

LE REGISTRAIRE DES MARQUES DE COMMERCE  
THE REGISTRAR OF TRADEMARKS

**Citation: 2022 TMOB 025**  
**Date of Decision: 2022-02-17**

**IN THE MATTER OF AN OPPOSITION**

**Premier Tech Home & Garden Inc.**

**Opponent**

**and**

**Ishihara Sangyo Kaisha, Ltd.**

**Applicant**

**1,864,509 for IPPATSU**

**Application**

INTRODUCTION

[1] Premier Tech Home & Garden Inc. (PTHG or the Opponent) is a Canadian leader in the manufacture and sale of consumer lawn and garden products. It opposes registration of the trademark IPPATSU (the Mark), which is the subject of application No. 1,864,509 (the Application), filed by Ishihara Sangyo Kaisha, Ltd. (the Applicant) on the basis of proposed use of the Mark in Canada in association with the following goods (the Goods): “herbicides, insecticides, nematicides, fungicides, pesticides, preparations for destroying vermin”. The Application includes a foreign translation for the Mark, which is set out as follows:

The English translation for the word “IPPATSU” is “one shot”.

[2] The Applicant did not indicate the origin of the word IPPATSU for which the English translation was provided.

[3] The main issue in this proceeding is whether there would be a likelihood of confusion between the Mark in association with the Goods and either one or both of the Opponent's registered trademarks that include or consist of the word ONE SHOT for, among other things, insect control products, herbicides and weed killer, as set out in the attached Schedule A (sometimes hereinafter collectively referred to as the ONE SHOT Trademarks).

[4] For the reasons that follow, the opposition is rejected.

#### THE RECORD

[5] The Application was filed on October 25, 2017 and advertised for opposition purposes in the *Trademarks Journal* on February 6, 2019.

[6] On July 5, 2019, the Opponent filed a statement of opposition under section 38 of the *Trademarks Act*, RSC 1985, c T-13 (the Act). Numerous amendments to the Act came into force on June 17, 2019. The date for identifying which version of the Act applies to opposition proceedings is the date on which the application being opposed was advertised. As the Application was advertised prior to June 17, 2019, pursuant to section 70 of the Act, the grounds of opposition will be assessed based on the Act as it read on June 16, 2019, with the exception of confusion for which subsection 6(2) to (4) of the Act as they currently read will be applied.

[7] The grounds of opposition raised by the Opponent are discussed below. Suffice it to note at this juncture that they revolve, for the most part, around the question of the likelihood of confusion between the Mark and the ONE SHOT Trademarks.

[8] On September 5, 2019, the Applicant filed and served a counter statement denying each ground of opposition pleaded in the statement of opposition.

[9] In support of its opposition, the Opponent filed an affidavit of its President, Louis Carrier, sworn December 13, 2019 (the Carrier affidavit), and certified copies of Canadian trademark registration Nos. TMA851286 and TMA854886 for the ONE SHOT Trademarks.

[10] The Applicant elected not to file any evidence.

[11] Both parties submitted written representations. An oral hearing was not requested.

## ANALYSIS

### **The parties' respective burden or onus**

[12] The Opponent has the initial evidential burden to adduce sufficient admissible evidence from which it could reasonably be concluded that the facts alleged to support each ground of opposition exist. Once that burden is met, the Applicant bears the legal onus of establishing, on a balance of probabilities, that the particular grounds of opposition should not prevent the registration of the Mark [*John Labatt Ltd v Molson Companies Ltd* (1990), 30 CPR (3d) 293 (FCTD); *Dion Neckwear Ltd v Christian Dior, SA et al*, 2002 FCA 29, 20 CPR (4th) 155].

### **Overview of the evidence – The Carrier affidavit**

[13] The Carrier affidavit provides background information on the history and business of the Opponent, including with respect to the use of the ONE SHOT Trademarks. More particularly, Mr. Carrier attests to the following with respect to the Opponent's use and advertising of the ONE SHOT Trademarks:

- Since February 2008, PTHG has continuously used, and continues to use, its ONE SHOT Trademarks in Canada with a variety of indoor and outdoor pest control products, including insecticides, aerosols, traps, ribbons and baits. The ONE SHOT Trademarks have also been used in Canada in association with herbicides and weed killer since at least as early as July 2013 [paras 11-13].
- The Opponent uses the ONE SHOT Trademarks on the packaging for, among other things, its indoor and outdoor pest control products and on the cases used to transport the various ONE SHOT branded products to consumers [paras 14-15 and Exhibits "B" and "C"].
- PTHG sells its indoor and outdoor pest control products at large retail chains such as Walmart, Rona, The Home Depot Canada, Lowes, Canadian Tire and Home Hardware [para 16]. Various examples of these points of sale displaying the ONE SHOT branded products are included as Exhibits R to T to the Carrier affidavit.

