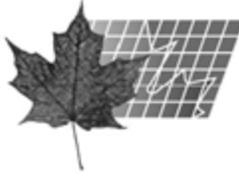


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C I P O

LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADEMARKS

Citation: 2021 TMOB 254

Date of Decision: 2021-11-25

IN THE MATTER OF AN OPPOSITION

GL SPE LLC

Opponent

and

Bruce Sheasby

Applicant

1,704,010 for YOUR GRACE LAND

Application

OVERVIEW

[1] GL SPE LLC (the Opponent) is a corporate entity that organizes, manages and licenses intellectual property relating to the late singer and actor, Elvis Presley. The estate in Memphis, Tennessee known as Graceland was a residence of the late Mr. Presley, and now operates as a tourist attraction that has been visited by millions of people. The Opponent is the owner of multiple Canadian registrations for trademarks which include or are comprised of the term GRACELAND.

[2] The Opponent opposes application No. 1,704,010 (the Application) for the trademark YOUR GRACE LAND (the Mark) filed by Bruce Sheasby (the Applicant). The Applicant is an ordained minister who performs a variety of services in connection with his ministry, including live musical performances and hosting a radio show. In much of the Applicant's marketing

material the Applicant is referred to as “Reverend Elvis”. The Applicant also legally changed his name to include “Elvis” as a middle name.

[3] For the reasons set out below, the Application is refused as the Applicant has not met his burden to demonstrate that there is no likelihood of confusion between the parties’ trademarks.

THE RECORD

[4] The Application was filed on November 21, 2014 and lists the following goods and services (the Goods and Services):

Goods

(1) Sound recordings, namely CDs and downloadable sound recordings featuring music and information on the topic personal improvement; pre-recorded compact discs and DVDs containing audio and video recordings featuring performances by an individual or musical groups; books, booklets, pamphlets and brochures on the topic of business management and personal improvement; digital media, namely, audio files, and audio recordings, and video recordings, all featuring performances by an individual or musical groups.

Services

(1) Business management consultancy and advisory services; entertainment services, namely, live performances by an individual or musical groups; broadcast of radio programmes.

(2) Church services; wedding ceremony services; memorial services; religious counseling services; organizing and conducting seminars, conferences, lectures, presentations, workshops, and events in the fields of theology, apologetics, evangelism, pastoral care, counselling, and religious study.

(3) Operation of performing arts practice and teaching studios; real estate services; operation of a community centre offering athletic, cultural and social services; book publishing services.

[5] The Application is based on use of the Mark in Canada since at least as early as 2011 on Services (1), since at least as early as 2012 on Services (2), and proposed use in association with the Goods and Services (3).

[6] The Application was advertised for opposition purposes in the *Trademarks Journal* on September 2, 2015. On November 3, 2015, 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, and pursuant to section 70 of the Act, the grounds of opposition in this proceeding will be assessed based on the Act as it read prior to June 17, 2019.

[7] The Opponent raises grounds of opposition based on registrability under section 12(1)(d), entitlement under sections 16(1)(a) and 16(3)(a), distinctiveness under section 2, and non-compliance with sections 30(b), (e) and (i) of the Act. For the grounds of opposition based on an alleged likelihood of confusion, the Opponent relies on its trademarks which include or are comprised of the term GRACELAND, which the Opponent asserts it has previously used or made known in Canada. The Opponent is the owner of the following Canadian trademark registrations:

Reg. No.	Trademark	Date Registered	Goods
TMA471,137	GRACELAND	February 18, 1997	Souvenir items, namely, collector plates and music boxes; paper goods, namely, calendars and date books.
TMA698,439	GRACELAND	October 12, 2007	Wine
TMA471,135	GATES OF GRACELAND	February 18, 1997	Souvenir items, namely, collector plates, stamp presentation sets, model Cadillacs, bell jars, jewelry and music boxes; and paper goods, namely, lithographs.

[8] The Applicant filed a counter statement denying the grounds of opposition.

[9] Both parties filed evidence, written representations and attended a hearing.

EVIDENCE

[10] The parties' evidence is summarized below and is discussed further in the analysis of the grounds of opposition.

