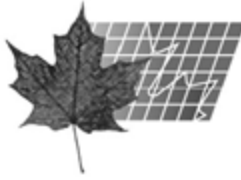


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LE REGISTRAIRE DES MARQUES DE COMMERCE  
THE REGISTRAR OF TRADEMARKS

**Citation: 2020 TMOB 82**

**Date of Decision: 2020-07-14**

**IN THE MATTER OF AN OPPOSITION**

**The Travelers Indemnity Company**

**Opponent**

**And**

**Designphil Inc.**

**Applicant**

**1,753,508 for TRAVELER'S  
COMPANY**

**Application**

FILE RECORD

[1] On November 5, 2015, Designphil Inc. (the Applicant) filed an application to register the trademark TRAVELER'S COMPANY (the Mark) based on the Applicant's proposed use in Canada and use and registration in Japan. The Mark is applied for in association with the following goods, as amended:

(1) Day planners; notebooks; memo pads; adhesive note pads; stickers; writing pads; envelopes; note cards; adhesive tapes for stationery purposes; masking tapes [stationery]; writing instruments, namely, pens, pencils, highlighting markers, pencil crayons; drawing rulers; rubber erasers; pen and pencil cases; paper clips; correcting tapes [office requisites]; staplers; sheets of plastic for placing under writing paper; rubber stamps; diaries; postcards; catalogs; calendars; wallets; business card cases; commuter pass holders; coin purses; card cases; folding briefcases; shoulder bags; business cases; rucksacks; carry-all bags.

[2] The application was advertised for opposition purposes in the *Trademarks Journal* issue dated July 6, 2016.

[3] On April 6, 2017, The Travelers Indemnity Company (the Opponent) filed a statement of opposition pleading grounds of opposition pursuant to sections 2, 12(1)(d), 16 and 30 of the *Trademarks Act*, RSC 1985, c T-13 (the Act).

[4] Numerous amendments to the Act came into force on June 17, 2019. The date for identifying which version of the Act applies to opposition proceedings is the date on which the application being opposed was advertised which in this case was July 6, 2016. Pursuant to section 70 of the Act, the grounds of opposition will therefore be assessed based on the Act as it read on June 16, 2019, with the exception of confusion, for which sections 6(2) to (4) of the Act as they currently read will be applied.

[5] The Applicant filed and served a counter statement on June 13, 2017, in which it requested that the Registrar strike the section 30(i) ground for being insufficiently plead. By inadvertence, the Registrar did not issue an interlocutory ruling in response to the Applicant's request.

[6] The Opponent filed, as its evidence, certified copies of the Opponent's five applications and eleven registrations relied upon in the statement of opposition; complete listings of which are attached under Schedules A and B to this decision. The Applicant filed as its evidence the affidavit of Ms. Nancy Doan, Trademark Assistant with the Applicant's agent. Both parties filed written representations. A hearing was requested at which only the Opponent was represented.

#### PRELIMINARY ISSUE

[7] In its written representations, the Applicant noted that the Registrar had not yet issued a ruling in response to the Applicant's request for an interlocutory ruling. It therefore requested again that the Registrar strike the Opponent's section 30(i) ground for having been insufficiently pleaded.

[8] The current practice of the Registrar to consider the sufficiency of pleadings is based on the decision of the Federal Court of Appeal in *Novopharm Ltd v AstraZeneca AB*, 21 CPR (4th)

289. One of the principles set out in that decision was that in determining the sufficiency of a statement of opposition after evidence has been filed, regard must be had to both the evidence and the statement of opposition in order to make a proper determination as to whether the applicant knows the case they have to meet. As an administrative matter before the Opposition Board, the sufficiency of pleadings on an interlocutory basis will therefore only be considered by the Registrar at the pleadings stage of an opposition. Once the opposition has progressed to the evidence stage, any consideration of pleadings will occur at the final decision stage, together with a consideration of the evidence filed.

[9] In view of the above, the section 30(i) ground will be considered together with a consideration of the evidence filed in this case.

#### LEGAL ONUS AND EVIDENTIAL BURDEN

[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 [see *John Labatt Limited v The Molson Companies Limited* (1990), 1990 CanLII 11059 (FC), 30 CPR (3d) 293 (FCTD) at 298].

