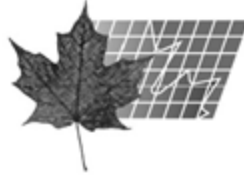


OPIC



CIPO

LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADEMARKS

Citation: 2020 TMOB 121

Date of Decision: 2020-10-30

IN THE MATTER OF AN OPPOSITION

**Larosh Dermocosmetic Laboratories
Inc.**

Opponent

and

Oxygen Biological Inc.

Applicant

1,768,674 for OXYGEN

Applications

BIOLOGICAL

**1,784,784 for oxygen biological
infusion**

INTRODUCTION

[1] Larosh Dermocosmetic Laboratories Inc. (the Opponent) opposes registration of the trademarks OXYGEN BIOLOGICAL and oxygen biological infusion (collectively, the Marks), the subject of application Nos. 1,768,674 and 1,784,784 respectively, that were originally filed by Jude Farjami. The applications for the Marks were subsequently assigned to Oxygen Biological Inc. (the Applicant).

[2] Application No. 1,768,674 for OXYGEN BIOLOGICAL was filed on February 19, 2016, while application No. 1,784,784 for oxygen biological infusion was filed on May 31, 2016. Both

applications are based on use of the trademarks in Canada since their respective filing dates and were filed in association with a variety of personal and skin care products, cosmetics, nutritional supplements, and related services. A complete listing of the goods and services associated with each application is included under Schedule A to this decision.

[3] Both applications were advertised in the *Trademarks Journal* of January 5, 2017.

[4] The Opponent alleges that (i) the applications do not conform to the requirements of section 30(b) of the *Trademarks Act*, RSC 1985, c T-13 (the Act); (ii) the applications do not conform to the requirements of section 30(i) of the Act; (iii) the Marks are not registrable under section 12(1)(d) of the Act; (iii) the Applicant is not the person entitled to the registration of the Marks under section 16 of the Act, and (iv) the Marks are not distinctive under section 2 of the Act.

[5] As a preliminary matter, I note that the Act was amended on June 17, 2019. All references in this decision are to the Act as amended, with the exception of references to the grounds of opposition which refer to the Act as it read 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 prior to that date).

[6] For the reasons that follow, I refuse the applications.

THE RECORD

[7] The Opponent filed its statements of opposition on June 26, 2017 (re: app. No. 1,768,674) and June 27, 2017 (re: app. No. 1,784,784). The Applicant filed and served its counter statements on September 5, 2017 denying all of the grounds of opposition.

[8] In support of its oppositions, the Opponent filed the affidavit of Samantha Santos, sworn on January 5, 2018, together with Exhibits A and B, and the affidavit of Hamidreza Vanaki, sworn January 5, 2018, together with Exhibits A to F. Identical evidence was filed in both oppositions. Neither affiant was cross-examined on their affidavit.

[9] The Applicant did not file any evidence.

[10] Only the Opponent filed written representations and attended an oral hearing.

THE PARTIES' RESPECTIVE BURDEN OR ONUS

[11] The Applicant bears the legal onus of establishing, on a balance of probabilities that the applications comply 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 [see *John Labatt Limited v The Molson Companies Limited* (1990), 30 CPR (3d) 293 (FCTD) at 298].

[12] With respect to the grounds of opposition, it is the following material dates that apply:

- Sections 38(2)(a)/30 - the filing date of the applications, namely, February 19, 2016 (re: app. No. 1,768,674) and May 31, 2016 (re: app. No. 1,784,784) [see *Georgia-Pacific Corporation v Scott Paper Ltd* (1984), 3 CPR (3d) 469 at 475 (TMOB) and *John Labatt Ltd v Molson Companies Ltd* (1990), 1990 CanLII 11059 (FC), 30 CPR (3d) 293 at 296 (FCTD) re: section 30(b); and *Tower Conference Management Co v Canadian Exhibition Management Inc* (1990), 28 CPR (3d) 428 at 432 (TMOB) re: section 30(i)];
- Sections 38(2)(b)/12(1)(d) – the date of my decision [see *Park Avenue Furniture Corp v Wickes/Simmons Bedding Ltd* (1981), 37 CPR (3d) 413 (FCA)];
- Sections 38(2)(c)/16(1)(a) – the date of first use claimed in the applications, namely, February 19, 2016 (re: app. No. 1,768,674) and May 31, 2016 (re: app. No. 1,784,784) [see *Metro-Goldwyn-Mayer Inc v Stargate Connections Inc* (2004), 2004 FC 1185 (CanLII), 34 CPR (4th) 317 (FCTD)]; and
- Sections 38(2)(d)/2 – the dates of filing of the statement of oppositions, namely, June 26, 2017 (re: app. No. 1,768,674) and June 27, 2017 (re: app. No. 1,784,784) [see *Metro-Goldwyn-Mayer supra*].

