



# Canadian Intellectual Property Office

## **THE REGISTRAR OF TRADEMARKS**

**Citation:** 2023 TMOB 103

**Date of Decision:** 2023-06-16

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

**Opponent:** S.S. Athletics Inc.

**Applicant:** Toatee Limited

**Application:** 1883145 for SOCIETY SPORT

### **INTRODUCTION**

[1] S.S. Athletics Inc. (the Opponent) opposes registration of the trademark SOCIETY SPORT (the Mark), that is the subject of application No. 1,883,145 (the Application), filed by Toatee Limited (the Applicant).

[2] The Application for the Mark was filed on February 14, 2018, for use in association with a variety of clothing, footwear, headgear, luggage, bags, and related items, as well as retail and wholesale services including those in relation to, among others, the aforesaid goods. A complete listing of the applied-for goods and services, together with their associated Nice classes (CI) and claims is attached under Schedule A to this decision.

[3] The Application was advertised in the *Trademarks Journal* of April 14, 2021. On June 14, 2021, 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). Numerous amendments to

the Act came into force on June 17, 2019. As the Application in this case was advertised after June 17, 2019, the Act as amended applies (see section 69.1 of the Act).

[4] The Opponent raises grounds of opposition based on section 38(2)(a)/30(2)(a), non-entitlement under sections 16(1)(a) and (b), non-distinctiveness under section 2, and non-compliance with section 38(2)(f) of the Act.

[5] For the reasons that follow, I refuse the application.

### **THE RECORD**

[6] As previously indicated, the Opponent filed its statement of opposition on June 14, 2021.

[7] The Applicant filed and served its counter statement on October 14, 2021, denying the grounds of opposition.

[8] In support of its opposition, the Opponent filed the affidavit of Ms. Stephanie Nichols, the founder, owner and manager of the Opponent, sworn on February 14, 2022, together with Exhibits A to O.

[9] On June 13, 2022, the Applicant provided a statement, pursuant to section 52(3) of the *Trademark Regulations*, that the Applicant does not wish to submit evidence.

[10] Neither party filed written representations nor requested a hearing.

### **OVERVIEW OF THE EVIDENCE**

#### **Summary of the Nichols Affidavit**

[11] Ms. Nichols states that she incorporated the Opponent on December 23, 2016, and that the Opponent is also known as and conducts business under the name Sweat Society.

[12] Ms. Nichols describes the Opponent as a private retail business offering online and in-person sales of ethically made and sourced, active and athletic clothing and other retail merchandise. She explains that the Opponent, based in Vancouver, British Columbia, sells both its own products as well as third party products to customers all over North America. She states that the majority of the Opponent's customers to date have been from Alberta, British Columbia and Ontario.

[13] Ms. Nichols states that the Opponent is the owner of the common law mark SWEAT SOCIETY, which has been used extensively, in word and in design form, in association with, in addition to other items, clothing and the retail sale of clothing, including athletic and casual clothing, since 2015. She states that the Opponent is also the owner of trademark application Nos. 1,974,511 (for SWEAT SOCIETY) and 1,975,199 (described as SWEAT SOCIETY & Design, however, I will refer to as the “SS Logo” as it consists of only design elements), filed in association with similar goods and services (which she refers to collectively as the “Sweat Society Goods”), printouts from the Canadian Trademarks Database of which she attaches as Exhibit B to her affidavit. I have included particulars of those trademark applications under Schedule B to this decision. Ms. Nichols refers to these three trademarks in her affidavit collectively as the “Sweat Society Mark”.

[14] Ms. Nichols explains that in 2015, the Opponent registered the *sweatsociety.ca* domain name, which she states prominently features the Sweat Society Mark in association with the Sweat Society Goods. She attaches screenshots from this website as Exhibit C to her affidavit. The trademark SWEAT SOCIETY appears on these pages on its own or with the SS Logo inserted between the words SWEAT and SOCIETY. The products shown in the photographs on these pages include crew neck sweatshirts, a sports bra, a tank top, and what appear to be t-shirts, shorts, and leggings. While one of the webpages refers to the “Sweat Society Private Label”, the SWEAT SOCIETY trademark is not apparent on any of the apparel items themselves; although the SS Logo does appear on the tank top and sweatshirts illustrated, and the trademark SWEAT SOCIETY is printed immediately below the photographs of the sweatshirts, together with a description and price.

