

LE REGISTRAIRE DES MARQUES DE COMMERCE  
THE REGISTRAR OF TRADEMARKS

**Citation: 2020 TMOB 113**

**Date of Decision: 2020-10-26**

**IN THE MATTER OF AN OPPOSITION**

**CWI, Inc.**

**Opponent**

**and**

**G N R Travel Centre Ltd.**

**Applicant**

**1,635,725 for GNR Camping World &  
Design**

**Application**

INTRODUCTION

[1] On July 18, 2013, G N R Travel Centre Ltd. (the Applicant) filed application No. 1,635,725 (the Application) to register the trademark GNR Camping World & Design, depicted below (the Mark).



[2] The Application is in association with the following goods and services (the Goods and Services):

**Goods:**

(1) Recreational vehicles, namely, campers, trailers, motor homes, fifth wheels, fold down trailers, camping vans, truck campers, and their parts and accessories

**Services:**

(1) (a) recreational vehicle dealership services. (b) sales services relating to recreational vehicles, namely, campers, trailers, motor homes, fifth wheels, fold down trailers, camping vans, truck campers, and their parts and accessories. (c) wholesale and retail services relating to recreational vehicles, namely, campers, trailers, motor homes, fifth wheels, fold down trailers, camping vans, truck campers, and their parts and accessories. (d) online sales of recreational vehicles, namely, campers, trailers, motor homes, fifth wheels, fold down trailers, camping vans, truck campers, and their parts and accessories. (e) financing services relating to recreational vehicles, namely, campers, trailers, motor homes, fifth wheels, fold down trailers, camping vans, truck campers, and their parts and accessories. (f) operation and maintenance of an internet website containing information relating to the above noted wares and services. (g) storage, service, repair and maintenance services relating to recreational vehicles, namely, campers, trailers, motor homes, fifth wheels, fold down trailers, camping vans, truck campers, and their parts and accessories.

[3] The Application is based on use of the Mark in CANADA since at least as early as July 24, 2008 in association with the Goods, and use of the Mark in CANADA since at least as early as May 3, 2007 in association with the Services.

[4] The Application was advertised for opposition purposes in the *Trademarks Journal* on April 15, 2015. On June 15, 2016, CWI, Inc. (the Opponent) filed a statement of opposition against the Application pursuant to section 38 of the *Trademarks Act*, RSC 1985, c T-13 (the Act). 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).

[5] The Opponent raises grounds of opposition based on registrability under section 12(1)(d), entitlement under sections 16(1)(a) and (b), distinctiveness under section 2, and non-compliance with section 30(b) of the Act.

[6] With respect to the section 12(1)(d) ground of opposition, the Opponent relied on registration No. TMA245,252 for the trademark CAMPING WORLD & Design. However, that registration was expunged pursuant to section 45 of the Act by the decision of the Registrar dated November 15, 2017; a decision that was upheld on appeal and is now final [see *Thompson Dorfman Sweatman LLP v CWI, Inc*, 2017 TMOB 152, 154 CPR (4th) 74 aff'd 2018 FC 941, 159 CPR (4th) 36]. Consequently, the section 12(1)(d) ground of opposition is dismissed and will not be discussed further in this decision.

[7] With respect to the section 16(1)(a) and (b) and section 2 grounds of opposition, the Opponent relies on three trademarks which each include, or are comprised of, the term “CAMPING WORLD”. These three trademarks relied on by the Opponent are identified in Schedule “A” to this decision, and are the subject of Canadian trademark applications with priority filing dates of July 17, 2013.

[8] Both parties filed evidence and written representations. A hearing was held at which both parties were represented.

#### EVIDENCE

[9] The evidence filed by the parties is briefly summarized below, and is discussed further in the analysis of the grounds of opposition. For ease of reference, in discussing the parties' evidence I will use the abbreviation “RV” for recreational vehicle, as is done by both parties.

