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LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADEMARKS

Citation: 2021 TMOB 269

Date of Decision: 2021-11-30

IN THE MATTER OF OPPOSITIONS

**Canadian Osteopathic Association
American Osteopathic Association**

Opponents

and

**Society for the Promotion of Manual
Practice Osteopathy (SPMPO)**

Applicant

**1,784,488 for OSTEOPATHY BC &
Design**

Application

INTRODUCTION

[1] Osteopathic medicine was developed in the mid to late-1800s by Andrew Taylor Still. Osteopathic medicine is a comprehensive medicine and surgery inclusive of the use of manipulation of tissue to restore function into the body. Today, there appear to be two streams of health professionals associated with osteopathy: (i) osteopathic physicians who are regulated and practice diagnosis and provide treatment as physicians and (ii) unregulated health providers who have a limited scope of care and are not physicians.

[2] The trademark OSTEOPATHY BC & Design set out below (the Mark) has been filed by the Society for the Promotion of Manual Practice Osteopathy (SPMPO) (the Applicant) who represents practitioners in BC who are not physicians and have a limited scope of care. This

application has been opposed by the Canadian Osteopathic Association and the American Osteopathic Association. These associations represent osteopathic physicians in Canada and the United States respectively.



[3] Because the Canadian Osteopathic Association and the American Osteopathic Association appeared at the same hearing, I consider it appropriate to issue one decision for both oppositions.

[4] Filed on May 27, 2016, the application is based on the Applicant's use of the Mark in Canada with the following Goods and Services. The application claims use in Canada since at least as early as April 2015 on the Goods and Services (1) and use in Canada since at least as early as May 2016 on Services (2).

Goods: (1) Education materials, namely, brochures in the field of osteopathy, downloadable digital audio recordings and digital videos featuring information in the field of osteopathy, and downloadable newsletters, and resource guides in the field of osteopathy.

Services: (1) Administration of an association of practitioners in osteopathy for the provision of professional development and membership to qualified osteopathic practitioners; marketing services, namely advertising in the field of osteopathy for the benefit of members; providing health care information and education to members and the public in the field of osteopathy; providing educational print and online information about osteopathy and osteopathic practitioners; promoting public knowledge and understanding of osteopathy and osteopathic practitioners; developing standards of practice for osteopathic practitioners; developing standards for the educational institutions teaching osteopathy.

(2) Educational services, namely, organizing seminars, workshops and conferences in the field of osteopathy treatment.

[5] The application was advertised on January 3, 2018.

[6] For the reasons that follow, I reject the oppositions by the Canadian Osteopathic Association and the American Osteopathic Association.

THE OPPOSITION BY THE CANADIAN OSTEOPATHIC ASSOCIATION

[7] The Canadian Osteopathic Association (the Opponent) filed its statement of opposition on February 5, 2018. The Registrar granted leave to amend the statement of opposition and issued an interlocutory ruling striking the ground of opposition based on section 30(i) of the *Trademarks Act*, RSC 1985, c T-13 (Act). After the interlocutory ruling, the relevant paragraphs of the statement of opposition are set out below:

3	The Opponent is the owner of the following common law trademark [the Opponent's Mark] and trade name: (i) CANADIAN OSTEOPATHIC ASSOCIATION used since as early as 1926 in association with osteopathy services and the representation of osteopathic practitioners.
4	(ii) In accordance with subsection 38(2)(c), having regard to subsection [16(1)(a)], the Applicant is not entitled to registration of its alleged trademark in Canada in association with the Goods and Services as covered by the application because at the date of first use and/or date of filing the alleged trademark was confusing with the Opponent's Mark, such that it is likely to be mistaken with it.
	(iii) In accordance with subsection 38(2)(c), having regard to subsection 16(1)(c), the Applicant is not entitled to registration if its alleged trademark in Canada in association with the Goods and Services as covered by the application because at the date of first use and/or the date of filing the alleged trademark was confusing with the previously used trade name of the Opponent.

In accordance with section 70 of the Act, all references to sections of the Act pertaining to the grounds of opposition are to the Act as it read before June 17, 2019.

[8] In support of its opposition, the Opponent filed the affidavit of Dr. James Church, its Past-President and Executive Director. In support of its application, the Applicant filed the affidavits of Gail Abernethy, its Vice President and Ceilidh Stubbs, an articling student employed by its agent. Both parties filed written submissions and attended a hearing.

