

O P I C



C I P O

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

**Citation: 2017 TMOB 114**

**Date of Decision: 2017-08-29**

**IN THE MATTER OF AN OPPOSITION**

**Caterpillar Inc.**

**Opponent**

**And**

**Puma SE**

**Applicant**

**No. 1,558,723 for procat**

**Application**

[1] Puma SE (the Applicant) filed application No. 1558723 for the trade-mark procat (the Mark) on January 5, 2012. The application is based upon proposed use of the Mark in association with footwear, namely athletic sports and casual shoes and boots; headgear, namely hats and caps.

[2] Caterpillar Inc. (the Opponent) is the owner of several registrations and applications for trade-marks consisting of or incorporating the term CAT, including registration No. TMA382,234 for the trade-mark CAT and Triangle Design (shown below), and application No. 1,588,026 for the trade-mark CAT, both of which cover a variety of goods, including: “work, sport and casual clothing, namely caps, headwear, namely stocking caps, ear muffs and head bands; footwear, namely work boots and athletic shoes.”



[3] The application for the Mark was advertised for opposition purposes in the *Trade-marks Journal* on August 8, 2012, and on October 5, 2012, the Opponent opposed it by filing a statement of opposition under section 38 of the *Trade-marks Act*, RSC 1985, c T-13 (the Act).

[4] The Opponent has raised four grounds of opposition:

- i. the Mark is not registrable under section 12(1)(d) of the Act in that it is confusing with the Opponent's trade-mark CAT and Triangle Design (registration No. TMA382,234);
- ii. the Applicant is not the person entitled to registration of the Mark under section 16(3)(a) of the Act in that it is confusing with the Opponent's trade-mark CAT and Triangle Design, which is the subject of registration No. TMA382,234 and with its trade-mark CAT, which is the subject of application No. 1,588,026, both of which were previously used or made known by the Opponent in Canada prior to the filing date of the application for the Mark;
- iii. the Applicant is not the person entitled to registration of the Mark under section 16(3)(c) of the Act in that it is confusing with the Opponent's trade-name CAT, which had been previously used by the Opponent in Canada prior to the filing date of the application for the Mark; and
- iv. the Mark is not distinctive within the meaning of section 2 of the Act in that it does not distinguish and is not adapted to distinguish the goods of the Applicant from those of the Opponent.

[5] The Opponent filed as its evidence the affidavit of Nai Vin Janet Chong, and the affidavit of Kenneth J. Beaupre. Mr. Beaupre was cross-examined on his affidavit and the transcript, as well as responses to undertakings, forms part of the record.

[6] As its evidence the Applicant filed the affidavit of Mr. Neil Narriman, and the affidavit of Ms. Lesley Gallivan. Although the Opponent requested to cross-examine both of the Applicant's affiants, the cross-examinations never proceeded.

[7] The Opponent did not file any evidence in reply.

[8] An oral hearing was held at which both parties were represented.

[9] For the reasons that follow, the application is allowed.

#### ONUS

[10] 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 [*John Labatt Limited v The Molson Companies Limited* (1990), 30 CPR (3d) 293 (FCTD) at 298].

#### OVERVIEW OF THE EVIDENCE

##### **Opponent's Evidence**

##### Affidavit of Mr. Beaupre

[11] Mr. Kenneth J. Beaupre identifies himself as Marketing Manager, Customer Services Support for the Retail Business Development Product Centre of the Opponent. I propose to primarily summarize the contents of his affidavit here but will highlight the relevant parts of his cross-examination in the body of my decision.

[12] Mr. Beaupre states that the Opponent is the owner in Canada of the registered mark CAT and Triangle Design (registration No. TMA382,234) and the word mark CAT (application No. 1,588,026) for use in association with, *inter alia*, work, sport and casual clothing namely caps, headwear, namely stocking caps, ear muffs and head bands; footwear, namely work boots and athletic shoes". While Mr. Beaupre states that the Opponent is the owner of a family of CAT trade-marks set out in paragraph 11 of his affidavit, it was confirmed on cross-examination that none of the marks listed in paragraph 11 had been used in association with footwear or headgear [Beaupre, cross-ex. Q. 27].

[13] According to the Beaupre affidavit, the Opponent is engaged in the manufacture, sale and distribution of a wide variety of vehicles, transporting devices, equipment and parts for a wide range of industries. He also states that an important part of the Opponent's business is the licensing of the Opponent's trade-mark merchandise or "soft goods" such as footwear, hats, clothing and apparel, bags, toys and models and stationery materials bearing the CAT trade-marks [Beaupre affidavit, para 6].

[14] Mr. Beaupre explains that the Opponent's philosophy in regards to its brand has been to create a strong brand which can be licensed beyond the core products and services that the Opponent offers, so as to reach a whole new audience for the Opponent's brands. The Opponent's licensed trade-mark merchandise program is a direct result of this philosophy and is an important part of the Opponent's brand awareness and its business. The Opponent believes that through its licensed merchandise, it is able to reach consumers who may never have had an experience with the Opponent, many of whom will be future decision makers who will carry a positive image of the Opponent with them [Beaupre affidavit, para. 7].

[15] Mr. Beaupre states that the Opponent has a number of licensees, known as trade-mark merchandise licensees, which are licensed to produce and market the Opponent's trade-mark merchandise bearing the Opponent's marks, including the CAT trade-marks. He explains that pursuant to the terms of the trade-mark license agreements, the Opponent exercises control over the quality and character of the goods that the licensees produce.

[16] Mr. Beaupre also states that marketing materials used to promote the Opponent's licensed merchandise must be approved by the Opponent [Beaupre affidavit, para. 14; Beaupre transcript, q. 361-366 and response to undertakings UA2, Tabs A and C].

[17] The Opponent's trade-mark merchandise licensees are licensed by the Opponent for promotional sales, retail sales or both. Promotional sales mean sales to the Opponent, its subsidiaries and/or its dealers. Retail sales mean sales to the general public, excluding promotional sales [Beaupre affidavit, para. 20]. Mr. Beaupre lists those companies that are licensed for promotional sales in Canada for the Opponent's goods, as well as those licensed for retail sales to Canada for the Opponent's goods [Beaupre affidavit, paras 20 and 21].

