



LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADEMARKS

Citation: 2020 TMOB 98

Date of Decision: 2020-08-11

IN THE MATTER OF AN OPPOSITION

Polar Valley Investments Ltd.

Opponent

And

BayBridge Seniors Housing Inc.

Applicant

1,717,121 for BAYBRIDGE

Application

INTRODUCTION

[1] Polar Valley Investments Ltd. (the Opponent) opposes registration of the trademark BAYBRIDGE (the Mark), which is the subject of application No. 1,717,121, filed by BayBridge Seniors Housing Inc. (the Applicant) on the basis of use of the Mark in Canada since at least as early as January 2010 in association with the following services:

Financial services, namely, financial investments in the field of retirement homes, independent living facilities, assisted living facilities, nursing homes and long term care facilities; design and development of residences that provide accommodation, meals, care, support, recreation, and transportation services to seniors, namely retirement homes, retirement residences, senior living residences, independent living residences, assisted living residences; memory care residences for individuals with Alzheimer's, dementia and memory loss; nursing homes and long term care facilities.

(the Services)

[2] For the reasons that follow, I find that this application ought to be refused.

THE RECORD

[3] The application was filed on February 27, 2015 and advertised for opposition purposes in the *Trademarks Journal* on February 17, 2016.

[4] On April 26, 2016, the Opponent filed a statement of opposition under section 38 of the *Trademarks Act*, RSC 1985, c T-13 (the Act) raising grounds of opposition based upon sections 30 (non-compliance), 12 (non-registrability), and 2 (non-distinctiveness) of the Act. For ease of reference, I reproduce the grounds of opposition as pleaded in Schedule A herein. Numerous amendments to the Act came into force on June 17, 2019. All references herein are to the Act as amended, with the exception of references to the grounds of opposition which refer to the Act before it was amended [see section 70 of the Act which provides that section 38(2) of the Act, as it read prior to June 17, 2019, applies to applications advertised before that date].

[5] The Applicant responded by filing and serving a counter statement.

[6] In support of its opposition, the Opponent filed:

- Two affidavits in the name of Monica Molina, an assistant employed by the law firm representing the Opponent, sworn October 13, 2017 and October 16, 2017, respectively (hereinafter the first Molina affidavit and the second Molina affidavit). The first Molina affidavit introduces into evidence various Internet searches. The second Molina affidavit introduces into evidence excerpts from the Canadian Trademarks Database concerning trademark registrations for BAYBRIDGE (TMA935,539), BAYSHORE (TMA509,700), BAYSHORE (TMA928,805), BAYSHORE HOME HEALTH (TMA672,357) and BAYSHORE HEALTHCARE (TMA869,988).
- The affidavit of Stuart Cottrelle, president of the Opponent, sworn October 16, 2017 (hereinafter, the Cottrelle affidavit). The Cottrelle affidavit introduces into evidence excerpts from the Canadian Trademarks Database for the same five trademark registrations to which reference is made in the second Molina affidavit and provides

some information regarding the Opponent's business, including the promotion and use of said trademarks in Canada.

[7] On January 3, 2018, the Registrar issued a cross-examination order permitting cross-examination of the Opponent's affiants; neither affiant was cross-examined.

[8] The Applicant elected not to file any evidence.

[9] Only the Opponent filed a written argument; no hearing was held.

ONUS AND MATERIAL DATES

[10] The Applicant bears the legal onus of establishing, on a balance of probabilities, that the Application complies with the requirements of the Act. This means that if a determinate conclusion cannot be reached in favour of the Applicant after a consideration of all of the evidence, then the issue must be decided against the Applicant. 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 Ltd v Molson Companies Ltd* (1990), 30 CPR (3d) 293 (FCTD); *Dion Neckwear Ltd v Christian Dior, SA et al* (2002), 20 CPR (4th) 155 (FCA)].

[11] The material dates with respect to the grounds of opposition are as follows:

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

ANALYSIS

Section 30(b)

[12] With respect to the first ground of opposition based upon non-compliance with section 30 of the Act, the Opponent has pleaded that (i) the Applicant has not used the Mark in Canada since the claimed date of first use, namely January 2010, in association with any of the Services listed in its application, and that (ii) the trademark allegedly used is not the applied for Mark. Based on these allegations, it seems reasonable to conclude that the Opponent is relying on section 30(b) of the Act.