- The ONE SHOT branded products have been promoted and advertised in Canada in a variety of ways, including via product catalogues and brochures and through large retail chain advertisements, trade shows, the PTHG website, and social media. Annual advertising figures for the Opponent’s ONE SHOT branded products in Canada for the years 2015 to 2019 ranged between \$3,300 and \$3,600 [paras 20-32]. Various examples of such promotion and advertising bearing the ONE SHOT Trademarks during those years and breakdowns of the website statistics or metric details of the ONE SHOT “Page Posts” on Facebook, Instagram and Pinterest are included as Exhibits E to Q to the Carrier affidavit.
- Between 2014 and 2019, total annual sales of the ONE SHOT branded goods in Canada ranged between \$5 million and \$5.6 million. Representative invoices from the sale of the Opponent’s goods are included as Exhibit D to the Carrier affidavit. A breakdown of the approximate ONE SHOT products that were sold from 2008 to 2013 on a per case basis is also included in a chart [paras 16-19].

[14] I note at this point of my analysis that I am satisfied that all uses made of the ONE SHOT Design trademark (registration No. TMA851286), in the various exhibited examples of packaging and images of the ONE SHOT branded products that purport to show use or the manner of display of the ONE SHOT Trademarks in association with the Opponent’s indoor and outdoor pest control products, also amount to use of the ONE SHOT word mark (registration No. TMA854886) as the words “one shot” sufficiently stand out from the other design elements and remain recognizable [per *Registrar of Trade-marks v Compagnie Internationale pour l’informatique CII Honeywell Bull* (1985), 4 CPR (3d) 523 (FCA); and *Nightingale Interloc v Prodesign* (1984), 2 CPR (3d) 535 (TMOB)]. In this regard, I further note that the fact that the ONE SHOT Trademarks have always been displayed on the Opponent’s products in combination with separate and distinct trademarks such as “Wilson” or “Spiderban” is not detrimental to the Opponent as it is well established that multiple trademarks may be used together on the same product [*AW Allen Ltd v Warner Lambert Canada Inc* (1985), 6 CPR (3d) 270 at 272 (FCTD)].

## **Grounds of opposition summarily rejected**

### Ground of opposition based on section 38(2)(e) of the ("new") Act

[15] The Opponent has pleaded that:

[The Application] does not comply with the provisions of section 38(2)(e) of the Act, because, at the time of filing the [A]pplication, namely October 25, 2017, and at all relevant times, the Applicant was not using and did not propose to use the [Mark] in Canada in association with [the Goods].

[16] This ground of opposition is improperly pleaded as it is based upon the new provisions of section 38(2)(e) of the Act, which did not exist under the "old" Act. As the Application was advertised prior to the coming into force of the "new" Act, the Opponent should have based its opposition upon section 38(2)(a) of the "old" Act in combination with the applicable provisions of former section 30 of the Act.

[17] Even if I were to consider this ground as a pleading of non-compliance with section 30(e) of the Act, I note that the Opponent has not pleaded any material facts in support of this ground of opposition, nor did it file any evidence or make any submissions in support thereof. This ground is accordingly rejected.

### Ground of opposition based on section 38(2)(f) of the ("new") Act

[18] The Opponent has pleaded that:

[The Application] does not conform with the requirements of section 38(2)(f) of the Act, because, at the time of filing the [A]pplication, namely October 25, 2017, and at all relevant times, the [A]pplicant was not entitled to use the [Mark] in Canada in association with the [Goods], in view of the fact that the [Mark] was confusing with the Opponent's [ONE SHOT Trademarks]. The English translation of the word IPPATSU provided by the Applicant is ONE SHOT.

[19] This ground of opposition is also improperly pleaded as it is based upon the new provisions of section 38(2)(f) of the Act, which did not exist under the "old" Act. As explained above, the date for identifying which version of the Act applies to opposition proceedings is the date on which the application being opposed was advertised.