[15] Ms. Nichols attests that the Opponent also publishes a blog on this website, which features, among other things, feature athletes, including well known athletes wearing athletic and casual clothing branded with the Sweat Society Mark. She attaches as Exhibit J to her affidavit, what she describes is a sample blog post showing use of the Sweat Society Mark on the Sweat Society Goods in collaboration with a feature athlete. The athletes shown on the webpages are shown in athletic attire, including t-shirts, tank tops, sweat shirts, and a zip up jacket, which display the SWEAT SOCIETY trademark, the SS Logo, or a combination of the two marks.

[16] Ms. Nichols states that also in 2015, the Opponent created a Facebook page and an Instagram page. She states that at the time of swearing her affidavit, the Facebook page had

1487 likes and 1542 followers, and the Instagram page had 1700 posts (each featuring the Sweat Society Mark), and 7834 followers. She states that the Opponent introduced the Sweat Society Mark for the first time on April 27, 2015, and that since that date: it has been used extensively on the Opponent's Facebook page in association with the Sweat Society Goods, including through the marketing of various collaborations with other local businesses and pop-up retail events; served as the profile picture for the Facebook page, and; has accompanied every post made by the Opponent on this page. In support of the aforementioned, she attaches the following to her affidavit:

- Exhibits D and E - screenshots of what she describes as the Opponent's main Facebook page and a post dated April 27, 2015, introducing the Sweat Society Mark;
- Exhibit F - samples of use of the Sweat Society Mark, on the Opponent's Facebook page, dated between May 2015 and February 2022;
- Exhibits G and H - a screenshot of the Opponent's main Instagram page, and what she describes as screenshots and pictures respectively, from the Opponent's Instagram page showing a large sample of the use of the Sweat Society Mark between June of 2015 and February of 2022; and
- Exhibit I – screenshots which show collaborations between the Opponent and local businesses, featured on the other business' websites, to promote and sell the Opponent's Sweat Society branded goods.

[17] The above-mentioned screenshots from the Opponent's social media pages contain a multitude a photographs of various pieces of athletic attire (consistent with attire featured in previously described exhibits) that were available for sale at numerous venues (pop-up retail events), and advertisements and photographs of the Opponent's pop-up retail events, dating back to 2015.

[18] Lastly, with respect to sales, Ms. Nichols states that the Opponent's sales revenues as of February 14, 2022 are estimated at over \$1,078,000. She states that a significant portion of these sales are attributable to sales of the Opponent's own branded athletic and casual clothing, including athletic and casual clothing branded with the Sweat Society Mark. She further states that the Opponent's first sale was achieved in April of 2015. As evidence of sales, she attaches the following to her affidavit:

- Exhibit K - a “sales by product vendor report” beginning January 1, 2015, with the names of the vendors other than the Opponent redacted from the printout;
- Exhibits L and M – a “sales over time report” for 2015 and an order and thank you note confirmation for one of the Opponent’s first sales, recorded on May 1, 2015, which she states is of a product branded with the Sweat Society Mark;
- Exhibit N – a “sales by product report” showing sales of Sweat Society Goods, which she states includes those branded with the Sweat Society Mark, beginning in 2015. The report identifies the following goods as being sold: tank tops, water bottles, leggings, t-shirts, crop tops, sweat shirts, hoodies, a popsocket, and a baseball cap; and
- Exhibit O – a “sales over time report” that shows the Opponent’s sales from 2015 to the date of swearing of Ms. Nichols’ affidavit.

## **ANALYSIS**

### ***Section 30(2)(a) Ground of Opposition***

[19] The Opponent pleads that the Application for the Mark does not conform to the requirements of section 30(2)(a) of the Act, because it does not contain a statement in ordinary commercial terms of the specific goods or services in association with which the Mark has been or is proposed to be used.

[20] The Opponent however, filed no evidence nor made any representations with respect to this ground of opposition. Consequently, the Opponent has failed to meet its evidential burden and this ground of opposition is rejected.