#### **Opponent's evidence**

[10] The Opponent filed the affidavit of Tamara Ward sworn February 22, 2017 (the Ward Affidavit) and the affidavit of Jo-Anne McConnery sworn February 22, 2017 (the McConnery Affidavit). Neither of these affiants was cross-examined. The Opponent also filed certified copies of the Opponent's three Canadian trademark applications and one registration that are referred to in the Statement of Opposition.

## The Ward Affidavit

[11] Ms. Ward is the Chief Marketing Officer of the Opponent, a company based in Illinois, U.S.A. She indicates that the Opponent is one of North America's largest RV retailer and service providers. The Opponent began its operations in 1966 in Kentucky and, either directly or through its licensee FreedomRoads, LLC, operates RV centres that offer RV maintenance and repair services, the sale of RV parts and supplies and the installation thereof, the sale of new and used RVs, and the sale of camping equipment and related goods. The Ward affidavit describes these retail locations as the "CAMPING WORLD RV Centres".

[12] The Opponent operates websites at <[www.campingworld.com](http://www.campingworld.com)> and <[www.campingworld.ca](http://www.campingworld.ca)> where customers can learn about RVs and research new and used RVs for sale. These websites prominently display the trademark CAMPING WORLD. Customers can purchase RV and camping equipment from these websites, as well as via mail order and telephone order.

[13] There are 123 CAMPING WORLD RV Centre locations, each of which prominently display the trademark CAMPING WORLD on interior and exterior signage. All of these CAMPING WORLD RV Centres are located in the United States; none are located in Canada. However, Ms. Ward indicates that Canadian consumers regularly attend CAMPING WORLD RV Centres in the United States to view, research and purchase RVs as well as camping equipment, related parts and supplies. Sales of RVs from these retail locations in the United States to consumers with Canadian addresses between 2007 and 2016 amounted to more than \$97,000,000 USD. Sales of RV and camping equipment and related parts and supplies from these U.S. retail locations to consumers with Canadian addresses between 2009 and early 2017 amounted to more than \$56,000,000 USD.

[14] Canadians can also purchase RV and camping equipment via the Opponent's websites and have the products shipped to Canada. The Opponent also distributes catalogues to consumers in Canada and has done so since 2004. From 2004 to 2017, over 730,000 catalogues were mailed to Canadian consumers.

[15] Ms. Ward states that between 2009 and early 2017, more than 50,000 Canadians made purchases via the Opponent's websites or catalogue. The result is that more than 60,000 orders were placed by Canadians during these years, with a total value in excess of \$10,000,000 USD. Representative invoices from such purchases are included in the Ward Affidavit.

#### The McConnery Affidavit

[16] Ms. McConnery is a legal assistant employed by the Opponent's agent. Her affidavit includes the results of various searches of the Canadian Intellectual Property Office online trademarks database, as well as other internet searches and searches of the internet archive known as the Wayback Machine.

#### **Applicant's evidence**

[17] The Applicant filed the affidavit of Kevin Betzold sworn June 21, 2017 (the Betzold Affidavit). Mr. Betzold was cross-examined on his affidavit on November 23, 2017. The transcript and answers to undertakings from that cross-examination form part of the record.

[18] Mr. Betzold is the General Manager and Vice President of Finance and Administration of the Applicant. The Applicant was formed on November 1, 1999 from the amalgamation of two predecessor entities, and has its principal office in Winnipeg, Manitoba.

[19] Mr. Betzold indicates that since 1973 the Applicant and its predecessors have operated a business selling and servicing RVs and RV accessories, and that since 1973 the Applicant and its predecessors have used trademarks which prominently include the terms "GNR CAMPING WORLD" in association with the operation of that business. Included in Exhibit "A" to the Betzold Affidavit are examples of such trademarks, including advertisements in the Winnipeg Free Press newspaper dated February 12, 1976 which display trademarks which include the terms "GNR CAMPING WORLD".

[20] Mr. Betzold indicates that the Applicant's clients are primarily individuals located in Manitoba, British Columbia, Quebec, Alberta, Ontario and Saskatchewan; however, the Applicant has clients all across Canada due to the fact that individuals travel across Canada in their RVs and stop at the Applicant's store to purchase goods and services.