ANALYSIS

[13] To begin with, I note that the grounds of opposition based on section 16(3)(a) are invalid, as the applications are based on use of the Marks. Consequently, the section 16(3)(a) grounds are summarily dismissed.

[14] Furthermore, I note that the Opponent has not brought forth any submissions with respect to its section 30(b), section 30(i), or section 12(1)(d) grounds of opposition. Indeed, the entirety of the Opponent's submissions have focused on its section 16(1)(a), and to a minimal extent, section 2 grounds of opposition. Each of these remaining grounds will be dealt with in turn.

Section 30(b) Ground of Opposition

[15] The Opponent has plead that the Applications do not conform to the requirements of section 30 of the Act since the original applicant (Jude Farjami), contrary to section 30(b), had not used the Marks in Canada in association with the goods described in the Applications since the dates specified in the Applications or at all.

[16] As previously stated, the Opponent did not refer to any evidence nor present any arguments in support of its allegations set out in this ground of opposition. The section 30(b) grounds of opposition are therefore summarily dismissed for the Opponent's failure to meet its initial evidential burden.

Section 30(i) Ground of Opposition

[17] The Opponent has plead that the Applications do not conform to the requirements of section 30 of the Act since the Applicant, contrary to section 30(i) could not have stated it was entitled to use the Marks in Canada in association with the Applicant's goods and services in view of the Opponent's ownership and prior use and making known in Canada of the Opponent's "O" & Design, Infused with Pure Oxygen & Design, OXYGEN BOTANICALS, OXYGEN MINERALS, and OXYGEN COMPLEX trademarks, and associated marks (collectively, the "Opponent's Marks").

[18] Section 30(i) of the Act requires an applicant to declare in the application that it is satisfied that it is entitled to use the trademark in Canada. Where an applicant has provided the required statement, the Registrar has previously found that an applicant has failed to substantively comply with section 30(i) where, for example:

- 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] which has been found where a licensee or distributor has attempted to register their principal's trade-mark or a confusingly similar variant[see *Suzhou Parsun Power Machine Co. Limited v Western Import Manufacturing Distribution Group Limited*, 2016 TMOB 26; *Flame Guard Water Heaters, Inc v Usines Giant Inc*, 2008 CanLII 88292 (TMOB); see also *McCabe v Yamamoto & Co (America) Inc* (1989), 23 CPR (3d) 498 at 503 (FCTD)];
- there is evidence of a *prima facie* case of non-compliance with a federal statute such as the *Copyright Act*, RSC 1985, c C-42 or *Food and Drugs Act*, RSC 1985, C F-27 [see *Interactiv Design Pty Ltd v Grafton-Fraser Inc* (1998), 87 CPR (3d) 537 (TMOB) at 542-543]; and
- there is evidence that a contractual relationship such as licensor-licensee existed and that the registration of a trademark would constitute a breach of the relationship [see *AFD China Intellectual Property Law Office v AFD China Intellectual Property Law (USA) Office, Inc*, 2017 TMOB 30].

[19] In the present case, the Opponent did not submit any evidence nor present any arguments that would support this ground of opposition. The section 30(i) ground of opposition is therefore summarily dismissed for the Opponent's failure to meet its initial evidential burden.

Section 16(1)(a) Grounds of Opposition

[20] The Opponent has plead that the trade-marks applied for are not registrable because they are confusing with the Opponent's Marks which had been previously used and made known in Canada by the Opponent or its predecessors in title and licensees in association with a variety of personal and skin care products.

[21] In its representations, however, the Opponent's submissions were limited to argue that the Applicant's Marks are confusing with the Opponent's mark OXYGEN BOTANICALS, which had been previously used in Canada by the Opponent. I have included only the particulars of this trademark under Schedule B to this decision, as I consider this mark to represent the Opponent's strongest case. That is, if the Opponent is not successful with this mark, it would not achieve a more favourable result with the other marks plead.