[11] The material dates that apply to the grounds of opposition are as follows:

- sections 38(2)(a)/30 - the filing date of the application [see *Georgia-Pacific Corp v Scott Paper Ltd* (1984), 3 CPR (3d) 469 at 475 (TMOB)].
- sections 38(2)(b)/12(1)(d) - the date of this decision [see *Park Avenue Furniture Corporation v Wickes/Simmons Bedding Ltd and The Registrar of Trade Marks* (1991), 1991 CanLII 11769 (FCA), 37 CPR (3d) 413 (FCA)].
- sections 38(2)(c)/16(3) - the filing date of the application [see section 16(3) of the Act].
- sections 38(2)(d)/2 - the date of filing of the opposition [see *Metro-Goldwyn-Mayer Inc v Stargate Connections Inc* (2004), 2004 FC 1185 (CanLII), 34 CPR (4th) 317 (FC)].

GROUND OF OPPOSITION SUMMARILY DISMISSED

**Section 30(i) Ground of Opposition**

[12] The Opponent alleges in its statement of opposition that the Applicant could not have been satisfied that it is entitled to use the Mark as the Applicant was or should have been aware of the Opponent's marks at the date of filing of the application.

[13] The Applicant submits however, and I agree, that the fact that an applicant is aware or has knowledge of allegedly confusing trademarks is not an exceptional circumstance and therefore cannot form the basis of a section 30(i) ground of opposition.

[14] Where an applicant has provided the statement required by section 30(i) of the Act, a section 30(i) ground should only succeed in exceptional cases, such as where there is evidence of bad faith on the part of the applicant [see *Sapodilla Co Ltd v Bristol-Myers Co* (1974), 15 CPR (2d) 152 (TMOB) at 155]. In this case, there is no evidence of bad faith or exceptional circumstances. Further, even if the Opponent had shown that the Applicant knew of its trademarks at the filing date of its applications, I note that it has been held that mere knowledge of the existence of an opponent's trademark does not in and of itself support an allegation that an applicant could not have been satisfied of its entitlement to use a mark at the time that it filed its application [*Woot, Inc v WootRestaurants Inc Les Restaurants Woot Inc*, 2012 TMOB 197].

[15] This ground of opposition is therefore dismissed.

**Section 30(b) Ground of Opposition**

[16] The Opponent also pleads that the application does not comply with the requirements of section 30(b) of the Act because the Mark had been used in Canada by the Applicant or a licensee thereof in association with the applied for goods before the Applicant's filing date.

[17] The application, however, was based on proposed use whereas a challenge under section 30(b) is intended for marks for which a date of first use had been claimed. Had the Opponent's intention been to challenge the application's compliance with the Act, it should have

chosen to plead this ground under section 30(e) of the Act. As a result, I do not consider this ground to be a valid ground.

[18] Even if this ground could be considered a valid ground, I still would have dismissed it as there is no evidence of record to suggest that the Applicant had started using the Mark prior to the filing date of the application.

### **Section 16(3)(a) Grounds of Opposition**

[19] The Opponent alleges in its statement of opposition that the Applicant is not the person entitled to registration of the Mark in Canada under section 16(3)(a) of the Act given that as of the Applicant's filing date, the Mark was confusingly similar to the Opponent's TRAVELERS trademarks which had been previously used or made known in Canada and which were still pending as of the date of advertisement of the Mark.

[20] In order to meet its initial burden with respect to its section 16(3)(a) ground of opposition, the Opponent must show that at least one of its TRAVELERS marks had been used before November 5, 2015, and was pending as at the date of advertisement of the application for the Mark, namely, December 28, 2016 [section 16(4) of the Act].

[21] The only evidence submitted by the Opponent was certified copies of its applications and registrations. As the Opponent provided no evidence regarding use of any of the Opponent's marks in Canada prior to the Applicant's filing date, this ground of opposition is accordingly dismissed for the Opponent's failure to meet its evidential burden.

### **Section 16(3)(c) Ground of Opposition**

[22] The Opponent's section 16(3)(c) ground is based on the allegation that the Applicant is not the person entitled to registration of the Mark in Canada under section 16(3)(c) of the Act because, as of the Applicant's filing date, the Mark was confusingly similar to the Opponent's TRAVELERS trade names which had been previously used or made known in Canada and which were still pending as of the date of advertisement of the Mark.

