



LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADEMARKS

Citation: 2022 TMOB 141

Date of Decision: 2022-07-28

IN THE MATTER OF AN OPPOSITION

Ever Young Dermatology

Opponent

and

Csaba Pölös

Applicant

1,696,398 for EVERYOUNG

Application

OVERVIEW

[1] Csaba Pölös (the Applicant) has applied to register the trademark EVERYOUNG (the Mark). The application, as amended, is in association with the following goods:

Preparations for dental and oral care namely mouthwash, toothpaste, gels for gum disease, preparations for cleaning dentures; perfumery and essential oils for hair care, dental care and oral care. (the Goods)

[2] Ever Young Dermatology (the Opponent) opposes the application based on alleged confusion with its trademarks and trade names which include the expression “EVER YOUNG”, including the registered trademark EVER YOUNG DERMESTHETICS & Design (TMA765,356), depicted below.



[3] The Opponent operates a dermatology clinic in Toronto and its registration covers cosmetic and medical dermatological services. As part of its business, the Opponent also sells skin care products bearing its trademark.

[4] For the reasons that follow, the application is refused as the Applicant has not satisfied its burden to demonstrate that there is no likelihood of confusion between the parties' trademarks.

THE RECORD

[5] Application No. 1,696,398 (the Application) was filed on October 2, 2014. The Application is based on proposed use of the Mark in Canada, as well as registration of the Mark in the EU in conjunction with use of the Mark in Hungary, Lithuania, Ireland and Spain.

[6] The Application was advertised for opposition purposes in the *Trademarks Journal* on October 4, 2017. On February 27, 2018, 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). Leave was subsequently granted to the Opponent to file an amended statement of opposition dated September 7, 2018 and a further amended statement of opposition dated October 19, 2020.

[7] 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.

[8] The Opponent raises grounds of opposition based on registrability under section 12(1)(d), entitlement under sections 16(2)(a) and (c) and 16(3)(a) and (c), distinctiveness under section 2, and non-compliance with sections 30(a), (d), (e) and (i) of the Act.

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

[10] The Opponent's evidence includes the affidavit of Dr. Ingrid Jarvis sworn September 7, 2018 (the Jarvis Affidavit). Later in the proceeding, the Opponent was granted leave to file an additional affidavit, namely, the affidavit of Catherine Eleanor Garrity Hart sworn October 19, 2020 (the Hart Affidavit). These two affidavits are discussed further, below. Neither affiant was cross-examined. The Applicant elected not to file any evidence.

[11] Both parties filed written representations and were represented at the hearing.

ONUS AND MATERIAL DATES

[12] The legal onus is on the Applicant to show that the Application complies with the provisions 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. Once this initial burden is met, the Applicant must satisfy the Registrar, on a balance of probabilities, that the grounds of opposition pleaded should not prevent the registration of the Mark [*John Labatt Ltd v Molson Companies Ltd* (1990), 30 CPR (3d) 293 (FCTD) at 298; *Dion Neckwear Ltd v Christian Dior, SA* (2002), 20 CPR (4th) 155 (FCA)].

[13] The material dates for the grounds of opposition are as follows:

- Section 38(2)(a) / 30 – the filing date of the Application [*Georgia-Pacific Corp v Scott Paper Ltd* (1984), 3 CPR (3d) 469 (TMOB) at 475];
- Section 38(2)(b) / 12(1)(d) – 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)];
- Section 38(2)(c) / 16(2)(a) and (c) and 16(3)(a) and (c) – the filing date of the Application;
- Sections 38(2)(d) and 2 - the filing date of the opposition [*Metro-Goldwyn-Mayer Inc v Stargate Connections Inc*, 2004 FC 1185, 34 CPR (4th) 317 (FC)].