[20] Even if I am wrong in that finding, I note that a section 38(2)(f) ground of opposition which alleges that an applicant “was not entitled to use the trademark”, is distinct from a section 38(2)(c) ground of opposition which alleges that an applicant “is not the person entitled to registration”. Indeed, section 38(2)(f) addresses the applicant’s lawful entitlement to *use* the trademark (*i.e.* in compliance with relevant federal legislation and other legal obligations) as opposed to the applicant’s entitlement to *register* the mark (relative to another person’s trademark, pursuant to section 16 of the Act) [see the Opponent’s section 16 ground of opposition discussed below].

[21] In this case, the facts pleaded are not ones that can support a section 38(2)(f) ground of opposition. Neither did the Opponent file any evidence or make any submissions in support of this ground of opposition. This ground is accordingly rejected.

### **Remaining grounds of opposition**

[22] The remaining grounds of opposition are based upon sections 12(1)(d) (non-registrability), 16 (non-entitlement) and 2 (non-distinctiveness) of the Act and all turn upon a determination of the likelihood of confusion between the Mark and the Opponent’s ONE SHOT Trademarks.

[23] I will assess the section 12(1)(d) ground of opposition first as it is the strongest, mostly because of the later material date applicable to this ground.

#### Ground of opposition based on section 12(1)(d) of the Act

[24] The Opponent has pleaded that:

The [Mark] is not registrable, having regard to the provisions of section 12(1)(d) of the Act, since it is confusing [...] with the Opponent’s [ONE SHOT Trademarks]. The English translation of the word IPPATSU provided by the Applicant is ONE SHOT. The Opponent’s [ONE SHOT Trademarks] are registered and used in Canada in association with (1) insect control products namely, insecticides, aerosols, traps, ribbons and baits; (2) herbicides and weed killer.

[25] I have exercised the Registrar’s discretion to confirm that both of the Opponent’s registrations for the ONE SHOT Trademarks are in good standing as of today’s date, which is

the material date for assessing a section 12(1)(d) ground of opposition [*Park Avenue Furniture Corp v Wickers/Simmons Bedding Ltd* (1991), 37 CPR (3d) 413 (FCA)].

[26] Hence, the Opponent has met its evidential burden in respect of this ground of opposition. The Applicant must therefore establish, on a balance of probabilities, that there is not a reasonable likelihood of confusion between the Mark and either one or both of the Opponent's ONE SHOT Trademarks.

*The test for confusion*

[27] 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.

[28] Thus, section 6(2) of the Act does not concern the confusion of the trademarks themselves, but of the goods or services from one source as being from another. In the present case, the question is essentially whether a consumer, with an imperfect recollection of the Opponent's ONE SHOT Trademarks, who sees the Applicant's Goods in association with the Mark, would think that they emanate from, are sponsored by or approved by the Opponent.

[29] In applying the test for confusion, the Registrar must have regard to all the surrounding circumstances, including those listed at section 6(5) of the Act, namely: (a) the inherent distinctiveness of the trademarks and the extent to which they have become known; (b) the length of time the trademarks have been in use; (c) the nature of the goods, services or business; (d) the nature of the trade; and (e) the degree of resemblance between the trademarks in appearance or sound or in the ideas suggested by them. This list is not exhaustive, and all relevant factors are to be considered. Further, all factors are not necessarily attributed equal weight as the weight to be given to each depends on the circumstances [see *Mattel, Inc v 3894207 Canada Inc* 2006 SCC 22, 49 CPR (4th) 321; *Veuve Clicquot Ponsardin v Boutiques Clicquot Ltée* 2006 SCC 23, 49 CPR (4th) 401; and *Masterpiece Inc v Alavida Lifestyles Inc*,

2011 SCC 27, 92 CPR (4th) 361 for a thorough discussion of the general principles that govern the test for confusion].

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

[30] The Mark is inherently distinctive. While the Applicant indicates in its Application that the English translation for the word “IPPATSU” is “one shot”, there is no evidence that the average consumer of the Applicant’s Goods would understand the Mark to refer to this particular meaning rather than being a coined word. I will return to this point when assessing the degree of resemblance between the parties’ marks in appearance, sound and ideas suggested by them.

[31] The Opponent’s ONE SHOT Trademarks on the other hand are not as inherently distinctive because of their highly suggestive or laudatory connotation in the context of their associated goods.

[32] The degree of distinctiveness of a trademark may be increased by means of it becoming known through promotion or use.

[33] There is no evidence that the Mark has been used or has become known in Canada in association with the Goods to any extent.

[34] In contrast, the evidence of use of the ONE SHOT Trademarks filed through the Carrier affidavit establishes extensive use of these marks by the Opponent in association with a range of indoor and outdoor pest control products.

