



# Canadian Intellectual Property Office

## **THE REGISTRAR OF TRADEMARKS**

**Citation:** 2023 TMOB 075

**Date of Decision:** 2023-05-01

## **IN THE MATTER OF AN OPPOSITION**

**Opponent:** Belron International Limited

**Applicant:** Stand Out Auto Glass Inc.

**Application:** 1,854,882 for STAND OUT AUTO GLASS

### **INTRODUCTION**

[1] Stand Out Auto Glass Inc. (the Applicant) has applied to register the trademark STAND OUT AUTO GLASS (the Mark), which is the subject of application No. 1,854,882 (the Application) in association with the following goods and services:

(1) Plate glass and glass used variously as windshields, windows, mirrors and sunroofs for automobiles, trucks, tractor trailers, trains, recreational vehicles (RVs), motorcycles and other road vehicles, boats and other marine vessels; Window motors and window channels for land vehicles and marine vessels.

(1) Replacement, repair, cutting, installing and maintenance of windshields for motor vehicles, automobile, and other vehicles' window-panes, and plate glass.

(2) Window tinting for automobiles and other vehicles and vessels. (the Goods and Services)

[2] Belron International Limited (the Opponent) opposes the Application based on various grounds, including alleged confusion with the Opponent's family of STANDARD AUTO GLASS registered trademarks, which have been previously used in Canada by the Opponent in association with, *inter alia*, the distribution and sale of windshields for motor vehicles and vehicle glass repair and replacement services in Canada (collectively, the STANDARD AUTO GLASS Trademarks). The full particulars of the Opponent's registrations are set out in Schedule A hereto.

[3] For the reasons that follow, the opposition succeeds.

### **THE RECORD**

[4] The Application was filed on August 29, 2017 on the basis of proposed use of the Mark in Canada in association with the Goods and Services. The Application was advertised for opposition purposes in the *Trademarks Journal* on February 20, 2019.

[5] The Opponent filed a statement of opposition under section 38 of the *Trademarks Act*, RSC 1985, c T-13 (the Act) on July 17, 2019. 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.

[6] On September 17, 2019, the Applicant filed and served a counter statement denying the grounds of opposition.

[7] In support of its opposition, the Opponent filed the affidavit of Brian Clements, Regional Director, Commercial Sales for Belron Canada Inc. (Belron Canada), a wholly-owned subsidiary and licensee of the Opponent, sworn April 7, 2020 (the Clements affidavit). The Clements affidavit speaks to the issues of use of the Opponent's STANDARD AUTO GLASS Trademarks and the past relationship between Belron Canada and the Applicant (formerly 1304045 Ontario Inc.) as a former franchisee and licensee of Belron Canada. Mr. Clements was not cross-examined on his affidavit.

[8] In support of its Application, the Applicant filed the affidavit of Linda Marie Kim Swailes, co-owner and a director and officer of the Applicant, sworn August 5, 2020 (the Swailes affidavit). The Swailes affidavit speaks to the issues of the past relationship between the Applicant (formerly 1304045 Ontario Inc.) and Belron Canada and the adoption of the Mark by the Applicant. Ms. Swailes was cross-examined on her affidavit, and the transcript of her cross-examination and replies to undertakings form part of the record.

[9] Both parties filed written representations and were ably represented at the hearing. In this regard, I note that the Opponent stated in its written representations that it is no longer pursuing the grounds of opposition set out at paragraphs 8 and 13 of its statement of opposition.

#### **THE PARTIES' RESPECTIVE BURDEN OR ONUS**

[10] 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), 1990 CanLII 11059 (FC), 30 CPR (3d) 293 (FCTD); *Dion Neckwear Ltd v Christian Dior, SA et al*, 2002 FCA 29, 20 CPR (4th) 155].

#### **ANALYSIS**

##### ***Non-registrability of the Mark under section 12(1)(d) of the Act***

[11] The Opponent has pleaded that the Mark is not registrable because it is confusing with its registered STANDARD AUTO GLASS Trademarks.

[12] I have exercised the Registrar's discretion to confirm whether each of the Opponent's pleaded registrations is 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)]. In this

regard, I note that the statement of goods and services of registration No. TMA197301 now reads as follows:

(1) Wax, soap for vehicles.

(2) Windshields for motor vehicles, automobile and other vehicles window-panes, automobile and other vehicles upholstery and trim, automobile and other vinyl tops and convertible tops, seat covers.

(3) Plate glass; glass for store fronts.

(4) Floor mats for vehicles.

(1) Replacement, repair, installing and/or servicing of windshields for motor vehicles, automobile and other vehicles window-panes, automobile and other vehicles upholstery and trim, floor mats, automobile and other vehicles vinyl tops and convertible tops, seat covers, store fronts, plate glass.

[13] The Applicant must therefore establish, on a balance of probabilities, that there is not a reasonable likelihood of confusion between the Mark and any one of the Opponent's pleaded registrations.

[14] In this regard, I stress that the Opponent's registered marks must be reviewed individually and not collectively as a "family of marks" for the purpose of assessing the likelihood of confusion with the Mark. As discussed below, however, evidence of a family of marks is a relevant surrounding circumstance in each case. That said, and unless indicated otherwise, I will focus my analysis on the Opponent's word mark STANDARD AUTO GLASS of registration No. TMA197301.

#### The test for confusion

[15] 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.

[16] 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 trademark STANDARD AUTO GLASS, who sees the Applicant's Goods and Services in association with the Mark, would think that they are sold or otherwise emanate from or are licensed, approved or sponsored by the Opponent.

[17] 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 Cliquot 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 degree of resemblance between the trademarks in appearance or sound or in the ideas suggested by them*

[18] The degree of resemblance between the trademarks at issue is often the factor likely to have the greatest effect on the confusion analysis and is thus an appropriate starting point [*Masterpiece, supra*, at para 49]. Each trademark must be considered as a whole and assessed for its effect on the average consumer as a matter of first impression; it is not the proper approach to set the trademarks side by side and carefully examine them to tease out similarities and differences. However, it is still possible to focus on particular features of each trademark that may have a determinative influence on the public's perception of it [per *United Artists Pictures Inc v*

*Pink Panther Beauty Corp* (1998), 80 CPR (3d) 247 (FCA)]. In this respect, the preferable approach is to begin by determining whether there is an aspect of each trademark that is “particularly striking or unique” [*Masterpiece, supra*, at para 64].