[21] Mr. Betzold states that since at least as early as July 24, 2008 the Applicant has been using the Mark in association with the Goods listed in the Application. In this regard, he describes that since that date, the Applicant has sold the Goods with stickers attached which display the Mark. Examples of RVs and RV accessories with stickers bearing the Mark are included as Exhibit “C”. In addition, the Betzold Affidavit includes as Exhibit “D” sample purchase agreements for certain of the Goods, the earliest dated July 12, 2008, wherein the purchase agreements display the Mark.

[22] Mr. Betzold also describes that between February 2013 and February 2015, the Applicant offered for sale a private label line of RVs under the trademark SERENITY, to which the above-referenced stickers bearing the Mark were applied.

[23] With respect to the Services identified in the Application, Mr. Betzold indicates that since at least as early as May 3, 2007, the Applicant has used the Trademark in association with the Services. However, I note that the Betzold Affidavit does not include any examples of the display of the Mark in question on or prior to the claimed date of May 3, 2007. The Betzold Affidavit does include numerous examples of the display of the Mark in association with the Services, such as sample purchase agreements from July 12, 2008 to October 3, 2008 (Exhibit “D”), display of the Mark at a trade show in Winnipeg in March 2008 (Exhibit “E”), and display of the Mark in print advertisements from July 2007 to October 2007 (Exhibit “F”). The Betzold Affidavit also includes numerous examples of the display of the Mark on the Applicant’s website, including archived versions of that website from the Wayback Machine (Exhibit “S”). In this regard, Mr. Betzold states at paragraph 35 of his affidavit that “GNR has advertised the Services in association with the Trademark continuously on its website at <http://www.gnrcw.com> since at least as early as May 3, 2007 and continuing to date in Canada.” However, no examples of the display of the Mark on the website on or prior to May 3, 2007 are included.

[24] Mr. Betzold indicates that since 2007, the Applicant has had sales in Canada of the Goods and Services in association with the Mark in excess of \$9,000,000 CAD per year, and since 2007 has spent in excess of \$2,100,000 CAD in advertising and marketing the Goods and Services in association with the Mark in Canada.

[25] Mr. Betzold indicates that the Applicant has not received notice of any confusion from its clients or prospective clients regarding the Mark, vis-à-vis the Opponent's trademarks.

#### ONUS AND MATERIAL DATES

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

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

- Section 38(2)(a) / 30 of the Act – the filing date of the Application [*Georgia-Pacific Corp v Scott Paper Ltd* (1984), 3 CPR (3d) 469 (TMOB) at 475];
- Section 38(2)(c) / 16(1)(a) and (b) of the Act – the date of first use of the Applicant's Mark;
- Sections 38(2)(d) and 2 of the Act - the filing date of the opposition [*Metro-Goldwyn-Mayer Inc v Stargate Connections Inc*, 2004 FC 1185, 34 CPR (4th) 317 (FC)].

#### ANALYSIS OF THE GROUNDS OF OPPOSITION

##### **Section 30(b) ground of opposition**

[28] With a ground of opposition based on section 30(b) of the Act, it is well established that if the date of use claimed in the application is earlier than the applicant's actual date of first use of the trademark in Canada, the section 30(b) ground of opposition is successful [see *Scenic Holidays (Vancouver) Ltd v Royal Scenic Holidays Ltd*, 2010 TMOB 63; *Pharmacia AB v Homeocan Inc* (2003), 33 CPR (4th) 375 (TMOB) at paras 6-8; *Hearst Communications Inc v Nesbitt Burns Corp* (2000), 7 CPR (4th) 161 (TMOB) at paras 7-11].