[35] The sales figures provided for the fiscal years 2014-2019 (and partial fiscal year 2020), which amount to more than \$29 million, together with the advertising and promotion of the ONE SHOT Trademarks by the Opponent for those years and accompanying exhibits attached to the Carrier affidavit support the Opponent’s contention that its ONE SHOT Trademarks have become known to a significant extent in Canada in association with a range of indoor and outdoor pest control products.

[36] In light of the foregoing, the overall consideration of this factor favours the Opponent.



The length of time the trademarks have been in use

[37] For the reasons given above, this factor favours the Opponent.

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

[38] The Goods are either identical or overlapping in nature with those of the Opponent. In the absence of evidence to the contrary, it is fair to assume that the parties' channels of trade would also be the same or overlapping.

[39] Accordingly these factors also favour the Opponent.

The degree of resemblance between the trademarks in appearance or sound or in the ideas suggested by them

[40] In *Masterpiece, supra*, the Supreme Court of Canada considered the importance of section 6(5)(e) in conducting an analysis of the likelihood of confusion (see para 49):

...the degree of resemblance, although the last factor listed in s. 6(5) is the statutory factor that is often likely to have the greatest effect on the confusion analysis ... if the marks or names do not resemble one another, it is unlikely that even a strong finding on the remaining factors would lead to a likelihood of confusion...

[41] There is no question that there is absolutely no resemblance between the parties' marks visually and phonetically speaking. However, the Opponent submits in its written representations that there is a "strong resemblance" between the parties' marks because the English translation of the word IPPATSU provided by the Applicant is ONE SHOT and that the Registrar should consider the issue of confusion from the perspective of the average consumer, who is also a member of the Japanese community:

58. In this instance, and by the Applicant's own admission, the [Mark] translates into the English word [*sic*] ONE SHOT. Therefore, while visually and phonetically different, the idea suggested by the respective marks is identical.

59. The Opponent submits that the Registrar should consider the issue of confusion from the perspective [of] the average consumer, who is also a member of the Japanese community, who encounters the Applicant's mark is [*sic*] association with the [Goods].

60. In *Cheung Kong (Holdings) Ltd v Living Realty Inc* (TD), [2000] 2 FC 501, [1999] FCJ No. 1966 [(*Cheung Kong*)], the Federal court trial division found that the Registrar erred in law by apparently failing to have regard to the number of Living Realty's clients who understood Chinese characters and their transliteration.

[42] I respectfully disagree with the Opponent's position for the following reasons.

[43] First, there is no evidence of record that the Mark is made up of a *Japanese* word. The Applicant merely indicates in its Application that "[t]he English translation for the word "IPPASTU" is "one shot"". In this regard, I am not prepared to assume that simply because the Applicant's address provided in the Application is in Japan, that it necessarily follows that the word IPPASTU is a Japanese word.

[44] Second, even assuming that the word IPPASTU is a Japanese word, there is no evidence to support a finding that a substantial portion of the Opponent's customers would be able to read and understand Japanese. As per my review above of the Carrier affidavit, the Opponent's ONE SHOT indoor and outdoor pest control products are sold to the general public by large retail chains.

[45] In this regard, I make mine the following comments of the Registrar in *Baycliff Company, Inc v CHENG, Wai Tao*, 2018 TMOB 66, in response to the Opponent's submissions that rely on the decision *Cheung Kong*:

#### Identifying the Average Consumer

[25] It has been established that the average consumer is generally Anglophone, Francophone, or bilingual in English and French [*Pierre Fabre Médicament v SmithKline Beecham Corp* (2001), 2001 FCA 13 (CanLII), 11 CPR (4th) 1 at para 15].

[26] In its written argument, the Opponent submits that the Opposition Board should make an inference that the average consumer of the Applicant's Goods and Services would be able to "read Chinese characters, given the Applicant's connections to China (it's where they are based) and given the Applicant's decision to include Chinese characters in the mark". The Opponent reasons that "[i]t would not make sense for the Applicant to include Chinese characters in its mark unless it was actively marketing those goods to Chinese-speaking Canadians", citing in support the decision [*Cheung Kong*].

[27] In *Cheung Kong*, the Court found that there was a reasonable likelihood of confusion between a mark comprised of Chinese characters and a mark that was the English equivalent thereof. Mr. Justice Evans reasoned that the question of whether a mark is likely to cause confusion should be asked in respect of the particular market in which the goods are offered, which would make up the appropriate "average consumer".

