



LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADEMARKS

Citation: 2020 TMOB 116
Date of Decision: 2020-10-17

IN THE MATTER OF OPPOSITIONS

Fresh, Inc.

Opponent

and

Coty Brands Management Inc.

Applicant

1,728,573 for fresh cream & Prose Design

Applications

1,727,969 for fresh cream & Prose Design

Application No. 1,727,969 – fresh cream & Prose Design – Overview

[1] philosophy, inc. has applied-to register the trademark fresh cream & Prose Design set out below (the Mark) for use in association with hair, bath and skin care preparations (the Goods). philosophy, inc. assigned the application to Coty Brands Management Inc. (both entities referred to as the Applicant). The application for the Mark is based on the Applicant’s use in Canada since at least as early as 2009.

fresh cream

philosophy: 2 c. heavy whipping cream, 1 tsp. vanilla extract, 4 tbsp. confectioners' sugar. in large bowl, beat heavy cream to soft peaks using electric mixer. add vanilla and sugar. beat cream mixture until stiff peaks form. top your favorite holiday treats, cakes and toddies with fresh cream, then enjoy.

[2] Fresh, Inc. (the Opponent or “Fresh”) filed a statement of opposition alleging that the application for the Mark is confusing with its FRESH trademarks for use in association with its skin care preparations, cosmetics and other similar products. The Canadian sales of products sold by the Opponent in association with the Opponent’s Fresh trademarks totaled over \$60 million from 2004-2016.

[3] For the reasons that follow, the opposition to the application succeeds.

Background

[4] On May 13, 2015, the Applicant filed an application to register the Mark based on its use in Canada since at least as early as 2009. The application was advertised for opposition purposes in the Trademarks Journal issue dated February 17, 2016.

[5] On June 30, 2016, the Opponent opposed the application on the basis of the grounds of opposition summarized below. The *Trademarks Act*, RSC 1985, c T-13 (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 before it was amended (see section 70 of the Act).

- (a) The application does not comply with the requirements of section 30(i) of the Act as the Applicant could not have been satisfied that it was entitled to use the Mark, because it knew or ought to have known of the Opponent’s prior rights in and to its family of FRESH trademarks and knew or ought to have known that:

(i) there would be a likelihood of confusion between the Mark and the Opponent's FRESH trademarks and/or (ii) that anyone seeing the Mark would assume an association between the Mark and the Opponent's FRESH trademarks.

(b) The application does not comply with the requirements of section 30(b) of the Act as the Applicant had not:

i. used the Mark in Canada as claimed prior to the filing date of the application; or

ii. used the Mark in Canada in association with the Goods as claimed prior to the filing date of the application.

(c) The Mark is not registrable under section 12(1)(d) because it is confusing with one or more of the following registered trademarks:

| No. | Trademark |
|------------|------------------------------|
| NLFD2488 | FRESH |
| TMA617,598 | <i>fresh</i> FRESH Design |
| TMA906,500 | FRESH F21C |
| TMA936,009 | FRESH FAMILY |

- (d) The Applicant is not the person entitled to register the Mark in view of section 16(1)(a) of the Act since the Mark was confusing with the Opponent's trademarks FRESH Design, FRESH LOTUS, FRESH ROSE FACE MASK, FRESH SOY FACE CLEANSER, and SUGAR FRESH F21C & Design.
- (e) The Applicant is not the person entitled to register the Mark in view of section 16(3)(b) of the Act since the Mark was confusing with the Opponent's trademark applications: FRESH LIFE (appl. No. 1,638,904) and FRESH RESEARCH LAB Design (appl. No. 1,703,753).
- (f) The Mark is not registrable as, when depicted, written and/or sounded, it is deceptively misdescriptive of the character or quality of the Goods.
- (g) The Mark is not distinctive of the Applicant because it does not distinguish, nor is adapted to distinguish, the goods of the Applicant from the goods and services of the Opponent in view of the use of the Opponent's FRESH trademarks.

[6] The Applicant filed and served a counter statement.

[7] The Opponent filed as its evidence the affidavit of Francois Bonin. The Applicant filed as its evidence the affidavit of Dane Penney. Only the Opponent filed a written argument and attended a hearing.