[18] Mr. Beaupre further explains that the majority of promotional sales made by the Opponent's trade-mark merchandise licensees are made to the Opponent's Canadian dealers, and that each of these dealers is licensed by the Opponent to use the Opponent's trade-marks [Beaupre affidavit, paras 23-28; Exhibits C-E]. Many of the dealers operate websites that sell the Opponent's licensed merchandise and also sell at their respective dealer locations across Canada [Beaupre affidavit, para. 29].

[19] With respect to the Opponent's licensed headgear in particular, Mr. Beaupre states that it is sold to over 430 retail stores in Canada [Beaupre affidavit, para. 33]. The approximate retail sales made by the Opponent's licensee that is licensed for the retail sales of headgear in Canada ranged between \$95,000 and \$330,000 U.S. between 2008 and 2012. The approximate promotional sales of headgear made by each of the three trade-mark merchandise licensees licensed specifically for the territory of Canada between 2008 and 2012 were \$223,000, \$1,671,000 and \$223,000 [Beaupre affidavit, paras. 30-33]. The Opponent's licensed headgear is also sold on the [shopcaterpillar.com](http://shopcaterpillar.com) website [Beaupre affidavit, paras. 36-37; Exhibits G & H].

[20] The Opponent's licensed footwear is sold to over 800 retail stores in Canada [Beaupre affidavit, para. 35]. Annual sales by the Opponent's licensee that is licensed for retail sales of footwear in Canada between 2005 and 2012 ranged between \$7.84 million (US) and \$11.8 million (US). The Opponent's licensed footwear is also sold on the websites [catfootwear.com](http://catfootwear.com) and [catfootwear.ca](http://catfootwear.ca) operated by Wolverine World Wide, one of the Opponent's trade-mark merchandise licensees for both promotional and retail sales to Canada for the Opponent's goods [Beaupre affidavit, paras. 21, 22, 34 and Exhibit F].

#### Affidavit of Ms. Chong

[21] Ms. Chong is a lawyer employed by the Opponent's agent. Her affidavit details various purchases made of CAT branded products from websites and the Opponent's Canadian dealers in March, 2013. Her evidence shows the purchases of footwear and/or headgear bearing the CAT trade-marks from a number of websites including the following: [www.catmerchandise.com](http://www.catmerchandise.com), [www.shopcaterpillar.com](http://www.shopcaterpillar.com), [www.catfootwear.com](http://www.catfootwear.com), [www.boutiquecat.ca](http://www.boutiquecat.ca), [www.heavydutygear.ca](http://www.heavydutygear.ca) [Chong affidavit, paras. 4-31; Exhibits A – GG].

## **Applicant's Evidence**

### Affidavit of Mr. Narriman

[22] Mr. Narriman is Global Head of Intellectual Property of the Applicant. He provides background information of the history of the Applicant and the athletes and sports teams in Europe and South America that have used the Applicant's products [Narriman, para. 4]. He explains that the Applicant produces sportswear, sports footwear, casualwear and lifestyle clothing and footwear products and distributes these products in more than 120 countries.

[23] At paragraphs 5-6 of his affidavit, Mr. Narriman provides worldwide sales figures and marketing expenses for products sold under the PUMA word mark, the PUMA word and Jumping Cat design mark, the Jumping Cat design mark, and the "Puma Form Strip Devices" for the years 2010 – 2013.

[24] Mr. Narriman explains that products identified by one or more of the Applicant's trade-marks have been sold in Canada since at least as early as 1969. The table listing each of the Applicant's marks is attached to this decision as Schedule A.

[25] PUMA Canada became a 100% direct subsidiary of PUMA North America in 2008 and PUMA North America is a 100% subsidiary of the Applicant. Since that time, PUMA North America granted a sub-license to PUMA Canada to distribute the Applicant's products in Canada and to use the marks owned by the Applicant. The Applicant's products sold in Canada bearing one or more of the family of Jumping Cat trade-marks are manufactured and supplied to PUMA Canada by the Applicant. Thus, the Applicant retains full and complete control over the character and quality of the goods sold in Canada in association with the Jumping Cat trade-marks [Narriman, para. 8].

[26] Mr. Narriman goes on to explain that once PUMA Canada receives the PUMA products directly from PUMA approved global manufacturing facilities around the world, the goods are transported to a distribution centre and then distributed to both wholesale and company owned retail outlets.

[27] Attached to Mr. Narriman's affidavit as Exhibit B are copies of various catalogues for the years 2009 to 2012 which would have been provided to Canadian customers in order to facilitate orders for clothing, footwear, headwear and related goods through PUMA Canada. The catalogues include depictions of products bearing one or more of the Applicant's "Jumping Cat" trade-marks and also include product names incorporating the term CAT. For example, clothing, footwear and headgear items are identified using the product names Drift Cat, Future Cat, Golf Cat, Speed Cat, Tune Cat, GP Cat, Ryu Cat, Pace Cat, Play Cat, Mega-Cat and Tropi Cat. The term CAT is also used to identify the use of the Jumping Cat Design when describing product designs including Big Cat Sports Bag, Big Cat Backpack Set, Big Cat Wallet, Cat Sweat Jacket, Cat Hooded Sweat JKTZ, Cat Popover, Cat SS Tee, Tricot Cat Suit Pant, Blinded Cat Tee, The Knitted Cat, Cat Basic Beanie, SF Mini Cat Set, Minicats Knit Military Cap, Crystal Cat Scarf, Cat Belt, Cat Headband and Cat Pack Tee. Product names incorporating the term CAT such as those mentioned above also appear on product packaging and hang tags [Narriman, Exhibit C].

[28] Attached as Exhibit D to his affidavit is a photograph of a clothing article showing the clothing label and hang tag where one of the Applicant's Jumping Cat Design trade-marks, shown below, is displayed. Mr. Narriman states at paragraph 12 of his affidavit that the Jumping Cat Design trade-mark appears in association with each and every product which is manufactured by the Applicant and sold in Canada.



[29] Mr. Narriman goes on to state that the Applicant has enjoyed considerable sales in Canada and throughout the world of its footwear, clothing, headwear and related products bearing one or more of the family of its Jumping Cat Design trade-marks. Annual Canadian sales of products bearing one or more of the Applicant's family of trade-marks ranged between \$55,960,000 and \$67,700,000 between 2006 and 2012 [Narriman affidavit, para. 13]. Canadian marketing expenses for advertisement of products bearing one or more of the Applicant's Jumping Cat Design trade-marks ranged between \$2,571,000 and \$3,551,000 between 2006 and 2012 [Narriman affidavit, para. 14].

