technical installations in the nature of heat engineering installations, burners; repair or maintenance of healthcare equipment; repair or maintenance of residential, commercial and industrial heating, air conditioning, cooling and ventilating equipment; repair or maintenance of motor vehicles, aircraft and ships; repair or maintenance of mechanical equipment for medical and orthopaedic use; repair or maintenance of photographic, projection and cinematographic equipment; repair or maintenance of data networking systems; repair or maintenance of irrigation devices, power supply systems and gas supply systems, clothing, bicycles, rubber goods, upholstery, shoes and clocks; ship building; chimney construction; application of stucco, plastering and rough casting; laying of land and sea cables; rental of machines, tools and equipment for building; destroying vermin and weed killing (except for agricultural purposes); washing of laundry; carpentry and timber engineering, and construction of wooden buildings; transportation of chemicals by truck, rail, boat and air; transportation of goods by truck, boat, rail and air; storage of chemicals; storage of a wide variety of goods, namely, food, boats, clothing, building supplies, furs; supply and distribution of energy, electricity, gas, heat and district heat, compressed air and water; transport of gases, liquids and solids by pipe-line; vehicle towing, transport of persons by car, rail, ship and airplane; loading and unloading of boats; storage of furniture; guarded transport of money and valuables; ambulance transport; travel arrangement; traffic management services, namely, creating special event traffic plans for others; garage and parking space rental, car rental, and packaging of articles for transportation; treatment of materials, namely purification of silicon-based or chlorine-based chemicals; metal refining services; technical consulting in the field of waste management, waste management services and waste disposal services; water treatment; environmental remediation services, namely, soil treatment, recycling services in the field of paper treatment; refining services for others in the field of precious metals and precious

metal scrap sweeps; consulting services in the fields of leaching of ores with cyanides and detoxification of cyanides, providing information via the internet about the use of chemicals in manufacturing; bookbinding, film development and reproduction of photographs, wood-working, tempering of metal; surface refinement of metal, namely, anodization, enamelling, galvanization, phosphating, chromium-plating, zinc-plating of metal; pre-treatment and finishing of textiles by applying easy-care and anti-static substances as well as flame retardants and water, oil and stain repellents; recycling of residue from fossil fuel power plants and of waste; incineration of residue from fossil fuel power plants and of waste; production of energy and heat; training in the field of animal nutrition, chemicals and specialty chemicals; providing instruction, namely, providing courses of instruction at the college level or above; education rendered through correspondence courses in the fields of chemicals, specialty chemicals, nutrition, animal nutrition and electronics; education rendered through correspondence courses in the fields of language or tuition; providing continuing education courses in the form of further training in the field of chemicals, specialty chemicals, nutrition and animal nutrition; personnel training in the field of power plants, waste incineration plants, waste disposal plants, and treatment plants; publication of books, periodicals and newspapers; scientific and technological services and design, namely, the research, development and design of new products by physicists, biologists and biochemists in the fields of chemicals, cosmetics and pharmaceuticals; scientific and technological services and design, namely, the research, development and design of power plants, waste incineration plants, waste disposal plants and waste treatment plants; industrial analysis and research services in the fields of chemicals, cosmetics, pharmaceuticals, power plants, waste incineration plants, waste disposal plants and waste treatment plants; design and development of computer hardware and software; technical consultancy in the field of developing technologies and technical components for food; technical consultancy in the field of developing technologies and technical components for the food and beverage processing and producing industries; technical consulting in the fields of implementation and operation of food processing and beverage processing technologies; technical consultancy in the field of food and beverage research; technical consultancy in the field of leaching and detoxification processes; technical consultancy in the field of silicon compounds; technical consultancy in the field of catalysts; technical consultancy in the field of electronics, namely, electronics recycling; technical consultancy in the field of rubbers and polymers; technical consultancy in the field of cyanide leaching and detoxification;

technical consultancy in the field of environmental science, design and testing of new environmentally-friendly products for others; technical consultancy and research in the fields of foods and dietary supplements; material testing services, laboratory testing of materials; performing chemical and physical analysis of waste and residue from waste incineration plants, power plants or water treatment plants; architectural services, services of chemists, medical, bacteriological and chemical laboratories; computer programming.

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

No Hearing Held

AGENT(S) OF RECORD

Marks & Clerk

FOR THE OPPONENT

MLT Aikins

FOR THE APPLICANT