[23] In order to meet its initial burden with respect to its section 16(3)(c) ground of opposition, the Opponent must show that its pleaded trade names had been used in Canada prior to November 5, 2015. The Opponent filed no evidence of use of any of the Opponent's trade names in Canada prior to the filing date of the application. Accordingly, this ground is also dismissed as a result of the Opponent's failure to meet its evidential burden.

## **Section 2 Ground of Opposition**

[24] The Opponent alleges in its statement of opposition that the Mark does not distinguish and is not adapted to distinguish the Applicant's goods in association with which it is used from the goods and services associated with the Opponent's TRAVELERS trademarks.

[25] In order to meet its initial burden in support of the non-distinctiveness ground of opposition, the Opponent was required to show that, as of the date of filing its statement of opposition, namely, April 6, 2017, at least one of its TRAVELERS marks was known to some extent and the reputation of this mark in Canada was substantial, significant or sufficient [*Motel 6, Inc v No 6 Motel Ltd* (1981), 56 CPR (2d) 44 (FCTD); and *Bojangles' International LLC v Bojangles Café Ltd* (2006), 48 CPR (4th) 427 (FC)].

[26] As discussed above, the Opponent did not file any evidence that any of its marks had been previously used or made known by the Opponent in Canada. This ground is therefore also dismissed as a result of the Opponent's failure to meet its evidential burden.

## REMAINING GROUNDS OF OPPOSITION

### **Section 12(1)(d) Ground of Opposition**

[27] The Opponent alleges that the Mark is not registrable because it is confusing with the following eight registrations of the Opponent for the TRAVELERS trademarks: TRAVELERS registration No. TMA364,562, TRAVELERS & Design, registration No. TMA787,979, TRAVELERS INSTITUTE, registration No. TMA818,561, TRAVELERS SELECTONE, registration No. TMA747,536, TRAVELERS OPTIMA, registration No. TMA932,163, TRAVELERS EXECUTIVE CHOICE, registration No. TMA709,995, TRAVELERS CANADA

CYBERRISK, registration No. TMA886,885 and MYTRAVELERS, registration No. TMA936,753.

[28] An opponent's initial evidential burden is met with respect to a section 12(1)(d) ground of opposition if the registrations set out in the statement of opposition are in good standing as of the date of the decision. I have exercised the Registrar's discretion to check the register [see *Quaker Oats of Canada Ltd/La Compagnie Quaker Oats du Canada Ltée v Menu Foods Ltd* (1986), 11 CPR (3d) 410 (TMOB)] and confirm that the registrations set out above are extant.

[29] As the Opponent's evidentiary burden has been satisfied, the Applicant must therefore establish, on a balance of probabilities, that there is not a reasonable likelihood of confusion between the Mark and any of these registered trademarks of the Opponent.

[30] At the hearing, the Opponent focused its submissions under this ground on its registration No. TMA787,979 for the mark TRAVELERS & Design, shown below.

**TRAVELERS** 

I will also focus my analysis on this registration as I consider this registration represents the Opponent's strongest case. If the Opponent is not successful with this mark, it would not achieve a more favourable result with the other marks.

[31] The Opponent's TRAVELERS & Design mark is registered in association with the following goods and services:

#### Goods

(1) Printed publications in electronically readable form namely, manuals, newsletters, press-releases, reports, brochures, leaflets and pamphlets; downloadable publications in electronic form namely manuals, newsletters, press-releases, reports, brochures, leaflets and pamphlets provided by CD-ROM and USB flash drives and on-line via the Internet; computer hardware; computer software namely providing CD-ROMs, USB flash drives and non-downloadable software in the field of insurance; printed matter and publications namely, manuals, newsletters, press-releases, reports, brochures, leaflets and pamphlets; books, manuals, newsletters, press-releases, magazines, reports; stationery namely, pens,

pencils, folders, files, binders, notepads, paper and envelopes, pictures, posters; instructional and teaching material namely, books, educational software featuring instruction in the field of insurance, finance and on-line tutorials.