## Affidavit of Ms. Gallivan

[30] Ms. Gallivan is a lawyer at the firm that previously represented the Applicant. Her affidavit introduces results and particulars from a search she conducted of the Canadian trade-marks register of the existence of trade-mark registrations and pending trade-mark applications which contain or comprise the term CAT or KAT and were registered or applied for in association with goods falling within class 25.

[31] Also attached to her affidavit are definitions for the words “cat” and “caterpillar” from various dictionaries.

## PRELIMINARY ISSUE

### **Section 50**

[32] As a preliminary matter, I will address the issue of whether the use of the Opponent’s marks in Canada enures to its benefit.

[33] Mr. Beaupre states at paragraph 14 of his affidavit that pursuant to the terms of the trade-mark merchandise license agreements the Opponent has with its trade-mark merchandise licensees, the Opponent exercises control over the character and quality of the Opponent’s goods that the trade-mark merchandise licensees produce. Some examples of ways in which the Opponent exercises its control described by Mr. Beaupre include the following [see Beaupre affidavit, para. 14; Exhibits B1-B8; Beaupre responses to undertakings, UA7, UA8, UA9, and Tabs C and D]:

- the Opponent establishes trade-mark usage and brand identity guidelines with respect to the character and quality of the Opponent’s products sold in association with the Opponent’s trade-marks;
- pursuant to its trade-mark merchandise license agreements, all of the Opponent’s licensed merchandise is to be identified by a circular licensed merchandise logo;
- the Opponent has the right to request at any time that random samples of any licensed merchandise be submitted to the Opponent to verify whether these samples are identical to the production sample that was approved by the Opponent;



- under the terms of the trade-mark merchandise license agreements, the Opponent requires trade-mark merchandise licensees to submit concept samples, pre-production samples and production samples of the licensed merchandise the trade-mark merchandise licensees propose to produce;
- also under the terms of the merchandise license agreements, the Opponent has the right to enter the premises where the products are manufactured to inspect licensed merchandise to ensure the standard and quality of such products; and
- in the case of CAT branded footwear sold in Canada, point of sale displays, shelving and towers bearing the CAT trade-mark are also sold and distributed to retailers throughout Canada.

[34] The only way that third party use of a trade-mark is deemed to be that of the registered trade-mark owner is when section 50 of the Act is satisfied. Sections 50(1) and (2) are reproduced below:

50. (1) For the purposes of this Act, if an entity is licensed by or with the authority of the owner of a trade-mark to use the trade-mark in a country and the owner has, under the license, direct or indirect control of the character or quality of the wares or services, then the use, advertisement or display of the trade-mark in that country as or in a trade-mark, trade-name or otherwise by that entity has, and is deemed always to have had, the same effect as such a use, advertisement or display of the trade-mark in that country by the owner.

(2) For the purposes of this Act, to the extent that public notice is given of the fact that the use of a trade-mark is a licensed use and of the identity of the owner, it shall be presumed, unless the contrary is proven, that the use is licensed by the owner of the trade-mark and the character or quality of the wares or services is under the control of the owner.

[35] The Applicant submits both in its written and oral argument that the Opponent's evidence of its licensing regime does not fulfil the requirements of section 50(1) of the Act. To support its submission that the Opponent does not in fact exercise direct or indirect control over the character or quality of its headgear and footwear sold in association with its trade-marks, the Applicant points to the following three examples in the evidence.

[36] First, the Applicant points to the evidence filed by the Opponent regarding Wolverine World Wide Inc. (Wolverine), its trade-mark licensee for promotional and retail sales for

footwear to Canada. The CAT Fall 2000 Buyer's Guide attached as Exhibit B-1 to the Beaupre affidavit states the following under "terms and conditions": "Wolverine Canada stands 100% behind the quality of its products both as to workmanship and the materials used in them under normal or proper use and maintenance". The Applicant also submits that the evidence makes it clear that it is Wolverine who assesses and determines what goods are defective and decides whether a replacement product is warranted. When asked about this on cross-examination, Mr. Beaupre states that it appears to him that Wolverine is guaranteeing its quality and that Wolverine would address the customer issue [Beaupre transcript, Q. 359-360]. Finally, the Internet Policy in the same document contains the following statement: "Due to the increasing popularity of retail Internet sites the following guidelines for retail use have been established by Wolverine Canada Inc....Any site incorporating CAT® product/logos must be approved by Wolverine Canada Inc. Please contact the Marketing Department for approval prior to going on line."

[37] Next, the Applicant points to Exhibit D of Mr. Beaupre's affidavit which are printouts of pages from Toromont Industries Ltd.'s (Toromont) *catmerchandise.com* website. Toromont is the Opponent's dealer for promotional sales of the Opponent's goods for Ontario, Manitoba, Newfoundland, Eastern Labrador and part of Nunavut [Beaupre affidavit, para. 24]. Toromont also sells the Opponent's licensed merchandise including hats and footwear through its website.

[38] The legal statement on the Privacy Policy page of Toromont's websites states as follows: "Toromont owns and operates the *catmerchandise.com* Web site. Toromont, Toromont Cat and related words, domain names and logos are trade-marks and the property of Toromont, used by Toromont Cat under the license from Toromont Industries Ltd." When asked under oath about dealer compliance with trade-mark use, Mr. Beaupre stated the following:

"Our dealers are wholly owned companies that are outside of Caterpillar's direct control. So I can't --- when it comes to how Toromont is doing things, we can influence and have certain controls but we don't have the same controls as if they were part of our company." [Beaupre transcript, q. 437].

[39] Finally, the Applicant submits that the trade-mark merchandise license agreement submitted as Tab C to the cross-examination of Mr. Beaupre focusses on the packaging and labelling of the goods as opposed to the care and quality of the goods themselves. In this regard,

the Applicant points to section 6.1 of the agreement under the heading Quality of Licensed Articles where it states the following:

“Licensee agrees that all Licensed Articles shall be of high safety and structural standards with respect to design, material and workmanship and of such style, appearance, quality and consistency as shall be adequate and suitable for their intended use... The approval process does not constitute an evaluation by CATERPILLAR of the Licensed Articles’ design, manufacture or warning or of any hazards associated with the design or manufacture of the Licensed Articles or warnings contained on them. CATERPILLAR in no way endorses or accepts responsibility for the design or manufacture of the Licensed Articles or warnings contained on them...”