[13] The initial burden on the Opponent is light respecting the issue of non-conformity with section 30(b) of the Act given that the facts regarding the Applicant's first use are particularly within the knowledge of the Applicant [*Tune Masters v Mr P's Mastertune Ignition Services Ltd* (1986), 10 CPR (3d) 84 (TMOB)]. Should the Opponent succeed in discharging its burden, then the Applicant must, in turn, substantiate the use claim contained in its application. However, the Applicant is under no such obligation unless its claim is first put into question by the Opponent meeting its initial evidential burden [*Kingsley v Ironclad Games Corp*, 2016 TMOB 19]. Moreover, the absence of evidence of use of the Mark as of the alleged date of first use does not in itself suffice to discharge the Opponent's burden [*Parmalat Food Inc v Sun World International Inc* (2006), 50 CPR (4th) 283 (TMOB)].

[14] Regarding the first prong of this ground, the Opponent submits that it has met its initial burden by way of the following: Mr. Cottrelle "not [being] aware of the Applicant using the [Mark] since at least as early as January 2010, in order to provide the [Services]" [Cottrelle affidavit, para 16]; the Applicant's LinkedIn page showing that it was founded in 2012 [first Molina affidavit, para 6, Exhibit B.2]; the fact that there are no archived captures of the Applicant's website prior to 2014 [first Molina affidavit, para 48, Exhibit D.1]; and that the Applicant's website was created on April 24, 2012 [first Molina affidavit, para 50, Exhibit E], which postdates the Applicant's claimed date of first use.

[15] While the Opponent's initial evidential burden is light, I am not satisfied that the above raises enough doubt to put into issue the Applicant's claimed date of first use. First, absent

further particulars, Mr. Cottrelle's lack of knowledge of use of the Mark by the Applicant is not persuasive. Mr. Cottrelle does not state having investigated the Applicant's use of the Mark in Canada in association with the Services in any way. Second, I note that the search results introduced by the first Molina affidavit under the headings "BayBridge's Website and Social Media Pages", "Archived Pages from BayBridge's Website" and "WhoIs Page" pertaining to the website *baybridgeseniorliving.com*, only contain references to an entity named "BayBridge Senior Living". None of these search results located by Ms. Molina actually identify the Applicant by name – i.e. BayBridge Seniors Housing Inc. As none of the documents specifically identify the Applicant and that there is no evidence that BayBridge Senior Living is a business or trade name used by the Applicant or that it is an entity otherwise related to the Applicant, there is no evidence to establish that either the social media pages or the website relied upon by the Opponent are actually owned and/or operated by the Applicant. I do not find the statement in Mr. Cottrelle's affidavit that the Applicant is the owner of the website at *baybridgeseniorliving.com* to be sufficient in that regard, as there is no explanation by Mr. Cottrelle as to the basis for that statement. Third, given the nature of the Services in the instant proceeding, I am not convinced that the absence of a website operated by the Applicant would in and of itself evidence non-use of the Mark. The first prong of this ground of opposition is therefore rejected.

[16] Likewise, the second prong of this ground of opposition (that the trademark allegedly used is not the applied for Mark) is also rejected as the Opponent did not file any evidence or make any submissions in its support.

[17] Accordingly, the section 30(b) ground of opposition is rejected in its entirety.

Section 30(i)

[18] With respect to the second ground of opposition based upon non-compliance with section 30, the Opponent has pleaded that the application does not conform to section 30(i) of the Act, because the Applicant could not have been satisfied of its entitlement to use the Mark in Canada in association with the Services. The Opponent pleaded no material facts as to why the Applicant could not have been satisfied of its entitlement to use the Mark.

[19] Given that the Opponent failed to provide sufficient particulars in support of this pleading to permit the Applicant to know the case it had to meet, in my view, the section 30(i) ground does not comply with section 38(3)(a) of the Act and is hereby rejected.