## Services

(1) Insurance services; insurance underwriting services for all types of insurance; claims adjustment in the field of insurance; insurance claims processing and administration; assessment of insurance claims; risk control and loss prevention consultation in the nature of identifying and assessing insured's risk exposure related to personal safety, property damage, and/or financial loss; risk control and loss prevention services in the nature of providing information and guidance to avoid or minimize risk exposures to personal safety, property damage and/or financial loss; risk management; electronic processing of insurance claims and payment data; insurance agency and brokerage services; providing information in insurance matters and medical care coordination, namely assisting employers and providers in processing medical claim forms and payment of medical claims; information and advisory services in the field of insurance and finance; education, providing of training programs in the field of insurance and finance.

(2) Insurance underwriting services for all types of insurance; claims adjustment in the field of insurance; insurance claims processing and administration; risk control and loss prevention consultation in the nature of identifying and assessing insured's risk exposure related to personal safety, property damage, and/or financial loss; risk control and loss prevention services in the nature of providing information and guidance to avoid or minimize risk exposures to personal safety, property damage and/or financial loss; electronic processing of insurance claims and payment data; insurance agency and brokerage services; providing information in insurance matters and medical care coordination, namely assisting employers and providers in processing medical claim forms and payment of medical claims; educational services namely, providing training programs in the field of insurance.

## Test for Confusion

[32] 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 trademarks 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 trademarks in appearance or sound or in the ideas suggested by them. These enumerated factors need not be attributed equal weight [see, in general, *Mattel, Inc v 3894207 Canada Inc* (2006), 2006 SCC 22 (CanLII), 49 CPR (4th) 321 (SCC) and *Masterpiece Inc v Alavida Lifestyles Inc* (2011), 96 CPR (4th) 361 (SCC)]. In fact, in *Masterpiece*, the Supreme Court stated that the degree of resemblance



between the marks is often likely to have the greatest effect on the confusion analysis [see also *Beverley Bedding & Upholstery Co v Regal Bedding & Upholstery Ltd* (1980), 47 CPR (2d) 145 (FCTD) at 149, affirmed 60 CPR (2d) 70].

### *Inherent Distinctiveness*

[33] Both of the parties' marks contain the word TRAVELER, either in the possessive or plural form. The word TRAVELER is defined by dictionary.com as follows [see *Tradall SA v Devil's Martini Inc*, 2011 TMOB 65 at para 29 which confirms that the Registrar may take judicial notice of dictionary definitions]:

(1) a person or thing that travels.

(2) a person who travels or has traveled in distant places or foreign lands.

[34] The second component of the Opponent's mark is an umbrella design while the second component of the Mark is the word COMPANY, which is defined by dictionary.com as follows:

1. a number of individuals assembled or associated together; group of people.

2. guest or guests: *We're having company for dinner.*

[35] In its written argument, the Applicant submits that the Opponent's mark is descriptive of the Opponent's services, including the Opponent's insurance for travelers. However, as pointed out by the Opponent's agent at the hearing, the Opponent's mark is not registered in association with travel insurance, nor is there any evidence that the Opponent uses its mark in association with such services. I therefore find the Opponent's mark to possess some degree of inherent distinctiveness.

[36] With respect to the Applicant's Mark, neither the word TRAVELER nor the word COMPANY has any suggestive meaning when used in association with the applied for goods. The Mark therefore also possesses some degree of inherent distinctiveness.

[37] As I find that both marks possess about the same degree of inherent distinctiveness, this factor favours neither party.

*Extent Known and Length of Time in Use*

[38] Neither the Applicant nor the Opponent has filed evidence of use or reputation in Canada. This factor therefore favours neither party.

*Nature of Goods, Services or Business*

[39] It is the Applicant's statement of goods as defined in its application compared to the registered services that govern my determination of this factor [*Mr. Submarine Ltd v Amandista Investments Ltd* (1987), 19 CPR (3d) 3 (FCA) and *Miss Universe Inc v Bohna* (1994), 58 CPR (3d) 381 (FCA)].

[40] The applied for goods comprise stationery and related products. The Opponent's mark is registered in association with insurance and insurance underwriting services, as well as a number of goods including "stationery, namely pens, pencils, folders, files, binders, notepads, paper and envelopes, pictures, posters." I agree with the Opponent's agent that these goods either directly overlap with or are closely related to the applied for goods.