EVIDENCE

The Jarvis Affidavit

[14] Dr. Jarvis is a dermatologist licensed by The College of Physicians and Surgeons of Ontario and The Royal College of Physicians and Surgeons of Canada. She has practiced as a dermatologist since 1983. From 1992 to 2005, she operated her dermatology practice in association with her mother, Dr. Anita Jarvis. From 2005 (when her mother retired) to 2013, Dr. Jarvis operated the practice as a sole practitioner. From 2013 to the present, Dr. Jarvis carried on the practice via an Ontario corporation (Dr. Ingrid Jarvis Medicine Professional Corporation) having the business name Ever Young Dermatology. It is this Ontario corporation having the business name Ever Young Dermatology that is the Opponent in this proceeding.

[15] For ease of reference, I will refer to the above-referenced practice, in its various forms over years, as the “clinic”.

[16] Dr. Jarvis describes that since 1992, the clinic has provided and advertised cosmetic and medical dermatological services under the EVER YOUNG, EVER YOUNG DERMESTHETICS (design and word mark) and EVER YOUNG DERMATOLOGY (design and word mark) trademarks and names. At paragraphs 9 and 10 of the affidavit, Dr. Jarvis describes the chain of title in respect of these trademarks which are now owned by the Opponent. The Applicant has not contested this chain of title nor do I see any basis in the evidence to do so. In discussing the Opponent’s trademarks I will focus primarily on the trademark EVER YOUNG DERMESTHETICS & Design which is the subject of the Opponent’s registration TMA765,356, as this appears to be the most frequently used variant of the Opponent’s trademarks. By way of example, Exhibit “20” to the Jarvis Affidavit is a photograph of the door to the Opponent’s clinic displaying the trademark EVER YOUNG DERMESTHETICS & Design.

[17] Dr. Jarvis states that the services available at the clinic consist of cosmetic and medical dermatology services, including cosmetic dermatology, medical dermatology and dermatologic surgery. She states that these services deal with all aspects of the skin and diseases thereof, and also deal with the aging of and skincare for the skin. The services include advice and education with respect to beauty care for the face and body, for hair, for oral hygiene and for cleansing of

the skin. These services are provided by licensed medical doctors. The Opponent also sells essential oils and products such as serums, waxes, eye gels and scrubs. Since 1992, the clinic has provided educational services dealing with beauty care, personal wellness and hygiene.

[18] In 1992, Dr. Jarvis's mother created, and the clinic began selling, a cosmetic and aesthetic product line in association with the trademark EVER YOUNG Dermesthetics. Examples of packaging for these products from various points between 1992 and 2018 are included as Exhibit "19" to the Jarvis Affidavit. The packaging examples all bear the trademark EVER YOUNG Dermesthetics in either word or design form. Examples of invoices for the sales of these products for each of the years from 2013 to 2017 are included as Exhibit "18" to the Jarvis Affidavit. In the body of the invoices, the products are identified as "EVER YOUNG HYDRATING GEL" and "EVERYOUNG HYDRATING CREAM".

[19] The Opponent has advertised its clinic in association with its trademarks in a variety of ways. The Opponent's main website at *ingridjarvis.com* displays the Opponent's trademarks, including the trademark EVER YOUNG DERMESTHETICS & Design (see Exhibit "9"), and the Jarvis Affidavit includes annual visitor and page view data for this website from 2015 through 2018. The Opponent has also advertised its clinic online via Google Ads, in print via the Etobicoke Guardian newspaper and Kingsway Business Directory, in person via booths at a local festival, and via the distribution of promotional items such as fridge magnets. Examples of such advertisements from the 2009 to 2013 period, each displaying the trademark EVER YOUNG DERMESTHETICS & Design are included in Exhibits "13" and "15".

[20] At paragraph 35 of her affidavit, Dr. Jarvis states that she is aware of no use of the trademark EVERYOUNG by the Applicant, and Exhibit "22" includes the results of online searches in this regard which located no evidence of use.

[21] I note that at paragraphs 41-46 of her affidavit, Dr. Jarvis provides opinions on various factors relating to the likelihood of confusion between the parties' trademarks in this case. I have given these opinions no weight as the affiant is not a disinterested party and the opinions are not necessary to resolve the case.