[20] Further, the evidence filed by the Opponent does not remedy the deficiency in the pleading [*Novopharm Ltd v AstraZeneca AB et al* (2002), 21 CPR (4th) 289 (FCA)] and, even were I to have considered that the Opponent had sufficiently raised a section 30(i) ground of opposition, I would still find it unsuccessful as the Opponent has not met its initial evidential burden with respect to that ground. Section 30(i) of the Act requires that an applicant include a statement in its application that it is satisfied that it is entitled to registration of its trademark. Where this statement has been provided, a section 30(i) ground should only succeed in exceptional cases, such as where there is evidence of bad faith [*Sapodilla Co Ltd v Bristol Myers Co* (1974), 15 CPR (2d) 152 (TMOB)]. The application for the Mark contains the required statement and there is no evidence that this is an exceptional case.

Section 12(1)(d)

[21] With respect to the non-registrability ground of opposition, the Opponent has pleaded that the Mark does not comply with the provisions of section 12(1)(d) of the Act because it is confusing with the trademarks listed in Schedule B herein, registered in association with various healthcare and medical services, including the trademarks BAYBRIDGE (TMA935,539), BAYSHORE (TMA509,700), BAYSHORE (TMA928,805), BAYSHORE HOME HEALTH (TMA672,357) and BAYSHORE HEALTHCARE (TMA869,988).

[22] An opponent meets its initial burden with respect to a section 12(1)(d) ground of opposition if the registration relied upon is in good standing. In this regard, the Registrar has discretion to check the register in order to confirm the existence of the registration relied upon by an opponent [*Quaker Oats of Canada Ltd/La Compagnie Quaker Oats du Canada Ltée v Menu foods Ltd* (1986), 11 CPR (3d) 410 (TMOB)]. The second Molina affidavit and the Cottrelle affidavit both include copies of the particulars for the above registrations. I have exercised my discretion to check the register and confirm that these registrations, including registration Nos. TMA935,539, TMA509,700 and TMA928,805 are in good standing.

[23] My review of the register also shows that all of the registrations relied upon by the Opponent, except for the registration for the trademark BAYBRIDGE (TMA935,539), are no longer owned by the Opponent and instead now stand in the name of Bayshore Specialty Rx Ltd., which is not a named party to this proceeding. The assignment of the remaining registrations was recorded on June 12, 2018, after the parties' evidence had been submitted in this opposition, but prior to the request for written arguments. The Opponent's written argument contained no submissions regarding the change in ownership of these registrations. Nevertheless, an opponent may rely on third party registrations for the purposes of a section 12(1)(d) ground of opposition [*USV Pharmaceuticals of Canada Ltd v Sherman and Ulster Ltd* (1974), 15 CPR (2d) 79 (TMOB)].

[24] In considering the section 12(1)(d) ground of opposition, I will focus my analysis on the registrations for the trademarks BAYBRIDGE (TMA935,539) and BAYSHORE (TMA509,700 and TMA928,805) as in my view these are the trademarks relied on by the Opponent which are closest to the applied for Mark. In other words, if confusion is not likely between the Mark and these trademarks, then it would not be likely between the Mark and any of the other registered trademarks pleaded by the Opponent. I will begin my analysis with reference to the Opponent's trademark BAYBRIDGE, and will then comment briefly on the trademark BAYSHORE, now owned by Bayshore Specialty Rx Ltd.

Test for confusion

[25] 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 the trademarks in the same area would likely lead to the inference that the goods and services associated with those trademarks are manufactured, sold, leased, hired or performed by the same person, whether or not the goods and services are of the same general class or appear in the same class of the Nice Classification.

[26] In making such an assessment, I must take into consideration all the relevant surrounding circumstances, including those listed in section 6(5) of the Act: (a) the inherent distinctiveness of the trademarks and the extent to which they have become known; (b) the length of time the trademarks have been in use; (c) the nature of the goods and 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 criteria are not exhaustive and different weight will be given to each one in a context-specific assessment [*Veuve Clicquot Ponsardin v Boutiques Clicquot Ltée*, 2006 SCC 23; *Mattel, Inc v 3894207 Canada Inc*, 2006 SCC 22 at para 54].