[22] With respect to the grounds of opposition based on section 16(1)(a) of the Act, the Opponent has an initial burden of establishing that one or more of its trademarks alleged in support of this ground of opposition were used or made known prior to the Applicant's claimed dates of first use, namely, February 19, 2016 (re: app. No. 1,768,674) and May 31, 2016 (re: app. No. 1,784,784), and were not abandoned at the dates of advertisement of the applications for the Marks (January 25, 2017) [section 16(5) of the Act].

[23] With respect to evidence of use of the Opponent's OXYGEN BOTANICALS mark, the Opponent has provided the affidavit of Hamidreza Vanaki (Vanaki), the President of the Opponent.

[24] Vanaki identifies the Opponent as a manufacturer and distributor of skin care products.

[25] Vanaki states that the Opponent, and its predecessors-in-title have sold cosmetics and skin care products continuously in every province across Canada since at least as early as June 2000, with sales of OXYGEN BOTANICALS products estimated to be in excess of \$1million in each of the last 5 years prior to the date of the proposed opposition. Vanaki states that based on experience, these sales figures represent significant sales for a single product brand in the Canadian marketplace. Vanaki further explains that the Opponent and its predecessors-in-title sell products under the OXYGEN BOTANICALS brand direct to consumers, including via wholesale and direct sales to Canadian commercial spa and salon distributors.

[26] In support, Vanaki provides the following:

- Exhibit C – copies of sample invoices issued by the Opponent's predecessor-in-title, CMI Cosmetics Manufacturers Inc. for the sale of OXYGEN BOTANICALS branded products between 2011 and 2013, wherein Vanaki indicates that reference to OB on each invoice denotes an "OXYGEN BOTANICALS" branded product. The invoices show a variety of OB denoted skin care products sold to foreign entities located outside of Canada, including cleansers, masks, creams, toners, etc.;
- Exhibit D – copies of sample invoices issued by the Opponent for the sale of OXYGEN BOTANICALS branded products in Canada prior to March 2017, wherein reference to OB on each invoice denotes an OXYGEN BOTANICALS branded product. The invoices are dated between 2016 and 2017, and show a variety of OB denoted skin care products sold, including cleansers, masks, creams, toners, etc.;

- Exhibit E – photos of sample products, product packaging and promotional materials that have been distributed by the Opponent and its predecessors in title across Canada between June 2000 and March 2017. The Opponent’s OXYGEN BOTANICALS mark clearly appears on the products shown (cosmetics bag and key chain), packaging, and promotional material (display posters); and
- Exhibit F – includes photos of product packaging for the Opponent’s OXYGEN BOTANICALS products, which clearly bear the mark, and which Vanaki attests have been in use since as least as early as June 2000.

[27] Lastly, Vanaki explains that the Opponent’s marketing of goods associated with its OXYGEN BOTANICALS trademark across Canada has been continuous since at least as early as June 2000, and includes the dissemination of video advertisements and brochures, trade-show presentations and advertisements on social media platforms. Vanaki states that spending in this regard averages more than \$100,000/year.

[28] Having regard to the above, I am satisfied that the Opponent has met its initial burden of establishing that its OXYGEN BOTANICALS trademark alleged in support of this ground of opposition was used prior to the claimed dates of first use set out in the Applicant’s applications, and was not abandoned at the dates of advertisement of the applications for the Marks.

[29] I now have to determine, on a balance of probabilities, if either of the Applicant’s Marks are likely to cause confusion with the Opponent’s OXYGEN BOTANICALS trademark.

The test for confusion

[30] The test for confusion is one of first impression and imperfect recollection. Section 6(2) of the Act indicates that the use of a trademark causes confusion with another trademark 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 trademarks are manufactured, sold, leased, hired or performed by the same person, whether or not the goods or services are of the same general class.

[31] 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 criteria are not exhaustive and it is not necessary to give each one of them equal weight [see, in general, *Mattel, Inc v 3894207 Canada Inc*, 2006 SCC 22, 1 SCR 772 (SCC) at para 54; *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée*, 2006 SCC 23, 49 CPR (4th) 401; and *Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27, 92 CPR (4th) 361].

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

[32] The overall consideration of the section 6(5)(a) factor, involves a combination of inherent and acquired distinctiveness of the parties' marks.

[33] The parties' marks are more or less equally inherently distinctive. In this regard, I note the following definitions, as provided by Ms. Santos, using the search strings "DEFINE BOTANICAL" and "DEFINE BIOLOGICAL" in a search using *www.google.ca*, in her affidavit as follows:

Botanical:

Adjective

1. relating to plants "botanical specimens"

Noun

1. a substance obtained from a plant and used as an additive, especially in gin or cosmetics.