Evidential Burden and Legal Onus

[8] Before considering the grounds of opposition, it is appropriate to review some of the technical requirements with regard to (i) the evidential burden on an opponent to support the allegations in the statement of opposition and (ii) the legal onus on an applicant to prove its case.

[9] With respect to (i) above, there is an evidential burden on an opponent to prove the facts in its allegations pleaded in the statement of opposition [*John Labatt Limited v The Molson Companies Limited* (1990), 30 CPR (3d) 293 (FCTD) at 298]. The presence of an evidential burden on an opponent with respect to a particular issue means that in order for the issue to be

considered at all, there must be sufficient evidence from which it could reasonably be concluded that the facts alleged to support that issue exist. With respect to (ii) above, the legal onus is on an applicant to show that the application does not contravene the provisions of the Act as alleged by an opponent (for those allegations for which the opponent has met its evidential burden). The presence of a legal onus on the applicant means that if a determinate conclusion cannot be reached once all the evidence is in, then the issue must be decided against the applicant.

Grounds of Opposition

Section 12(1)(d) Ground of Opposition

[10] The material date for a section 12(1)(d) ground of opposition is the date of my decision [*Park Avenue Furniture Corporation v Wickes/Simmons Bedding Ltd and The Registrar of TradeMarks* (1991), 37 CPR (3d) 413 (FCA)].

[11] The Opponent has met its evidential burden as I have exercised my discretion and confirm that the registrations pleaded by the Opponent set out below are extant [*Quaker Oats Co of Canada v Menu Foods Ltd* (1986), 11 CPR (3d) 410 (TMOB)]:

| No. | Trademark |
|------------|--------------|
| TMA617,598 | <i>fresh</i> |
| TMA906,500 | FRESH F21C |
| TMA936,009 | FRESH FAMILY |

[12] I now have to determine, on a balance of probabilities, if the Mark is likely to cause confusion with one or more of the Opponent's registered trademarks. I consider that the Opponent's best case is registration No. TMA617,598 for the trademark FRESH Design and will concentrate my analysis on it. This trademark is registered for use in association with:

body lotions, hand creams, face creams, bath gels, shower gels, face soaps, body soaps, shampoos, hair conditioners, cosmetics, namely, lipsticks, eye shadows, lip gloss, nail polish, face powders, foundation, scented incense, perfume, toilet waters, massage oils.

Test to Determine Confusion

[13] 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 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 or Nice Class. In making such an assessment, I must take into consideration all the relevant surrounding circumstances, including those listed in section 6(5): the inherent distinctiveness of the trademarks and the extent to which they have become known; the length of time the trademarks have been in use; the nature of the goods and services or business; the nature of the trade; and the degree of resemblance between the trademarks in appearance or sound or in the ideas suggested by them. The criteria in section 6(5) are not exhaustive and different weight will be given to each one in a context specific assessment [*Mattel, Inc v 3894207 Canada Inc*, 2006 SCC 22, [2006] 1 SCR 772 at para 54]. I also refer to *Masterpiece Inc v Alavida Lifestyles Inc* (2011), 92 CPR (4th) 361 (SCC) at para 49, where the Supreme Court of Canada states that section 6(5)(e), the resemblance between the marks, will often have the greatest effect on the confusion analysis.

[14] In *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée*, 2006 SCC 23, [2006] 1 SCR 824 at para 20, the Supreme Court of Canada set out how the test is to be applied:

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] at a time when he or she has no more than an imperfect recollection of the [prior] trademarks and does not pause to give the matter any detailed consideration or scrutiny, nor to examine closely the similarities and differences between the marks.

Summary of the Opponent's Evidence

[15] The Opponent filed the affidavit of Francois Bonin, its Chief Financial Officer (para 1). The Opponent's evidence summarized below leads to the conclusion that its trademark FRESH Design is well known in Canada in association with the Opponent's goods.