[41] With respect to the parties' channels of trade, the only evidence filed in this regard was the selected printouts from the parties' websites *www.travelerscanada.ca* and *www.travelers-company.com* attached as exhibits to the Doan affidavit. The Applicant submits it can be inferred from this evidence that the Opponent offers its insurance services through its website and its own brokers while the Applicant offers its stationery goods through its own website and stationery stores.

[42] The Opponent, on the other hand, submits that the issue of confusion must be considered from the perspective of what the registration/application would entitle the parties to do, not what they happen to be doing at the moment. I agree. In *Masterpiece, supra*, the Court stated at para. 59 that while actual use is not irrelevant, "it should not be considered to the exclusion of potential uses within the registration." As there is no restriction to the Opponent's channels of trade, it is open for the Opponent to sell its goods by retail or directly to the consumer through its website. I therefore find that the parties' channels of trade could overlap.

*Degree of Resemblance*

[43] As stated earlier, the degree of resemblance between the trademarks will often have the greatest effect on the confusion analysis. When considering the degree of resemblance, the law is clear that the trademarks must be considered in their totality. The appropriate test is not a side by side comparison but an imperfect recollection in the mind of a consumer of an opponent's trademark [*Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée* 2006 SCC 23 at para 20].

[44] There is a fair degree of resemblance in appearance and sound between the marks in issue as the Applicant has incorporated the dominant part of the Opponent's TRAVELERS & Design mark as the first component of the Mark. In general, it is the first portion of a mark that is often considered the more important for the purposes of distinction [*Conde Nast Publications Inc v Union Des Editions Modernes* (1979), 26 CPR (2d) 183 at 188 (FCTD)]. Further, the second component in the Mark, the word COMPANY, does not meaningfully diminish the resemblance between the Mark and the Opponent's trademark.

[45] With respect to the idea suggested, since neither mark conveys a particular idea, there is no resemblance in the ideas conveyed.

#### *Surrounding Circumstance – State of the Register Evidence*

[46] Ms. Doan was instructed by the Applicant's agent to conduct a search for all active trademark registrations or pending applications which contain or comprise the term TRAVELER or TRAVELLER and are registered or applied for in association with goods which the Canadian Intellectual Property Office has classified as falling within Nice classes 16 or 18. Attached as exhibits to her affidavit are copies of information pertaining to each trademark registration and application found in her search. The Applicant submits that there are at least 18 relevant marks contained on the register, and provides a summary of these marks in a table at paragraph 64 of its written argument.

[47] State of the register evidence can be used to make inferences about the state of the marketplace, but only where large numbers of relevant trademarks are located [*Ports International Ltd v Dunlop Ltd* (1992), 41 CPR (3d) 432; *Del Monte Corporation v Welch Foods Inc* (1992), 44 CPR (3d) 205 (FCTD); *Kellogg Salada Canada Inc v Maximum Nutrition Ltd* (1992), 43 CPR (3d) 349 (FCA)]. More recently, in *Vital Source Inc v Vital Life Pharmaceutical*

*Inc* 2020 TMOB 21, former Member Fung also pointed out the assistance of state of the marketplace evidence to support state of the register evidence as follows at paragraphs 74-75:

[74] In *Hawke & Company Outfitters LLC v Retail Royalty Company*, 2012 FC 1539, de Montigny J. (as he then was) commented that “the exact number of similar marks necessary to establish that an element of a mark was commonly adopted as a component of trademarks used in association with the relevant wares or services at the material date [...] likely depends on the facts of a given case” [para 44]. He explained the difficulty with the state of the register evidence as follows : “[A] search of the Trademarks Office Register is not the best way to establish the state of the marketplace or the actual use of a mark. The fact that a mark appears on the register does not show that it is currently in use, was in use as of the relevant material dates, is used in relation to wares or services similar to those of the parties, or the extent of any such use [...]” [para 40].

[75] In *Canada Bread Company, Limited v Dr Smood ApS*, 2019 FC 306, having reproduced the quote above, Roy J. noted that two other Federal Court decisions [*McDowell v Laverana GmbH & Co KG* 2017 FC 327 and *McDowell v The Body Shop International PLC*, 2017 FC 581] agreed with de Montigny J.’s observations in the *Hawke* decision where “the evidence of the use of a common element becomes relevant only where the registered marks are commonly used in the market in question”. He added that “it remains very much unclear what inference may legitimately be drawn without evidence of the use made by third parties in the marketplace of a common element” [para 61].