Biological:

Adjective

1. relating to biology or living organisms. Synonyms: biotic, organic, living:

Noun

1. a therapeutic substance, such as a vaccine or drug, derived from biological sources. "an international biotechnology company with interests in biologicals, agriculture, and pharmaceutical products".

[34] Ms. Santos search also includes links to an array of online dictionaries, including *Merriam-Webster*, all of which appear to have definitions consistent with those above.

[35] Thus, it appears that both parties' marks use terminology that is highly similar in the ideas suggested, in that both are suggestive of products that incorporate substances derived from living organisms. Further to this, both parties' marks use the term "OXYGEN", which provides the same degree of inherent distinctiveness, as when used in association with the parties' respective goods, does not have any clear connotation. Lastly, I do not consider that the word "infusion" in the Applicant's Mark oxygen biological infusion, adds to its overall inherent distinctiveness, as the word infusion, simply implies that the biological substance has been "infused" or imparted to the product.

[36] In any event, the strength of a trademark may be increased by means of it becoming known in Canada through promotion or use.

[37] The Opponent asserts that its mark OXYGEN BOTANICALS has become very well known in Canada and has acquired enormous goodwill and reputation in Canada as a result of significant advertising and extensive sales across Canada as set out in the Vanaki affidavit.

[38] I agree that the Vanaki affidavit shows significant sales (\$1,000,000 for each of the 5 years prior to the statement of opposition) and advertising of goods (averaging over \$100,000/year) in association with the Opponent's OXYGEN BOTANICALS trademark, such that it has acquired distinctiveness over a number of years. Consequently, this factor favours the Opponent.

Section 6(5)(b) – the length of time of use

[39] The Opponent submits that the Vanaki affidavit establishes that the Opponent's OXYGEN BOTANICALS mark has been used since at least as early as 2000, and continues to be used in association with the Opponent's goods.

[40] It is true that Vanaki states that the OXYGEN BOTANICALS mark has been used in Canada since 2000; however, I note the earliest documentary evidence of use relates to export sales dating in 2011. Further to this, the annual sales figures provided by Vanaki, are in relation only to the last 5 years prior to the date of the statement of opposition.

[41] Nevertheless, as the Applicant has not provided any evidence of use of its Mark, this factor strongly favours the Opponent.

Sections 6(5)(c) and (d) - the nature of the services and business or trade

[42] The Opponent submits that the nature of the goods of the parties is the same (in the personal beauty, skin care and cosmetics spheres) and the parties' channels of trade are anticipated to be the same. In the absence of evidence from the Applicant to the contrary, I agree.

[43] Consequently, this factor strongly favours the Opponent.

Section 6(5)(e) - degree of resemblance in appearance, when sounded, or in idea suggested

[44] When considering the degree of resemblance between the marks, the law is clear that the marks must be considered in their totalities; it is not the correct approach to lay the trademarks side by side and compare and observe similarities or differences among the elements or components of the marks. The Supreme Court of Canada in *Masterpiece, supra* advised that the preferable approach when comparing marks is to begin by determining whether there is an aspect of the trademark that is particularly striking or unique.

[45] The Opponent submits that the degree of resemblance between the Opponent's trademarks and the Applicant's Marks in appearance, sound and/or ideas suggested are all extremely similar. The Opponent submits that the ideas suggested by OXYGEN BOTANICALS and OXYGEN BIOLOGICAL are synonymous, and there is a high degree of resemblance between these marks in appearance and in sound.

[46] The Opponent submits that on a comparison of the marks, the marks have the identical first word OXYGEN followed by a second word starting with the letter B and having the identical sequence "B__"ICAL", and further wherein the second word of each mark is also 10 letters long. It is also material that the words "BIOLOGICAL" and "BOTANICALS" have similar meanings. In this regard, as indicated in the Santos affidavit, "botanical" means "relating to plants" and "biological" means "relating to biology or living organisms". Of course, the Opponent submits, "plants" are living organisms. Lastly, the Opponent submits that the marks in question are exceedingly similar in sound.