Inherent distinctiveness and extent known

[27] The Applicant's Mark is identical to the Opponent's registered trademark BAYBRIDGE. The trademark BAYBRIDGE is inherently distinctive as it is neither descriptive nor suggestive of either party's services.

[28] With respect to the extent to which the respective parties' trademarks have become known, the Applicant has not presented any evidence that its Mark has been used or become known to any extent in Canada.

[29] With respect to the Opponent's registered trademark BAYBRIDGE, I am not satisfied that the Opponent's evidence demonstrates that its mark is known to any significant extent in Canada. In its written argument, the Opponent submits that its trademark BAYBRIDGE has become known to some extent by way of: (i) Mr. Cottrelle's statement that the Opponent's Canadian sales in association with the trademark for the period of April 2016-September 2017 have exceeded \$100,000 [Cottrelle affidavit, para 10]; and (ii) the Opponent promoting this trademark on its website at www.bayshore.ca/services/baybridge [first Molina affidavit, para 3, Exhibit A.1].

[30] However, first, I note that Mr. Cottrelle provides no examples of actual use of the Opponent's trademark BAYBRIDGE within the meaning of section 4 of the Act. Instead, such evidence purports to be included via the first Molina affidavit. As she is employed by the law firm representing the Opponent, I am unable to place much, if any, weight on Ms. Molina's evidence given that it relates to a contentious issue in the proceeding, namely, the Opponent's use of its trademarks [*Cross Canada Auto Body Supply (Windsor) Limited et al v Hyundai Auto Canada* (2006), 53 CPR (4th) 286 (FCA)]. At best, the excerpt under Exhibit A.1 to the first Molina affidavit establishes that the website page existed at the time Ms. Molina performed her

search; it does not however speak to the truth of its contents. Further, there is no evidence to establish that the page was accessed by consumers in Canada, nor to what extent if it was.

[31] I would add that use, promotion and reputation of the Opponent's trademark BAYBRIDGE could have been evidenced through the affidavit of someone with direct knowledge of the Opponent's activities such as the Opponent's president, Mr. Cottrelle.

[32] Therefore, I am not satisfied that the Opponent's trademark BAYBRIDGE is known in Canada to any significant extent.

[33] Consequently, I find that the overall consideration of the section 6(5)(a) factor, which involves a combination of inherent and acquired distinctiveness of the parties' trademarks, does not favour either party.

Length of time in use

[34] While the application is based on use in Canada since at least as early as January 2010, as mentioned above, the Applicant has not demonstrated any use of its Mark.

[35] Similarly, with respect to the Opponent's trademark BAYBRIDGE, while the particulars for registration No. TMA935,539 indicate that a declaration of use was filed on March 29, 2016, as discussed above I am not satisfied that the Opponent's evidence in this case demonstrates use of this trademark.

[36] Consequently, this factor does not favour either party.

Nature of the services, business and trade

[37] When considering the nature of the goods, services and the nature of the trade, I must compare the Applicant's statement of goods and services with those contained in the registrations relied upon by the Opponent [*Henkel Kommanditgesellschaft auf Aktien v Super Dragon Import Export Inc* (1986), 12 CPR (3d) 110 (FCA); *Mr Submarine Ltd v Amandista Investments Ltd* (1987), 19 CPR (3d) 3 (FCA)]. However, these 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); *American Optional Corp v Alcon Pharmaceuticals Ltd* (2000), 5 CPR (4th) 110 (TMOB)].

[38] The application for the Mark covers various home/care facilities related services, including nursing homes and long term care facilities as well as financial, design and development services related thereto, and memory care residences for individuals with Alzheimer's, dementia and memory loss. As detailed in Schedule C herein, the Opponent's registration for the trademark BAYBRIDGE covers healthcare and medical services provided in the patient's home, in hospitals or in clinical environments, including, amongst others, treating patients for their diseases and health conditions, providing in-home nursing services and providing in-home rehabilitation, occupational therapy and physiotherapy services.