[40] As set out above, Section 50(1) of the Act specifically provides that in order for any trade-mark use by a licensee to enure to the benefit of the trade-mark owner, the owner must have “direct or indirect control of the character or quality of the goods or services”. I agree with the Applicant the use of the marks by Wolverine and Toromont evidence that control over the character and quality of the goods by the Opponent was deficient and consequently such use did not enure to the benefit of the Opponent. If the Opponent did exercise control over the character or quality of the design or manufacture of the licensed articles, I would have expected the license agreement to have focused on the character and/or quality of the goods manufactured in association with the Opponent’s mark as opposed to their packaging and labelling. Further, Mr. Beaupre’s statement that the Opponent’s dealers are wholly owned dealers outside of the Opponent’s direct control suggests to me that the Opponent does not in fact have direct/indirect control over the care/quality of the goods sold in association with the Opponent’s marks.

[41] With respect to section 50(2) of the Act, I find that the evidence from the Opponent’s Fall 2000 Buyer’s Guide attached as Exhibit B-1 to the Beaupre affidavit appears to show that it is Wolverine who is the source of the goods as opposed to the Opponent. Further, the evidence from Toromont’s website appears to show that the trade-marks are used under license from Toromont Industries Ltd. and not the Opponent.

[42] In view of the above, I am not prepared to infer that the Opponent has the requisite control over the character or quality of the goods at issue (i.e. footwear and headgear) which are being offered in association with the Opponent's marks.

[43] I will discuss the impact of this finding in more detail in my confusion analysis below.

## GROUNDS OF OPPOSITION

### **Non-Registrability – Section 12(1)(d)**

[44] The Opponent has pleaded that the Mark is not registrable because it is confusing with its trade-mark CAT and Triangle Design, which is the subject of registration No. TMA382,234..

[45] The material date to assess the section 12(1)(d) ground of opposition is 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)].

[46] The Opponent filed a copy of its registration as Exhibit A-1 to the Beaupre affidavit and I have exercised my discretion and checked the register to confirm that the Opponent's registration is extant [*Quaker Oats Co of Canada v Menu Foods Ltd* (1986), 11 CPR (3d) 410 (TMOB)]. Therefore, the Opponent has met its initial burden with respect to this ground.

[47] As the Opponent's evidentiary burden has been satisfied, the Applicant must therefore establish on a balance of probabilities, that there is no reasonable likelihood of confusion between its trade-mark and the Opponent's trade-mark.

[48] 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.

[49] 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 *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)].

Section 6(5)(a) – inherent distinctiveness and the extent to which the marks have become known

[50] The Opponent's trade-mark consists solely of the word CAT and a triangle design component. I consider the Opponent's trade-mark to possess a high degree of inherent distinctiveness because the meaning of the word CAT has no significance in relation to the Opponent's goods. While CAT could be argued to be the short form for the Opponent's corporate name, Caterpillar Inc., Mr. Beaupre did not attest to this in his affidavit and there is no evidence to suggest that consumers would recognize it as being such as a matter of first impression in the marketplace.

[51] With respect to the Mark, the Opponent submitted in its written argument that the word "PRO" is suggestive and laudatory. However, in the absence of evidence that PRO has any suggestive or laudatory connotation in association with the Applicant's goods, I consider that the mark as a whole is distinctive because it is a coined word comprised of components which typically do not appear together. Further, I do not find that the Mark has any significance in relation to the Applicant's goods.

[52] The acquired distinctiveness of a trade-mark refers to the distinctiveness a mark has obtained by means of it becoming known in Canada through promotion or use.

[53] There is no evidence that the Mark has acquired distinctiveness.

[54] There are a number of issues with respect to the acquired distinctiveness of the Opponent's mark. Although the Opponent claims use in Canada since at least as early as 1991 for its CAT and Triangle Design registered mark, there is a lack of documentary support for sales of headgear prior to 2003 and footwear prior to 2011. Further, the Opponent's evidence of the delivery of a limited number of caps between 2003 and 2005 suggests that the use of the Opponent's mark in association with these caps may have been promotional in nature. Finally, without a clear indication that the use of the Opponent's registered mark by the licensees enured to the benefit of the Opponent, it is difficult to know whether Canadian consumers would recognize all of the goods being provided by the various licensees or dealers as being associated with the Opponent or only some of them.

[55] Overall, I am not satisfied that the Opponent's mark has acquired as much distinctiveness in the hands of the Opponent as the Opponent has claimed. However, despite its limitations, I am still satisfied that the Opponent's mark has become known in Canada to a greater extent than Mark. This factor therefore favours the Opponent.

Section 6(5)(b) – the length of time each has been in use

[56] The application for the Mark is based upon proposed use in Canada and the Applicant has not filed any evidence to show that any use of the Mark has commenced to date. By contrast, the Opponent has provided some evidence of use of its mark since at least as early as 2003, but it is questionable whether all of this use enured to the benefit of the Opponent because of the limitations set out above. I therefore do not find that this factor significantly favours either party.

Sections 6(5)(c) and (d) – the nature of goods, services or business and trade

[57] When considering sections 6(5)(c) and (d) of the Act, it is the statement of goods in the application for the Mark and the statement of goods in the Opponent's registration that govern the assessment of the likelihood of confusion under section 12(1)(d) of the Act [*Henkel Kommanditgesellschaft auf Aktien v Super Dragon Import Export Inc* (1986), 12 CPR (3d) 110 (FCA) and *Mr Submarine Ltd v Amandista Investments Ltd* (1987), 19 CPR (3d) 3 (FCA)]. Those statements must be read with a view to determining the probable type of business or trade intended by the parties rather than all possible trades that might be encompassed by the wording. Evidence of the parties' actual trades is useful in this respect [*McDonald's Corp v Coffee Hut Stores Ltd* (1996), 68 CPR (3d) 168 (FCA); *Procter & Gamble Inc v Hunter Packaging Ltd* (1999), 2 CPR (4th) 266 (TMOB); and *American Optical Corp v Alcon Pharmaceuticals Ltd* (2000), 5 CPR (4th) 110 (TMOB)].