[47] I agree with the Opponents submissions. Moreover, as indicated in the section 6(5)(a) factor, I do not find the word “INFUSION” in the Applicant’s Mark, OXYGEN BIOLOGICAL INFUSION, alters the idea suggested between the parties’ marks. Furthermore, the parties’ marks share the first and most striking component “OXYGEN”, while the remainder of the marks share a high degree of similarity in appearance and idea suggested.

[48] Consequently, having regard to the aforementioned, this factor strongly favours the Opponent.

Conclusion

[49] The Opponent submits that due to the striking similarities between the Opponent’s OXYGEN BOTANICALS mark and the Applicant’s Marks, coupled with goods (and services) associated with the marks that are the same or overlapping, the use of the Applicant’s Marks in the same area where the Opponent uses its mark will likely lead to the inference that the goods (and services) associated with the Marks are manufactured, sold, leased, hired or performed by the same entity.

[50] In view of the above, and keeping in mind that the test for confusion is one of first impression and imperfect recollection, I agree with the Opponent that the Applicant has not discharged its onus to show that, on the balance of probabilities, there would be no reasonable likelihood of confusion between the Marks and the Opponent’s OXYGEN BOTANICALS trademark.

[51] Having regard to the foregoing, I allow the grounds of opposition based on section 16(1)(a) of the Act.

Section 12(1)(d) Grounds of Opposition

[52] An opponent’s initial onus is met with respect to a section 12(1)(d) ground of opposition if one or more of the registrations relied upon are in good standing. The Registrar has the discretion to check the register in order to confirm the existence of any registrations relied upon by an opponent [see *Quaker Oats of Canada Ltd/La Compagnie Quaker Oats du Canada Ltée v Menu foods Ltd* (1986), 11 CPR (3d) 410 (TMOB)].

[53] Once again, I have chosen to focus on the Opponent's registration for OXYGEN BOTANICALS, registration No. TMA531,223, as this registration represents the Opponent's strongest case.

[54] I have exercised the Registrar's discretion to confirm that the Opponent's OXYGEN BOTANICALS registration No. TMA531,223 is in good standing as of today's date, which, as previously indicated, is the material date for assessing a section 12(1)(d) ground of opposition [per *Park Avenue Furniture Corp, supra*]. The Opponent has therefore satisfied its evidential burden.

[55] The difference in material date under this ground of opposition does not affect my ultimate conclusion regarding confusion. As such, my findings under the grounds of opposition based on section 16(1)(a) are equally applicable.

[56] Accordingly, the grounds of opposition based on section 12(1)(d) of the Act are also successful.

Section 2 Grounds of Opposition

[57] The Opponent has plead that the Marks are not distinctive, within the meaning of section 2, as the Marks do not actually distinguish and are not adapted to distinguish the goods with which they are used by the Applicant from the Opponent's Goods by reason of the Opponent's use and making known in Canada of the Opponent's Mark in association with the Opponent's Goods.

[58] Again, I have chosen to focus on the Opponent's OXYGEN BOTANICALS trademark, as this mark represents the Opponent's strongest case.

[59] While there is a legal onus on the Applicant to show that the Marks are adapted to distinguish or actually distinguish 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)].

[60] Pursuant to its evidential burden, the Opponent is under an obligation to show that, as of the date of filing of the statement of opposition, its trademark had become known sufficiently to negate the distinctiveness of the Mark [see *Bojangles' International, LLC v Bojangles Café Ltd*, 48 CPR (4th) 427 (FC)].

[61] As discussed more fully in the analysis of the section 16(1)(a) grounds of opposition, I accept that the Opponent has provided evidence of use of its OXYGEN BOTANICALS trademark in Canada, but that such evidence supports sales dating to 2011. Nevertheless, the sales and advertising figures provided by Vanaki appear to be significant in relation to the Opponent's associated goods.

[62] As the difference in material dates is insignificant, I am satisfied that the Opponent has discharged its initial evidential burden of to show that, as of June 26 and 27, 2017 respectively, its trademark had become known sufficiently to negate the distinctiveness of the Mark. As I have found the parties' marks to be confusing, the Applicant has failed to show that its Marks are adapted to distinguish or actually distinguish its goods from those of others throughout Canada.

[63] Consequently, the grounds of opposition based on section 2 of the Act are successful.

DISPOSITION

[64] Having regard to the aforementioned, pursuant to the authority delegated to me under section 63(3) of the Act, I refuse the applications pursuant to section 38(12) of the Act.