[39] I find that there is overlap or at least a close connection between the parties' services as they both ultimately relate to healthcare and support services in a home or clinical setting. While some of the Applicant's services (such as its financial investment and design services) differ from those of the Opponent, they are nevertheless in the field of, or otherwise related to, care and living facilities.

[40] In view of the above, and considering that the Opponent's evidence suggests that the parties are competitors [Cottrelle affidavit, para 15], I would also expect their channels of trade to overlap.

[41] Consequently, these factors favour the Opponent.

Degree of resemblance

[42] As noted by the Supreme Court in *Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27 at para 49, "the degree of resemblance, although the last factor listed in [section] 6(5) [of the Act], is the statutory factor that is often likely to have the greatest effect on the confusion analysis [...]". In the case at hand, the parties' trademarks are identical. Consequently, this factor strongly favours the Opponent.

Conclusion regarding likelihood of confusion with the Opponent's BAYBRIDGE trademark

[43] Taking all of the above into consideration, particularly given that the parties' marks are identical, the close connection between the parties' services and the potential for overlap in their channels of trade, I find that the Applicant has failed to establish, on a balance of probabilities, that there is no reasonable likelihood of confusion between the Mark and the Opponent's trademark BAYBRIDGE. The section 12(1)(d) ground of opposition based on the Opponent's registered trademark BAYBRIDGE (TMA935,539) is therefore successful.

Conclusion regarding likelihood of confusion with the third party BAYSHORE trademark

[44] With respect to the registered trademark BAYSHORE, which is relied on by the Opponent but is now owned by a third party, this mark has a fair degree of inherent distinctiveness as it is neither suggestive nor descriptive of its related services. However, the Opponent's evidence falls short of establishing that the trademark BAYSHORE has become known to any extent in Canada. As above, there is overlap or a close connection between the services respectively covered and, in the absence of evidence to the contrary, a potential overlap in the respective channels of trade. There is also a certain degree of resemblance between the applied for trademark BAYBRIDGE and the trademark BAYSHORE, in view of their identical prefixes and similar structures, as they both start with the term BAY followed by a monosyllabic word (BRIDGE or SHORE) comprising almost the same number of letters. That said, the marks' respective suffixes result in a somewhat different appearance, sound and suggested idea. Overall, in my view, these trademarks are about as alike as they are different.

[45] It could be argued that the fact that the registered trademark BAYSHORE in the name of Bayshore Specialty Rx Ltd. already coexists on the register with the registered trademark BAYBRIDGE in the name of the Opponent, cuts against a likelihood of confusion between the Mark and the trademark BAYSHORE. However, this coexistence on the register is not dispositive [*Molson Breweries v Labatt Brewing Co* (1996), 68 CPR (3d) 202 (FCTD)] especially absent any evidence of marketplace coexistence.

[46] While the trademarks are not identical, in my view, the differences between them are not sufficient to outweigh the overall consideration of the section 6(5) factors discussed above. In the

absence of additional surrounding circumstances favouring the Applicant, I find that at best for the Applicant, the probability of confusion between the Mark and the registered trademark BAYSHORE is evenly balanced between a finding of confusion and of no confusion. As the onus is on the Applicant to show, on a balance of probabilities, that there is no reasonable likelihood of confusion, I must find against the Applicant. Consequently, the section 12(1)(d) ground of opposition also succeeds in respect of the registered trademark BAYSHORE (TMA509,700 and TMA928,805).

Section 2

[47] With respect to the non-distinctiveness ground of opposition, the Opponent has pleaded that the Mark does not comply with the provisions of section 2 of the Act, because it is not adapted to distinguish the services in association with which it is allegedly used from those of the Opponent.

[48] To meet its evidential burden in respect of this ground, the Opponent must show that any one of the trademarks it relies upon in its pleadings had become sufficiently known in Canada, as of the filing date of the statement of opposition, so as to negate the distinctiveness of the Mark [*Motel 6, Inc v No. 6 Motel Ltd* (1981), 56 CPR (2d) 44 (FCTD)]. In that regard, I find that the change of ownership regarding most of the relied upon registrations does not affect the assessment of this ground of opposition as it took place after the material date relating to same.