[48] In the present case, at least ten of the eighteen marks identified by the applicant at paragraph 64 of its written argument are for goods unrelated to the parties’ stationery products. This leaves about eight third party registered marks that include the component TRAVELER or TRAVELLER and are for goods related or similar to those of the parties.

[49] I do not consider eight relevant registrations to be sufficient for me to make any inferences about the state of the marketplace. Therefore, in the absence of any evidence of use made by the third parties in the marketplace with any of these marks, I am unable to infer that the component TRAVELER or TRAVELLER has been commonly adopted as a component of trademarks used in association with the relevant goods or services as of the material date.

[50] In view of the above, I do not find this to be a relevant surrounding circumstance.

## Conclusion

[51] Having considered all of the surrounding circumstances and applying the test of confusion as a matter of first impression and imperfect recollection, I find that the Applicant has not met its legal onus of demonstrating that there is no reasonable likelihood of confusion between its Mark and the Opponent's trademark registration No. TMA787,979 for the trademark TRAVELERS & Design.

[52] I reach this conclusion due to the similarities between the trademarks and the overlap in the nature of the goods and presumably their channels of trade. As mentioned earlier, the degree of resemblance between the parties' marks is the statutory factor that is often likely to have the greatest effect in deciding the issue of confusion. This is particularly the case where the parties' goods, or services, and the parties' channels of trade, are the same or overlapping [see *Reynolds Consumer Products Inc v PRS Mediterranean Ltd* (2013), 2013 FCA 119 (CanLII), 111 CPR (4th) 155 (FCA) at paras. 26-30].

[53] This ground of opposition therefore succeeds.

## SECTION 16(3)(B) GROUND OF OPPOSITION

[54] The Opponent alleges that the Applicant is not the person entitled to register the Mark because, at the filing date of the application, the Mark was confusingly similar to the marks set out in the Opponent's TRAVELERS applications (set out in the attached schedules A and B) which had been previously filed and were pending at the advertisement date. I note that three of these applications have since issued to registration.

[55] The Opponent's initial burden is to establish that its applications were filed prior to the filing date of the application (i.e. November 5, 2015) and that they were still pending at the date of advertisement of the Mark (i.e. July 6, 2016) [section 16(4) of the Act].

[56] The certified copies of the various TRAVELERS applications submitted by the Opponent confirms that each of these applications were filed before the application's filing date and were pending at its advertisement date. I will focus my analysis, however, on the Opponent's application No. 1,689,402 for the mark TRAVELERS CANADA as I consider this application

represents the Opponent's strongest case. If the Opponent is not successful with this mark, it would not achieve a more favourable result with any of the other marks.

[57] The Opponent's TRAVELERS CANADA, mark has been applied for in association with the following services:

(1) Insurance and surety services; underwriting services; claims services, namely, insurance claims adjusting, insurance claims administration, processing and management of insurance claims and payment data; risk management; risk control services and consultation; providing information in insurance matters; printed materials in the field of insurance, namely, distribution of printed materials in the field of insurance via mail.

(2) Warranty services.

(3) Publications in the field of insurance, namely, distribution of printed publications in the field of insurance via mail, distribution of electronic publications in the field of insurance online and via email.

(4) Financial services, namely, broker loans; providing temporary use of online, non-downloadable software for use in the field of insurance.

[58] Once again, the test to determine the issue of confusion is set out in section 6(2) of the Act where it is stipulated that the use of a trademark causes confusion with another trademark if the use of both trademarks in the same area would likely lead to the inference that the goods and services associated with those trademarks are manufactured, sold or leased by the same person, whether or not the goods and services are of the same general class. Under this ground, the question posed by section 6(2) is whether purchasers of the goods, sold under the Mark would believe that those goods were produced or authorized or licensed by the Opponent who sells its services under its TRAVELERS CANADA mark. In making such an assessment, I must take into consideration all the relevant surrounding circumstances, including those listed in section 6(5), set out above.

[59] I do not consider that the factors set out at sections 6(5)(a) and (b) favour either party. In this regard, I consider both parties' marks to possess the same degree of inherent distinctiveness. Further, neither the Applicant nor the Opponent has filed evidence of use or reputation of either of their marks in Canada.