(a) The Opponent is a manufacturer and seller of high-quality cosmetic and personal care products, including skin care and body care preparations, hair care preparations, fragrances and other related beauty products (para 4). The FRESH Design trademark appears on containers like those set out below (para 9, Exhibit C).

| FRESH Rose Face Mask | FRESH Lotus Youth Preserve Face Cream | FRESH Bath and Shower Gel |
|---|--|--|
|  <p>The image shows the packaging for the FRESH Rose Face Mask. It is a white rectangular box with a clear window at the bottom. The text on the box includes "ROSE FACE MASK", "MASQUE DE VIE A LA ROSE", "REJUVENATING MASK WITH ROSES", and the FRESH logo at the bottom.</p> |  <p>The image shows the packaging for the FRESH Lotus Youth Preserve Face Cream. It consists of a blue rectangular box and a white jar with a silver lid. The text on the box includes "fresh", "LOTUS YOUTH PRESERVE FACE CREAM", and "WITH SUPER 7 COMPLEX".</p> |  <p>The image shows a clear plastic bottle of FRESH Bath and Shower Gel. The bottle is filled with a light-colored gel. The text on the bottle includes "fresh.", "HESPERIDES GRAPEFRUIT BATH & SHOWER GEL", and "WITH GENTLE PEARL EXTRACT".</p> |

(b) Since 2004, the vast majority of FRESH products have been sold and distributed through the national retailer Sephora (paras 11-12), including since 2015 through its website (para 13, Exhibits H-I). In 2016, FRESH products also were sold in two Nordstrom department stores in Toronto (para 17).

(c) Sales in Canada of the Opponent's FRESH products from 2004-2016 through Sephora are set out below (para 16):

| Year | Sales (CAN) | Year | Sales (CAN) |
|------|-------------|------|------------------|
| 2004 | 62,200 | 2011 | 2,658,800 |
| 2005 | 209,000 | 2012 | 4,008,100 |
| 2006 | 212,000 | 2013 | 6,4739,400 (sic) |
| 2007 | 470,800 | 2014 | 11,864,000 |
| 2008 | 779,700 | 2015 | 18,197,700 |
| 2009 | 1,254,400 | 2016 | 22,702,400 |
| 2010 | 1,858,000 | | |

- (d) The Opponent promotes its products on its website located at *www.fresh.com*, which has been accessible to customers located in Canada since 2000 (para 18). The FRESH Design trademark appears prominently on its website (Exhibit J). From 2009-2016, the Fresh website received over 439,500 visits from Internet users in Canada; in 2016 alone, the Fresh Website received over 100,000 visits from Internet users in Canada (para 19).
- (e) The FRESH products have been featured in articles published in print and online publications, including in magazines and newspapers and beauty and lifestyle websites including Vogue, Seventeen, Cosmopolitan, Vanity Fair, InStyle, Glamour, In Touch, Allure, People, New York Times, The Vancouver Sun, and Elle (Elle Canada and Elle Quebec) (para 22; Exhibit M). While the Opponent has not provided any evidence of the circulation of the magazines and newspapers referred to in Mr. Bonin's affidavit, I can take judicial notice that there is some circulation in Canada of magazines and newspapers such as The Vancouver Sun, Elle, New York Times and People [see, for example, *Northern Telecom Ltd v Nortel Communications Inc* (1987), 15 CPR (3d) 540

(TMOB) at 543; *Timberland Co v Wrangler Apparel Corp* (2005), 46 CPR (4th) 201 (TMOB) at 207].

[16] The Opponent's evidence also includes examples of the Applicant's Mark. In this respect, Mr. Bonin attaches evidence that the Applicant's FRESH CREAM products appear on printouts from various websites, including *www.philosophy.com*, *www.philosophyskincare.ca*, and *www.sephora.com* (paras 23-26; Exhibits N-Q). While this evidence may show that the Applicant's products appeared on these websites as of the date the printouts were obtained, they are not evidence that the Applicant's philosophy brand or the Mark was known to any extent to Canadian consumers.

Inherent Distinctiveness

[17] A trademark is inherently distinctive when nothing about it refers the consumer to a multitude of sources [*Compulife Software Inc v CompuOffice Software Inc* 2001 FCT 559 at para 19]. As noted by Justice Bédard in *Philip Morris Products SA v Imperial Tobacco Canada Limited*, 2014 FC 1237 at para 66, citing *Apotex Inc v Canada (Registrar of Trademarks)*, 2010 FC 291, whether a trademark is distinctive is a question of fact that is determined by reference to the message that it conveys to the casual consumer of the goods or services in question when the trademark is considered in its entirety as a matter of first impression.