[19] Given the descriptive character of the words AUTO and GLASS in the context of the parties’ auto glass-related goods and services, I find the most striking aspects of the parties’ trademarks are the words STANDARD and STAND OUT respectively. That said, I cannot ignore the words AUTO and GLASS simply because they describe the nature of the parties’ goods and services.

[20] That being so, I find that the parties’ trademarks are visually and phonetically much more similar than different, as a matter of first impression, since they share the same construction, the same number of syllables, and the same start “STAND” and finish “AUTO GLASS”. However, I do not find persuasive the Opponent’s submission that the average consumer would be likely to slur the termination of the words STANDARD and STAND OUT, as their last syllables, especially the syllable OUT is not dropping off but, rather, quite the opposite. Thus, I disagree with the Opponent that any difference in pronunciation between STANDARD and STAND OUT is “negligible”.

[21] Conceptually, the words STANDARD and STAND OUT both convey, as acknowledged by the Applicant in its written representations, a general idea about the quality of the parties’ goods and services. In this regard, I am in general agreement with the Applicant’s submission that the parties’ trademarks “also convey more than that” because the Mark conveys to consumer that the Applicant offers “outstanding” auto-glass related goods and services that cause the Applicant to “stand out” from its competitors, whereas the Opponent’s trademark conveys to consumers that the Opponent offers auto-glass related goods and services that are of a “standard” quality. Indeed, according to the Swailes affidavit (discussed below), the Mark “was intended to suggest the *opposite* of ‘Standard’” [Swailes affidavit, at para 16]. However, given the various definitions of the word STANDARD in the *Oxford Canadian Dictionary*, Second Edition, comprising: “an object or quality or measure serving as an example or principle to which others conform or should conform or by which the accuracy or quality of others

is judged”; “the degree of excellence etc. required for a particular purpose (*not up to the standard*)”; “having recognized and permanent value; authoritative”; “set the standard: reach a level of excellence to which others must try to match”, I also agree with the Opponent that “both parties’ marks are a combination of a somewhat laudatory term and the term ‘AUTO GLASS’”, and as such, that the trademarks convey the general idea that the parties offer quality auto glass-related goods and services.

[22] In sum, considering the matter as a first impression and imperfect recollection, I find there is a fairly high degree of resemblance between the parties’ trademarks. Accordingly, this factor favours the Opponent.

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

[23] The inherent distinctiveness of a trademark refers to its originality. Trademarks consisting wholly or in part of words descriptive of the articles to be sold or of the services to be rendered attract a more limited range of protection than does an invented, unique, or non-descriptive word or an original design [see *General Motors Corp v Bellows*, [1949] SCR 678, citing *Office Cleaning Services Ltd v Westminster Window & General Cleaners, Ltd* (1946), 63 RPC 39 at 41 (HL); and *Fairmount Properties Ltd v Fairmount Management LLP*, 2008 FC 876].

[24] Given the descriptive character of the words AUTO and GLASS in the context of the parties’ auto glass-related goods and services, and the suggestive character of the words STANDARD and STAND OUT as discussed above, neither of the parties’ trademarks is inherently strong. To the contrary, both parties’ trademarks are inherently weak and reside on the low end of the spectrum of inherent distinctiveness.

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

[26] This brings me to review the evidence of use of the parties’ trademarks introduced through the Clements and Swailes affidavits respectively, in light of the parties’ representations. In this regard, I find that the specific facts of this case require a

high degree of detail given the past commercial relationship between Belron Canada and the Applicant and the latter's position that the Opponent has lost control over the character and quality of the goods and services offered by its franchisees and licensees—including, formerly the Applicant—in association with the Opponent's trademarks. As it will become apparent from my review of the evidence below, there is a debate between the parties as to the termination of the trademark license agreement that was entered into between the parties back in 2006. Hence my added emphasis in some of the assertions reproduced below.

The Clements affidavit

[27] Because the Opponent's evidence of use of its other STANDARD AUTO GLASS registered trademarks will be relevant as an additional surrounding circumstance, I summarize below those portions of the Clements affidavit that I consider to be the most pertinent regarding the extent of use and promotion of both the Opponent's word mark STANDARD AUTO GLASS and the Opponent's other relied-upon trademark registrations comprising its STANDARD AUTO GLASS family of marks.

[28] Mr. Clements essentially attests to the following:

*i. Background and history*

- the Opponent is an affiliated company of Belron Group S.A., which is the parent company of the Belron Group, the world's largest dedicated vehicle glass repair and replacement company, with approximately 30,000 employees, operating in more than 30 countries on five continents [para 2];
- the Opponent and its affiliates own a number of brands in the field of vehicle glass repair and replacement services ("VGRR Services"), including APPLE AUTO GLASS, BROCO GLASS, DURO, LEBEAU, SPEEDY AUTO GLASS, and STANDARD AUTO GLASS. Under these brands, the Opponent and its predecessors-in-title have advertised, promoted, offered, and performed VGRR Services in Canada for over 75 years, serving hundreds of thousands of Canadian customers every year [paras 2-3];



- Belron Canada oversees the national operations of these brands, and *provides support to its corporate-owned, franchised, and licensed service centres* across Canada. With more than 350 service centres, 40 distribution/warehouse centres, and over 1,800 employees in all 10 provinces, Belron Canada is the Canadian leader in the field of VGRR Services” [para 4; and Exhibit A: screenshots of Belron Canada’s website at *www.belroncanada.com* and of the Opponent’s website at *www.belron.com* that provide additional details about these two companies];
- ii. The STANDARD AUTO GLASS Trademarks*
- the Opponent and its predecessors-in-title have used the STANDARD AUTO GLASS Trademarks in Canada in connection with windshields, windows, and plate glass for motor vehicles, among other goods, and VGRR Services since at least as early as June 1960 [para 7; and Exhibit B: copies of the Opponent’s Canadian registrations of the STANDARD AUTO GLASS Trademarks];
  - since that time, the Opponent and its predecessors-in-title have advertised, promoted, offered for sale, and sold windshields, windows, and plate glass for motor vehicles, and advertised and performed VGRR Services, *exclusively through dedicated STANDARD AUTO GLASS service centres* located throughout Canada. For over 60 years, the Opponent and its predecessors-in-title have prominently displayed the STANDARD AUTO GLASS Trademarks in, on, and around such Canadian service centres. In particular, Belron Canada *currently provides support to 22 STANDARD AUTO GLASS service centres in Canada* [paras 8, 9 and 14; and Exhibit C: representative photographs of various STANDARD AUTO GLASS service centres located in Canada, all of which prominently display one or more of the STANDARD AUTO GLASS Trademarks—for example, as both interior and exterior signage. Mr. Clements states that these photographs are representative of the manner in which the Opponent and its predecessors-in-title have used the STANDARD AUTO GLASS Trademarks in Canada in connection with their windshields, windows, and plate glass for motor vehicles and with the performance and advertising of their VGRR Services];

