



# Canadian Intellectual Property Office

## **THE REGISTRAR OF TRADEMARKS**

**Citation:** 2023 TMOB 223

**Date of Decision:** 2023-12-29

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

**Opponent:** Besurance Corporation

**Applicant:** AMVAC Chemical Corporation

**Application:** 2,000,330 for B SURE

### **INTRODUCTION**

[1] Besurance Corporation (the Opponent) opposes registration of the trademark B SURE (the Mark), which is the subject of application No. 2,000,330 by AMVAC Chemical Corporation (the Applicant).

[2] Filed on December 10, 2019, the applied-for statement of goods is reproduced below, together with the associated Nice class (CI):

CI 1 (1) Chemicals for use in agriculture, horticulture and forestry except fungicides, herbicides, insecticides and parasiticides; fertilizers.

[3] The Opponent alleges the following: (i) the Applicant is not the person entitled to the registration of the Mark in Canada under section 16(1)(a) of the *Trademarks Act*, RSC 1985, c T-13 (the Act), as amended June 17, 2019, in association with the applied-

for goods; (ii) having regard to section 2 of the Act, the Mark is not distinctive of the Applicant as it does not distinguish nor is it adapted to distinguish the applied-for goods from the goods and services of the Opponent; (iii) pursuant to section 38(2)(e) of the Act, the Applicant was not using and did not intend to use the Mark at any time in association with the applied-for goods; and (iv) pursuant to section 38(2)(f) of the Act, the Applicant was not entitled to use the Mark in Canada because as of the filing date the Applicant was aware, knew or should have known of the Opponent's BESURE mark and the alleged reputation attaching thereto.

[4] The section 16(1)(a) and non-distinctiveness grounds are both based on the Opponent's allegation that the Mark is confusing with the Opponent's trademark application No. 2,088,196 for the trademark BESURE, used in Canada since June 2015 in association with the following services: providing SAAS (software as a service) where users register and collaborate as a group to share risks with respect to assumption, management, and administering of risk pools to protect themselves from financial risks related to things and events that are most important to them.

[5] For the reasons that follow, I reject the opposition.

### **THE RECORD**

[6] The application was advertised on August 31, 2022. The Opponent filed its statement of opposition on October 31, 2022.

[7] The Opponent also filed and served a statement indicating that it did not wish to submit evidence. In support of its application, the Applicant filed and served as its evidence the affidavits of Allen Secord and Julia Walters. Neither of these affiants were cross-examined. The Opponent did not file any evidence in reply.

[8] Only the Applicant filed written representations. A hearing was not held.

### **MATERIAL DATES**

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

- Section 16(1)(a) – the filing date of the application or the date of first use of the trademark in Canada, whichever is earlier;
- Section 2 – the filing date of the statement of opposition;
- Section 38(2)(e) – the filing date of the application; and
- Section 38(2)(f) – the filing date of the application.

### **EVIDENTIAL BURDEN AND LEGAL ONUS**

[10] In an opposition proceeding, the legal onus is on the applicant to show that its application complies with the provisions of the Act. However, for each ground of opposition, 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 that ground of opposition exist. If this initial burden is met, then the applicant must satisfy the Registrar, on a balance of probabilities, that the ground of opposition should not prevent registration of the trademark at issue [*Joseph E Seagram & Sons Ltd v Seagram Real Estate Ltd* (1984), 3 CPR (3d) 325 (TMOB); *John Labatt Ltd v Molson Companies Ltd* (1990), 30 CPR (3d) 293 (FCTD)].

[11] In order to meet its initial burden under each of the grounds of opposition pleaded in this case, the Opponent must show the following:

- Section 16(1)(a) - that it had used its trademark BESURE prior to the material date and had not abandoned its trademark as of the date of advertisement;
- Section 2 - that its trademark BESURE was known to a sufficient extent in Canada or was well known in a specific area of Canada prior to October 31, 2022, so as to negate the distinctiveness of the Mark;
- Section 38(2)(e) – that as of December 10, 2019, the Applicant was not using and did not propose to use the Mark in association with all of the applied-for goods; and

- Section 38(2)(f) – that as of December 10, 2019, the Applicant was not entitled to use the Mark in Canada in association with the applied-for goods.

### **GROUND OF OPPOSITION SUMMARILY DISMISSED**

[12] The Opponent provides no evidence or submissions in support of any of its grounds of opposition.

[13] As such, it is unnecessary for me to discuss the Applicant's evidence, although I note that the evidence filed by the Applicant demonstrates that the Mark has been used by the Applicant's predecessors-in-title since 2019 in association with the applied-for goods and continues to be used in Canada by the Applicant [Second affidavit, paras. 11 and 16; Exhibits B.1 and B.2].

[14] As the Opponent does not meet its initial evidentiary burden, each of the grounds of opposition is rejected.

### **DISPOSITION**

[15] In view of the above, pursuant to section 38(12) of the Act and the authority delegated to me under section 63(3) of the Act, I reject the opposition.

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Cindy R. Folz  
Member  
Trademarks Opposition Board  
Canadian Intellectual Property Office

# Appearances and Agents of Record

**HEARING DATE:** No hearing held

## **AGENTS OF RECORD**

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

**For the Applicant:** Riches, McKenzie & Herbert LLP