The Hart Affidavit

[22] Ms. Hart is an associate with the Opponent's agent. At paragraph 41 of her affidavit, she states that "I used various searching tools including Google and Yahoo to look for use of the Trademark by the Applicant. I did not find any use of the Trademark anywhere in the world by the Applicant." I note that this particular portion of the Hart Affidavit is similar in content to the statements at paragraph 35 of the Jarvis Affidavit, though Ms. Hart's searches were conducted a little more than two years after those of Dr. Jarvis. I discuss this evidence further in the analysis of the grounds of opposition, below.

[23] Paragraphs 2 to 40 of the Hart Affidavit include a variety of statements by Ms. Hart relating to third party publications and businesses based on information she located online. In general, these paragraphs of the Hart Affidavit appear to be directed at demonstrating the scope of personal care products offered in Canada by certain third party businesses, based on Ms. Hart's review of third party websites which are attached as exhibits to her affidavit.

[24] I appreciate that in some instances it may be necessary for a party to file evidence regarding the state of the marketplace that is obtained by a member of the agent firm representing the party. However, customarily in those circumstances, the specific facts attested to by the affiant will be limited to describing the nature of any search conducted and webpage(s) located. In my view, the additional commentary in paragraphs 2 to 40 of the Hart Affidavit concerning the alleged activity of third party businesses is hearsay and invites consideration of some of the factors discussed by the Federal Court of Appeal in *Cross-Canada Auto Body Supply (Windsor) Ltd v Hyundai Auto Canada*, 2006 FCA 133, 53 CPR (4th) 286. In these circumstances, and since in my view there are no facts contained in paragraphs 2 to 40 of the Hart Affidavit that are necessary to resolve this opposition, out of an abundance of caution I have afforded those paragraphs no weight.

ANALYSIS OF THE GROUNDS OF OPPOSITION

Section 12(1)(d) ground of opposition

[25] The Opponent pleads that the Mark is not registrable because it is confusing with the Opponent's registered trademark EVER YOUNG DERMESTHETICS & Design (TMA765,356) shown above. I have exercised my discretion to check the Register and confirm that this registration remains 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 with respect to the section 12(1)(d) ground of opposition. As a result, the Applicant bears the legal burden of demonstrating on a balance of probabilities that there is no likelihood of confusion between the Mark and the Opponent's registered trademark.

Test for confusion

[26] The test for confusion is set out in section 6(2) of the Act which provides 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, 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.

[27] 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; *Mattel, Inc v 3894207 Canada Inc*, 2006 SCC 22, [2006] 1 SCR 772 at para 54].

[28] 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 they have no more than an imperfect recollection of the opponent's trademark, and do 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]. 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].

Degree of resemblance

[29] In *Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27, 92 CPR (4th) 361 at para 49, 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. I will begin by considering this factor.

[30] In assessing the degree of resemblance, it is preferable to determine whether there is an aspect of each trademark that is "particularly striking or unique" [*Masterpiece, supra*, at paragraph 64]. The striking element of the Opponent's trademark is the expression "EVER YOUNG". I consider the term "dermesthetics", by virtue of its positioning in the trademark and being written in a smaller font, to be a secondary aspect of the Opponent's trademark rather than the most striking element. While the term "dermesthetics" is not a dictionary word in English or French, the term is nevertheless highly suggestive of aesthetic goods and services relating to skin. I do not consider the design aspect of the Opponent's trademark to be the striking or unique element, given its simplicity and location within the trademark as a whole .

[31] The Applicant's Mark is comprised solely of the word EVERYOUNG, and thus is essentially identical to the striking aspect of the Opponent's trademark.

[32] The degree of resemblance factor strongly favours the Opponent.

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

[33] While not devoid of inherent distinctiveness, the Opponent's trademark has a low degree of inherent distinctiveness, as it is suggestive of services designed to keep the recipient's appearance "forever young". The Applicant's Mark in association with the Goods has a similarly low degree of inherent distinctiveness for essentially the same reason.