[58] The Opponent's mark CAT and Triangle Design is registered in association with, inter alia, "work, sport and casual clothing, namely caps, headwear, namely stocking caps, ear muffs and head bands; footwear, namely work boots and athletic shoes". The application for the Mark covers "footwear, namely athletic, sports and casual shoes and boots; headgear, namely hats and caps." There is therefore direct overlap in some of the goods and the others are closely related.

[59] In view that the parties' goods overlap, and there is no restriction in either the Applicant's application or the Opponent's registration, the Applicant's goods may therefore be sold in the same channels of trade and purchased by the same consumers who purchase the Opponent's products. In the absence of any evidence on this point from the Applicant, I consider it reasonable to conclude that there could be overlap in the parties' respective channels of trade.

#### Section 6(5)(e) – degree of resemblance between the trade-marks

[60] In considering the degree of resemblance, the Supreme Court of Canada in *Masterpiece, supra*, sets out that resemblance is defined as the quality of being either like or similar (para 62) and that the approach to assessing resemblance should involve a consideration of whether there is an aspect of a trade-mark that is particularly striking or unique (para 64).

[61] The parties' trade-marks resemble each other to some extent in appearance and sound since both share the component CAT. I do, however, find that the first portion of the Mark assists in differentiating it from the Opponent's mark [see *Conde Nast Publications Inc v Union des editions modernes* (1979), 46 CPR (2d) 183 (Fed TD)]. As noted above, there is no evidence that the component PRO has any suggestive or laudatory connotation in association with the Applicant's goods. I therefore do not consider the ideas suggested by the marks to be similar. In this regard, the Opponent's mark suggests the idea of a feline animal while the Applicant's Mark is a coined word without any apparent meaning.

#### Surrounding Circumstances

##### *The Applicant's Family of Trade-marks*

[62] As a surrounding circumstance with respect to the issue of confusion, the Applicant has relied upon the use of an alleged family of Jumping Cat Design trade-marks, particulars of which are set out in Schedule A to this decision. The Applicant submits that since it has established the existence of a family of Jumping Cat Design trade-marks for similar goods, it follows that consumers would be more likely to assume that a new word mark that sounds similar and suggests a similar idea for similar goods belongs to the Applicant as opposed to the Opponent.

[63] In the present case, the evidence shows that the Applicant has been using its family of Jumping Cat Design trade-marks in Canada since as early as 1969 and Mr. Narriman has provided evidence of significant sales and advertising for these marks. Mr. Narriman also states that the Jumping Cat Design trade-mark appears in association with each and every product which is manufactured by the Applicant and sold in Canada in association with all of the members of its family of trade-marks [Narriman affidavit, para. 12].

[64] I do not find that the Applicant's family of Jumping Cat Design marks is a significant factor that may decrease the likelihood of confusion in this case for two reasons. First, the common component in the Applicant's family of marks which the Applicant has shown use of is the design of a jumping cat. As the Mark is a word mark with no design features, I do not find that consumers familiar with the Jumping Cat Design marks of the Applicant would be likely to assume that the Mark is part of the Applicant's family of marks. Second, even if I did find that there was some resemblance between the Mark and the Applicant's other marks in sound and idea suggested, section 19 of the Act does not give the owner of a registration the automatic right to obtain any further registrations no matter how closely they may be related to the original registration [*see Coronet-Werke Heinrich Schlerf GmbH v Produits Menagers Coronet Inc* (1984), 4 CPR (3d) 108 (TMOB) at 115 and *Groupe Lavo Inc v Procter & Gamble Inc* (1990), 32 CPR (3d) 533 (TMOB)].

#### *State of the Register Evidence*

[65] As an additional surrounding circumstance, the Applicant has relied on the state of the register evidence introduced by the Gallivan affidavit to minimize the effect of any resemblance between the marks at issue.

[66] Ms. Gallivan located approximately 130 applications/registrations for trade-marks containing the element CAT or KAT on the Canadian trade-mark register for goods falling within class 25 [Gallivan affidavit, para. 2; Exhibits A and B].

[67] It has been held that while state of the register evidence can be useful to assess the commonality or distinctiveness of a trade-mark or portion of a trade-mark in relation to the register as a whole, it is only relevant insofar as inferences may be made with respect to the state



of the marketplace, and inferences about the state of the marketplace can only be drawn when a significant number of pertinent registrations are located [*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)]. Evidence of marketplace use of some of the marks located in the search is not necessary for an inference to be drawn. However, the exact number of similar marks needed to establish that an element of a mark was commonly adopted as a component of trade-marks used in association with the relevant goods or services at the material date is not clear and likely depends on the facts of a given case [*Hawke & Company Outfitters LLC v Retail Royalty Co*, 2012 FC 1539; *Heather Ruth McDowell v Laverana GmbH & Co KG*, 2017 FC 327].

[68] In its written argument, the Opponent pointed out that of the 130 marks provided, 70 or so are comprised of either a design of a stylized feline animal (or a part thereof) alone with no word element, or comprised of a design of a stylized feline animal (or a part thereof) and word element, in which the design element is the dominant feature of the mark. The Opponent asserts that these marks are easily distinguishable from the Opponent's CAT marks by appearance, sound and idea suggested. The Opponent also notes that the vast majority of the other trade-marks contain word or design elements that serve to distinguish such marks from the CAT trade-marks more effectively than the Applicant's Mark does.

[69] I agree with the Opponent that many of the marks located by Ms. Gallivan have design elements that are the dominant feature of the mark or are for goods that are unrelated to the goods at issue. However, I find that there are still at least 13 marks that have the component CAT without a distinctive design element, each owned by a different third party, that are registered in association with clothing items that are relevant considerations.

[70] Another relevant consideration is the Applicant's evidence of product names incorporating the term CAT which appear in the Applicant's catalogues and on product packaging and hang tags. As noted above, clothing, footwear and headgear items are identified using the product names Drift Cat, Future Cat, Golf Cat, Speed Cat, Tune Cat, GP Cat, Ryu Cat, Pace Cat, Play Cat, Mega-Cat and Tropi Cat. The term CAT is also used to identify the use of the Jumping Cat design when describing product designs including Big Cat Sports Bag, Big Cat

Backpack Set, Big Cat Wallet, Cat Sweat Jacket, Cat Hooded Sweat JKTZ, Cat Popover, Cat SS Tee, Tricot Cat Suit Pant, Blinded Cat Tee, The Knitted Cat, Cat Basic Beanie, SF Mini Cat Set, Minicats Knit Military Cap, Crystal Cat Scarf, Cat Belt, Cat Headband and Cat Pack Tee. While I agree with the Opponent that the Applicant has not shown use of these product names as trade-marks, I still consider this evidence relevant to further support the inference that the term CAT has been commonly adopted in the marketplace in association with clothing.