### ***Section 16(1)(b) Ground of Opposition***

[21] The Opponent pleads that the Applicant is not the person entitled to registration of the Mark pursuant to section 16(1)(b) of the Act given that, at the filing date of the Application, it was confusing with the Opponent’s trademark applications - application No. 1,974,511 (SWEAT SOCIETY), filed July 29, 2019, and application No. 1,975,199 (SWEAT SOCIETY & Design, that is, the SS Logo), filed July 19, 2019.

[22] With respect to the section 16(1)(b) ground of opposition, the Opponent has an initial burden of establishing that its application(s) was/were filed prior to the filing date of the

Application (*i.e.*, February 14, 2018), and that the application(s) was/were not abandoned at the date of advertisement (April 14, 2021) [section 16(3) of the Act]. The Registrar has the discretion to check the Register in order to confirm the existence of the applications relied upon by an opponent [see *Quaker Oats of Canada Ltd/La Compagnie Quaker Oats du Canada Ltée v Menu foods Ltd* (1986), 11 CPR (3d) 410 (TMOB)].

[23] Neither of the Opponent's relied upon applications were filed prior to the Applicant's filing date of February 14, 2018; consequently, the Opponent has not satisfied its evidential burden with respect to these marks.

[24] Accordingly, this ground of opposition is rejected.

### **Section 16(1)(a) Ground of Opposition**

[25] The Opponent pleads that pursuant to sections 16(1)(a), the Applicant is not the person entitled to registration of the Mark, because at the date of filing of the application, the Mark was confusing with the Opponent's Sweat Society trademarks (that is, the common law trademark SWEAT SOCIETY, and the trademarks SWEAT SOCIETY and SS Logo under application Nos. 1,974,511 and 1,975,199, respectively, previously referred to collectively as the Sweat Society Marks). More particularly, the Opponent pleads that:

- Use of the Mark in the same area as the Opponent's Sweat Society Marks is likely to lead to the inference that the goods or services associated with the Mark are manufactured, sold, leased, hired or performed by the same person as those of the Opponent's Sweat Society Marks;
- The Opponent began using the Sweat Society Marks as early as 2015 in association with athletic wear and casual wear, including sports bras, t-shirts, tank tops, crop tops, sweat shirts, long sleeve shirts, hoodies, shorts, leggings, sweat pants, underwear, sport shoes and other items;
- Use by the Opponent of the Opponent's Sweat Society Marks predates any use by the Applicant and predates the Applicant's filing date; and
- The Opponent's Sweat Society Marks have become widely known.

[26] The Opponent has an initial burden of establishing that one or more of its trademarks alleged in support of this ground of opposition was/were used or made known prior to the earlier of the date of filing of the Application, namely, February 14, 2018, or the date of first use of the Mark in Canada, and was not abandoned at the date of advertisement of the Application for the Mark (in this case, April 14, 2021) [section 16(3) of the Act]. As the Applicant has not filed any evidence, and the application is based on proposed use in Canada, the material date for the Opponent under this ground of opposition is February 14, 2018, the date of filing of the Application.

[27] While the Opponent's evidence could have been more precise, as Ms. Nichols refers to the Sweat Society trademarks collectively in her affidavit, rather than individually when attesting to use and sales, when viewing the evidence as a whole, I am satisfied that the Opponent has met its burden. In this regard, the evidence depicts each of the Opponent's relied upon trademarks, displayed in the advertising and performance of the Opponent's retail services (specifically at pop-up retail events), with most of the Opponent's purported goods being represented. This evidence of use dates to 2015. I do note however, that Ms. Nichols attests that the Opponent was incorporated in 2016, and that no predecessor-in-title was identified. In any event, it is moot as to whether the Opponent can rely upon use since 2015 or 2016, as either date predates the material date under this ground.

[28] I now have to determine, on a balance of probabilities, if the Mark is likely to cause confusion with one or more of the Opponent's SWEAT SOCIETY Marks. In considering the issue of confusion, my analysis will focus on the Opponent's SWEAT SOCIETY trademark – which appears in both in isolation as well as with the SS Logo inserted between the words SWEAT and SOCIETY. I do not consider the SS Logo on its own to bear any resemblance to the Applicant's Mark.

#### The Test for Confusion

[29] 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 he or she has no more than an imperfect recollection of the opponent's trademark, and does not pause to give the matter any detailed consideration or scrutiny, nor to examine closely the similarities and differences between the marks [*Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée*, 2006 SCC 23 at para 20].