[34] However, when it comes to assessing the extent to which the parties' trademarks have become known, this consideration favours the Opponent. The Opponent's evidence indicates that its trademark has been used continuously since 1992. While the Opponent has not provided annual sales figures, it has nevertheless provided evidence that the Opponent's clinic has operated continuously since 1992 in association with the Opponent's trademark and the Opponent has provided examples of a variety of advertising over the course of that period in association with the trademark. In contrast, there is no evidence of record that the Applicant's Mark has been used or become known at all in Canada.

[35] I note that in its written representations the Applicant argues that the Opponent's evidence is not sufficient to demonstrate that the Opponent's trademark has "acquired distinctiveness" in accordance with *MC Imports Inc v AFOD Ltd*, 2016 FCA 60 at para 81. However, that portion of *MC Imports* addressed the sufficiency of evidence of acquired distinctiveness for a trademark that had been found to be clearly descriptive under section 12(1)(b) of the Act. That is not the circumstance here. As noted above, I consider both parties' trademarks in this case to possess at least a modicum of inherent distinctiveness.

[36] In these circumstances, taking into account both the inherent distinctiveness of the parties' trademarks and the extent to which they have become known, this factor favours the Opponent.

Length of time the trademarks have been in use

[37] As noted above, the Opponent's evidence indicates that the Opponent and its predecessors have used the trademark EVER YOUNG DERMESTHETICS & Design in Canada since 1992. There is no evidence of any use of the Applicant's Mark. Therefore, this factor also favours the Opponent.

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

[38] Given that each of the other statutory factors favours the Opponent, the outcome of the confusion analysis essentially turns on the question of whether the Goods listed in the Application, and their likely channels of trade, are sufficiently different from the Services in the Opponent's registration to avoid a finding of confusion. For the following reasons, I conclude that they are not.

[39] When considering the goods and services of the parties, it is the statement of goods and services in the parties' trademark application and registration that govern the analysis [see *Mr Submarine Ltd v Amandista Investments Ltd* (1987), 19 CPR (3d) 3 (FCA); and *Miss Universe Inc v Bohna* (1994), 58 CPR (3d) 381 (FCA)]. Those statements must be read with a view to determining the probable type of business or trade intended by the parties rather than all possible trades that might be encompassed by the wording. In this regard, evidence of the actual trades of the parties can be useful, particularly where there is an ambiguity as to the goods or services covered in the application or registration at issue [*McDonald's Corp v Coffee Hut Stores Ltd* (1996), 68 CPR (3d) 168 (FCA); *Procter & Gamble Inc v Hunter Packaging Ltd* (1999), 2 CPR (4th) 266 (TMOB)].

[40] The Opponent's registration covers the services "Cosmetic and medical dermatological services" and the Opponent's evidence of its use of its trademark is consistent with that description. In particular, the Opponent operates a clinic in Toronto that offers cosmetic dermatology, medical dermatology and dermatologic surgery, and deals with various aspects of the skin, skin care and diseases thereof. As part of its clinic, the Opponent also provides advice and education with respect to beauty care for the face and body, for hair, for oral hygiene and for cleansing the skin, and sells a variety of related beauty products, including skin care products branded with the Opponent's trademark. While these ancillary services and goods are not listed in the Opponent's registration, I do not consider it unusual that a business such as the Opponent offering cosmetic and medical dermatological services would also provide advice on personal care and sell skin care products.

[41] The Goods listed in the Application do not overlap directly with the Opponent's services; however, the Goods in the Application nevertheless fall within the general category of personal

care products. For example, items such as “perfumery and essential oils for hair care, dental care and oral care” strike me as goods which could well be sold by aesthetics-related businesses similar in nature to that of the Opponent.

[42] Notably, the Applicant has not filed any evidence to shed greater light on the nature of its business and the likely channels of trade through which its goods would be sold.

[43] In these circumstances, at best for the Applicant, I consider the section 6(5)(c) and (d) factors to favour the Applicant to only a slight degree. Given the extent to which the other statutory factors weigh in the Opponent’s favour, I do not consider the section 6(5)(c) and (d) factors to be sufficient for the Applicant to avoid a finding of confusion.