[71] In view of the above, I do not think it can be said that the use of the word mark CAT is particularly distinctive of any one trader when used in association with clothing. The evidence suggests that consumers are somewhat accustomed to seeing CAT word marks in the clothing trades and are therefore used to distinguishing such marks based on their other components. This factor therefore favours the Applicant.

#### Conclusion on the Likelihood of Confusion

[72] In applying the test for confusion, I have considered it as a matter of first impression and imperfect recollection. Having considered all of the surrounding circumstances, and despite the fact that the applied for goods overlap with the Opponent's goods, I find the differences between the parties' marks, combined with the evidence that the term CAT is used by enough traders in the marketplace as a component to distinguish clothing products, sufficient to shift the balance of probabilities regarding confusion in favour of the Applicant. I am of the view that the ordinary consumer would not, as a matter of first impression, be likely to think that the goods associated with "procat" would emanate from the same source as those associated with CAT and Triangle Design or vice versa. Consequently, I find that there is no reasonable likelihood of confusion between the parties' trade-marks.

[73] Accordingly, this ground of opposition is rejected.

#### **Sections 16(3)(a) and (c) – Entitlement**

[74] The Opponent has pleaded that the Applicant is not the person entitled to registration of the Mark in view of the provisions of section 16(3)(a) and 16(3)(c) of the Act since at the filing date of the application, the Mark was confusing with the Opponent's trade-mark CAT and

Triangle Design which is the subject of registration No. TMA382,234, its word trade-mark CAT, which is the subject of application No. 1,588,026 and with the Opponent's trade-name CAT, all of which had been previously used in Canada by the Opponent.

[75] An opponent meets its evidential burden with respect to section 16(3)(a) and (c) of the Act if it shows that its trade-marks and trade-name had been used in Canada prior to the filing date of the application (i.e. January 5, 2012) for the applicant's trade-mark and had not been abandoned as of the date of advertisement of the applicant's application (i.e. August 8, 2012) [section 16(5) of the Act].

[76] To the extent that the Opponent has met its initial burden with respect to its section 16 grounds of opposition, most of my conclusions respecting the section 12(1)(d) ground of opposition are also applicable here. Although the Applicant's evidence of third party registrations of CAT marks for clothing was filed as evidence after the material date for this ground, given the particulars of the third party registrations, I am prepared to infer that they were in use in the marketplace in Canada as of the earlier date.

[77] Accordingly, for the same reasons which were set out above in my analysis under the section 12(1)(d) ground of opposition, these grounds of opposition are unsuccessful.

## **Section 2 – Distinctiveness**

[78] The Opponent has pleaded that the Mark does not distinguish and is not adapted to distinguish the goods of the Applicant from those of the Opponent.

[79] While there is a legal onus on the Applicant to show that the Mark is adapted to distinguish or actually distinguishes its goods from those of others throughout Canada, there is an initial evidential burden on the Opponent to establish the facts relied upon in support of the ground of non-distinctiveness [see *Muffin Houses Incorporated v The Muffin House Bakery Ltd* (1985), 4 CPR (3d) 272 (TMOB)].

[80] In order to meet its evidential burden, the Opponent is under an obligation to show that, as of the date of filing of the statement of opposition (i.e. October 5, 2012), one or more of its trade-marks had become known sufficiently to negate the distinctiveness of the Mark. The

reputation of the Opponent's trade-marks should be substantial, significant or sufficient [*Bojangles' International, LLC v Bojangles Café Ltd* (2004), 40 CPR (4th) 553, affirmed (2006), 48 CPR (4th) 427 (FC)].

[81] In this case, there is evidence that at least some of the use of the Opponent's marks has not been in the manner specified by section 50 of the Act. In view of the non-distinctive use by others of the Opponent's marks, I am not satisfied that either of the Opponent's marks had become known sufficiently in Canada in association with headgear or footwear as of, October 5, 2012 to negate the distinctiveness of the Mark [see *Motel 6, Inc v No 6 Motel Ltd* (1981), 56 CPR (2d) 44 (FCTD); *Bojangles' International, LLC and Bojangles Restaurants, Inc v Bojangles Café Ltd* (2006), 48 CPR (4th) 427 (FC)].

[82] Even if I had been satisfied that the Opponent had met its burden under this ground, assessing each of the section 6(5) factors as of October 5, 2012, would not have significantly impacted my analysis of the surrounding circumstances of this case. Thus, for reasons similar to those previously expressed under the section 12(1)(d) ground, I would have been satisfied that the Applicant has discharged the legal onus resting upon it to show that, as of October 5, 2012, the Mark was not reasonably likely to cause confusion with either of the Opponent's trade-marks.

[83] In view of the foregoing, the non-distinctiveness ground of opposition is also unsuccessful.

DISPOSITION

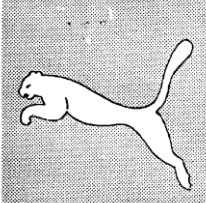

[84] In my view of the forgoing, pursuant to the authority delegated to me under section 63(3) of the Act, I reject the opposition pursuant to section 38(8) of the Act.