- the Opponent also advertises its VGRR Services by distributing business cards that prominently display the STANDARD AUTO GLASS Trademarks [para 10; Exhibit D: representative copies of business cards which have been distributed in Canada];
- the STANDARD AUTO GLASS Trademarks are also prominently displayed on the Opponent’s STANDARD AUTO GLASS website at [www.standardautoglass.ca](http://www.standardautoglass.ca) [para 11; Exhibit E: representative screenshots of this website, which has been visited more than 25,000 times since it was launched in June 2017];
- the total retail sales of VGRR Services performed by Belron Canada’s *licensees through dedicated Canadian STANDARD AUTO GLASS services centres* amounted to more than \$7.2 million Canadian dollars for the years 2015 to 2019. The Opponent’s approximate Canadian retail sales of VGRR Services can be summarized as follows:

Year	Sales (CAD)
2015	\$1,200,000
2016	\$1,300,000
2017	\$1,500,000
2018	\$1,700,000
2019	\$1,500,000
<b>Total</b>	<b>\$7,200,000</b>

*iii. The Applicant’s history as a former franchisee and licensee*

- the Applicant is a company incorporated under the laws of the Province of Ontario as 1304045 Ontario Inc. The Applicant is owned and operated by Ms. Swailes and Peter Swailes (the Swailes affidavit specifies that Mr. Swailes is the husband of Ms. Swailes), who are the directors and officers of 1304045 Ontario Inc. [para 15; and Exhibit F: copy of the Corporation Profile Report for 1304045 Ontario Inc.];
- 1304045 Ontario Inc. is a former franchisee and licensee of Belron Canada. In December 2006, it entered into a Supply Agreement with Belron Canada pursuant to which 1304045 Ontario Inc. operated a STANDARD AUTO GLASS

- service centre in Orillia, Ontario [para 16; and Exhibit G: copy of the signed Supply Agreement, executed on December 12, 2006 by Mr. and Ms. Swailes];
- in December 2006, 1304045 Ontario Inc. also entered into a Trademark License Agreement with Belron Canada, pursuant to which 1304045 Ontario Inc. was permitted to use the STANDARD AUTO GLASS Trademarks in Orillia, Ontario and the surrounding area in the course of its advertising, promoting, offering, and performing VGRR services as a licensee of Belron Canada [para 17; and Exhibit H: copy of the signed Trademark License Agreement, executed on December 12, 2006 by Mr. and Ms. Swailes];
  - in June 2017, Belron Canada notified Mr. and Ms. Swailes that it would be terminating its business relationship with 1304045 Ontario Inc. effective as of August 11, 2017 [para 18; and Exhibit I: copies of letters dated September 15, 2016, February 2, 2017 and June 6, 2017, from Belron Canada to Mr. and Ms. Swailes, related to Belron Canada's terminating its business relationship with 1304045 Ontario Inc.]. Belron Canada subsequently terminated its business relationship with 1304045 Ontario Inc., including the Supply Agreement and Trademark License Agreement, on August 11, 2017; and
  - the Applicant filed the Application for the Mark on August 29, 2017, i.e. shortly after Belron Canada terminated its business relationship with 1304045 Ontario Inc. [para 18. Also attached as Exhibits J and K to the Clements affidavit, are a copy of Mr. Swailes' business card given to Mr. Clements by a colleague and which bears the address at which 1304045 Ontario Inc. formerly operated a STANDARD AUTO GLASS service centre and advertises its VGRR services in connection with the Mark; and a screenshot of the Applicant's website at [www.standoutautoglass.ca](http://www.standoutautoglass.ca) which displays a photograph of a billboard advertising the Applicant's VGRR services having been voted "The BEST of ORILLIA" in 2016, and prominently displaying the Mark with underneath the phrase "*(formerly Standard Auto Glass)*".

[29] Both in its written representations and at the hearing, the Applicant has submitted that the Clements affidavit contains few actual details of the Opponent's use of the

Opponent's STANDARD AUTO GLASS Trademarks and who, *in specific*, uses (and benefits from the use of) the Opponent's Trademarks in Canada. For example, the Applicant submits that:

- the “representative photographs of various STANDARD AUTO GLASS centres in Canada” attached as Exhibit C to the Clements affidavit do not provide any detail as to the Opponent's relationship with these service centres. In fact, the representative samples of use attached to the Clements affidavit as Exhibits C and D (copies of business cards) do not include dates or other information upon which this Board can determine the actual length of time in which the Opponent's STANDARD AUTO GLASS Trademarks have been used in Canada, whether by the Opponent, Belron Canada, or their licensees;
- Mr. Clements states at paragraph 9 that “[Belron Canada currently provides support to 22 STANDARD AUTO GLASS service centres in Canada”. But in paragraph 13, the AUTO GLASS Services are referred to as being performed by Belron Canada's “licensees”. Similarly, Mr. Clements states in paragraph 4 that “[Belron Canada] oversees the national operations of these brands, and provides support to its corporate-owned, franchised and *licensed* service centre across Canada”. While this statement refers to service centres falling under all the Opponent's brands, the cumulative effect of Mr. Clements' evidence is clearly that a number of the Opponent's STANDARD AUTO GLASS-branded service centres are operated by independent licensees and are not, in fact, owned by the Opponent or its corporate subsidiaries; and
- other than its Trademark License Agreement with the Applicant, the Opponent has not submitted any evidence to establish which of its STANDARD AUTO GLASS-branded centres are operated by licensees, or more importantly, that the Opponent exercises the requisite degree of control over the character or quality of the goods and services provided by such licensees in association with the Opponent's STANDARD AUTO GLASS Trademarks, as required by section 50 of the Act.

[30] Therefore, the Applicant submits that the Clements affidavit does not, in fact, evidence the “extensive” use of the Opponent’s STANDARD AUTO GLASS Trademarks throughout Canada that it purports to and that Mr. Clements’ statements as to the extent and length of use of the Opponent’s STANDARD AUTO GLASS Trademarks ought to be given little weight, as they are not supported by documentary evidence and it is not clear that the Opponent is entitled to the benefits of subsection 50(1) of the Act.

