



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2024 TMOB 015

Date of Decision: 2024-01-30

IN THE MATTER OF AN OPPOSITION

Opponent: Aphria Inc.

Applicant: Atlas Growers Ltd.

Application: 1,897,974 for ATLAS A Design

INTRODUCTION

[1] Atlas Growers Ltd. (the Applicant) has applied to register the ATLAS A Design (the Mark), shown below:



[2] The Mark is applied for in association with a variety of goods and services, including cannabis and cannabis-related goods and services, set out in Schedule A to this decision (the Goods and Services).

[3] Aphria Inc. (the Opponent) opposes registration of the Mark. The opposition is based primarily on allegations that Mark is confusing with four trademarks registered by the Opponent in association with goods and services including cannabis products, set out in schedule B below (collectively, the Opponent's Marks). Each such trademark contains a triangular design as exemplified by the Opponent's trademark A Design, Registration No. TMA1,064,697 (Opponent's A Design Mark), shown below:



[4] For the reasons that follow, the application is refused in part.

THE RECORD

[5] The application was filed on May 8, 2018. The application was advertised for opposition purposes in the *Trademarks Journal* on January 6, 2021. On March 5, 2021, the Opponent opposed the application by filing a statement of opposition under section 38 of the *Trademarks Act*, RSC 1985, c T-13 (the Act). I note that the Act was amended 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).

[6] The grounds of opposition are summarized below:

- Contrary to sections 38(2)(b) and 12(1)(d) of the Act, the Mark is not registrable because, as of the filing date of the application, the Mark was confusing with the Opponent's Marks that have been registered.
- Contrary to sections 38(2)(c) and 16(1)(a) of the Act, the Applicant is not entitled to registration of the Mark in Canada in association with the Goods and Services because, at the time of the filing date of the application, the Mark was confusing with the Opponent's Marks that had been previously used in Canada since before the filing date of the application.

- Contrary to sections 38(2)(c) and 16(1)(b) of the Act, the Applicant is not entitled to registration of the Mark in Canada in association with the Goods and Services because, at the filing date of the application, the Mark was confusing with the Opponent's Marks for which applications had been previously filed in Canada.
- Contrary to sections 38(2)(d) and 2 of the Act, the Mark is not distinctive of the Goods and Services and is confusingly similar to the Opponent's Marks.
- Contrary to sections 38(2)(e) of the Act, the Applicant was not using and did not propose to use the Mark in Canada in association with each of the Goods and Services.
- Contrary to section 38(2)(f) of the Act, at the filing date of the application, the Applicant was not entitled to use the Mark in Canada in association with the Goods and Services because it was confusing with the Opponent's Marks in that use in association with the Goods and Services would likely lead to the inference that they were manufactured, sold, leased, hired or performed by the Opponent, and the Applicant was aware or ought to have been aware of the Opponent's Marks at the date of filing of the application.

[7] On May 11, 2021, the Applicant served and filed a counter statement. Both parties filed evidence, which is discussed below. No cross examinations were conducted with respect to any evidence filed in this proceeding. Only the Opponent filed written representations; no oral hearing was held.

EVIDENCE

Opponent's Evidence

[8] As its evidence in this proceeding, the Opponent filed the affidavit of Preety Keith, Marketing Manager for the Opponent, sworn December 13, 2021. Ms. Keith's affidavit includes the following information:

- The Opponent is a producer of medicinal and recreational cannabis founded in 2014, and has offered medicinal cannabis to Canadians since that date.

Ms. Keith provides details as to the nature of the medicinal and recreational cannabis industries and regulatory frameworks in Canada.

- In May 2021, the Opponent merged with Tilray, Inc. (Tilray), but continues to exist as a legal entity; Tilray and its subsidiaries have a licence to use the Opponent's Marks as part of an intercompany licence agreement.
- The Opponent has been using the Opponent's A Design Mark with slight alterations, in association with its goods, since at least as early as December 2014, and the current iterations have been in use since at least 2018.
- Since 2014, the Opponent's Marks have appeared on packaging for cannabis products and on invoices for such goods, and while providing related services; as Exhibit D, Ms. Keith attaches sample images of products and invoices displaying the Opponent's Marks. She states that these images are representative of how the Opponent's Marks have been used in Canada by the Opponent since at least December 2014.
- Ms. Keith provides sales figures in the tens of millions for medicinal cannabis for the years 2016 through 2021, as well as unit sales figures in the hundreds of thousands for the years 2017 through 2021.
- The Opponent sells its products through its website, which displays the Opponent's Marks. Ms. Keith attaches current and archived screenshots of the Opponent's website as it has appeared since 2014.
- The Opponent also promotes its goods and services through its social media accounts and Tilray's social media accounts, which are shown in Exhibit F and G as displaying the Opponent's Marks.
- A number of other publications, instances of press coverage, and press releases are attached as Exhibits H through J.