EVIDENTIAL BURDEN AND LEGAL ONUS

[9] While there is an initial evidential burden on an opponent, the legal burden or onus remains on an applicant, on a balance of probabilities [*John Labatt Ltd v Molson Cos* (1993), 30 CPR (3d) 293 (FCTD)].

ANALYSIS

Sections 16(1)(a) and 16(1)(c) Grounds of Opposition

[10] With non-entitlement grounds of opposition under sections 16(1)(a) and 16(1)(c) of the Act, the material date is the date of first use in the application. Therefore, the material dates for assessing confusion with respect to the Goods and Services (1) is April 2015 and Services (2) is May 2016.

The Opponent meets its initial evidential burden

[11] In order to consider grounds of opposition based on sections 16(1)(a) and 16(1)(c) of the Act, the Opponent has an initial evidential burden to prove that its CANADIAN OSTEOPATHIC ASSOCIATION trademark [section 16(1)(a)] or its Canadian Osteopathic Association trade name [section 16(1)(c)] had been used in Canada prior to the claimed dates of first use of the Mark in Canada. The Opponent also has to demonstrate that it had not abandoned its trademark or trade name at the date of advertisement of the Mark.

[12] The Opponent's affiant, Dr. Church, provides the following evidence:

- a) The Opponent has represented the osteopathic profession nationally since its incorporation in 1926 (para 12; Exhibit P).
- b) Osteopathic medicine is a comprehensive medicine and surgery inclusive of the use of manipulation of tissue to restore function into the body. An osteopath is a physician who practices osteopathic medicine. There are many variants and derivatives of the terms "Osteopathic Medicine" and "Osteopath" that are used to refer to this branch of medicine (para 9).

- c) The Opponent's Standards of Practice which explain who is qualified to be an osteopath include the trademark and trade name Canadian Osteopathic Association (Exhibit P). As this document indicates it was updated in May 2017 but references several provincial standards put into place at an earlier date and Dr. Church references the approval of a national standard in the late 2000s (paras 28), I infer a similar document would have existed at the material date.
- d) The Opponent's website features CANADIAN OSTEOPATHIC ASSOCIATION as a trademark and trade name (Exhibit G). The Opponent's website strongly encourages members of the public to seek treatment from osteopaths as opposed to from other non-regulated individuals or organizations that claim to offer osteopathic services. The website distinguishes osteopaths, described as highly trained individuals who operate within a regulatory framework, from other non-regulated individuals or organizations who claim to engage in the practice of osteopathy without the necessary training (para 16).
- e) Dr. Church attaches diplomas issued in 1906, 1952, and 1984 for "Doctors of Osteopathy" (Exhibit H), a letter confirming that his application to practice Osteopathic Medicine has been approved (Exhibit I), a registration certificate confirming that he is entitled to practice Osteopathic Medicine in BC (Exhibit J), correspondence relating to the regulation of osteopathy (Exhibits K-L), and correspondence relating to the unauthorized practice of osteopathy (Exhibit N). None of these Exhibits, however, includes the trademark or trade name CANADIAN OSTEOPATHIC ASSOCIATION.
- f) The Opponent filed trademark applications for the trademarks OSTEOPATHIC and OSTEOPATHY on June 3, 2016 (Exhibits B and C).

[13] While the evidence speaking to the scope of the Opponent's use of the trademark and trade name is unquestionably weak, the appearance of CANADIAN OSTEOPATHIC ASSOCIATION appearing on the standards of practice are sufficient to meet the Opponent's evidential burden [*Consumers Distributing Co/Cie Distribution aux Consommateurs v Toy*

World Ltd, 1990 CasrwellNat 1398 (TMOB) at para 14 which confirms that trademark and trade name usage are not necessarily mutually exclusive].

When trademarks and trade name are confusing

[14] Trademarks are confusing when there is a reasonable likelihood of confusion within the meaning of section 6(2) of the Act:

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 . . . 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.

[15] Section 6(3) of the Act sets out an analogous test for confusion with a trade name. Thus, the issue is not confusion between the trademarks or trademark and trade name themselves, but confusion of goods and services from one source as being from another source.