Conclusion regarding the section 12(1)(d) ground

[44] Having considered all of the surrounding circumstances, I conclude that the Applicant has not satisfied its legal burden to show that there is no reasonable likelihood of confusion between the parties’ trademarks. I reach this conclusion particularly in view of the high degree of resemblance between the parties’ trademarks, the length of time that the Opponent’s trademark has been in use, and the absence of any evidence from the Applicant regarding the nature of its business and likely channels of trade. The section 12(1)(d) ground of opposition based on the Opponent’s registration No. TMA765,356 is therefore successful.

[45] I note that the Opponent in its statement of opposition also raised a section 12(1)(d) ground of opposition based on a third party registration, namely, TMA784,449 for the trademarks FACES EVER YOUNG (& DESIGN) owned by Faces Cosmetics Inc. That registration was the subject of a proceeding under section 45 of the Act, initiated by the Opponent, which resulted in a decision of this Board to expunge the registration [see *Ever Young Dermatology v Faces Cosmetics Inc*, 2022 TMOB 103]. The appeal period for that decision has recently expired. However, regardless of the status of that section 45 proceeding, I do not consider it necessary to address the Opponent’s section 12(1)(d) ground of opposition based on TMA784,449, given that I have already found in the Opponent’s favour in respect of the section 12(1)(d) ground of opposition based on TMA765,356.

Sections 16(2) and 16(3) grounds of opposition

[46] With its non-entitlement grounds of opposition under sections 16(2)(a) and 16(3)(a) of the Act, the Opponent relies not only on its prior use of the registered trademark EVER YOUNG DERMESTHETICS & Design, but also prior use of the unregistered word marks EVER YOUNG DERMESTHETICS and EVER YOUNG. In addition, the Opponent relies on its use of these trademarks not just in association with the cosmetic and medical dermatological services listed in TMA765,356, but also in association with the services “education services relating to beauty and esthetics care, personal wellness and hygiene” and the goods “cosmetics, preparations and goods for use in beauty and esthetics care for face and body and hair care preparations.”

[47] With its non-entitlement grounds of opposition under sections 16(2)(c) and 16(3)(c), the Opponent relies on prior use of the trade names EVER YOUNG DERMESTHETICS and EVER YOUNG.

[48] In order to meet its initial evidential burden under the non-entitlement grounds of opposition, the Opponent is required to demonstrate use of its trademarks and trade names prior to the filing date of the Application, namely, October 2, 2014. In my view, the Opponent has readily met that initial evidential burden. In particular, the Opponent’s evidence demonstrates use since 1992 of at least the trademark EVER YOUNG DERMESTHETICS & Design in association with cosmetic and medical dermatological services as well in association with skin care products. Further, I consider the Opponent’s evidence (particularly Exhibits “18” and “19” to the Jarvis Affidavit) to also demonstrate use of the trademark EVER YOUNG in association with skin care products since prior to the material date. I also consider that the Opponent has demonstrated use of the trade name EVER YOUNG DERMESTHETICS since prior to the material date (for example, see Exhibits “16” and “20” to the Jarvis Affidavit). In my view, there is no evidence to suggest that the Opponent had abandoned these trademarks or trade name as of the date of advertisement of the Application.

[49] The legal burden then shifts to the Applicant to demonstrate that on a balance of probabilities there was no likelihood of confusion between the Opponent’s trademarks and trade name and the Mark as of October 2, 2014. For essentially the same reasons as set out in my analysis of the section 12(1)(d) ground of opposition, I find that the Applicant has not satisfied

that legal burden. Indeed, particularly with the section 16(2)(a) and 16(3)(a) grounds of opposition which are based on prior use of the Opponent's trademarks in association with not only cosmetic and medical dermatological services, but also skin care products, the Opponent's position is even stronger than in respect of its section 12(1)(d) ground of opposition.