[49] As per my comments above, the Opponent's evidence does not allow me to draw any meaningful conclusion regarding the extent of use, advertising or reputation of any of the relied upon trademarks in Canada. Consequently, the section 2 ground of opposition is rejected as the Opponent has not met its initial evidential burden.

DISPOSITION

[50] 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.

Iana Alexova
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

SCHEDULE A

Excerpts from the statement of opposition

3. The Opponent bases its opposition to the trademark BAYBRIDGE, (application no. 1717121, advertised under that number in the issue of the Trademarks Journal dated February 17, 2016), as follows:

(a) Section 38(2)(a)

The Opponent bases its opposition on section 38(2)(a) of the Act, namely that the opposed application does not comply with the requirements of section 30 of the Act in that:

(i) the applied-for mark was not used in Canada by the Applicant since the claimed date of first use, namely January 2010, with each of the general classes of services listed in its trademark application as having been used in Canada by such date of first use, and in this regard:

(A) the applied-for mark was not used in Canada by the Applicant since the January 2010 claimed date of first use with the following general class of services: “Financial services, namely, financial investments in the field of retirement homes, independent living facilities, assisted living facilities, nursing homes and long term care facilities”, and/or

(B) the applied-for mark was not used in Canada by the Applicant since the January 2010 claimed date of first use with the following general class of services: “design and development of residences that provide accommodation, meals, care, support, recreation, and transportation services to seniors, namely retirement homes, retirement residences, senior living residences, independent living residences, assisted living residences”, and/or

(C) the applied-for mark was not used in Canada by the Applicant since the January 2010 claimed date of first use with the following general class of services: “memory care residences for individuals with Alzheimer’s, dementia and memory loss; nursing homes and long term care facilities”;

(ii) the trademark allegedly used is not the applied for trademark (and any purported use in that regard is, in any event, denied);

(iii) The Opponent alleges that the applied for trademark is not registrable in that the trademark application does not comply with the provisions of Section 30(i), in that the Applicant could not be and can still not be satisfied that it is entitled to use its mark in Canada in association with the listed services in the application.

(b) Section 38(2)(b)

The Opponent alleges that the applied-for trademark is not registrable having regard to the provisions of Section 12(1)(d), in that the applied-for mark is confusing with the registered trademarks of the Opponent , the particulars of which are found in paragraph 2 above.

[c] Section 38(2)(d)

The Opponent alleges that the applied-for trademark is not entitled to registration having regard to Section 38(2)(d) in that the said trademark is not distinctive, since it is not adapted to distinguish the services in association with which it is alleged by the Applicant to have been used in Canada from those of others and in particular the services of the Opponent and trademarks of the Opponent (the particulars of which are found in paragraph 2 above), having regard to the definition of “distinctive” in Section 2.

SCHEDULE B

Trademark	Registration Number
BAYBRIDGE	TMA935,539
BAYSHORE	TMA509,700
BAYSHORE	TMA928,805
BAYSHORE HOME HEALTH	TMA672,357
BAYSHORE HEALTHCARE	TMA869,988
BAYSHORE CLINIC	TMA731,118
BAYSHORE CLINICS	TMA779,191
BAYSHORECONNEX	TMA758,737
BAYSHORE DIABETES	TMA891,565
BAYSHORE DIALYSIS	TMA788,524
BAYSHORE DOC AT HOME	TMA826,230
BAYSHORE HOUSE CALLS	TMA806,575
BAYSHORE MEDICAL PERSONNEL	TMA672,177
BAYSHORE PHARMACY	TMA898,566
BAYSHORE PHYSIO	TMA848,298
BAYSHORE PHYSIOTHERAPY	TMA848,354
BAYSHORE REHAB	TMA848,296
BAYSHORE REHABILITATION	TMA848,297
BAYSHORE SPECIALTY RX	TMA727,496
BAYSHORE THE SENIORS' CARE ASSISTANCE PROGRAM	TMA922,950
BAYSHORE THERAPY & REHAB	TMA816,606
BAYSHORE DIABÉTE	TMA826,243
BAYSHORE RX SPÉCIALISÉS	TMA727,216
BAYSHORE SOINS À DOMICILE	TMA672,164
CLINIQUE BAYSHORE	TMA729,505
CLINIQUES BAYSHORE	TMA826,245
DIABÉTE BAYSHORE	TMA826,244
MÉDECIN CHEZ VOUS BAYSHORE	TMA826,231
PHYSIO ET RÉADAPTATION BAYSHORE	TMA826,248
RX SPÉCIALISÉS BAYSHORE	TMA727,494
SOINS À DOMICILE BAYSHORE	TMA672,182