Applicant's Evidence

[9] The Applicant submitted two affidavits as its evidence in this proceeding: the affidavit of Sheldon Croome, the Chief Executive Officer of the Applicant, sworn July 12, 2022, and the affidavit of Jane Buckingham, senior trademark searcher for the Applicant's agent of record, sworn July 13, 2022.

[10] The Croome affidavit includes the following information:

- The Applicant is a wholly owned subsidiary of Atlas Biotechnologies Inc. established in 2015.
- The Mark has been used in association with the sale of the Applicant's cannabis products in Canada since at least May 2019, including by being marked on their packaging. As Exhibits B and C, respectively, Mr. Croome attaches an invoice for a sale of cannabis products in May 2019, and a photograph of packaging displaying the Mark for cannabis products which Mr. Croome states is representative of cannabis products sold by the Applicant since May 2019.
- The Mark has been displayed on the packaging of various cannabis products sold in Canada by the Applicant, including dried cannabis flower (sold since May 13, 2019), dried cannabis pre-rolls (sold since September 3, 2020), TCH and CBD vaporizer pen cartridges (sold since November 6, 2020), THC and CBD oil (sold since February 3, 2021), transdermal patches (sold since June 16, 2021), THC and CBD tinctures (sold since August 2, 2021), and THC and CBD transdermal gel (sold since September 29, 2021). Photographs of packaging displaying the Mark for each such product are attached.
- Mr. Croome attaches sales figures for the Applicant's cannabis products in Canada for 2019 (\$350,000), 2020 (\$5.2M), and 2021 (\$8.5M), as well as advertising figures for the years 2017 through 2021 between \$52,000 in 2017 to \$684,000 in 2021.
- Mr. Croome attaches current and archived screenshots of the Applicant's website as Exhibits F through I, as well as a screenshot of the Applicant's "business partner" Shoppers Drug Mart's website showing the Applicant's cannabis goods displaying the Mark for sale. Screenshots for the Applicant's social media accounts are attached as Exhibits K through O.
- Mr. Croome states that he is not aware of any instances of confusion between the Applicant's Goods and Services and those of the Opponent.

[11] The Buckingham affidavit includes the particulars for 45 trademarks, including at least ten registered trademarks associated with cannabis and incorporating an “A” or “triangle” design.

ANALYSIS

Ground of Opposition: Section 12(1)(d)

[12] The Opponent alleges that contrary to section 12(1)(d) of the Act, the Mark is not registrable due to the Opponent’s registrations for the Opponent’s Marks. I have exercised my discretion to check the register and confirm that these registrations remain extant [per *Quaker Oats Co of Canada v Menu Foods Ltd* (1986), 11 CPR (3d) 410 (TMOB)]. The Opponent has therefore met its initial evidential burden for the section 12(1)(d) ground of opposition.

[13] Since the Opponent has discharged its evidentiary burden regarding this ground of opposition, I must assess whether the Applicant has discharged its legal onus to prove, on balance of probabilities, that there is no confusion between the Applicant’s Mark and the aforementioned registrations of the Opponent. The material date with respect to confusion with a registered trademark is the date of this decision [*Simmons Ltd v A to Z Comfort Beddings Ltd* (1991), 37 CPR (3d) 413 (FCA)].

[14] In applying the test for confusion, the Registrar must have regard to all the surrounding circumstances, including those specifically enumerated in 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 each has 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. These enumerated factors need not be attributed equal weight [see, in general, *Mattel USA Inc v 3894207 Canada Inc*, 2006 SCC 22 (*Mattel*), and *Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27 (*Masterpiece*)]. Moreover, in *Masterpiece*, the Supreme Court stated that the degree of resemblance between the trademarks is often likely to have the greatest effect on the confusion analysis.

[15] Finally, section 6(2) of the Act does not concern confusion between the trademarks themselves, but confusion regarding goods or services from one source as being from another source. In this case, the question posed by section 6(2) is whether there would be confusion regarding the goods and services sold under the Mark such that they would be thought to have emanated from the Opponent.