Opponent's Evidence

[11] The Opponent filed as its evidence the affidavit of Gary Hahn sworn December 15, 2016 (the Hahn Affidavit), the affidavit of Jo-Anne McConnery sworn December 16, 2016 (the McConnery Affidavit) and certified copies of Canadian registration Nos. TMA698,439; TMA471,135; and TMA471,137. Neither Mr. Hahn nor Ms. McConnery was cross-examined.

Hahn Affidavit

[12] Mr. Hahn is the VP, Marketing & Media with the Opponent. He describes the Opponent as a corporate entity that organizes and manages certain intellectual properties relating to the late Elvis Presley and Elvis Presley Enterprises, Inc. (EPE). EPE was created to conduct business and manage assets related to the late Mr. Presley.

[13] Mr. Hahn's affidavit includes a variety of information demonstrating the fame of Elvis Presley, including that he holds the Guinness World Record as the best selling solo artist in the world, with over 1 billion records sold worldwide and 129.5 million records sold within the United States and Canada.

[14] Mr. Presley purchased a property in Memphis, Tennessee on March 19, 1957. This property was known as GRACELAND. The property and mansion became a gathering place for Mr. Presley's entourage and fans, and was ultimately the location of Mr. Presley's passing and grave.

[15] On June 7, 1982, the estate was opened to the public and has since become a significant tourist attraction that averages more than half a million visitors each year. The GRACELAND estate is listed in the National Register of Historic Places in the United States and the mansion is one of the most-visited private homes in the U.S., second only to the White House. Based on information collected from the location of online ticket purchases and credit card receipts from on-site ticket purchases, Mr. Hahn states that, at a minimum, tens of thousands of Canadians have visited the GRACELAND estate from 2014 to the present.

[16] Mr. Hahn states that the Opponent is the owner of the trademark GRACELAND and licenses others, including EPE, to use that trademark on a broad range of goods and services. The Opponent maintains direct or indirect control over the character or quality of the goods and services used in Canada in association with the trademark GRACELAND, including quality control standards which EPE must maintain when offering goods and services in association with the trademark.

[17] EPE operates the website located at *www.graceland.com* (the GRACELAND website) which offers and sells a range of goods and services in association with the trademark

GRACELAND, including tickets to tours of the estate, arranging wedding ceremonies, booking hotel accommodations, as well as GRACELAND branded products such as clothing, books, and DVDs. Mr. Hahn confirms that GRACELAND branded products were sold and shipped to Canada each year between 2014 and 2016.

[18] Mr. Hahn also describes that Canadians are exposed to the trademark GRACELAND by way of multiple Canadian tour companies that advertise the GRACELAND estate as part of holiday tours which they arrange in which Memphis is a destination.

McConnery Affidavit

[19] Ms. McConnery is a Legal Assistant with the prior agent of the Opponent. Her affidavit includes the results of various searches of the Canadian Intellectual Property Office trademarks database, the results of online searches for articles relating to the Applicant and the Opponent, as well as certified copies of certain United States trademark applications and registrations.

Applicant's Evidence

[20] The Applicant filed as his evidence an affidavit in his own name sworn April 13, 2017 (the Sheasby Affidavit) and the affidavit of Dwain Sands sworn April 13, 2017 (the Sands Affidavit). Both the Applicant and Mr. Sands were cross-examined on their respective affidavits, and the transcripts of those cross-examinations, as well as written answers provided to undertakings, were made of record.

Sheasby Affidavit

[21] The Applicant identifies his full legal name as Bruce Reinhold Elvis Sheasby. The Applicant is the Senior Pastor and President of the Spiritual Community Church of the West, a Canadian federally incorporated registered charity, also operating under the names "Your Grace Land" and "Your Grace Land Radio".

[22] The Applicant was ordained as a minister in 1995 in the United Church of Canada and served in that capacity with the United Church until November 2006. In December 2006 he started the Spiritual Community Church of the West.

[23] In 1997, the Applicant hosted “The International Elvis Gospel Festival” as a church fundraiser in Vauxhall, Alberta. The event received media attention and the Applicant describes that he was given the name “Reverend Elvis” by a Toronto Sun reporter. The Applicant states that he subsequently added “Elvis” to his legal name in 2004.

[24] Since 2007, the Applicant hosted an event in Calgary known as the “Rev Elvis & Friends Blue Christmas” as a benefit for Calgary charities.