[18] In my view, the parties' trademarks have a similar amount of inherent distinctiveness. The Opponent's trademark FRESH has a somewhat laudatory connotation as it may suggest that the products give consumers a fresh-faced appearance or allow them to feel fresh (see the dictionary definitions attached to the Penney affidavit, Exhibit C). Similarly, the Mark may have a descriptive connotation as consumers may understand that the Applicant's products contain FRESH CREAM or feel like FRESH CREAM. This idea is emphasized by what appears to be a recipe for FRESH CREAM appearing in the bottom half of the Mark. Finally, the limited stylization of the Applicant's and the Opponent's respective trademarks does not increase the distinctiveness of either trademark.

Extent Known and Length of Time in Use

[19] I am satisfied from the evidence of Mr. Bonin that the Opponent's trademark FRESH Design has been used extensively in Canada for a lengthy period of time. Consequently, I find it reasonable to conclude that the FRESH Design trademark is quite well known. While Mr. Bonin also attaches pages from websites appearing to show the Applicant's FRESH CREAM products, such as FRESH CREAM Body Lotion and FRESH CREAM shampoo, being available for sale to Canadian customers (paras 23-26, Exhibits N-Q), in the absence of evidence of sales, I do not find that the fact that these products appear on websites, including the Sephora website, has given rise to any significant Canadian reputation for the Mark.

Nature of the Goods and Services

[20] The Applicant's hair, bath and skin care preparations are identical to the goods covered by the Opponent's registration (TMA617,598), which lists "body lotions, hand creams, face creams, bath gels, shower gels, face soaps, body soaps, shampoos, hair conditioners, cosmetics, namely, lipsticks, eye shadows, lip gloss, nail polish, face powders, foundation, scented incense, perfume, toilet waters, massage oils". The Opponent's and Applicant's goods could be sold in identical stores and appear to be sold at Sephora.

Degree of Resemblance

[21] 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 of an opponent's trademark in the mind of a consumer [*Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée, supra* at para 20]. The preferable approach when comparing trademarks is to begin by determining whether there is an aspect of the trademark that is particularly striking or unique [*Masterpiece, supra* at para 64].

[22] With respect to the Mark, I find that the most striking component is FRESH CREAM due to its size and positioning within the Mark. I find this because the remainder of the text in the Mark appears in small font and appears to be in the nature of a recipe or suggesting one of the

ingredients in the Goods (specifically FRESH CREAM is made with whipping cream, vanilla and sugar which may be used to top treats and drinks). While the word PHILOSOPHY does appear in the trademark, given its size and placement at the start of the recipe for FRESH CREAM, I do not find this component to be striking.

[23] I find that there is a fair degree of resemblance in appearance and sound between the Opponent's FRESH Design trademark and the Mark, by reason of the shared component FRESH, which is the entirety of the Opponent's trademark and the first part of the most striking part of the Applicant's trademark. This is reinforced by the stylization and emphasis on FRESH in the Mark. Furthermore, I find it unlikely that a consumer would, as matter of first impression, sound out (or consider the mark when sounded) to include the recipe in small font set apart from the FRESH CREAM component beginning with "philosophy 2c. heavy whipping cream, 1 tsp. vanilla extract, 4 tbsp. confectioners' sugar ...". I find there to be less resemblance in ideas suggested as the Applicant's trademark suggests the food FRESH CREAM, while the Opponent's trademark has no such connotation. Finally, I note that there is no evidence that consumers would attribute any brand name or source significance to the word "philosophy" in the Mark, as there is no evidence that any Canadians have accessed the webpages featuring the FRESH CREAM products attached to the Bonin affidavit.

State of the Register and Marketplace Evidence

[24] State of the Register and marketplace evidence favours an applicant when the presence of a common element in marks causes consumers to pay more attention to the other features of the marks, and to distinguish between them by those other features [*McDowell v Laverana GmbH & Co. KG*, 2017 FC 327 at para 42].