[31] I am in general agreement with the Applicant’s submissions.

[32] In this regard, I acknowledge that the exhibited Trademark License Agreement between 1304045 Ontario Inc. and Belron Canada [Exhibit H] does include specific clauses relating to quality control. However, in the absence of any clear statement to that effect by Mr. Clements and given the uncertainty regarding the effective date of termination of this agreement following the expiry of the initial two-year term stipulated at clause 3 of that agreement (discussed below), I am not prepared to infer that the same type of trademark license agreement has necessarily been put in place between the Opponent and each of the 22 STANDARD AUTO GLASS-branded centres and that the Opponent has exercised the requisite degree of control over the use of its STANDARD AUTO GLASS Trademarks by each of its licensees. That said, I am not prepared to infer, as the Applicant would wish, that the Opponent has necessarily lost control over the character and quality of the goods and services offered by its licensees, including the Applicant, in association with the Opponent’s trademarks and that the latter are not distinctive. Rather, I am simply not in a position, in view of the imprecisions noted above, to determine the extent to which either one of the Opponent’s STANDARD AUTO GLASS Trademarks has become known in Canada by virtue of any such license.

[33] This brings me to turn to the Applicant’s evidence introduced through the Swailes affidavit.

#### The Swailes affidavit

[34] Ms. Swailes essentially attests to the following:

- the Applicant operates a vehicle glass repair and replacement business in Ramara, Ontario that has operated under the trademark and trade name STAND OUT AUTO GLASS since approximately the beginning of 2018 [paras 1 and 21];
- from 1998 until 2006, the Applicant's business operated as a franchise of Standard Auto Glass Limited, a subsidiary of the Opponent [para 2];
- in 2006, the Opponent convinced the Applicant to become a "Very Important Affiliate" (a "VIA") instead. In December 2006, the Applicant entered into a Trademark License Agreement with the Opponent, under which the Opponent granted the Applicant the right to continue using the STANDARD AUTO GLASS trademark and trade name for its business as a VIA for a term of two years and for a \$500 fee [paras 3 and 4; and Exhibit A: another copy of the above-referenced Trademarks License Agreement attached as Exhibit H to the Clements affidavit];
- in or around the same time, the Applicant entered into a Supply Agreement that obligated the Applicant to pay the Opponent a \$200 monthly fee and purchase 90% of its inventory of auto glass from the Opponent [para 5];
- between 2006 and 2008, the Applicant had a number of issues dealing with the Opponent. Among other things, the Applicant believed the Opponent overcharged it for materials and misrepresented what the Applicant was paying to the Opponent as compared to its other affiliates. Ultimately, the Applicant chose not to pay any of the fees required under either the Trademark License Agreement or the Supply Agreement [para 6];
- in late 2008, Ms. Swailes called a representative of the Opponent, named Yvon Ouellette, to explain why it wished to terminate its relationship with the Opponent. According to Ms. Swailes, Mr. Ouellette purportedly informed her that the Opponent "*was done with the STANDARD AUTO GLASS banner*" or similar words to the effect that the Opponent "*would no longer be promoting the STANDARD AUTO GLASS brand*" [para 7];
- after that, the Applicant *continued* to use the STANDARD AUTO GLASS trademark and trade name but, given what Ms. Swailes had been told by Mr. Ouellette, and given the issues the Applicant had been having with the

Opponent, the Applicant *made no effort to renew* the Trademark License Agreement and the Opponent never asked it to [para 8];

- in the months and years following the expiry of the Trademark License Agreement, *the Opponent never objected to the Applicant's continued use of* STANDARD AUTO GLASS as the name of its business. The Applicant continued to do so, believing in good faith that the Opponent had no issue with the Applicant's *unlicensed use* of this name. The Applicant's belief was based on the fact that, among other things, *the Opponent knew that the Applicant was continuing to use the name and never told it to stop* [para 9];
- for instance, throughout this period, the Opponent sent the Applicant invoices addressed to STANDARD AUTO GLASS for materials that the Applicant had purchased from the Opponent's Vanfax business [para 10; and Exhibit B: sample invoices from May 30, 2014 and March 3, 2017];
- in or around April 2012, another representative of the Opponent in Montreal, Ms. Christina Calucci, confirmed to the Applicant that the Opponent considered the December 2006 Supply Agreement to be null and void [para 11];
- in mid-2016, the Applicant was advised by the Opponent's representative, Scott Stevenson, that the Applicant would need to enter into a new supply agreement with the Opponent if it wanted *to continue* purchasing any materials from the Opponent's Vanfax business. The Applicant refused and the Opponent indicated in September 2016 that *it would be terminating its relationship with the Applicant by December 31, 2016* [paras 12 and 13];
- then, in February 2017, the Opponent wrote again to the Applicant advising it that *the Opponent would not be terminating its relationship with the Applicant* if the Applicant began complying with the terms of the December 2006 agreements, which according to Ms. Swailes had long expired. In this regard, she adds that she does not know why the Opponent changed its mind, since the Applicant had not agreed to any of its terms or to buy any of its materials [para 13];
- in July 2017, the Opponent wrote again to the Applicant to notify it that the Opponent would be terminating their relationship as of August 11, 2017. In its letter dated July 19, 2017, the Opponent stated that "*effective as of August 11,*

2017, we will expect you to remove all signage with respect to the Standard Auto Glass banner” [para 14; and Exhibit C: another copy of the above-referenced letter attached as Exhibit I to the Clements affidavit];

- the Applicant was surprised by the Opponent’s *sudden demand* that the Applicant cease using the STANDARD AUTO GLASS banner since according to Ms. Swailes, the Opponent *had never had an issue with the Applicant’s unlicensed use of this name over the roughly nine years that the Applicant had been using it since the expiry of the Trademark License Agreement* [para 15];
- however, the Applicant *decided in August 2017 to comply with the Opponent’s request to change the Applicant’s name only because the Applicant did not want to have to deal with the Opponent any longer* [para 15];
- the Applicant selected its new name STAND OUT AUTO GLASS—which was *intended to suggest the opposite of “standard”: instead of being known as “standard” auto glass and auto glass services, the Applicant wanted to become known for “stand out” (i.e. outstanding) auto glass and related services* [para 16];
- the process of changing the Applicant’s name was not an easy one, particularly since the Opponent gave the Applicant only a few weeks. The process included, among other things, ordering and obtaining new exterior and interior signage for the Applicant’s business, new decals for the Applicant’s vehicles, and making changes to the Applicant’s website, Facebook page, business cards, invoices and other marketing materials. It was not until the beginning of 2018 that this transition was complete [paras 19 to 21]; and
- to the extent that the Opponent relies on Exhibit K to the Clements affidavit, to suggest that the Applicant was calling itself “STAND OUT AUTO GLASS” in 2016 or at the time of filing the Application for the Mark, this is not correct. As indicated above, the Applicant did not even choose that name until August 2017 [para 21].