[16] In the instant case, the question posed by sections 6(2) and 6(3) of the Act is whether consumers of the Goods and Services sold in association with the Mark would believe that they were produced, authorized, performed or licensed by the Opponent. The test for confusion is one of first impression and imperfect recollection. In applying the test for confusion, the Registrar must have regard to all the surrounding circumstances, including those specifically enumerated in section 6(5) of the Act. The weight to be given to each factor may vary, depending on the circumstances [*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].

Nature of the goods, services or business and trade

[17] I consider it appropriate to begin with the nature of the goods, services, business and trade.

[18] The Opponent has represented the osteopathic profession since 1926 (Church affidavit, para 12). The Opponent defines osteopathic medicine as a comprehensive medicine and surgery inclusive of the use of manipulation of tissue to restore function into the body (Church affidavit,

para 9). An osteopath is a physician who practices osteopathic medicine (Church affidavit, para 9). To become a licensed osteopath in Canada, one must first graduate from four years of intensive medical education from an American college of osteopathic medicine accredited by the American Osteopathic Association to obtain a diploma for Doctor of Osteopathic Medicine (DO) (para 14). This rigorous training ensures that osteopathic physicians (DO) have the same comprehensive medical training as their Medical Doctor colleagues (MD) (para 14). Many Canadian provinces have regulations that reserve the titles Osteopath, Osteopathic Physician, Osteopathic Practitioner, Doctor of Osteopathic Medicine, Doctor of Osteopathy and Osteopathic Medical Practitioner for exclusive use by physicians and surgeons in those provinces (Exhibit M, para 24). As of May 2018, the Opponent was aware of over 30 osteopathic physicians registered across Canada, including physicians certified in the specialties of family medicine, psychiatry, pediatrics, physical medicine, sport and osteopathic musculoskeletal medicine (Exhibit F). I infer that the number would have been similar at the material date.

[19] Ms. Abernethy explains in her affidavit that the Opponent's members and the Applicant's members do not have the same scope of practice. The Applicant's website explains:

In the last century, different legal and regulatory structures around the world have split osteopathy into two professional streams. An osteopathic physician has achieved the nationally recognized academic and professional standards within his or her country to practice diagnosis and provide treatment as a medical doctor. Their key difference from medical doctors (MDs) is that they have completed education at a school that also integrates principles of osteopathic philosophy and training in OMT.

Osteopaths (practising osteopathy) are primary contact health providers with limited practice rights, who do not prescribe pharmaceuticals, perform surgery or complete various other functions of a full-fledged doctor. An osteopath is a person who has achieved the nationally recognized academic and professional standards within his or her country to provide osteopathy.

Although there is no evidence that this material existed at the material date, I infer this to be the case given that the Applicant was incorporated in 2005.

[20] The Applicant's evidence is that two of its purposes are (i) to promote, represent, demonstrate and inform the public of osteopathy and the role it plays in health care and (ii) to ensure the best quality of manual practice osteopathy is provided to the people of BC from osteopathic practitioners (Abernethy affidavit, para 1).

[21] Although, the Applicant claims a difference in it and the Opponent's targeted area of interests (osteopathic physician versus a health care provider that practices osteopathy with limited practice rights), there is a clear overlap in the Goods and Services and the Opponent's Services. Both the Applicant and the Opponent represent health care professionals in the field of osteopathy and promote their respective practitioners to the public. This factor strongly favours the Opponent.

Inherent distinctiveness

[22] Both the Mark and the Opponent's trademark and trade name CANADIAN OSTEOPATHIC ASSOCIATION possess little inherent distinctiveness as both are closely connected with the field of interest and the location of the parties. Due to the presence of the design element and the tag line FOR EVERY BODY, the Mark has a slightly higher degree of inherent distinctiveness than the Opponent's trade name and trademark.

[23] With respect to Ms. Stubbs evidence attempting to demonstrate that the component OSTEOPATHY is common to the trade, all of her evidence postdates the material date.

Extent known and length of time in use

[24] There is no evidence that the Applicant had commenced use of its trademark before the material dates. In this regard, I find that Ms. Abernethy's evidence of use of the Mark all post-dates the material dates.