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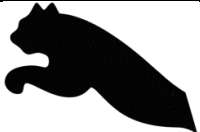

Cindy Folz  
Member  
Trade-marks Opposition Board  
Canadian Intellectual Property Office

SCHEDULE A

Applicant's Family of Trade-marks







Trade-mark	Application or Registration Number	Goods
	TMA209348	<p>(1) Footwear, namely, athletic shoes, and corrective shoes; sporting articles and equipment and tourists' articles and equipment, namely, sports balls; gaiters; puttees and leggings; knapsacks, match bags, athletic equipment, namely skis, table tennis bats, ping-pong balls, badminton rackets, shuttlecocks, javelins, roller-skates, skates, Indian clubs, sports hoops, discus; sportswear, namely training overalls and leotards; physical training shorts and singlets; football shirts and shorts, bathing suits and bathing costumes; leather goods, namely brief-cases, shopping bags, hand-bags, carrying cases for athletic equipment and sportswear; leisure shoes.</p> <p>(2) Footwear, namely, sports shoes, and orthopedic shoes; sports and leisure wear and equipment, namely, balls used in sports; leggings, namely, stockings and leather leggings; rucksacks, sports bags; sports equipment, namely skis, table tennis rackets and balls, badminton rackets and badminton shuttlecocks, javelins, roller skates, ice skates, Indian clubs, sports hoops, discus discs; items of sportswear, namely, sports coveralls, gymnastic shorts and singlets, football sweaters, bathing trunks and bathing suits; leather goods, namely, brief cases, shopping bags, handbags, carrying bags for sports equipment and sports clothing.</p> <p>(3) Boots, shoes, jackets, all-weather suits, leisure suits, T-shirts, spikes and studs for boots and shoes and wrenches for inserting or withdrawing the same.</p> <p>(4) Shirts, tank tops, blouses, shorts, skirts, socks, stockings, cardigans, jerseys, pullovers, sweaters, training suits, warm-up suits, pants, dresses, anoraks, sports bags, toys, namely miniature shoes and miniature balls.</p>
	TMA772641	<p>(1) Perfumery, bath oils, essential oils, incense and aromatherapy oils, cosmetics, namely skin preparations, after shave preparations, deodorant and antiperspirants, cologne and scented sprays, antibacterial skin soaps, antibacterial soap, deodorant soap, hand soaps, liquid soaps for hands, face and body, shaving soap, skin soap, toilet soap, waterless soap, hair care products, namely hair shampoo, shampoo-conditioners, hair gels, hair lotions, pomades, dentifrices.</p>

	<p>(2) Spectacles, spectacle glasses and frames, sunglasses, spectacle cases, protective glasses, protective clothing, namely clothing for motorsports.</p> <p>(3) Leather and imitation leather sold in bulk; shoulder bags, tote bags, drawstring pouches, duffel bags, clutch bags, backpacks, book bags, purses, pocket wallets, briefcases, handbags, suitcases, key cases, carrying bags, small travel bags, match bags, travel bags, golf bags, shopping bags, luggage grip bags, sports bags, sacks, carry-all bags, knapsacks, all-purpose athletic bags, school bags, waist bags, toiletry bags sold empty, trunks and travelling cases; umbrellas, parasols and walking sticks.</p> <p>(4) Towels, blankets and pillow cases.</p> <p>(5) Athletic clothing, sports clothing, casual clothing, children's clothing, outdoor winter clothing, rainwear, exercise clothes, golf wear, formal wear, sports and leisure suits, sports training suits, warm-up suits, all-weather jackets, all-weather pants, pullovers, jerseys, jackets, winter gloves, sweatshirts, shorts, pants, t-shirts, tops, skirts, socks, wristbands, athletic uniforms, blousons, turtlenecks, camisoles, sweaters, cardigans, wraps, cover-ups, coats, dresses, blouses, underwear, tank tops, trousers, tights, bathing suits and bathing costumes, neckerchiefs, scarves and belts, sweatbands; athletic footwear, gymnastic shoes, sports and leisure shoes, children's footwear, outdoor winter footwear, rain footwear, exercise footwear, ski footwear, boots, slippers, sandals, mountain climbing footwear; hats, caps, sunvisors, headbands.</p> <p>(6) Spikes and studs for boots and shoes and wrenches for inserting or withdrawing the same.</p> <p>(7) Handgrips for gripping gymnastic equipment; basketballs, soccer balls, footballs, volleyballs, handballs, baseballs, bowling balls, tennis balls, table tennis balls, golf balls; pumps and ball needles for inflating sports balls; shinguards, knee, elbow and ankle supports for sports purposes; shuttlecocks, sport gloves, goalkeeper gloves, boxing gloves, baseball gloves, golf gloves, racketball gloves, bicycling gloves, ski gloves; tennis rackets, cricket bats, golf clubs, hockey sticks, rackets for table tennis, badminton and squash, javelins, Indian clubs, skis; bags, cases and covers for sporting apparatus, namely basketball bags, football bags, soccer ball bags, volleyball bags, handball bags, bowling bags, bags for personal exercise mats, bags, cases and covers for tennis rackets, table tennis rackets, badminton rackets, squash rackets, cricket bats, golf clubs, hockey sticks, skis; roller skates, ice skates; inline</p>
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		<p>skates, tables and nets for table tennis.</p> <p>(8) Protective footwear, namely steel toe boots, abrasion and slip resistant footwear, anti-static footwear, penetration resistant footwear, oil-, petrol-, base-, acid-, fat- and fertilizer- resistant footwear, footwear with heat resistant sole, motorcycle boots.</p>
	TMA709069	(1) Watches and their parts and accessories, namely watch cases, gift cases for watches, watch stands, watch chains and watch bands.
	TMA328674	(1) Bicycles.
	TMA765716	<p>(1) Footwear, namely sports shoes.</p> <p>(2) Footwear, namely sandals.</p> <p>(3) Sun glasses, watches; bags, namely shopping bags.</p> <p>(4) Clothing, namely shirts, tops, tank tops; headgear, namely caps.</p> <p>(5) Clothing, namely gloves; drink bottles.</p> <p>(6) Umbrellas; clothing, namely pants, jackets.</p> <p>(7) Bags, namely sport bags, back bags, hand bags, shoulder bags; clothing, namely belts.</p> <p>(8) Footwear, namely leisure shoes.</p>
	TMA719708	<p>(1) Leather and imitation leather sold in bulk; shoulder bags, tote bags, drawstring pouches, duffel bags, clutch bags, backpacks, book bags, purses, pocket wallets, briefcases, handbags, suitcases, key cases, carrying bags, carry-on bags, travel bags, golf bags, shopping bags, luggage grip bags, sports bags, sacks, carry-all bags, knapsacks, all-purpose athletic bags, school bags, waist bags, school bags, waistbags, toilet bags, trunks and travelling cases; umbrellas, parasols and walking sticks; athletic clothing, sports clothing, protective clothing, casual clothing, children's clothing, outdoor winter clothing, rainwear, exercise clothes, golf wear, formal wear, sports and leisure suits, training suits, warm-up suits, all-weather suits, pullovers, jerseys, jackets, winter gloves, sweatshirts, shorts, pants, t-shirts, tops, skirts, socks, wristbands, athletic uniforms, blousons, turtlenecks, camisoles, sweaters, cardigans, wraps, cover-ups, coats, dresses, blouses, underwear, tank tops, trousers, tights, bathing suits, neckerchiefs, scarves and belts; athletic footwear, gymnastic shoes, sports and leisure shoes, children's footwear, outdoor winter footwear, rain footwear, exercise footwear, ski footwear, boots, slippers, sandals, mountain climbing</p>