[29] An opponent's initial evidential burden under section 30(b) is light [*Tune Masters v Mr P's Mastertune Ignition Services Ltd* (1986), 10 CPR (3d) 84 (TMOB) at 89] and can be met by reference not only to the opponent's evidence but also to the applicant's evidence [*Labatt Brewing Co v Molson Breweries, A Partnership* (1996), 68 CPR (3d) 216 (FCTD) at 230]. However, an opponent may only successfully rely upon the applicant's evidence to meet its initial burden if the opponent shows that the applicant's evidence puts into issue the claim set forth in the application [*Corporativo de Marcas GJB, SA de CV v Bacardi & Company Ltd*, 2014 FC 323 at paras 30-38].

[30] In this case, the Application claims use of the Mark in association with the Goods since at least as early as July 24, 2008, and use of the Mark in association with the Services since at least as early as May 3, 2007. As the claimed dates of use for the Goods and the Services differ, and the specific issues raised by the evidence relating to the Goods and Services also differ, I address the Goods and Services separately, below. However, I will first address a preliminary issue raised by the Opponent that relates to both the Goods and the Services.

#### Preliminary Issue

[31] With respect to both the Goods and Services, the Opponent takes the position that the Applicant's display of the Mark in close proximity to an illustrated raccoon character (for example, see Exhibits "C" through "F" to the Betzold Affidavit) does not constitute use of the Mark as applied for. I respectfully disagree with the Opponent on this point. In my view, the display of the Mark in combination with the raccoon character still constitutes use of the Mark for the purpose of section 4 and section 30(b) of the Act. It is well established that multiple trademarks can be used together [see *AW Allen Ltd v Canada (Registrar of Trade Marks)* (1985), 6 CPR (3d) 270 (Fed TD) at 272], and in my view a typical consumer would perceive the Mark as being a separate trademark from the illustrated raccoon character. Indeed, in many instances in the Applicant's evidence the Mark is displayed either on its own or substantially separated from the illustrated raccoon character (for example, see Exhibit "E" to the Betzold Affidavit).



## Goods

[32] Section 4(1) of the Act reads as follows:

4 (1) A trademark is deemed to be used in association with goods if, at the time of the transfer of the property in or possession of the goods, in the normal course of trade, it is marked on the goods themselves or on the packages in which they are distributed or it is in any other manner so associated with the goods that notice of the association is then given to the person to whom the property or possession is transferred.

[33] With respect to the claimed use of the Mark in association with the Goods since July 24, 2008, the Applicant is relying on its display of the Mark on stickers which are affixed to the Goods (or the packaging of the goods) at the time of sale to customers. Examples of these stickers bearing the Mark, attached to RVs and packaging for RV accessories, sold as part of the Applicant's retail business, are included as Exhibit "C" to the Betzold Affidavit.

[34] The Applicant's display of the Mark in this fashion appears to comply with a plain reading of section 4(1) of the Act, in that via the stickers the Applicant's Mark is "marked" on the goods themselves or their packages at the time of transfer to the customer. However, as argued by the Opponent, the issue is that the Applicant is a *retailer* rather than a manufacturer, and as such the products which the Applicant is selling and to which it is affixing its stickers bearing the Mark are the goods of third parties branded with their own separate trademarks. The nature of the Applicant's business in this regard was clearly established during the cross-examination of Mr. Betzold [see cross-examination transcript Q77 to Q98]. I note as an aside that the evidence indicates that the Applicant did have its own private label line of RVs under the brand "Serenity" (to which stickers bearing the Mark were also applied); however, that did not occur until 2013, well after the claimed date of use in association with Goods.

[35] As a consequence, I am satisfied that the Opponent has met its initial evidential burden via the Applicant's evidence and the cross-examination of Mr. Betzold, sufficient to raise an issue as to whether the Applicant has used the Mark in association with the Goods for the purposes of section 4(1) since the claimed date of July 24, 2008.