[25] The Applicant describes that through discussions with church members and the church music director Dwain Sands in 2011 the name “Your Grace Land” was adopted for the Applicant’s Sunday church services and the name of the radio program was changed to “Your Grace Land Radio”. On cross-examination, the Applicant explained that he is the owner of the Mark, and that for certain goods and services he uses the Mark in his personal capacity and for others he licenses the use of the Mark to the Spiritual Community Church of the West [Sheasby cross-examination at p. 49, l.14 – p. 50, l. 10]. I note that the Opponent contests the sufficiency of that license; however, in my view, it is not necessary to address the licensing issue in order to resolve this opposition.

[26] The Sheasby Affidavit includes as exhibits multiple examples of the Applicant’s depiction of the Mark on various goods and promotional materials. By way of example, Exhibit 18 is a printout from the Applicant’s website at www.yourgraceland.com (this printout was also included as Exhibit 27 to the McConnery Affidavit). The webpage states in part as follows:

*Your Grace Land*TM is the hub of services, multimedia and events of Rev. Bruce R.E. Sheasby, The Reverend Elvis. *Your Grace Land*TM offers message and music to lift your spirit and encourages *Inspirational Core Values*TM. Living individually and/or collectively with these *Inspirational Core Values*TM is what Rev. Elvis calls *Your Grace Land*TM.

[27] Exhibit 19 to the Sheasby Affidavit is a printout of the results of an online search for the term “graceland chuch”. Exhibit 25 is a copy of the covers, publishing and chapter information from a book entitled “Grace Land” by Reverend Steve McVey.

Sands Affidavit

[28] Mr. Sands is the music director of the Spiritual Community Church of the West, conducting weekly Sunday church services known as “Your Grace Land” since June 2011. He also presides at the “Your Grace Land” Sunday services when the Applicant is absent. Since 2012 Mr. Sands has been a co-producer and co-host of “Your Grace Land Radio”.

[29] Mr. Sands describes that on Your Grace Land Radio, guests from all walks of life are asked to “please share moments from your grace land” where they proceed to talk about how grace has touched their life in ways that has deep meaning.

[30] At the Your Grace Land Sunday Services, there are prayers, readings from the Bible, hymns, inspirational music, generally a message from the Applicant, as well as people sharing stories of how God’s Grace has touched their lives.

Cross-examination of the Applicant and Mr. Sands

[31] There were multiple answers given during the cross-examinations of the Applicant and Mr. Sands which are noteworthy. For example, set out below is an exchange from the cross-examination of Mr. Sands [Sands cross-examination at p. 21, l. 26 – p. 22, l. 20; certain content has been underlined for emphasis]:

Q. Going back to the radio show, and as you have named it Your Grace Land Radio, when you refer to Reverend Elvis by that name in the introduction, am I right in thinking that you expect listeners to recognize the connection to Elvis Presley and the songs of Elvis Presley and the songs that the Reverend sings?

A. I don’t dispute that we are using that as a hook for the program.

Q. What are you using as a hook?

A. The reference to Mr. Sheasby’s name, Reverend Elvis.

Q. And when you say “as a hook”, you mean as an attractor for listeners?

A. As an attraction to the program.

Q. And that’s due to the power of the “Elvis” name, if I can put it that way; is that correct?

A. Well, it’s actually his name, the Reverend legal name; one of his names is Elvis.

Q. Right, he changed his name, as I understand it, right?

A. Yes. But there's no dispute that his love for Elvis Presley music and his influence, the influence by Elvis on his music, is part of the draw to Reverend Elvis.

[32] Set out below is an exchange from the cross-examination of the Applicant [Sheasby cross-examination at p. 20, l. 19 – p. 21, l. 6 and p. 26, l. 10 – l. 24; again, certain content has been underlined for emphasis]:

Q. All right, so I think I understand what you're saying. Your use of "hook" in this context means a power of attraction; you want to draw people, and that's why you use "Reverend Elvis", and "Your Grace Land" fits nicely with that, right?

A. There's no doubt, and there's nothing in what I will say or what Dwain will say or what's in our evidence that my adopting the name Elvis into my legal name has [not] been influenced by my connection to Elvis, and there's no question that some people will also make a connection, in their mind, between Elvis Presley Enterprises Graceland and Your Grace Land, but it doesn't end there. The hook is worthless if it doesn't lead you somewhere. And were Your Grace Land leads people is not to Memphis but to God's grace.

[...]