In that case, the evidence showed that the applicant targeted the Chinese community in Toronto, which allowed the court to conclude that the particular market for those goods consisted of consumers who understood both English and Chinese. I note that in the present case, there is no evidence showing that the Applicant has targeted the Chinese community in Toronto or anywhere else in Canada.

[28] In *Cheung's Bakery Products Ltd v Saint Honore Cake Shop Limited*, 2011 TMOB 94 (CanLII), 93 CPR (4th) 438 (*Cheung's Bakery*), the Opposition Board found the average consumer to be a person able to read and understand both English and Chinese. In doing so, the Board noted:

- that the opponent had provided sufficient evidence to support a finding that a substantial portion of the opponent's actual customers would be able to read and understand Chinese characters (at paragraph 94);
- that it agreed with the applicant's submissions that much weight could not be placed on the evidence adduced by the opponent regarding the applicant's prospective business operations in Canada (printouts of the applicant's Asian website) (at paragraphs 96, 97);
- that the applicant likely intended, to some degree, to target Chinese consumers in Canada based on "the applicant's decision to include Chinese characters in the mark, as well as the applicant's inclusion of "moon cakes", "egg rolls", and "New-Year cakes" in the Wares (all of which the opponent has evidenced are Chinese delicacies) and the applicant's connections to China and Hong Kong" (at paragraph 97).

[29] Notably, in the present case there is no evidence to support a finding that a substantial portion of the Opponent's customers would be able to read and understand Chinese. There is also no evidence that any of the Applicant's Goods would be recognized as Chinese delicacies.

[30] The Opponent submits the fact that the Applicant is based in China and that the Mark includes Chinese characters constitutes a sufficient basis from which to presume that a significant or substantial number of the Applicant's customers understand Chinese. However, in the absence of further evidence (such as was established above in *Cheung's Bakery*), I do not consider it reasonable to infer that the Applicant likely intends, to some degree, to target Chinese consumers in Canada, such that the average consumer would be able to read and understand Chinese characters.

[31] Accordingly, while I acknowledge that in some cases it is appropriate to consider the average consumer to be a person able to read and understand Chinese characters, based on the evidence of record, I do not consider this to be such a case.

[46] In the same vein, I am reproducing below the following commentary taken from Gill: *Fox on Canadian Law of Trade-marks and Unfair Competition*, 4th edition, at chapter 8:33,

highlighting the decision rendered in *B. Jadow & Sons, Inc. v. Grupo Cyanomex S.A* , which I find particularly applicable to the present case:

Under United States trade-mark law there is what is known as the doctrine of foreign equivalence. Generally stated, the doctrine holds that foreign language word marks must be translated into the English language as part of the comparison of meaning.<sup>1</sup> When asked to import the American doctrine of foreign equivalence as a surrounding circumstance in determining a likelihood of confusion, the Federal Court of Canada has to date rejected its application in Canada,<sup>2</sup> as has the Trade Mark Opposition Board.<sup>3</sup> For example, in *B. Jadow & Sons, Inc. v. Grupo Cyanomex S.A. de C.V.*<sup>4</sup> the applicant for the mark KOLA LOKA was met with an opposition by the owner of the registered mark KRAZY GLUE. Although the mark KOLA LOKA was found to mean crazy glue in Spanish, the court noted that only a minimal proportion of the Canadian population speaks Spanish as a mother tongue and therefore concluded that the average consumer having a vague or imperfect recollection of the registered trade-mark KRAZY GLUE would find no degree of resemblance whatsoever to the ideas suggested by KOLA LOKA and KRAZY GLUE. Further, the court stated that it “would have reached the same conclusion even if the evidence tendered on appeal had established the existence of Spanish communities in Toronto and Quebec City. The mere fact that ethnic enclaves exist in two urban centres in the country would not be sufficient to displace the well established, average consumer test.”<sup>5</sup> Similar analyses and results have issued from Trade Mark Opposition Board decisions with respect to other foreign language marks as well.<sup>6</sup>

[47] To sum up, there is no evidence that the average consumer of the Goods would understand the Mark to refer to any particular meaning or idea that is identical or similar to the one suggested by the Opponent’s ONE SHOT Trademarks.

[48] Accordingly, the overall consideration of this factor strongly favours the Applicant.

#### *Conclusion regarding the likelihood of confusion*

[49] Given the importance of the section 6(5)(e) factor, I find that the Applicant has discharged its burden of showing, on a balance of probabilities, that there is not a reasonable likelihood of confusion that the Mark will prompt the consumers to think that the Goods come from the same source as the ones associated with the Opponent’s ONE SHOT Trademarks or are otherwise associated with the Opponent.