[25] For example, in *Kellogg Salada Canada Inc v Maximum Nutrition Ltd*, [1992] 3 FC 442, 43 CPR (3d) 349 (CA), where the issue was whether confusion was likely between the trademark NUTRI-VITE and the trademarks NUTRI-MAX and NUTRI-FIBRE, the Federal Court of Appeal found that consumers were accustomed to making fine distinctions between various NUTRI trademarks based on small differences in their suffixes. In *Kellogg*, there were at least 47 trademark registrations and 43 trade names that contained the word "Nutri".

[26] In *McDowell*, Justice MacTavish explains that evidence of third party trademark registrations with a common element is only significant where the registered marks are commonly used in the market in question [*Cie Gervais Danone v Astro Dairy Products Ltd.*, 1999 CanLii 7656 (FC), 160 FTR 27 at para 17, [1999] FCJ No 408 (FCTD)].

[27] Mr. Penney, a Trademark Search Specialist employed by the Applicant's agent, includes the results of searches for trademark applications and registrations in Classes 3 and 5 containing the word FRESH (Exhibit B-2). Mr. Penney also printed out screen shots of websites and correlates these to a number of the applications and registration identified in his search (Exhibit D-2).

[28] The state of the Register evidence shows that there are hundreds of third party FRESH applications and registrations. The search located dozens of trademarks including FRESH in the skin care and cosmetics field including: FRESH & SMOOTH MOISTURIZING+MEADOWFOAM (TMA888,448); FRESH'N FREE (TMA238,922); FRESH AIR (TMA516,872); FRESH APPEAL (TMA352,461); FRESH BLUSH (TMA308,930); FRESH GLOW (TMA528,478), FRESH HYDRATION (TMA904,823); FRESH KITCHEN (TMA880,461); FRESH LASH (TMA236,897); and FRESH SENSATION (TMA695,161). I find that by virtue of the number of relevant trademarks identified by Mr. Penney, the state of the Register evidence is a factor which favours the Applicant despite the issues with the evidence outlined in paragraphs 29-30 below.

[29] First, a significant number of the results located in Mr. Penney's search are not in the parties field of interest, including the following representative examples, ACTI-FRESH (TMA944,545 for use with feminine sanitary protection products); ACTIFRESH (TMA854,687 for fabric softeners); AFFRESH (TMA824,357 for oven cooktop cleaners); ALWAYS FRESH (TMA810, 365 for deodorizing preparations for pet litter boxes); CITRUS FRESH (TMA925,956 for dishwasher cleaner); FRESH & CLEAN (TMA939,053 for disposable wipes impregnated with chemicals and compounds for vaginal and perineal cleansing); FRESH'N CLEAN (TMA314,096 for shampoos and crème rinses for animals); FORMALDE-FRESH (TMA391,004 for preservative for tissue specimens) and FRESH AMERICAN LAMB & Design (TMA629,656 for packaged fresh or chilled lamb carcasses). Second, well over a hundred of the

results are not based on use or are not allowed or registered. Third, a significant number of the marks do not include the FRESH component in a dominant or striking way (unlike the Mark and the Opponent's FRESH trademarks) including, by way of representative examples, REPLENISH RESTORE REFRESH (TMA882,058), PAPIER D'ARMÉNIE & DESSIN (TMA489,874), MR. CLEAN & Design (TMA177,379) and FLEECY FRESH AIR AIR FRAIS & DESIGN (TMA977,139).

[30] Fourth, there are issues with several of the webpage printouts attached to Mr. Penney's affidavit. Many of the webpages indicate that the third party product including FRESH as a component of its trademark is out of stock or not available for delivery; others are targeted towards the US market as their prices are given in USD, including those listed below. Finally, the FRESH component often is a very small or incidental part of the third party trademarks, unlike the Mark and the Opponent's trademark FRESH Design, as discussed below.

- (a) Trademarks where the webpage printout indicates the product is out of stock or not available for delivery: Clinique Fresh Bloom Allover Colour, Peony Blend, Secret Fresh Effects Spring Cotton Scent Women's Invisible Solid Antiperspirant & Deodorant, Fresh Glow Luminous Fluid Base, Degree Woman Body Responsive Antiperspirant & Deodorant, Speed Stick 24/7 Solid A/P Deodorant Fresh Rush, CoverGirl Fresh Complexion Under Eye Concealer, and L'Oreal Textureline Fresh Style Conditioner.
- (b) Trademarks where the webpage printouts indicate USD: Victoria's Secret PINK FRESH & CLEAN.
- (c) Trademarks where FRESH is a very small or incidental part: Veet Rasera Hair Removal Gel Cream Fresh Sensation + Bladeless Tool, L'Oréal Professionnel Tecni.Art Fresh Dust Dry Shampoo, and Right Guard Total Defense 5 Fresh Blast Power Gel Antiperspirant and Deodorant.