Q. So would you agree -- I think Mr. Sands answered candidly the questions I put to him about Graceland; are you generally in agreement with his comments about how well-known Graceland is, the fact that musicians visit it as a kind of pilgrimage?

A. Yeah, I didn't choose to cross-examine the affiants who gave your evidence. We don't take issue with the fact that Elvis is very well known and respected by many people absolutely.

Q. And that Graceland itself is very well known itself as a destination?

A. Again, it's very well known by a lot of people, and it's amazing how a new generation can start to be disconnected from things that another generation might think everyone should now.

[33] I note that at p. 20, l. 26 of the transcript of the Sheasby cross-examination, reproduced above, I have included in parenthesis the word "not", which is a correction to the transcript requested by the Applicant to which I understand the Opponent does not object. Regardless of the impact, if any, of that purported correction, in my view, what is more significant is the Applicant's subsequent statement that "[...] there's no question that some people will also make a connection, in their mind, between Elvis Presley Enterprises Graceland and Your Grace Land [...]".

[34] The cross-examinations also established that in 2010, prior to the Applicant's adoption of the Mark, the Applicant and Mr. Sands visited the GRACELAND estate in Memphis, Tennessee

[Sands cross-examination at p. 16, l. 16 – p. 18, l. 4; Sheasby cross-examination at p. 25, l. 11 – p. 26, l. 24].

[35] I do not suggest that any of the above answers provided on cross-examination were alone critical to the disposition of this case. Instead, the answers merely reinforced and were reflective of the evidence of record as a whole.

[36] As an aside, I note that during his cross-examination, the Applicant stated that he decided to legally change his name to include “Elvis” as a middle name after having a telephone conversation with a representative of Elvis Presley Enterprises [Sheasby cross-examination p. 11, l. 2 to p. 12, l. 16]. However, the Applicant confirmed on cross-examination that there is no documentary record relating to that conversation. I have given the content of any such conversation no weight as I consider it to be hearsay that is neither necessary nor reliable.

ANALYSIS

[37] The Applicant bears the legal onus of establishing, on a balance of probabilities, that the Application complies with the requirements of the Act. However, there is an initial evidential burden on the Opponent to adduce sufficient admissible evidence from which it could reasonably be concluded that the facts alleged to support each ground of opposition exist [*John Labatt Limited v The Molson Companies Limited* (1990), 30 CPR (3d) 293 (FCTD) at 298].

[38] The grounds of opposition under sections 2, 12(1)(d), 16(1)(a) and 16(3)(a) each turn on the question of whether there is a likelihood of confusion between the Mark and the Opponent’s trademark GRACELAND. I will begin with a consideration of the section 2 ground of opposition.

Section 2 Ground of Opposition - Distinctiveness

[39] In order to meet the initial evidential burden for a distinctiveness ground of opposition, an opponent must show that its trademark had a substantial, significant or sufficient reputation in Canada [see *Bojangles' International LLC v Bojangles Café Ltd*, 2006 FC 657, 48 CPR (4th) 427 at paras 33 and 34]. The material date for assessing this ground of opposition is the filing date of the opposition, namely, November 3, 2015 [*Metro-Goldwyn-Mayer Inc v Stargate Connections*

Inc, 2004 FC 1185, 34 CPR (4th) 317]. With this ground of opposition, an opponent's evidence is not restricted to the sale of goods or services in Canada. It may also be based on evidence of knowledge or reputation of an opponent's trademark, including that spread by means of word of mouth or newspaper and magazine articles [*Motel 6 Inc v No 6 Motel Ltd* (1981), 56 CPR (2d) 44 (FC) at para 45].

[40] In my view, the Opponent has demonstrated a sufficient reputation in Canada in its trademark GRACELAND prior to the material date to satisfy its initial evidential burden for the distinctiveness ground of opposition. The Opponent's evidence suggests that the trademark GRACELAND is reasonably well-known in Canada by virtue of its connection with Elvis Presley and his estate in Memphis, Tennessee. Indeed, the Applicant and Mr. Sands acknowledged as much on cross-examination. The McConnery Affidavit includes evidence of a multitude of Canadian media articles over the years which have referred to the GRACELAND estate in connection with Elvis Presley.