[25] The Canadian Osteopathic Association was chartered in 1926 (Church affidavit, Exhibit F). The Opponent's evidence of use, however, does not allow me to determine the extent of use of its relied upon trademark and trade name from 1926 to either of the material dates.

Degree of resemblance between the trademarks in appearance or sound or in the ideas suggested

[26] When considering the degree of resemblance, the law is clear that the trademarks and trade names must be considered in their totality. It is not correct to lay them side by side and compare and observe similarities or differences among their elements or components.

[27] There are both similarities and differences between the Mark and the Opponent's trademark and trade name. In this regard, both marks and the Opponent's trade name describe or suggest the geographical location and of the nature of the services offered. However, the first portion of the Opponent's trademark and trade name is the geographic area CANADIAN and its suffix is ASSOCIATION, whereas the Mark begins with OSTEOPATHY and includes BC and the tagline FOR EVERY BODY.

[28] While there are similarities between the Mark and the Opponent's trademark and trade name due to the components OSTEOPATHIC and OSTEOPATHY, I do not consider these words to be striking or unique as they merely describe the field of the associated goods or services. The ideas suggested by the Mark and the Opponent's trademark and trade name are also somewhat similar since both suggest those that practice osteopathy in different jurisdictions. In the end, in view of the descriptive and suggestive nature of the Mark and the Opponent's trademark and trade name, although there are similarities between them, I do not consider there to be a high degree of resemblance when assessed in their entirety. There are sufficient differences visually, phonetically and in ideas suggested due to the different components of the trademarks including the order of the components and the tagline FOR EVERY BODY.

Surrounding circumstance: jurisprudence concerning weak trademarks

[29] The jurisprudence on weak trademarks favours the Applicant. It is well accepted that comparatively small differences will suffice to distinguish between weak trademarks [*Boston Pizza International Inc v Boston Chicken Inc* (2001), 2001 FCT 1024, 15 CPR (4th) 345 (FCTD) at para 66]. As explained in *Provigo Distribution Inc v Max Mara Fashion Group SRL* (2005), 2005 FC 1550 (CanLII), 46 CPR (4th) 112 (FCTD) at para 31:

The two marks being inherently weak, it is fair to say that even small differences will be sufficient to distinguish among them. Were it otherwise, first user of words in common use would be unfairly allowed to monopolize these words. A further justification given by courts in coming to this conclusion is that the public is expected to be more on its guard when such weak trade names are used ...

[30] A party adopting a weak trademark has been held to accept some risk of confusion [*General Motors v Bellows* (1949), 10 CPR 101 at 115-116 (SCC)]. While it is possible for the degree of distinctiveness attributed to a weak trademark to be enhanced through extensive use

[*Sarah Coventry Inc v Abrahamian* (1984), 1 CPR (3d) 238 (FCTD) at para 6], there is no evidence that this is the case here.

Surrounding circumstance – protection of consumers and risk to the public

[31] The Opponent submits that the Mark would lead to source confusion in that consumers seeking services from the Applicant's members would believe that they were receiving treatment from an osteopathic physician. There is very scant evidence at the material date as to whether the Mark would have signalled to consumers seeking treatment that the Applicant's members were osteopathic physicians as a matter of first impression. In this regard, while the Opponent's evidence is that there were around thirty osteopathic physicians practising in Canada, the Opponent has failed to submit evidence which would allow me to infer that as a matter of first impression the Mark suggests to consumers that any related goods or services were provided by an osteopathic physician.

[32] With respect to the Opponent's evidence of various provincial statutes that reserve the titles osteopath, osteopathic physicians, and osteopathic practitioner for those licensed by the College of Physicians and Surgeons in a particular province (Church affidavit, Exhibit M) and the Applicant's and Opponent's materials and websites which include warnings that not all people who claim to practice osteopathy are licensed doctors (assuming that such warnings were available at the material date), I find this to be material that consumers are likely to encounter during the process of researching either the Applicant or the Opponent (or the services of their members). Therefore, these explanations and warnings do not assist me in determining whether there is a likelihood of confusion as a matter of first impression.