[30] 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, including in appearance or sound or in the ideas suggested by them. This list is not exhaustive; all relevant factors are to be considered, and are not necessarily attributed equal weight [see *Mattel, Inc v 3894207 Canada Inc* 2006 SCC 22; *Veuve Clicquot, supra*; and *Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27].

Section 6(5)(a) – the inherent distinctiveness of the trademarks and the extent to which they have become known

[31] Both parties' marks consist of the word SOCIETY used in combination with words that are either descriptive or suggestive when used in association with their respective goods and services. In this regard, the word SPORT, in the Mark, is clearly descriptive of goods and services that are in the sports field, or relate to goods that are used for sport. The word SWEAT in the Opponent's trademark, on the other hand, in my view, is highly suggestive of goods (and services of the sale of such goods) that are used during sporting or physical activities wherein the user "sweats". While the shared component, SOCIETY, may be viewed as suggestive of a "community", per the following definition, as located in the *Merriam-Webster Online Dictionary*, it is not descriptive:

*Society*: a community, nation, or broad grouping of people having common traditions, institutions, and collective activities and interests.

[32] Therefore, both parties' word marks have a similar degree of inherent distinctiveness, with the Opponent's SWEAT SOCIETY trademark being only slightly more inherently distinctive in view of its suggestive rather than descriptive connotation.

[33] The strength of a trademark may be increased by means of it becoming known in Canada through promotion or use.

[34] The Applicant has not filed any evidence of use or making known of its Mark. The Opponent, on the other hand, has filed evidence of use of its SWEAT SOCIETY trademark, both in word format or with the SS Logo inserted between the words SWEAT and SOCIETY, since at



least 2016. However, given the imprecise nature of Ms. Nichols' evidence, it is not possible to ascertain the extent to which each particular trademark has been used in association with the goods. The extent of use of these marks is a little more clear with respect to the Opponent's services, as both marks appear prominently throughout the evidence on the Opponent's social media pages, webpages, and photographs of and advertisements for the Opponent's pop up retail events. However, the number of followers of the Opponent's social media pages and the sales figures provided in the Opponent's evidence, over the course of a nearly seven year period, are such that I cannot infer that the Opponent's relied upon marks have become known to a significant extent (or even to a significant extent in a specific area of Canada).

[35] Overall, having regard to the aforementioned, this factor favours the Opponent, albeit not to a significant extent for the reasons explained above.

#### Section 6(5)(b) – the length of time of use

[36] There is no evidence that the Applicant has commenced use of the Mark in Canada.

[37] On the other hand, the Opponent has shown use of its SWEAT SOCIETY trademark since at least as early as 2016. Consequently, this factor favours the Opponent.

#### Sections 6(5)(c) and (d) – the nature of the goods and channels of trade

[38] In the absence of evidence and submissions from the Applicant, the nature of the parties' goods and services and channels of trade appear to be highly similar or even overlapping.

[39] While the Opponent's goods are in the area of athletic apparel and related goods and services pertaining to the sale of such goods, there are no restrictions in the Applicant's application regarding the nature of the Applicant's apparel and services connected to the sale of such goods. Indeed, the Applicant's trademark itself, with the inclusion of the word SPORT, implies that there would be overlap. Furthermore, the Applicant's statement of services includes the wholesale of sporting goods and sports equipment, which supports the inference that overlap exists and that the Applicant's goods are sports and athletic oriented (with the Applicant's services pertaining to the sale of such goods).

[40] Accordingly, these factors favour the Opponent.

### Section 6(5)(e) – the degree of resemblance

[41] It is well established that when considering the degree of resemblance between trademarks, the trademarks must be considered in their totality and it is not the correct approach to lay them side by side and carefully compare and observe the similarities or differences among their elements.

[42] While it is generally accepted that the first component of a mark is often the most important for the purposes of distinguishing between the marks [*Conde Nast Publications Inc v Union des éditions modernes* (1979), 46 CPR (2d) 183 (FCTD)], the importance of this factor diminishes if the first component is descriptive. Indeed, when any portion of a trademark is a common descriptive or suggestive word, its importance diminishes [see *Merial LLC v Novartis Animal Health Canada Inc* (2001), 11 CPR (4th) 191 (FCTD)]. Furthermore, the Supreme Court of Canada in *Masterpiece, supra* has advised that the preferable approach when comparing marks is to begin by determining whether there is an aspect of the trademark that is particularly striking or unique.