[35] Both in its written representations and at the hearing, the Applicant takes the position that the Opponent led the Applicant to believe that the Opponent would be abandoning its STANDARD AUTO GLASS brand. To the extent that the Applicant relies on Ms. Swailes’ alleged conversations with Mr. Ouellette or Ms. Calucci as evidence



that the Opponent had abandoned or intended to abandon the STANDARD AUTO GLASS Trademarks, I agree with the Opponent that this is inadmissible hearsay that should be disregarded, not to mention that Ms. Swailes could not find any written or recorded documentation of her alleged conversation with Ms. Calucci to the effect that the Opponent considered the December 2006 Supply Agreement to be null and void [transcript at 15:13-25; and reply to undertaking].

[36] In fact, speaking of the December 2006 Supply Agreement, I do not find persuasive the Applicant's position that it would have become null and void. Quite the opposite, the evidence of record leads me to believe that this agreement had been tacitly renewed up to the effective termination date of August 11, 2017.

[37] First, I note that clause 14 of the agreement stipulates that it will automatically renew for further one year terms unless either party gives the other party a notice to the contrary. Second, the sample invoices from May 30, 2014 and March 3, 2017 attached as Exhibit B to the Swailes affidavit expressly identify the Applicant as a "VIA" (i.e. a "Very Important Affiliate", per the Supply Agreement), which contradict Ms. Swailes' assertions that the Supply Agreement had become null and void. Third, as a further reservation with respect to the credibility to be given to Ms. Swailes' testimony, I note that Ms. Swailes' assertion made at paragraph 13 of her affidavit referred to above that she "do[es] not know why the Opponent changed its mind" is apparently contradicted by Belron Canada's letter dated February 2, 2017 addressed to the Applicant "Attn: Peter Swailes and Linda Kim Swailes" [included in the bundle of letters attached as Exhibit I to the Clements affidavit]. This letter expressly indicated that it "serves as confirmation that Belron will not, at this time, be exercising its right to terminate" both the Supply Agreement and the Trademark License Agreement given "your recent discussions with Mr. Scott Stevenson, during which you expressed your desire to begin complying with the Agreements". The letter further stressed that "leniency is being shown in your regard in light of your eagerness to right the wrongs of recent times and that Belron will not hesitate to take any action contemplated in the Agreements and/or law should you fail to comply with the obligations set forth therein." Fourth, I note that the screenshot of the Applicant's website attached as Exhibit K to the Clements affidavit that bears a

copyright date of 2020 and displays a billboard showing the Mark with underneath the mention “formerly Standard Auto Glass”, also includes the following accompanying text referring to the Applicant’s past history with the Opponent and stating that the Applicant is “*now* a family-run business, independently owned and operated” [my emphasis]:



We would like to sincerely thank the people of Orillia and surrounding area for voting us #1 in the automotive glass industry! I started working with Standard Auto Glass on March 1, 1981 as a glass technician, road man, then as a shop assistant manager, to shop manager, to owner/operator on October 1, 1998. I am proud to say that we are now a family-run business, independently owned and operated. During the past 35+ years in the glass industry I have strived to give my customers #1 quality products, service, and most importantly to treat each and every person I meet with kindness and compassion.

On behalf of **Stand Out Auto Glass** Orillia, Kim and I would like to wish everyone a very Merry Christmas and a wonderful, safe, and prosperous New Year! Thank you again for voting us #1; this award means a great deal to us.

All the best,  
Pete & Kim Swailes  
**Stand Out Auto Glass Orillia**

[38] This brings me to discuss the Trademark License Agreement. As indicated above, and as transpired from my review of the Clements and Swailes affidavits respectively, there is a debate between the parties as to the termination of the Trademark License Agreement that was entered into between the parties in 2006. The Applicant apparently takes the position that it terminated after the initial two-year term stipulated at clause 3 of the agreement, while the Opponent submits that the agreement was terminated on the effective termination date of August 11, 2017. I note that clause 3 of the agreement provided that the parties could agree to renew this License Agreement on or before the expiry of the initial two-year term of the Agreement and that it was a condition of this License that the Applicant be a member in good standing of the Opponent’s VIA program. Given the content of the three successive letters attached as Exhibit I to the Clements affidavit, and my reservations noted above as to the credibility to be afforded to Ms. Swailes’ testimony, I am prepared to infer that the Trademark License Agreement had been tacitly renewed up until the effective termination date of August 11, 2017. Still, given the absence of details as to the extent of use of either one of the Opponent’s STANDARD AUTO GLASS Trademarks by the Applicant, the extent known of these marks in Canada by virtue of such licensed use remains very much unclear.

[39] I shall add in this regard that if I am wrong in finding that the Trademark License Agreement had been tacitly renewed, this does not change my ultimate conclusion as to the distinctiveness of the Opponent's STANDARD AUTO GLASS Trademarks.

Clause 8.3 of the License Agreement expressly provides that "Licensee will at no time take any action whatsoever to contest the validity or ownership" of the Opponent's trademarks, while clause 9.3 includes the following non-waiver provision:

Non-waiver - The failure of Licensor to exercise any right, power or option given hereunder or to insist upon the strict compliance with the terms and conditions hereof by Licensee shall not constitute a waiver of the terms and conditions of this Agreement with respect to that or any other or subsequent breach thereof nor a waiver by Licensor of its rights at any time thereafter to require strict compliance with all terms and conditions hereof including the terms or conditions with respect to which Licensee has failed to exercise such right, power or option.

#### Conclusion on this second factor

[40] On balance, I find that the evidence is inconclusive regarding the extent to which either of the parties' trademarks has been used or become known in Canada.

[41] As submitted by the Applicant both in its written representations and at the hearing, the specimen of business card bearing the Mark provided to Mr. Clements and the screenshot of the Applicant's website displaying a billboard showing the Mark [Exhibits J and K to the Clements affidavit] merely show that the Applicant was using the Mark *at some point in time*. No evidence is provided as to when the business card was obtained by the Opponent. Nor is there evidence to show when the billboard was erected. In this regard, I agree with the Applicant that it is perfectly reasonable for the Applicant to advertise the fact that it was voted BEST IN ORILLIA in 2016 even after changing its name to STAND OUT AUTO GLASS at the beginning of 2018, as asserted by Ms. Swailes. Still, the Swailes affidavit provides no information as to the penetration of the Applicant's advertising efforts or extent of use of the Mark.