[36] On this issue, the Opponent's argument is that the Applicant's display of the Mark by way of the stickers affixed to the Goods (or their packaging) is not use of the Mark in association

with “goods” for the purpose of section 4(1), since the products bearing the stickers were not manufactured by the Applicant (or under the Applicant’s control or direction); they are instead third party goods sold by the Applicant in its role as a retailer, and the display of the Mark on the stickers instead constitutes use in association with the Applicant’s retail services. I sympathize with the Opponent’s argument on this point. However, in my view, the weight of existing legal authority suggests that such display does constitute use of a trademark in association with goods pursuant to section 4(1) [for example, see *McDowell v Laverana GmbH & Co. KG*, 2016 FC 1276 at paras 18 and 19; *Riches, McKenzie & Herbert LLP v Park Pontiac Buick GMC Ltd* (2005), 50 CPR (4th) 391 (TMOB) at para 9; *Stevenson Hood Thornton Beaubier LLP v Deedee Bodnar*, 2010 TMOB 144 at para 8]. While many of these cases were decided in the context of proceedings under section 45 of the Act, I see no basis to depart from the interpretation of section 4(1) in those decisions in the context of the analysis of a section 30(b) ground of opposition.

[37] In view of the above, I am satisfied that the Applicant has demonstrated on a balance of the probabilities that it has used the Mark in association with the Goods since the claimed date of July 24, 2008. Consequently, I dismiss the section 30(b) ground of opposition as it relates to the Goods.

### Services

[38] Section 4(2) of the Act reads as follows:

(2) A trademark is deemed to be used in association with services if it is used or displayed in the performance or advertising of those services.

[39] To meet its initial evidential burden for the section 30(b) ground of opposition with respect to the Services, the Opponent relies on archived versions of the Applicant’s website from dates shortly before and after the May 3, 2007 claimed date of use (see McConnery Affidavit paragraph 12 and Exhibit 18A through D). These archived versions of the Applicant’s website do not display the specific Mark which is the subject of the Application.

[40] At paragraph 35 of the Betzold Affidavit Mr. Betzold states that “GNR has advertised the Services in association with the [Mark] continuously on its website at <http://www.gnrcw.com>

since at least as early as May 3, 2007 and continuing to date in Canada.” However, the Betzold Affidavit notably does not include any examples of the display of the Mark (on the website or otherwise) on or before the claimed date. Exhibit “S” to the Betzold Affidavit includes archived examples of the Applicant’s website from the Wayback Machine which display the Mark, but these are dated from February 2012 to May 2016, well after the date of use claimed in the Application.

[41] In some cases, the absence of an applicant’s trademark on a website, alone, has been held to be insufficient to meet an opponent’s initial evidential burden under section 30(b), particularly if the goods or services concerned would not necessarily be offered online [see *Littlewoods Ltd. v. Grabish*, 2013 TMOB 34, 111 CPR (4th) 438 (TMOB)]. However, in the present case, some of the Services in the Application are online services. Also, the only specific reference in the Applicant’s evidence to its alleged display of the Mark as of May 3, 2007 is the alleged display of the Mark on its website (see paragraph 35 of the Betzold Affidavit), and that is the very type of use which is called into question by Exhibits 18A through D of the McConnery Affidavit. Further, I find it notable that despite providing extensive evidence of its use of the Mark in association with the Services, including examples of use dating back to July 2007, the Applicant has not provided a single example of the use of the Mark on or before the claimed date of May 3, 2007, or any explanation as to why the Mark did not appear on the archived versions of its website shortly before and after the claimed date.

[42] Ultimately, for the reasons set out above, I am satisfied that the Opponent has met its initial evidential burden for the section 30(b) ground of opposition in respect of the Services, and the Applicant has not satisfied me on a balance of probabilities that it has used the Mark in association with the Services since the claimed date of May 3, 2007. Consequently, the section 30(b) ground of opposition with respect to the Services is successful.

### **Grounds of opposition based on confusion**

[43] The Opponent’s grounds of opposition under sections 16(1)(a) and (b) and section 2 of the Act all require a finding of a likelihood of confusion between the Mark and one or more of the Opponent’s three trademarks (identified in Schedule “A” to this decision) which include, or are comprised of, the term “CAMPING WORLD”. The material dates for these grounds of

opposition differ, as noted in paragraph 27 of this decision. In conducting the confusion analysis, below, I do so with reference to the material date for the distinctiveness ground of opposition, namely, June 15, 2016. However, in my view, the outcome of the confusion analysis in this case would be the same regardless of which material date is applied.