[60] As for sections 6(5)(c) and (d) of the Act, the goods and services of the parties are different. In this regard, with the exception of warranty services, the Opponent's services all appear to be limited to the field of insurance. The Applicant's goods, on the other hand, comprise, *inter alia*, stationery and related products. This factor therefore favours the Applicant.

[61] With respect to section 6(5)(e) of the Act, there is a some resemblance in appearance and sound between the marks in issue as the Applicant has incorporated the first and dominant part of the Opponent's TRAVELERS CANADA mark as the first component of the Mark. The second component of the Mark, however, is different enough from the second component of the Opponent's mark such that the overall resemblance between the marks is diminished. Further, as neither mark conveys a particular idea, there is no resemblance in the ideas conveyed.

[62] Finally, with respect to the state of the register evidence, since both marks under this ground also include the word TRAVELER, either in the possessive or the plural form, the reasons set out under the section 12(1)(d) ground also apply to this ground of opposition. I therefore do not consider this to be a relevant surrounding circumstance under this ground.

[63] The test to be applied is a matter of first impression in the mind of a casual consumer somewhat in a hurry who sees the Mark when he or she has no more than an imperfect recollection of the Opponent's TRAVELERS CANADA trademark, and does not pause to give the matter any detailed consideration or scrutiny [*Veuve Clicquot Ponsardin, supra*].

[64] Section 6(2) of the Act does not concern 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 there would be confusion of the goods sold under the Mark such that they are thought to be provided by the Opponent. I conclude that, on a balance of probabilities, given all the surrounding circumstances, there is not a reasonable likelihood of confusion.

[65] I reach this conclusion due to the differences between the trademarks and the differences in the parties' goods, services and channels of trade. In this regard, the Opponent's services, as applied for, appear to be limited to the field of insurance. Further, the Opponent has not applied for any goods that overlap with or are related to the stationery and related office products applied

for by the Applicant. I consider this difference in the parties' goods and services sufficient to tip the balance of probabilities in the Applicant's favour. I therefore find that the Applicant meets its legal onus of proving that there is no reasonable likelihood of confusion between the Mark and the Opponent's TRAVELERS CANADA mark. This ground is therefore unsuccessful.

DISPOSITION

[66] In view of the foregoing and pursuant to the authority delegated to me under section 63(3) of the Act, I refuse the application pursuant to section 38(12) of the Act.

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Cindy R. Folz  
Member  
Trademarks Opposition Board  
Canadian Intellectual Property Office



SCHEDULE A- OPPONENT'S REGISTERED MARKS

<b>Trademark</b>	<b>Registration No./Application No.</b>
TRAVELERS	TMA364,562
TRAVELERS & Design	TMA787,979
TRAVELERS INSTITUTE	TMA818,561
TRAVELERS SELECTONE	TMA747,536
TRAVELERS OPTIMA	TMA932,163
TRAVELERS EXECUTIVE CHOICE	TMA709,995
TRAVELERS CANADA CYBERRISK	TMA886,885
MYTRAVELERS	TMA936,753
TRAVELERS CURLING CLUB CHAMPIONSHIP	TMA970,519/No. 1,691,429
TRAVELERS CURLING CLUB CHAMPIONSHIP & Design	TMA970,518/No. 1,691,428
TRAVELERS CURLING CLUB CHAMPIONSHIP & Design	TMA970,245/No. 1,673,023

SCHEDULE B – OPPONENT’S PENDING APPLICATIONS

<b>Trademark</b>	<b>Application No.</b>
TRAVELERS CANADA	1,689,402
TRAVELERS SELECT	1,691,321
TRAVELERS SELECT PLUS	1,709,148
TRAVELERS SELECT EXPRESS	1,709,144
TRAVELERS CONVERTIBLE PERFORMANCE BOND	1,679,193

**TRADEMARKS OPPOSITION BOARD  
CANADIAN INTELLECTUAL PROPERTY OFFICE  
APPEARANCES AND AGENTS OF RECORD**

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**HEARING DATE** 2020-05-06

**APPEARANCES**

Michael O'Neill For the Opponent

No one appearing For the Applicant

**AGENTS OF RECORD**

Gowling WLG For the Opponent

Marks & Clerk For the Applicant