[42] In the same vein, in view of the imprecisions noted above in my review of the Clements affidavit, I agree with the Applicant that Mr. Clements' statements as to the extent and length of use of the Opponent's STANDARD AUTO GLASS Trademarks ought to be given little weight, as they are not supported by detailed documentary

evidence and it is not clear that the Opponent is entitled to the benefit of subsection 50(1) of the Act.

[43] Overall, I find that the section 6(5)(a) factor does not significantly favour one party over the other.

*The length of time the trademarks have been in use*

[44] As noted by the Federal Court of Appeal, “[a] mark that has been in use a long time, versus one newly arrived on the scene, is presumed to have made a certain impression which must be given some weight” [*United Artists Pictures Inc v Pink Panther Beauty Corp*, [1998] 3 FC 534].

[45] As indicated above, the Application is based upon proposed use and the actual date of first use of the Mark is unclear.

[46] Despite the imprecisions noted above in my review of the Clements affidavit, the fact remains that the Opponent’s registration No. TMA197301 claims use of the trademark STANDARD AUTO GLASS in Canada since at least as early as June 1, 1960, which is consistent with Mr. Clements’ statements of use and enables the Registrar to assume *de minimis* use of the Opponent’s trademark [*Entre Computer Centers, Inc v Global Upholstery Co* (1991), 40 CPR (3d) 427 (TMOB)].

[47] Accordingly, the section 6(5)(b) factor favours the Opponent, but not significantly.

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

[48] As acknowledged by the Applicant in its written representations and at the hearing, there is no dispute that the goods and services offered by both parties in association with their respective trademarks are identical or directly overlapping and that the parties’ goods and services are offered through similar channels of trade.

[49] However, the Applicant submits that “consumers in the trade for auto-glass related goods and services have been conditioned to differentiate between marks based on small differences, owing to the number of traders using highly suggestive or descriptive marks in association with their goods or services”. For example, the

Applicant notes that the Opponent's own brands APPLE AUTO GLASS, BROCO GLASS, SPEEDY AUTO GLASS, and STANDARD AUTO GLASS all contain descriptive and/or highly suggestive terms. While not without merit, I am not prepared to accord significant weight to this latter argument of the Applicant as the evidence of record is simply insufficient to establish significant use of any of these other alleged brands. This brings me to turn to the state of the register and marketplace evidence.

*Additional surrounding circumstances*

State of the register and marketplace evidence

[50] While not expressly described as such, the Swailes affidavit also purports to introduce state of the register and marketplace evidence that demonstrate that STANDARD is a commonly-used term within the automotive goods and services trade.

[51] State of the register evidence is only relevant insofar as one can make inferences from it about the state of the marketplace [*Ports International Ltd v Dunlop Ltd*, 1992 CarswellNat 1431 (TMOB); and *Welch Foods Inc v Del Monte Corp*, 1992 CarswellNat 178 (FCTD)]. Inferences regarding the state of the marketplace may be drawn from such evidence only if a large number of relevant trademarks are located [*Kellogg Salada Canada Inc v Maximum Nutrition Ltd* (1992), 1992 CanLII 14792 (FCA), 43 CPR (3d) 349 (FCA); *McDowell v Laverana GmbH & Co KG*, 2017 FC 327 at paras 41-46]. Relevant trademarks include those that (i) are registered or are allowed and based on use; (ii) are for similar goods and services as the marks at issue, and (iii) include the component at issue in a material way [*Sobeys West Inc v Schwan's IP, LLC*, 2015 TMOB 197 at para 38].

[52] In the present case, Ms. Swailes attaches to her affidavit as Exhibit D the printouts of the following Canadian trademark registrations and websites that allegedly relate to the use of the word STANDARD in trademarks and trade names in Canada:

Trade Name / Trademark	Website	Goods/services	Related Canadian Trademark Registration(s)
STANDARD	<a href="http://www.standardbrand.com">www.standardbrand.com</a>	Sale of auto parts	TMA492883 TMA492889 TMA492885 TMA506147
STANDARD AUTOWRECKERS	<a href="http://www.standardautowreckers.com">www.standardautowreckers.com</a>	Sale of auto parts	
STANDARD		Automotive tires	NFLD2227
STANDARDFIT	<a href="http://www.rossie.com">www.rossie.com</a>	Automotive parts	TMA774052
STANDARD ROAD ASSIST		Roadside services for automobiles	TMA679554
STANDARD PLUS EMERGENCY ROADSIDE ASSISTANCE	<a href="http://www.ccsfco.ca">www.ccsfco.ca</a>	Roadside services for automobiles	

[53] However, I agree with the Opponent that such evidence should be given little to no weight because of the low number of registrations found and in the absence of any conclusive state of the marketplace evidence, as per the following passages reproduced from the Opponent's written representations:

- Four registrations owned by Standard Motor Products, Inc. and a screenshot of this company's website at *www.standardbrand.com*. As is evident from the bottom right-hand corner of the screenshot, this company is headquartered in Long Island City, New York. Under cross-examination, Ms. Swailes admitted that she has no knowledge of this company doing business in Canada, having any commercial presence in Canada, or having any reputation in Canada. She also admitted to having no knowledge of any of the registered trademarks being used in Canada or any automotive parts being sold by this company in Canada [transcript at 26:3-26:21].
- A screenshot of *www.standardautowreckers.com*, the website for Standard Autowreckers. When asked about her knowledge of this company's reputation in Canada, Ms. Swailes responded, "I would think they must have a good reputation, I'm thinking. They are certainly on the radio a lot." However, there is no evidence whatsoever of such radio ads in the Swailes Affidavit, and Ms. Swailes admitted as much under cross-examination [transcript at 27:4-27:8].
- The Newfoundland registration for STANDARD owned by The Firestone Tire and Rubber Company, a company based in Ohio. Pursuant to subsection 67(1) of the Trademarks Act, this mark does not expire and is not subject to section 45 cancellation proceedings. As such, there is no way of deducing whether this mark, which was registered in 1937, remains active. Notably, Ms. Swailes did not list a corresponding website or attach a relevant screenshot, and admitted to having no knowledge of this company doing business or having a commercial presence or reputation in Canada [transcript at 27:22-28.8].