SCHEDULE C

Statement of services covered by registration No. TMA935,539

Health care services namely: treating patients for their diseases and health conditions in their homes and in clinical environments; providing the services of nurses in the home, hospitals or in clinical environments; the provision of specialized clinical health programs that provide optimal health care to persons with specific health conditions; Medical and pharmaceutical services namely: providing intravenous infusion services in the home, or in clinical environments; providing the services of specialty nurses in the home, hospitals or in clinical environments; preparation and delivery of specialty and infusion drugs used in intravenous infusions delivered in the home, or in clinical environments; education and counselling services namely educating patients on the subject of medical and pharmaceutical injections namely on how to self-inject drugs; Medical services namely providing in-home rehabilitation, occupational therapy and physiotherapy services; Consulting services in the field of healthcare, medication use and administration. [H]ealth care planning and health and disease management.

Statement of services covered by registration No. TMA509,700

Community based clinical health services namely dialysis clinics.

Community based clinical health services namely: home health care services delivered in the patient's home and rehabilitation therapy clinics.

Statements of goods and services covered by registration No. TMA928,805

Goods

Computer software on CD, DVD, and downloadable software, the foregoing containing information on the subject of healthcare and health and disease management, such software also providing the ability to manage, maintain, process and monitor such information and to deliver such information to third parties; Educational materials namely printed course materials in the field of healthcare and health and disease management.

Services

Health care services namely: treating patients for their diseases and health conditions in their homes and in clinical environments; providing the services of nurses in the home, hospitals or in clinical environments; the provision of specialized clinical health programs that provide optimal health care to persons with specific health conditions.

Medical and pharmaceutical services namely: providing intravenous infusion services in the home, hospitals or in clinical environments; providing the services of specialty nurses

in the home, hospitals or in clinical environments; preparation and delivery of specialty and infusion drugs used in intravenous infusions delivered in the home, hospitals or in clinical environments; education and counselling services namely educating patients on the subject of medical and pharmaceutical injections namely on how to self-inject drugs; drug mixing, drug preparation and drug delivery services; conducting of drug trials and providing clinical drug trial support namely the provision of clinical staff services and pharmacy services; sale of medical supplies related to pharmaceutical infusions and injections; sale of pharmaceuticals used in infusions and injections; operation of a medical clinic.

Operation of dialysis clinics.

Operation of medical clinics specializing in rehabilitation, occupational therapy and physiotherapy services; Medical services namely providing in-home rehabilitation, occupational therapy and physiotherapy services; Business management services for the health care industry, namely, the gathering, storage, management and retrieval of health care-related data to assist health care workers in the delivery of care and treatment to their patients; Telecommunication services, namely, transmission of health care related data and documents to allow for remote patient monitoring, remote healthcare services and remote data access, all delivered via the Internet, via telephone networks and satellite networks and via internal and external computer networks; Design and development of computer hardware, computer and telecommunication networks, software, health care and business information management processes, all the foregoing to assist health care workers in the delivery of care and treatment to their patients; Non-downloadable computer software accessible via an internet website, such software containing information on the subjects of healthcare and health and disease management, such software also providing the ability to manage, maintain, process and monitor such information and to deliver such information to third parties; Education services namely seminars and courses on healthcare, care planning and health and disease management; Consulting services in the field of healthcare, medication use and administration, health care planning and health and disease management.

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

No Hearing Held

AGENTS OF RECORD

RICHES, MCKENZIE & HERBERT LLP

For the Opponent

TORYS LLP

For the Applicant