[44] In considering the issue of confusion, I will focus on the Opponent's trademark CAMPING WORLD (i.e. the word trademark which is the subject of Canadian application No. 1,635,827), as in my view this represents the Opponent's best case. If there is no likelihood of confusion between the Applicant's Mark and the Opponent's trademark CAMPING WORLD, there would be no likelihood of confusion with the design versions of the Opponent's trademark, as the design elements of the Opponent's design trademarks do not resemble the Applicant's Mark.

#### Test for confusion

[45] The test to determine the issue of confusion is set out in section 6(2) of the Act where it is stipulated that the use of a trademark causes confusion with another trademark if the use of both trademarks in the same area would likely lead to the inference that the goods and services associated with those trademarks are manufactured, sold, 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. 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: 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.

[46] These criteria are not exhaustive and different weight will be given to each one in a context specific assessment [see *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée*, 2006 SCC 23, 49 CPR (4th) 401 (SCC); *Mattel, Inc v 3894207 Canada Inc*, 2006 SCC 22, [2006] 1 SCR 772 (SCC) at para 54]. I also refer to *Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27, 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.

[47] The test for confusion is assessed as a matter of first impression in the mind of a casual consumer somewhat in a hurry who sees the applicant's mark, at a time when he or she has no more than an imperfect recollection of the opponent's trademark, and does not pause to give the matter any detailed consideration or scrutiny, nor to examine closely the similarities and differences between the marks [*Veuve Clicquot, supra*, at para 20].

*Inherent distinctiveness of the trademarks and extent to which they have become known*

[48] I consider the Opponent's trademark CAMPING WORLD to have a low degree of inherent distinctiveness, as it is highly suggestive of the nature of the goods and services being offered by the Opponent, namely, the sale and service of RVs and related accessories which are used for camping.

[49] The Applicant's Mark has a higher degree of inherent distinctiveness than the Opponent's trademark. In particular, in my view, the most striking and dominant element of the Applicant's Mark is the term "GNR". It is the term displayed in the largest font and is the first term read when viewing the Mark. While abbreviations such as "GNR" on their own are generally not considered to have a high degree of distinctiveness, in this case, in my view, the presence of the term "GNR" combined with the other design elements of the Mark, results in the Mark as a whole having a higher degree of inherent distinctiveness than the Opponent's trademark CAMPING WORLD.

[50] With respect to the extent to which the parties' trademarks have become known, both parties have provided evidence that their respective trademarks are known in Canada to some extent at least. The Opponent has no physical stores in Canada, but the evidence indicates that the Opponent has sold RV and camping accessories to customers in Canada via its website (for which sales figures are provided dating back to 2009), and has advertised its goods and services in Canada via catalogue distribution since at least 2004. In comparison, the Applicant's business is located in Canada and the evidence indicates that it has been continuously using its Mark in Canada since at least 2008. The parties' sales figures in Canada appear to be comparable.

[51] Considering that the Applicant's Mark is more inherently distinctive than the Opponent's trademark, and the parties' trademarks appear to be known in Canada to a similar extent, on balance, in my view, this factor favours the Applicant.

*Length of time the trademarks have been in use*

[52] The Opponent's evidence indicates that it has been using its trademark in Canada via its catalogue distribution since 2004. The Opponent has provided sales figures in Canada in association with its trademark CAMPING WORLD since 2009.

[53] The Applicant's evidence indicates that it has been using the Mark in Canada in since at least 2008.

[54] In my view, this factor favours the Opponent, but only to a slight extent.

*Nature of the goods and services; nature of the trade*

[55] The nature of the parties' goods and services overlap directly. Both parties' businesses relate to the sale and service of RVs and RV accessories. This factor therefore favours the Opponent.

*Degree of resemblance*

[56] Resemblance must be assessed with a consideration of whether there is an aspect of the mark that is particularly striking or unique [see *Masterpiece*, *supra*, at para 64].