[41] The legal burden then shifts to the Applicant to demonstrate that his Mark is distinctive in Canada. In considering whether a trademark is distinctive, one may consider whether it is likely to cause confusion with another party's trademark [see *Bensusan Restaurant Corp v Blue Note Restaurant Inc* (2000), 10 CPR (4th) 550 (TMOB) at para 30]. The test for confusion is one of first impression and imperfect recollection. Section 6(2) of the Act provides that the use of a trademark causes confusion with another trademark if the use of both trademarks 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 or appear in the same class of the Nice Classification. Also, where it is likely the public will assume an applicant's goods are approved, licensed, or sponsored by the opponent so that a state of doubt and uncertainty exists in the minds of the purchasing public, it follows that the trademarks are confusing [see *Glen-Warren Productions Ltd v Gertex Hosiery Ltd* (1990), 29 CPR (3d) 7 (FCTD) at para 21].

[42] In applying the test for confusion set out in section 6(2) of the Act, the Registrar must have regard to all the surrounding circumstances, including those specifically enumerated in section 6(5) of the Act. The weight to be given to each factor may vary, depending on the

circumstances [see *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée*, 2006 SCC 23, 49 CPR (4th) 401; *Mattel, Inc v 3894207 Canada Inc*, 2006 SCC 22, [2006] 1 SCR 772; and *Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27, 92 CPR (4th) 361]. These factors are considered below.

Degree of resemblance

[43] The degree of resemblance factor will often have the most significant impact on the confusion analysis [*Masterpiece, supra* at para 49].

[44] The Applicant's position is that the parties' trademarks are sufficiently different such that there is no likelihood of confusion. His arguments are essentially twofold. First, the Applicant argues that the word "GRACE" in the Mark is a reference to the biblical concept of grace, and thus conveys an idea that is unrelated to the GRACELAND estate of Elvis Presley. Second, the Applicant argues that the presence of the first word "YOUR" in the Mark and the separation of the two words "GRACE" and "LAND" (i.e. in contrast to the Opponent's one word trademark GRACELAND) is sufficient for consumers to distinguish between the parties' two trademarks.

[45] Respectfully, I am unable to agree with either of these arguments. With respect to the first argument, it is apparent that when the Applicant uses his Mark he is intending, at least in part, to reference the biblical concept of grace. However, based on the evidence of record, in my view, there can be no doubt that the Applicant's selection of the three words "YOUR", "GRACE" and "LAND" in that specific order, in association with the Goods and Services listed in the Application, is going to convey to a significant proportion of consumers the idea of the GRACELAND estate of the late Elvis Presley. I am reinforced in this view by the numerous examples in the evidence in which the Mark is depicted in conjunction with the name "Reverend Elvis".

[46] With respect to the Applicant's second argument, I do not consider the inclusion of the pronoun "YOUR" or the space between the words "GRACE" and "LAND" to be sufficient to differentiate the two parties' trademarks in terms of appearance, sound or idea. I also note that when the Mark is depicted by the Applicant in design form in the marketplace, the word

“YOUR” is depicted in a different and smaller font from the words “GRACE” and “LAND”, the latter two words being depicted in an identical larger font.

[47] Overall, the parties’ trademarks bear a high degree of resemblance, and this factor strongly favours the Opponent.

The inherent distinctiveness of the trademarks and the extent to which they have become known

[48] Both parties’ trademarks are inherently distinctive, as neither describe any aspect of the parties’ goods or services.

[49] With respect to the extent to which they have become known, as of November 3, 2015, I am satisfied that the Opponent’s trademark GRACELAND was reasonably well-known in Canada by virtue of its connection with Elvis Presley. While the Applicant’s Mark has also become known to some extent through use in the Calgary area since 2011, in my view, the evidence suggests that the Opponent’s trademark is more widely known within Canada.

[50] Therefore, this factor also favours the Opponent.

The length of time the trademarks have been in use

[51] The evidence indicates that the Opponent’s trademark GRACELAND has been known for decades in Canada and I am satisfied that the Opponent is the senior user in this case. This factor also favours the Opponent.

The nature of the goods, services or business; and the nature of the trade

[52] When it comes to music related goods and services in the Application, such as the goods “pre-recorded compact discs and DVDs containing audio and video recordings featuring performances by an individual or musical groups”, there is overlap in the parties’ goods and potential channels of trade, given the connection between the Opponent’s trademark GRACELAND and the musical career of Elvis Presley and the fact that GRACELAND branded DVDs are available for sale on the Opponent’s GRACELAND website. For the remaining goods and services in the Application there is less potential for overlap.