Kathryn Barnett
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

SCHEDULE A

Application No. 1,768,674 – OXYGEN BIOLOGICAL

Goods

- (1) Cosmetic pencils, cosmetic pads, mascara, eye makeup remover, eye pencils, eye gels, eyeliners, eye masks, eyeshadow, eyebrow pencils, eyebrow brushes, eyelash thickeners, facial makeup, foundation makeup, blush, blush creams, pressed powders, skin clarifiers, skin cleansers, skin conditioners, skin creams, skin emollients, skin lighteners, skin lotions, skin masks, skin moisturizers, skin soaps, skin texturizers, skin toners, skin gels, beauty masks, personal deodorants, hand creams, hand lotions, body creams, body moisturizers, body mask creams, body mask powders, body balms, body oils, body powders, body lotions, body scrubs, body gels, body peels, shower oils, shower gels, bath oils, bath gels, massage oils, massage gels, massage creams, hair bleaching preparations, hair colouring preparations, hair conditioners, hair gels, hair growth stimulants, hair lighteners, hair lotions, hair mousses, hair pomades, hair rinses, hair shampoos, hair sprays, hair straightening preparations, hair tinting brighteners, hair waving lotions, hair retardant creams, hair detangling lotions, hair finishing hold gels, hair retardant serums, after-shave balms, after-shave creams, after-shave lotions, lipsticks, lip pencils, lip gloss, lip stays, lip moisturizers, lip sealers, lip scrubs, nail polishes, nail polish removers, nail growth enhancers, nail ridge fillers, nail top coats, nail base coats, cuticle creams, cuticle removers, nutritional supplements, namely capsules and tablets, namely Omega 3-6-9 Multi-blend, B-Complex capsules, dietary supplements, namely vitamin and mineral specialty dietary supplements, nutritional herbal dietary food supplements consisting of vitamins, minerals, essential fatty acids, and fiber, herbal teas and tisanes, herbs, namely, processed and dried herbs for food purposes, namely chamomile, mint, fennel, rosemary, thyme and licorice, and processed and dried herbs as a nutritional supplement, namely chamomile, mint, fennel, rosemary, thyme and licorice.

Services

- (1) Health spa resorts; health spa services; providing temporary accommodations and meals to clients of a health beauty spa.

Application No. 1,784,784 – OXYGEN BIOLOGICAL INFUSION

Goods

- (1) Cosmetic pencils, cosmetic pads, mascara, eye makeup remover, eye pencils, eye gels, eyeliners, eye masks, eyeshadow, eyebrow pencils, eyebrow brushes, eyelash thickeners, facial makeup, foundation makeup, blush, blush creams, pressed powders, skin clarifiers, skin cleansers, skin conditioners, skin creams, skin emollients, skin lighteners, skin lotions, skin masks, skin moisturizers, skin soaps, skin texturizers, skin toners, skin gels, beauty

masks, personal deodorants, hand creams, hand lotions, body creams, body moisturizers, body mask creams, body mask powders, body balms, body oils, body powders, body lotions, body scrubs, body gels, body peels, shower oils, shower gels, bath oils, bath gels, massage oils, massage gels, massage creams, hair bleaching preparations, hair colouring preparations, hair conditioners, hair gels, hair growth stimulants, hair lighteners, hair lotions, hair mousses, hair pomades, hair rinses, hair shampoos, hair creams, hair detangling lotions, hair finishing hold gels, hair retardant serums, after-shave balms, after-shave creams, after-shave lotions, lipsticks, lip pencils, lip gloss, lip stays, lip moisturizers, lip sealers, lip scrubs, nail polishes, nail polish removers, nail growth enhancers, nail ridge fillers, nail top coats, nail base coats, cuticle creams and cuticle removers

Services

- (1) Health spa resorts; health spa services; providing temporary accommodations and meals to clients of a health beauty spa.

SCHEDULE B

Opponent's registration No. TMA531,223 (OXYGEN BOTANICALS)

Goods

- (1) Skin care products, namely, face creams, hand creams, toners, cleansers, moisturizers, sun block, and skin treatment serums and collagen supplements; shampoos, conditioners and hair forming lotions; cosmetics, namely foundation, blush, lipstick, eyeliner, bronzing powders, nail polish and nail polish remover; oxygen machines for application of oxygen to the epidermis.

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

APPEARANCES

David Schnurr For the Opponent

No one appearing For the Applicant

AGENTS OF RECORD

Miller Thomson LLP For the Opponent

O'Brien TM Services Inc. For the Applicant