- A registration for STANDARDFIT GR & Design owned by Rossi S.P.A, an Italian company. While Ms. Swailes lists this company’s website at *www.rossie.com*, she has not included a screenshot thereof. Under cross-examination, Ms. Swailes admitted that she had no information or knowledge of this company doing business in Canada, having any commercial presence in Canada, or having any reputation in Canada [transcript at 28:9-29:2].
- A registration for STANDARD ROAD ASSIST owned by SP Plus Corporation, a company based in Illinois. Again, Ms. Swailes has not listed a website or attached a relevant screenshot. Under cross-examination, Ms. Swailes admitted that she had no information or knowledge of this company doing business in Canada, having a commercial presence in Canada, or having any reputation in Canada [transcript at 29:4-17].
- A screenshot from *www.costco.ca* advertising “Standard Plus Emergency Roadside Assistance.” On cross-examination, Ms. Swailes admitted to having no information or knowledge of this company having any commercial presence or reputation in Canada [transcript at 30:2-9].

61. In fact, Ms. Swailes admitted on cross-examination that she had no information or knowledge of anyone in Canada having visited these websites or having seen these marks or names, of any of the registered trademarks having been used in Canada, or of anyone in Canada having purchased or hired STANDARD-branded goods or services [transcript at 22:13-23:18, 24:12-18].

#### Family of marks

[54] As indicated above, it is the Opponent’s position that it is the owner of a family of STANDARD AUTO GLASS registered trademarks.

[55] However, there can be no presumption of the existence of a family of marks in opposition proceedings. A party seeking to establish a family of marks must establish that it is using more than one or two trademarks within the alleged family (a registration or application does not establish use) [*Techniquip Ltd v Canadian Olympic Assn* (1998), 1998 CanLII 7573 (FC), 145 FTR 59 (FCTD), aff’d 250 NR 302 (FCA); and *Now Communications Inc v CHUM Ltd* (2003), 32 CPR (4th) 168 (TMOB)].

[56] Given the imprecisions noted above in my review of the Clements affidavit, I am not satisfied that the Opponent has established that it has a family of marks.

Conclusion re: likelihood of confusion

[57] As indicated above, the Applicant bears the legal onus of establishing, on a balance of probabilities, that there is not a reasonable likelihood of confusion as to the source of the parties' goods or services. The presence of an onus on the Applicant means that if, after all the evidence is in, a determinate conclusion cannot be reached, the issue must be decided against the Applicant [see *John Labatt, supra*].

[58] Having considered all of the surrounding circumstances, I arrive at the conclusion that the probability of confusion is evenly balanced between a finding of confusion and of no confusion. Specifically, in view of the identical or overlapping nature of the goods, channels of trade and target audience and the degree of resemblance between the parties' trademarks, the Applicant has failed to demonstrate that an average consumer seeing the Mark in association with the applied-for Goods and Services having only a vague recollection of the Opponent's trademark, as a matter of first impression, would not infer that the Goods and Services are sold or otherwise emanate from or are licensed, approved or sponsored by the Opponent. Indeed, while I have found that the Opponent's trademark is inherently weak, I am not satisfied that the Applicant has sufficiently distinguished its Mark from the Opponent's STANDARD AUTO GLASS trademark.

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

***Non-compliance of the Application under section 30(i) of the Act***

[60] The Opponent has pleaded that contrary to section 30(i) of the Act, the Applicant could not have been satisfied, at the date of filing the Application, that it was entitled to use the Mark in association with the applied-for Goods and Services, given the Opponent's extensive use, promotion, advertising, and making known in Canada of the STANDARD AUTO GLASS Trademarks, in association with overlapping goods and services, of which the Applicant had full knowledge as a former franchisee of the Opponent's affiliate, Belron Canada, and a former licensee of the STANDARD AUTO GLASS Trademarks.



[61] Section 30(i) of the Act requires that an application include a statement that the applicant is satisfied that it is entitled to use the applied-for trademark in association with the applied-for goods or services. In this case, the Opponent acknowledges that such a statement was provided in the Application. However, the Opponent implicitly pleads that this statement was made in bad faith because of the past relationship between Belron Canada and the Applicant as a former franchisee and licensee of the STANDARD AUTO GLASS Trademarks.

[62] More particularly, the Opponent submits that on termination of the Trademark License Agreement, the Applicant became contractually prohibited from using “any name or mark similar to the [STANDARD AUTO GLASS Trademarks]” per clauses 8.2 and 8.3 of the Trademark License Agreement, reproduced below:

8.2 Licensee’s Obligations on Termination – Upon the proper termination of this Agreement for any reason whatsoever, Licensee shall cease to be a licensee of Licensor and shall:

(a) immediately cease to use, directly or indirectly, in any manner whatsoever the Trademarks or *any name or mark similar to the Trademarks*. Without limiting the generality of the foregoing, Licensee shall immediately cease and desist from all uses of the Trademarks whether on documents, advertising or otherwise; and

(b) remove the Trademarks from or deliver up to Licensor or its duly authorized representatives all materials including signs and advertising materials in its possession, custody or control upon which the Trademarks appear (except for such documents reasonably required for archival purposes). Such material shall be delivered up to Licensor without charge.

8.3 Licensee shall acquire no right, title, or interest in said Trademarks and any goodwill associated with said Trademarks shall enure solely to the benefit of Licensor. No monetary amount shall be associated or attributable to any goodwill associated with Licensee’s use of said Trademarks upon expiration or termination of this Agreement. Licensee will at no time take any action whatsoever to contest the validity or ownership of said Trademarks.

[63] I agree with the Opponent that the Applicant was contractually obligated not to adopt a “similar mark” to the Opponent’s STANDARD AUTO GLASS Trademarks. I further agree with the Opponent that the Mark “is undoubtedly ‘*similar*’ to the STANDARD AUTO GLASS Trademarks”. As set out by the Opponent in its written representations:

180. When the franchise relationship was terminated, the Applicant did not relocate or otherwise change its business: the Applicant continues to operate a vehicle glass repair and replacement business through its service centre in Orillia, Ontario. The Applicant merely adopted a new name which, as outlined in detail [...] above, is remarkably similar to its previous name.