[53] On balance, at best for the Applicant, I consider this factor to favour the Applicant to only a slight degree, and only for those Goods and Services unrelated to music. In any event, I do not consider this factor to be dispositive, and it is significantly outweighed in this case by other factors such as the degree of resemblance.

Other surrounding circumstances – concurrent use

[54] 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 at para 19].

[55] In the present case, the Mark has been in use since 2011 and I have no evidence of any instances of actual confusion. While this weighs in the Applicant's favour, I do not attribute much weight to this factor in this case, given the limited scope of the Applicant's use of his Mark [see *Alpha Sportswear Ltd v Alpha Industries Inc* 2004, 39 CPR (4th) 87 (TMOB) at para 31]. On this point, I think it is important to note that by filing the Application the Applicant is seeking registered exclusive rights to the Mark *across Canada*, not simply in a limited geographic area, and it is against that backdrop that the likelihood of confusion must be assessed.

Other surrounding circumstances – third party use

[56] The Applicant relies in part on alleged third party use of the terms "graceland" and "grace land" as a factor which weighs in his favour and that should narrow the scope of protection to which the Opponent's trademark is entitled. However, the evidence of third party use in this case is not sufficient to benefit the Applicant. For example, the online search results for "graceland church" included as Exhibit 19 to the Sheasby Affidavit appear to have identified results primarily from the United States, and to the extent that it identified any results from Canada I have no evidence as to the extent to which any such churches are known in Canada. Similarly, with respect to the book titled "Grace Land" by Steve McVey, it is apparent from Exhibit 25 to the Sheasby Affidavit that this book was published in the United States by an

author resident in that country and I have no evidence regarding the extent to which this book is distributed or known in Canada.

Conclusion regarding the section 2 ground

[57] Considering all of the above factors, and in particular given the high degree of resemblance between the trademarks and the extent to which the Opponent's trademark has become known, I find that the Applicant has failed to meet his burden of demonstrating on a balance of the probabilities that there is no likelihood of confusion, and thus has failed to show that his Mark was distinctive or capable of distinguishing his Goods and Services throughout Canada as of November 3, 2015. Therefore, the section 2 ground of opposition succeeds.

Section 12(1)(d) Ground of Opposition

[58] The material date for this ground of opposition is the date of my decision [*Park Avenue Furniture Corporation v Wickes/Simmons Bedding Ltd and The Registrar of Trade Marks* (1991), 37 CPR (3d) 413 (FCA)]. I have exercised my discretion to check the register and confirm that the Opponent's registration Nos. TMA471,137; TMA698,439 and TMA471,135 each remain extant [see *Quaker Oats Co Ltd of Canada v Menu Foods Ltd* (1986), 11 CPR (3d) 410 (TMOB)]. The Opponent has therefore met its initial evidential burden for the section 12(1)(d) ground of opposition.

[59] The burden then shifts to the Applicant to demonstrate that there is no likelihood of confusion between the Mark and the Opponent's registered trademarks. In considering the issue of confusion under section 12(1)(d), I will do so with reference to the Opponent's registration TMA471,137 for the trademark GRACELAND, as in my view this registration represents the Opponent's strongest case. For essentially identical reasons to the analysis of confusion discussed above for the section 2 ground of opposition, I conclude that the Applicant has not satisfied his legal burden under section 12(1)(d). I note that with the section 12(1)(d) ground, the nature of the goods, services, business and trade factor more strongly favours the Applicant, given that the goods listed in the Opponent's registration TMA471,137 are quite limited. Nevertheless, in my view, that factor is substantially outweighed by the high degree of resemblance between the trademarks and the extent to which the Opponent's trademark

GRACELAND has become known. The section 12(1)(d) ground of opposition therefore also succeeds.

Remaining Grounds of Opposition

[60] Since I have found in the Opponent's favour with respect to the sections 2 and 12(1)(d) grounds of opposition, I do not consider it necessary to address the remaining grounds.

DISPOSITION

[61] Pursuant to the authority delegated to me under section 63(3) of the Act, I refuse the Application pursuant to section 38(12) of the Act.

Timothy Stevenson
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

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

HEARING DATE 2021-09-07

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