[57] The striking aspect of the Opponent's trademark is the term "CAMPING WORLD".

[58] In my view, the striking or unique aspect of the Applicant's Mark is the term "GNR", given its size and prominence within the Mark as a whole. While the Applicant's Mark incorporates the entirety of the Opponent's trademark CAMPING WORLD, in my view, that alone is not sufficient to give rise to a high degree of resemblance overall, given the highly suggestive, if not descriptive, nature of the term "CAMPING WORLD", and its secondary placement within the Mark as a whole.

[59] Thus, while there is a degree of resemblance owing to the common presence of the term “CAMPING WORLD”, in my view, the marks as a whole are sufficiently different in appearance, sound and idea conveyed that this factor favours the Applicant.

### *Surrounding circumstances*

#### Concurrent use

[60] Evidence of instances of actual confusion is not required in order to demonstrate a likelihood of confusion. However, concurrent use of two trademarks without such instances of actual confusion is a surrounding circumstance which can suggest an absence of a likelihood of confusion, depending on the specific nature and duration of that concurrent use [see *Christian Dior SA v Dion Neckwear Ltd*, 2002 FCA 29, 20 CPR (4th) 155 (FCA) at para 19; see also *Maple Leaf Consumer Foods Inc v Kelbro Enterprises Inc*, 2012 TMOB 28, 99 CPR (4th) 424].

[61] In this case, the evidence indicates that the Applicant’s Mark and the Opponent’s trademark CAMPING WORLD have coexisted in the Canadian marketplace since at least 2008 (with both parties having reasonably substantial Canadian sales since that time), and there is no evidence of record of any instances of actual confusion.

[62] I note that the coexistence of the Applicant’s Mark with the Opponent’s trademarks has little, if any, relevance to the section 16(1)(a) and (b) grounds of opposition for which the material date is the Applicant’s date of first use of the Mark. However, the Applicant’s evidence demonstrates that the Applicant and its predecessors have been using trademarks which include the terms “GNR” and “CAMPING WORLD” in Canada since at least as early as 1976. While these earlier trademarks were not identical to the Mark which is the subject of this proceeding, they nevertheless included the term “CAMPING WORLD” which is the basis for the Opponent’s confusion allegation in this case.

[63] The above facts suggest that, at least in this case, the mere presence of the term “CAMPING WORLD” as a component of the Applicant’s Mark is not sufficient to give rise to a likelihood of confusion. This is a surrounding circumstance which favours the Applicant.

### Conclusion regarding confusion

[64] Taking into account all of the relevant factors set out above, and particularly in view of the low degree of inherent distinctiveness of the Opponent's trademark CAMPING WORLD, the limited degree of resemblance between the parties' marks as a whole, and the absence of any instances of actual confusion despite many years of coexistence, I am satisfied that the Applicant has met its legal burden of demonstrating on a balance of probabilities that there is no likelihood of confusion.

[65] Consequently, the non-entitlement grounds of opposition under sections 16(1)(a) and 16(1)(b), and the non-distinctiveness ground of opposition under section 2, are rejected on the basis that there is no likelihood of confusion.

[66] In addition, I also reject the Opponent's section 16(1)(b) ground of opposition on the basis that the priority filing date of the Opponent's three applications, namely, July 17, 2013, did not precede the Applicant's first use of its Mark. As discussed above, the Applicant's evidence demonstrates that it has been using the Mark since at least as early as 2008. In this regard, the Opponent did not meet its initial evidential burden with respect to the section 16(1)(b) ground. In any event, for the reasons discussed above, in my view, each of the section 16(1)(a), (b) and section 2 grounds fail as the Applicant has satisfied me that there is no likelihood of confusion.

### DISPOSITION

[67] Pursuant to the authority delegated to me under section 63(3) of the Act, the Application is refused with respect to the Services and the opposition is rejected with respect to the Goods pursuant to section 38(12) of the Act.