[64] In this regard, the Opponent refers to the decision *Super Seer Corp v 546401 Ontario Ltd* (2000), 6 CPR (4th) 560 (TMOB), in which the Registrar concluded that a license agreement between the parties supported a ground of opposition based on section 30(i) of the Act. In that case, the agreement specifically provided that if the license is “terminated at any time or for any reason, [the applicant] shall forthwith discontinue all use of the logo and trademarks ‘Super Seer’, and thereafter shall no longer use or have the right to use the logo and trademarks ‘Super Seer’, or any variation thereof.” The Registrar ultimately refused the application, stating:

Having regard to the license agreement between the parties and the fact that Mr. Reuber, President of the applicant, was **aware** of the history of the SUPER SEER mark in view of his prior partnership with Mr. Smith and his involvement in SEER INDUSTRIES LIMITED, and considering further that the applicant’s mark SEER & Design is **almost identical in appearance** to the opponent’s trade-mark SUPER SEER & Design, I find that the applicant has failed to meet the legal burden upon it in respect of the Subsection 30(i) ground in relation to its trade-mark SEER & Design. [Emphasis added by the Opponent]

[65] The Opponent also refers to the decision *Flame Guard Water Heaters, Inc v Usines Giant Inc*, [2008] TMOB No. 36, in which the Registrar similarly held that breach of a contractual relationship was sufficient to establish bad faith under section 30(i) of the Act, stating:

The Opponent has met its initial onus to establish that there existed, prior to the filing of this application, a **contractual relationship licensor-licensee between the parties**. The Applicant has not contested Mr. Phillips’ assertions described above. Therefore I accept the fact that the Applicant was **fully aware** that the Opponent is the registered owner of the trade-mark FLAME GUARD. However in normal circumstances such fact would not be sufficient for the Opponent to succeed. The mere knowledge of the Opponent’s rights does not prevent the Applicant to make the statement required under s. 30(i) of the Act that it is satisfied that it is entitled to use the Mark. Nonetheless the Opponent alleges that the Applicant wanted to include in the license agreement a provision by which the Opponent would acknowledge the Applicant’s ownership and unfettered right to use the trade-mark FLAMEBAR. The Opponent refused the insertion of that clause and, as mentioned above, instead **the Applicant was precluded from adopting a trade-mark that would be considered, in a reasonable determination by**

**the Opponent, to be confusing** with its trade-mark **FLAME GUARD**. Obviously if the Opponent refused to acknowledge the Applicant's right to use the Mark in the license agreement, it did consider that trade-mark to likely cause confusion with its trade-mark **FLAME GUARD**.

The Opponent's initial burden has been met under this ground of opposition. Consequently, the burden shifts on the Applicant who failed to file any evidence. In some instances, the Registrar has maintained a ground of opposition under s. 30(i) where the evidence showed that a contractual relationship "licensor-licensee" existed and that the registration of a trade-mark would constitute a breach of such contractual relationship ... Under the circumstances described above, the Applicant failed to demonstrate, on a balance of probabilities, its substantive compliance with s. 30(i) of the Act. The second ground of opposition is therefore successful. [Emphasis added by the Opponent]

[66] In view of all the foregoing, I find that the Applicant has failed to meet the legal burden upon it in respect of the section 30(i) ground of opposition. Accordingly, this ground of opposition is successful.

#### ***Remaining grounds of opposition***

[67] As the Opponent has succeeded under two grounds of opposition, it is not necessary to address the remaining grounds of opposition.

#### **DISPOSITION**


[68] 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.

---

Annie Robitaille  
Member  
Trademarks Opposition Board  
Canadian Intellectual Property Office

## SCHEDULE A

I am reproducing below the full particulars of the Opponent's registrations as set out in its statement of opposition.

Reg. No.	Trademark	Goods/Services
TMA197301	STANDARD AUTO GLASS	<p><b>Goods:</b> (1) Windshields for motor vehicles, automobile and other vehicles window-panes, automobile and other vehicles upholstery and trim, floor mats, automobile and other vinyl tops and convertible tops, seat covers, store fronts, plate glass, wax, soap.</p> <p><b>Services:</b> (1) Replacement, repair, installing and/or servicing of windshields for motor vehicles, automobile and other vehicles window-panes, automobile and other vehicles upholstery and trim, floor mats, automobile and other vehicles vinyl tops and convertible tops, seat covers, store fronts, plate glass.</p>
TMA447504	STANDARD AUTO GLASS	(1) Operation of a business involving the sale, replacement, repair, installation and servicing of motor vehicle windshields, window-panes, side and back lights, upholstery and trim, floor mats, vinyl tops and convertible tops, seat covers, plate glass, and automobile accessories manufactured by others.
TMA753439	STANDARD AUTOGLASS	<p><b>Goods:</b> (1) Windshields for motor vehicles; window-panes for automobiles and other vehicles; upholstery and trim for automobiles and other vehicles; floor mats; convertible tops and other vinyl tops for automobiles; seat covers; plate glass; wax; soap.</p> <p><b>Services:</b> (1) Operation of a business involving the sale, replacement, repair, installation and servicing of motor vehicle windshields, window-panes, side and back lights, upholstery and trim, floor mats, vinyl tops and convertible tops, seat covers, plate glass and automobile accessories.</p>
TMA1035952	STANDARD AUTO GLASS 	<p><b>Goods:</b> (1) Car wax, soap for vehicles. (2) Windshields and windows for vehicles, upholstery and trim for motor vehicles, convertible tops and vinyl tops for motor vehicles, seat covers. (3) Plate glass. (4) Floor mats for vehicles.</p> <p><b>Services:</b> (1) Operation of a business involving the sale of windshields and windows for vehicles, headlights, sidelights and taillights, plate glass, upholstery and trim for motor vehicles, floor mats, convertible tops and vinyl tops for motor vehicles, seat covers, and accessories for motor vehicles manufactured by others, namely, windshield wipers, covers for steering wheels, headrest covers for</p>

Reg. No.	Trademark	Goods/Services
		<p>vehicle seats, floor mats, lights for vehicles. 37(2) Operation of a business involving the replacement, repair, installation and servicing of windshields and windows for vehicles, headlights, sidelights and taillights, plate glass, upholstery and trim for motor vehicles, floor mats, convertible tops and vinyl tops for motor vehicles, seat covers, and accessories for motor vehicles manufactured by others, namely, windshield wipers, covers for steering wheels, headrest covers for vehicle seats, floor mats, lights for vehicles.</p>

# Appearances and Agents of Record

**HEARING DATE:** 2023-01-19

## **APPEARANCES**

**For the Opponent:** Graham Hood

**For the Applicant:** John H. Simpson

## **AGENTS OF RECORD**

**For the Opponent:** Smart & Biggar LP

**For the Applicant:** Shift Law Professional Corporation