[43] In applying these principles to the present case, the more striking and dominant portion of each party's trademark, in my view, is the word SOCIETY, as the other words that form each of the parties' marks are either descriptive or highly suggestive when used in association with their respective goods and services. Further, the other component of the parties' marks, the words SPORT and SWEAT, are indicative of the type of SOCIETY, or community, to which the parties' goods and services pertain. Thus, the marks of the parties share a notable degree of resemblance due to the shared and more dominant component SOCIETY, and in respect of the similar ideas conveyed.

[44] Accordingly, this factor favours the Opponent.

### Conclusion

[45] In applying the test for confusion, I have considered it as a matter of first impression and imperfect recollection.

[46] In the present case, due to the degree of similarity between the parties' trademarks in appearance, particularly in ideas suggested, and given that the nature of the parties' goods, services, and channels of trade are similar or overlapping, I conclude on a balance of probabilities that confusion between the parties' marks is at best, evenly balanced. Therefore,

the Applicant has failed to establish, on a balance of probabilities, that the Mark is not confusing with the Opponent's SWEAT SOCIETY trademark.

[47] Thus, the ground of opposition based on section 16(1)(a) of the Act is successful.

### **Section 2 Ground of Opposition**

[48] With respect to this ground of opposition, the Opponent pleads:

- that the Mark is not distinctive of the Applicant's goods and is confusingly similar to the trademarks of the Opponent. In particular, the Mark is not distinctive of the goods in Nice class 25 or of the services in Nice class 35, as described in the application.

[49] It is immaterial that the Opponent has restricted this ground to only the Applicant's goods in Nice class 25 and the services in Nice class 35, as I do not consider that the Opponent has met its burden under this ground of opposition. In this regard, I am not satisfied that the Opponent's evidence establishes that, as of the filing date of the statement of opposition, namely, June 14, 2021, one or more of the Opponent's relied upon trademarks had become known to such an extent in Canada (or alternatively, well known in a specific area of Canada), such that it could negate the distinctiveness of the Mark [per *Bojangles' International, LLC v Bojangles Café Ltd*, 2006 FC 657, 48 CPR (4th) 427 (FC) at para 33].

[50] Consequently, this ground of opposition is rejected.

### **Section 38(2)(f) Ground of Opposition**

[51] The Opponent pleads that at the filing date of the Application, the Applicant was not entitled to use the trademark in Canada in association with the applied-for goods and services for the reasons set out in the statement of opposition.

[52] However, the Opponent has not made any representations concerning this ground of opposition. Furthermore, this section of the Act addresses the Applicant's lawful entitlement to use the trademark as opposed to the Applicant's entitlement to *register* the trademark [see *Methanex Corporation v Suez International, société par actions simplifiée*, 2022 TMOB 155]. Only pleading that an applied-for trademark is confusing with a previously used trademark, (which effectively is what is being pleaded in the present case) is therefore not a fact that alone,

can support a section 38(2)(f) ground of opposition. Consequently, the ground of opposition based on section 38(2)(f) is rejected.

**DISPOSITION**

[53] Having regard to the aforementioned, 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.

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Kathryn Barnett  
Member  
Trademarks Opposition Board  
Canadian Intellectual Property Office

## **SCHEDULE A**

Application No. 1,883,145 for trademark SPORT SOCIETY.

Goods (Nice class and statement):

- CI 18 (1) Luggage, bags, namely, all-purpose carrying bags, drawstring bags, tote bags, sports bags, weekend (overnight) bags, garment bags, luggage bags, duffle bags and fanny packs, wallets and change purses; Umbrellas and parasols; Animal skins; Cases of leather and leatherboard; Leather and imitations of leather; Purses; Briefcases; Travelling sets, namely, travel handbags and travel luggage; Card wallets; Luggage tags; Travelling trunks and travelling bags; Holdalls; Backpacks.
- CI 25 (2) Clothing, namely, shirts, t-shirts, jackets, pants, hoodies, sweatshirts, sweaters, dresses, sweatpants, underwear, jogging bottoms, vests, socks, bralets, crop tops, leggings, shorts, coats, bodysuits, boxer shorts and crop t-shirts; Footwear, namely, sandals, slippers, shoes, boots, trainer shoes, flip flops, sliders, deck shoes, sports shoes, and sneakers; Headgear, namely, beanie hats, caps, bucket hats, dad hats, snapback hats, trucker hats and sun hats.