		<p>footwear, protective footwear; hats, caps, sunvisors, headbands; board games, card games, parlour games, wooden toys; handgrips for gripping gymnastic equipment; sport balls, basketballs, soccer balls, footballs, volleyballs, handballs, baseballs, bowling balls; pumps and ball needles for inflating sport balls; shinguards, knee, elbow and ankle supports for sport purposes; sport gloves, goalkeepers gloves, boxing gloves, baseball gloves, golf gloves, racketball gloves, bicycling gloves, ski gloves; tennis rackets, cricket bats, golf clubs, hockey sticks, rackets for table tennis, badminton and squash, skis; bags, cases and covers for sporting apparatus, namely basketball bags, football bags, soccer ball bags, volleyball bags, handball bags, bowling bags, bags for personal exercise mats, bags, cases and covers for tennis rackets, table tennis rackets, badminton rackets, squash rackets, cricket bats, golf clubs, hockey sticks, skis; roller skates, ice skates; inline skates, tables and nets for table tennis..</p> <p>(2) Shoulder bags, tote bags, drawstring pouches, duffel bags, clutch bags, backpacks, book bags, purses, pocket wallets, briefcases, handbags, suitcases, key cases, carrying bags, carry-on bags, travel bags, shopping bags, luggage grip bags, sports bags, sacks, carry-all bags, knapsacks, all-purpose athletic bags, school bags, waist bags toilet bags, trunks and travelling cases; athletic clothing, sports clothing, casual clothing, outdoor winter clothing, rainwear, exercise clothes, golf wear, sports and leisure suits, training suits, warm-up suits, all-weather suits, pullovers, jerseys, jackets, sweatshirts, shorts, pants, t-shirts, tops, skirts, socks, wristbands, athletic uniforms, blousons, turtle necks, sweaters, cardigans, wraps, cover-ups, coats, dresses, blouses, underwear, tank tops, trousers, scarves and belts; athletic footwear, gymnastic shoes, sports and leisure shoes, outdoor winter footwear, rain footwear, exercise footwear, boots, slippers, sandals; hats, caps, sunvisors, headbands; bags, cases and covers for sporting apparatus.</p>
	TMA772642	(1) Protective footwear, namely motorcycle boots, steel toe boots, abrasion and slip resistant footwear, anti-static footwear, penetration resistant footwear, oil-, petrol-, base-, acid-, fat- and fertilizer- resistant footwear, footwear with heat resistant sole.
	TMA822140	(1) Bicycles as well as their parts and fittings.

	TMA477872	(1) Boots, shoes, slippers; sporting articles and equipment, namely sports balls, sports bags, carry-on bags, waist bags, shoe bags, ball sacks; ball air-pumps; headbands, wristbands, training suits, warm-up suits, all-weather suits, jackets, shinguards, goalkeeping gloves, caps, pants, shorts, polo shirts, sweat shirts, jerseys, T-shirts, tank-tops, socks, sockettes, pullovers, towels, spectacles, sunglasses, spectacle frames and cases.
	TMA478909	(1) Watches and their parts and accessories, namely watch cases, gift cases for watches, watch stands, watch chains and watch bands.
	TMA495781	(1) Eau de toilette, after shave, shower gel, body lotion and personal deodorant.
	TMA272234	(1) Boots, shoes, jackets, all-weather suits, leisure suits, t-shirts, spikes and studs for boots and shoes and wrenches for inserting or withdrawing the same. (2) Shirts, tank tops, blouses, shorts, skirts, socks, stockings, cardigans, jerseys, pullovers, sweaters, training suits, warm-up suits, pants, dresses, anoraks, sports bags, sports balls, toys, namely miniature shoes and miniature balls.
	TMA486061	(1) Sports bags, boots, shoes, T-shirts, sweatshirts, caps, soccer balls, shinguards.
	Not registered Application number: 1555760	(1) Boots, shoes, sport and leisure shoes, slippers, shirts, blouses, pullovers, sweatshirts, pants, sport pants, underpants, denim jeans, trousers, jackets, shorts, anoraks, coats, skirts, leisure wear, sports clothing, rainwear, jogging suits, warm-up suits, socks, stockings, t-shirts, polo shirts, suits, sweaters, vests, cardigans, tights, tops, namely, tank tops and sport shirts, underwear, clothing for hiking, mountaineering wear, casual wear, sportswear, all-weather suits, namely, rain suits, snow suits, wind suits, bathing costumes, swimming trunks, bikinis, caps, hats, scarves, anti-sweat headbands and anti-sweat wristbands, gloves, belts.
	Not registered Application number: 1558723	(1) Footwear, namely athletic, sports and casual shoes and boots; headgear, namely hats and caps.

	Not registered Application number: 1556304	(1) Bags, namely sport and leisure bags, clutch bags, purses, pocket wallets, briefcases, suitcases, key cases, travel bags, golf bags, luggage grip bags, toilet bags, trunks and travelling cases; clothing, namely athletic, sports and casual wear, rainwear, all-weather suits, namely, rain suits, snow suits, wind suits, socks, stockings, belts, underwear, scarves, gloves, bathing costumes, swimming trunks, bikinis.
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**TRADE-MARKS OPPOSITION BOARD  
CANADIAN INTELLECTUAL PROPERTY OFFICE  
APPEARANCES AND AGENTS OF RECORD**

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**HEARING DATE** 2017-06-02

**APPEARANCES**

John C. Cotter and Janet N. Chong

FOR THE OPPONENT

Grant Lynds and Colleen Morrison (Marks & Clerk)

FOR THE APPLICANT

**AGENTS OF RECORD**

Osler, Hoskin and Harcourt

FOR THE OPPONENT

Kestenberg Siegal Lipkus

FOR THE APPLICANT