[33] With respect to the copies of letters attached as Exhibit N to the Church affidavit from the College of Physicians and Surgeons of British Columbia and the College of Physicians and Surgeons of Ontario, advising non-registered individuals that they are in breach of provincial laws and regulations with respect to engaging in the practice osteopathy, osteopathic medicine, or in referring to themselves as an osteopath, osteopathic physician or osteopathic practitioner, these letters do not assist me in determining whether there is a likelihood of confusion between the Mark and the Opponent's trademark or trade name. As there are only a few letters dated

between 1999 and 2010, they are unlikely to have had any impact on the likelihood of source confusion at the material dates.

Conclusion

[34] The question posed by sections 6(2) and 6(3) of the Act is whether consumers of the Goods and Services, provided under the Mark believe that they were provided, authorized or licensed by the Opponent owing to its trademark or trade name CANADIAN OSTEOPATHIC ASSOCIATION. I have assessed this as 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 Opponent’s trademark or trade name, and does not pause to give the matter any detailed consideration or scrutiny, nor to examine closely the similarities and differences between the Mark and the Opponent’s trademark or trade name CANADIAN OSTEOPATHIC ASSOCIATION.

[35] Having regard to section 6(5), in particular the low inherent distinctiveness of the Opponent’s trademark and trade name, that small differences may suffice to distinguish between weak marks, and that there is no evidence that the Opponent’s trademark or trade name has become known to any significant extent, I find that the Applicant has met the legal onus on it to show that, on a balance of probabilities, there is no reasonable likelihood of confusion between the Mark and the Opponent’s trademark or trade name. Accordingly, these grounds of opposition are rejected.

THE OPPOSITION BY THE AMERICAN OSTEOPATHIC ASSOCIATION

[36] This application was also opposed by the American Osteopathic Association (AOA). After an interlocutory ruling, the remaining ground of opposition is set out below:

3	The [AOA] is an organization that operates the American Osteopathic Association’s Commission on Osteopathic College Accreditation (COCA) that provides the only advanced medical and surgical training required for licensure of osteopaths in Canada. The [AOA] is an international leader in advanced manual therapy techniques.
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4	<p>The [AOA] is the owner of the following [trademarks] and trade name:</p> <ul style="list-style-type: none"> (i) AMERICAN OSTEOPATHIC ASSOCIATION used with association services related to osteopathic professionals since 1901. (ii) United States Registered Trademark AMERICAN OSTEOPATHIC ASSOCIATION & Design, Registration number 4249300, used since as early as 2005 in the United States and made known in Canada ... (iii) United States registered trademark AMERICAN OSTEOPATHIC ASSOCIATION & Design, Registration number 3162198 used in the United States and made known in Canada since 2005 ...
5	<ul style="list-style-type: none"> (ii) In accordance with subsection 38(2)(c), having regard to subsection [16(1)(a)], the Applicant is not entitled to registration of its alleged trademark in Canada in association with the Goods and Services as covered by the application because at the date of first use and/or date of filing the alleged trademark was confusing with the [AOA's trademarks], such that it is likely to be mistaken with it.

[37] The American Osteopathic Association's evidence is provided by Joshua L. Prober, its Senior Vice-President and General Counsel. Mr. Prober's evidence is that the AOA owns the trade name AMERICAN OSTEOPATHIC ASSOCIATION and the trademark AMERICAN OSTEOPATHIC ASSOCIATION (paras 5-6). The AOA's Commission on Osteopathic College Accreditation accredits 35 osteopathic medical schools which offer instruction at 55 teaching locations in the United States (para 13). The evidence of use of the AMERICAN OSTEOPATHIC ASSOCIATION trademark and trade name provided by Mr. Prober includes the following:

- on the American Osteopathic Association website *osteopathic.org* (Exhibit G);
- on the Canadian Osteopathic Association website (Exhibit K);
- on a Wikipedia page entitled "Osteopathic medicine in Canada" (Exhibit M);

- in the Opponent’s document “Osteopathic Practice in Canada” (Exhibit U) which explains that

... In November of 2009, the Federation of Medical Regulatory Authorities of Canada approved the ‘FMRAC Agreement on the Medical Standards’ which recognizes the osteopathic medical degree from a medical school accredited by the American Osteopathic Association Commission on Osteopathic College Accreditation as a medical degree recognized by all regulatory authorities in Canada to register for medical practice.