[50] In view of the above, the grounds of opposition under sections 16(2)(a) and (c) and 16(3)(a) and (c) all succeed.

Section 2 ground of opposition

[51] As I have already found in the Opponent's favour in respect the grounds of opposition under sections 12(1)(d), 16(2)(a) and (c) and 16(3)(a) and (c), which each turn on the issue of confusion, I do not consider it necessary to assess the section 2 ground of opposition.

Section 30 grounds of opposition

[52] I will address the grounds of opposition under section 30 because they are conceptually distinct from the confusion grounds discussed above; however, I will do so only briefly, given that I have already found in the Opponent's favour with respect to the registrability and entitlement grounds which alone are sufficient to resolve this proceeding.

Section 30(a)

[53] The Opponent asserts that the Application does not comply with section 30(a) of the Act because the descriptions of the Goods are not in ordinary commercial terms. The Jarvis Affidavit contains various statements regarding the alleged lack of specificity of the terms used to describe the goods, and the Opponent's written representations include arguments to this effect. I note that the description of goods in the Application was revised to its current form after the Jarvis Affidavit was filed, but that had no impact on the ultimate outcome of this ground.

[54] In my view, the manner in which the Goods are described does not contravene section 30(a). Descriptions such as "toothpaste", "mouthwash", "preparation for cleaning dentures", "perfumery", "essential oils for personal use" and "dental gel" are all included among the list of acceptable descriptions in the Canadian Intellectual Property Office *Goods and Services Manual*.

I consider the description of Goods in the Application to be the same or of equivalent specificity to those aforementioned acceptable descriptions. The section 30(a) ground of opposition is therefore rejected.

Section 30(d)

[55] The Opponent asserts that the Mark was not used by the Applicant as of the filing date in the countries indicated in the Application, namely, Hungary, Lithuania, Ireland and Spain. In this regard, the Jarvis Affidavit and Hart Affidavit include evidence that the affiants unsuccessfully searched online for examples of use of the Mark by the Applicant. However, I do not consider this evidence sufficient to meet the Opponent's initial evidential burden under section 30(d), for at least the reason that the Goods listed the application would not necessarily have been advertised or sold online. Also, I note that the Opponent pleads that the Application does not comply with section 30(d) because the Applicant is not the owner of the corresponding EU registration. However, the particulars of the EU registration included as Exhibit "23" to the Jarvis Affidavit identify the Applicant as being one of the owners of that registration, and I received no further evidence or arguments from the Opponent on this point.

[56] In view of the above, the section 30(d) ground of opposition is rejected.

Section 30(e)

[57] The Opponent asserts that as of the filing date of the Application the Applicant did not intend to use the Mark in Canada, and in this respect relies on the evidence in the Jarvis Affidavit and Hart Affidavit of unsuccessful online searches for the Mark. However, I do not consider the absence of evidence of use of the Mark to constitute evidence that the Applicant did not intend to use the Mark in Canada at the time of filing. The Opponent has not met its initial evidential burden and the section 30(e) ground of opposition is rejected.

Section 30(i)

[58] The Opponent asserts that the Applicant could not have been satisfied of its entitlement to use the Mark. Section 30(i) of the Act required an applicant to include a statement in the application that the applicant is satisfied that it is entitled to use the trademark in Canada. Where

an applicant has provided the required statement, the jurisprudence suggests that non-compliance with section 30(i) can be found only where there are exceptional circumstances that render the applicant's statement untrue, such as evidence of bad faith [see *Sapodilla Co Ltd v Bristol-Myers Co* (1974), 15 CPR (2d) 152 (TMOB) at 155]. Mere knowledge of the existence of an opponent's trademark is not sufficient to support a section 30(i) ground of opposition [see *Woot Inc v WootRestaurants Inc*, 2012 TMOB 197].

[59] In the present case, the Application contains the requisite statement and there is no evidence that this is an exceptional case. Accordingly, the section 30(i) ground of opposition is rejected.

DISPOSITION

[60] 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 2022-06-14

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