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Timothy Stevenson  
Member  
Trademarks Opposition Board  
Canadian Intellectual Property Office



SCHEDULE A

**Trademarks on which Opponent relies**

<b>Trademark</b>	<b>Application Number</b>	<b>Services</b>
CAMPING WORLD	1635827	(1) Retail store services, mail order services, electronic and mail order catalog services, and computerized on-line ordering services, all in the field of recreational vehicles, recreational vehicle equipment, recreational vehicle accessories, recreational vehicle parts, recreational vehicle supplies, camping equipment, camping accessories and camping supplies (2) Maintenance, service and repair of recreational vehicles; installation, service and repair of recreational vehicle equipment, recreational vehicle accessories and recreational vehicle supplies; Rental of recreational vehicles, motor homes, campers, travel trailers and fifth wheel trailers
	1635828	(1) Retail store services, mail order services, electronic and mail order catalog services, and computerized on-line ordering services, all in the field of recreational vehicles, recreational vehicle equipment, recreational vehicle accessories, recreational vehicle parts, recreational vehicle supplies, camping equipment, camping accessories and camping supplies (2) Maintenance, service and repair of recreational vehicles; installation, service and repair of recreational vehicle equipment, recreational vehicle accessories and recreational vehicle supplies; Rental of recreational vehicles, motor homes, campers, travel trailers and fifth wheel trailers

	<p>1635829</p>	<p>(1) Retail store services, mail order services, electronic and mail order catalog services, and computerized on-line ordering services, all in the field of recreational vehicles, recreational vehicle equipment, recreational vehicle accessories, recreational vehicle parts, recreational vehicle supplies, camping equipment, camping accessories and camping supplies</p> <p>(2) Maintenance, service and repair of recreational vehicles; installation, service and repair of recreational vehicle equipment, recreational vehicle accessories and recreational vehicle supplies; Rental of recreational vehicles, motor homes, campers, travel trailers and fifth wheel trailers</p>
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**TRADEMARKS OPPOSITION BOARD  
CANADIAN INTELLECTUAL PROPERTY OFFICE  
APPEARANCES AND AGENTS OF RECORD**

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**HEARING DATE** 2020-08-17

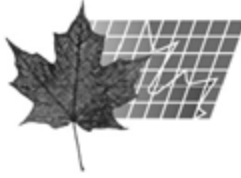
**APPEARANCES**

Heidi Jensen	For the Opponent
Lynda Troup	For the Applicant

**AGENTS OF RECORD**

Jensen IP	For the Opponent
Thompson Dorfman Sweatman LLP	For the Applicant

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LE REGISTRAIRE DES MARQUES DE COMMERCE  
THE REGISTRAR OF TRADEMARKS

**Citation: 2020 TMOB 113**

**Date of Corrigendum: 2020-12-23**

**IN THE MATTER OF AN OPPOSITION**

**CWI, Inc.**

**Opponent**

**and**

**G N R Travel Centre Ltd.**

**Applicant**

**1,635,725 for GNR Camping World &  
Design**

**Application**

[1] It has come to my attention that paragraph 67 of my decision recently issued in the above-noted opposition (2020 TMOB 113) contains a potential ambiguity as to the outcome of the proceeding.

[2] Accordingly, paragraph 67 of my decision dated October 26, 2020 is amended to read:

[67] Pursuant to the authority delegated to me under section 63(3) of the Act, ~~I reject all of the grounds of opposition pursuant to section 38(12) of the Act, with the exception of the ground of opposition based upon non-conformity with section 30(b) of the Act with respect to the Services. Accordingly, the Application is refused with respect to the Services and the opposition is rejected with respect to the Goods pursuant to section 38(12) of the Act, the claim to use of the Mark in Canada in association with the Services since at least as early as May 3, 2007 will be deleted from the Application, and the Application is restricted to the basis of use of the Mark in Canada since at least as early as July 24, 2008 in association with the Goods.~~

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Timothy Stevenson  
Member  
Trademarks Opposition Board  
Canadian Intellectual Property Office