Services (Nice class and statement):

- CI 35 (1) Retail services connected with the sale of clothing and fashion accessories, namely, handbags, wallets, luggage, umbrellas, purses, backpacks; Retail services in relation to hats and caps; Retail services in relation to footwear; Retail services in relation to all-purpose carrying bags, drawstring bags, tote bags, sports bags, weekend (overnight) bags, garment bags, luggage bags, duffle bags and fanny packs; Retail services in relation to luggage; Retail services in relation to fabrics; Retail services in relation to home furnishings; Retail services in relation to jewellery; Retail services connected with stationery; Retail services in relation to umbrellas; Retail services in relation to toiletries, namely, personal body care lotions, bath and body lotions, skin care lotions, hair care lotions, shower gels, deodorants, antiperspirants, make-up, perfumes and aftershave; Retail services in relation to board games, video games and sporting games, namely sports equipment; Retail services in relation to toys; Retail services in relation to sporting equipment; Retail services in relation to sporting articles; Online retail services relating to clothing; Online retail services relating to handbags; Online retail services relating to jewelry; Online retail services relating to toys; Online retail services relating to luggage; Online retail services relating to cosmetics; Wholesale services relating to clothing; Wholesale services in relation to footwear; Wholesale services in relation to hats and caps; Wholesale services in relation to all-purpose carrying bags, drawstring bags, tote bags, sports bags, weekend (overnight) bags, garment bags, luggage bags, duffle bags and fanny packs; Wholesale services in relation to umbrellas; Wholesale services in relation to luggage; Wholesale services in relation to jewellery; Wholesale services in relation to toiletries namely, personal body care lotions, bath and body lotions,

skin care lotions, hair care lotions, shower gels, deodorants, antiperspirants, make-up, perfumes and aftershave; Wholesale services in relation to fabrics; Wholesale services relating to sporting goods; Wholesale services in relation to toys; Wholesale services in relation to board games, video games and sporting games, namely sports equipment; Wholesale services in relation to stationery supplies; Business management of wholesale and retail outlets.

Claims:

Used in UNITED KINGDOM

Registered in or for EUIPO (EU) on July 05, 2017, under No. 016472086

Proposed Use in CANADA.

## **SCHEDULE B**

Application No. 1,974,511 for the trademark SPORT SOCIETY.

Goods (Nice class and statement):

CI 21 (1) Reusable water bottles.

CI 25 (2) Sports bras, t-shirts, tank tops, crop tops, sweat shirts, long sleeve shirts, hoodies, shorts, leggings, sweat pants, underwear, sport shoes, headbands.

Services (Nice class and statement):

CI 35 (1) Retail sale of jewelry, bags, towels, sports bras, t-shirts, tank tops, crop tops, sweat shirts, long sleeve shirts, hoodies, shorts, leggings, sweat pants, underwear, sport shoes, headbands.

Application No. 1,975,199 for the following trademark (described on the Register as SWEAT SOCIETY & DESIGN; however, as previously indicated, I refer to this trademark as the "SS Logo", as it consists of only design elements):



Goods (Nice class and statement):

CI 21 (1) Reusable water bottles.

CI 25 (2) Sports bras, t-shirts, tank tops, crop tops, sweat shirts, long sleeve shirts, hoodies, shorts, leggings, sweat pants, underwear, sport shoes, headbands.

Services (Nice class and statement):

CI 35 (1) Retail sale of jewelry, bags, towels, sports bras, t-shirts, tank tops, crop tops, sweat shirts, long sleeve shirts, hoodies, shorts, leggings, sweat pants, underwear, sport shoes, headbands.

# Appearances and Agents of Record

**HEARING DATE:** no hearing held.

## **AGENTS OF RECORD**

**For the Opponent:** Borden Ladner Gervais LLP

**For the Applicant:** Osler, Hoskin Harcourt LLP