[31] In conclusion on this surrounding circumstance, despite the deficiencies identified above, this factor strongly favours the Applicant based on the number of relevant results identified. That being said, while I find this factor strongly favours the Applicant it is not determinative of

whether there is a reasonable likelihood of confusion as all of the surrounding circumstances must be considered.

Conclusion

[32] Having regard to the above, and bearing in mind that there is a fair degree of similarity in appearance and sound between the trademarks at issue, and that the Opponent has established that its FRESH Design trademark is well known in Canada in association with goods of an identical nature to the Applicant's which may be sold through the same channels of trade, I conclude that the Applicant has failed to discharge the legal burden upon it in respect of the issue of confusion between the Mark and the Opponent's FRESH Design trademark on a balance of probabilities.

[33] I make this finding even though the Applicant's state of the Register evidence indicates that consumers may pay more attention to the other features in the Mark. I find that a casual consumer somewhat in a hurry, and having an imperfect recollection of the Opponent's trademark FRESH Design, may mistakenly believe that the source of the Applicant's products sold in association with the Mark is the same as the source of the Opponent's products. In so finding, I have noted the Supreme Court of Canada's comments in *Mattel* (para 58): "the standard is not that of people 'who never notice anything' but of persons who take no more than 'ordinary care to observe that which is staring them in the face'". Finally, had there been evidence that Canadian consumers would understand that the word "philosophy" appearing in the Mark was a brand name or had source significance, my conclusion on this ground of opposition may have differed.

Section 2 Ground of Opposition

[34] The evidence of use of the FRESH Design trademark discussed in paragraph 15 is sufficient to meet the Opponent's burden with respect to the section 2 ground of opposition. The Applicant's position is no stronger as of the statement of opposition filing date [see *Metro-Goldwyn-Mayer Inc v Stargate Connections Inc* 2004 FC 1185, 34 CPR (4th) 317 at 324 for the material date for this ground of opposition]. Accordingly, I reach the same conclusion regarding

the likelihood of confusion as under the section 12(1)(d) ground of opposition and this ground of opposition also succeeds.

Remaining Grounds of Opposition

[35] Having already refused the application under two grounds, I will not discuss the remaining grounds of opposition.

Application No. 1,728,573 – fresh cream & Prose Design

[36] Application No. 1,728,573 for the trademark fresh cream & Prose Design set out below (the FRESH CREAM & Prose Design Mark) was filed on May 19, 2015 based on use in Canada in association with skin care preparations since at least as early as 2009. The FRESH CREAM & Prose Design Mark was advertised on February 24, 2016.

fresh
cream

philosophy: 1 c. heavy cream,
1 tbsp. powdered sugar. in large
bowl, whip heavy cream until thick.
add sugar. beat cream mixture
to stiff peaks. top your favorite
holiday treats and toddies with
fresh cream, then enjoy.

[37] The two oppositions are substantially similar with respect to issues, evidence and material dates. The only difference of note is that the design of FRESH CREAM & Prose Design Mark is in a different orientation with the recipe appearing in a more narrow column underneath FRESH CREAM (as if applied to a tube or jar). This difference, however, has no significant effect on the considerations for the section 12(1)(d) and 2 grounds of opposition. Consequently,

the same results follow for this application as for application No. 1,727,969, that is, the Opponent succeeds on both grounds.

Disposition

[38] Accordingly, pursuant to the authority delegated to me under section 63(3) of the Act, I refuse application Nos. 1,727,969 and 1,728,573 pursuant to section 38(12) of the Act.

Natalie de Paulsen
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

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

Hearing Date: 2020-07-15

Appearances

John C. Cotter For the Opponent

No one appearing For the Applicant

Agents of Record

Osler, Hoskin & Harcourt LLP For the Opponent

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