[50] Accordingly, the section 12(1)(d) ground of opposition is rejected.

### Ground of opposition based on section 2 of the Act

[51] The Opponent has pleaded that:

The [Mark] is not distinctive, having regard to the provisions of section 2 of the Act, in that the [Mark] does not distinguish the Applicant's [G]oods from those of the Opponent. Moreover, the [Mark] is not adapted so as to distinguish the Applicant's [G]oods from those of the Opponent. The English translation of the word IPPATSU provided by the Applicant is ONE SHOT.

[52] In order to meet its initial evidential burden under this ground of opposition, the Opponent has to show that as of the filing date of the statement of opposition (namely July 5, 2019), its relied upon ONE SHOT Trademarks had a substantial, significant or sufficient reputation in Canada with relevant goods so as to negate the distinctiveness of the Applicant's Mark [*Motel 6, Inc v No 6 Motel Ltd*, (1981), 56 CPR (2d) 44 (FCTD); *Bojangles' International, LLC v Bojangles Café Ltd*, 2006 FC 657].

[53] The Opponent's evidence of use of the ONE SHOT Trademarks discussed above with respect to the section 12(1)(d) ground of opposition is sufficient to meet the Opponent's burden with respect to the section 2 ground of opposition.

[54] The difference in relevant dates does not affect my analysis above under the section 12(1)(d) ground of opposition. As the section 2 ground of opposition is not stronger than the section 12(1)(d) ground of opposition, it is also rejected.

### Ground of opposition based on section 16 of the Act

[55] The Opponent has pleaded that:

The Applicant is not entitled to registration of the [Mark] having regard to the provisions of section 16(1)(a) of the Act, since at the date of filing the [Application], the [Mark] was confusing with the Opponent's [ONE SHOT Trademarks] which had been previously used in Canada [...]. The English translation of the word IPPATSU provided by the Applicant is ONE SHOT.

[56] While the Opponent's reliance on section 16(1)(a) of the Act appears to incorrectly refer to the "new" Act, I am prepared to construe the Opponent's pleading as referring to the provisions of section 16(3)(a) of the "old" Act. Indeed, in view of the pleaded facts and the

evidence of record, I find it reasonable to treat the Opponent's incorrect reference to section 16(1)(a) of the Act in the same way as a clerical error.

[57] In order to meet its initial evidential burden under this ground of opposition, the Opponent has to evidence use of its ONE SHOT Trademarks prior to the date of filing of the Application and non-abandonment of its marks as of the date of advertisement of the Application [section 16(5)]. Again, the Opponent's evidence of use of the ONE SHOT Trademarks discussed above with respect to the section 12(1)(d) ground of opposition is sufficient to meet the Opponent's burden with respect to the present ground of opposition.

[58] The difference in relevant dates does not affect my analysis above under the section 12(1)(d) ground of opposition. As the section 16 ground of opposition is not stronger than the section 12(1)(d) ground of opposition, it is also rejected.


#### DISPOSITION

[59] Pursuant to the authority delegated to me under section 63(3) of the Act, I reject the opposition pursuant to section 38(12) of the Act.

---

Annie Robitaille  
Member  
Trademarks Opposition Board  
Canadian Intellectual Property Office

SCHEDULE A

Trademark	Registration No.	Goods/Claims
ONE SHOT	TMA854886	<p>(1) Insect control products namely, insecticides, aerosols, traps, ribbons and baits.</p> <p>(2) Herbicides and weed killer.</p> <p><u>Claims::</u></p> <p><i>Employée au CANADA depuis au moins aussi tôt que février 2008 en liaison avec les produits (1)</i></p> <p>Declaration of Use filed July 10, 2013 on goods (2).</p>
	TMA851286	<p>(1) Insect control products namely, insecticides, aerosols, traps, ribbons and baits.</p> <p>(2) Herbicides and weed killer.</p> <p><u>Claims:</u></p> <p><i>Employée au CANADA depuis au moins aussi tôt que février 2008 en liaison avec les produits (1)</i></p> <p>Declaration of Use filed May 21, 2013 on goods (2).</p>

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

---

No Hearing Held

**AGENTS OF RECORD**

Norton Rose Fulbright Canada LLP/S.E.N.C.R.L., S.R.L.	For the Opponent
--	------------------

Blake, Cassels & Graydon LLP Intellectual Property Group	For the Applicant
---	-------------------