While this Exhibit is dated May 2017, I infer a similar document would have existed given that it references a 2009 document FMRAC Agreement on National Standards (Exhibit V) which states:

... The Canadian Standard requires that new applicants have the following qualifications in order to be eligible for a full (unrestricted) license to practice medicine:

- a) have a medical degree from a medical school listed in the FAIMER’s International Medical Education Directory (IMED) or the WHO’s World Directory of Medical Schools (WDMS) or a Doctor of Osteopathic Medicine degree from a school in the US accredited by the American Osteopathic Association Commission on Osteopathic College Accreditation ...

The Applicant’s evidence consists of the affidavits of Gail Abernethy and Ceilidh Stubbs. Both the AOA and the Applicant filed a written argument and attended the hearing.

Section 16(1)(a) Ground of Opposition

[38] AOA has an initial evidential burden to prove that it had used or made known at least one of its AMERICAN OSTEOPATHIC ASSOCIATION trademarks pleaded in the statement of opposition as of April 2015 with respect to the Goods and Services (1) and May 2016 for Services (2). AOA must also demonstrate that it had not abandoned its trademarks as of the date of advertisement of the Mark (January 3, 2018). As I consider that AOA’s trademark AMERICAN OSTEOPATHIC ASSOCIATION provides the Opponent with its best chance of success, I will concentrate my analysis on this trademark.

American Osteopathic Association fails to meet its evidential burden

[39] AOA does not meet its evidential burden with respect to the ground of opposition.

Making known of the AMERICAN OSTEOPATHIC ASSOCIATION trademark

[40] AOA does not meet its evidential burden with respect to the making known of its AMERICAN OSTEOPATHIC ASSOCIATION trademarks. The making known requirements set out in section 5 require a finding that the trademark has become well known in Canada by reason of the distribution or advertising of AOA's goods and services in Canada such that a substantial area in Canada knows its trademark [*Marineland Inc. v Marine Wonderland and Animal Park Ltd.* (1974), 16 CPR (2d) 97 (FCTD)]. There is no such evidence that any of AOA's trademarks have become known any such extent.

Use of the AMERICAN OSTEOPATHIC ASSOCIATION trademarks

[41] Sections 4(1) and 4(2) of the Act explain what is required in order for a trademark to have been used in association with goods and services.

AOA fails to meet its evidential burden

[42] For the reasons that follow, I find that AOA's evidence is insufficient to show use of its AMERICAN OSTEOPATHIC ASSOCIATION trademarks in Canada.

- a) **Website** - The display on the *osteopathic.org* website does not constitute use in Canada since it is not clear that the services are actually targeted at and offered to Canadians or performed in Canada [*HomeAway.com, Inc v Hrdlicka*, 2012 FC 1467; *Unicast SA v South Asian Broadcasting Corp* (2014), 2014 FC 295, 122 CPR (4th) 409 at paras 46-47]. Rather, the website states "we serve as the professional family for more than 145,000 osteopathic physicians and medical students across the U.S." Further there is no evidence that Canadians access the website, nor does the website appear to include information specific to Canadians [*Star Island Entertainment LLC v Provent Holdings Ltd* (2013), 2013 TMOB 84 (CanLII), 112 CPR (4th) 321 (TMOB) at para 30; *McCarthy Tétrault v Lawyers Without Borders Inc* (2010), 87 CPR (4th) 437 (TMOB) at para 21; *Unicast, supra* at para 64].

- b) **Legislation** – The references to AMERICAN OSTEOPATHIC ASSOCIATION in the various acts and regulations are not use of the trademark by AOA.
- c) **Reference on third party websites and documents** – The references to AMERICAN OSTEOPATHIC ASSOCIATION on the BC Health Link website, the MyHealthAlberta.ca website, the CANADIAN OSTEOPATHIC ASSOCIATION website and other documents, the Wikipedia entry on Osteopathic medicine in Canada and the College of Physicians and Surgeons of British Columbia websites are not use of the trademark by AOA. While this evidence may have assisted the AOA showing that its trademark was known to some extent, it does not fulfill the conditions in sections 4(1) or 4(2) of the Act.

[43] As the AOA fails to meet its evidential burden, the ground of opposition is rejected and it is unnecessary to consider the Applicant’s evidence.

DISPOSITION

[44] Pursuant to the authority delegated to me under section 63(3) of the Act, I reject the oppositions, 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 2021-07-20

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