[16] For ease of reference in conducting the confusion analysis, I will focus on the Opponent's A Design Mark, as in my view it represents the Opponent's best case with respect to the issue of confusion.

Inherent and acquired distinctiveness

[17] The Opponent submits that both of the parties' trademarks consist of a stylized capital "A", and therefore possess roughly equal inherent distinctiveness. I note that the Mark consists of an inverted "V" design with thick diagonal lines connected at the top, with a lighter, nearly horizontal line at the bottom giving the impression of a stylized capital "A". The Opponent's A Design Mark also consists of two thick diagonal lines in a shape akin to an inverted "V", with a triangular notch absent from the left-hand line, set against a circular background of varying shades. While trademarks consisting of single letters are traditionally considered to be weak and to lack inherent distinctiveness [*GSW Ltd v Great West Steel Industries Ltd* (1975), 22 CPR (2d) 154 (FCTD) at 162-164], I find that the marks in this case could also be considered as artistic geometric shapes. Regardless, as the designs in question have no readily apparent connection to the parties' goods or services, but ultimately consist of relatively simple geometric shapes, I find that neither trademark has more than a moderate degree of inherent distinctiveness [for a similar conclusion, see *Honda Giken Kogyo Kabushiki Kaisha also trading as Honda Motor Co, Ltd v Chongqing Changan Automobile Co, Ltd*, 2022 TMOB 70 at paras 50-51].

[18] The distinctiveness of a trademark can be increased through its use and promotion in Canada [see *Sarah Coventry Inc v Abrahamian* (1984), 1 CPR (3d) 238 (FCTD); *GSW Ltd v Great West Steel Industries Ltd* (1975), 22 CPR (2d) 154 (FCTD)]. In this respect, the Opponent submits that it is one of the world's largest cannabis

companies and occupies a large section of the Canadian cannabis market, despite only being able to legally sell medicinally since 2014 and recreationally since 2018. The Opponent notes that the Applicant has only sold its cannabis goods in Canada since 2019, and that its total accrued sales only amount to about 12 percent of the Opponent's total sales as of 2021. Given that the Opponent's A Design Mark was displayed on the packaging for its goods during this time period, the Opponent submits, and I agree, that its trademark has acquired more distinctiveness than the Applicant's Mark.

[19] Accordingly, this factor favours the Opponent.

Length of time in use

[20] Given that the Opponent began using the Opponent's A Design Mark in association with medicinal cannabis goods as early as 2014, and with recreational cannabis goods since 2018, while the Applicant began using the Mark in association with cannabis goods in 2019, this factor favours the Opponent.

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

[21] When considering sections 6(5)(c) and (d) of the Act, it is the statement of goods and services as defined in the registration relied upon by the Opponent and the statement of Goods and Services in the application for the Mark that governs the assessment of the likelihood of confusion under section 12(1)(d) of the Act [*Henkel Kommanditgesellschaft auf Aktien v Super Dragon Import Export Inc* (1986), 12 CPR (3d) 110 (FCA); *Mr Submarine Ltd v Amandista Investments Ltd* (1987), 19 CPR (3d) 3 (FCA)]. However, as each statement must be read with a view to determining the probable type of business intended, evidence of the parties' actual trades is useful [see *McDonald's Corp v Coffee Hut Stores Ltd*, 1996 CanLII 3963 (FCA); *McDonald's Corp v Silcorp Ltd* (1989), 55 CPR (2d) 207 (FCTD), aff'd (1992), 41 CPR (3d) 67 (FCA)].

[22] The Opponent submits that the goods of the Applicant and Opponent are essentially identical given that both entities sell cannabis in various forms, as summarized by the Opponent in the following table:

Applicant's Goods	Opponent's Goods
<p>Class 3: (1) Topicals made with marijuana, marijuana extracts, marijuana resins, marijuana oils, marijuana waxes, namely topical face creams, body lotions, and lip balms</p>	<p>(1) Bath additives; bath herbs; bath oils; bath oils for cosmetic purposes; beauty care cosmetics; beauty creams for body care; beauty gels; beauty lotions; body and beauty care cosmetics; body creams; body oils; cosmetic creams; cosmetic oils; cosmetics and make-up; face and body lotions; face and body milk; face lotion; hair care preparations; hair styling preparations; hand cream; hand lotions; lip care preparations; lip conditioners; lip glosses; liquid soaps; massage creams; massage oils; non-medicated bubble bath preparations; non-medicated preparations for the care of hair; non-medicated preparations for the care of skin; non-medicated preparations for the care of the scalp; non-medicated skin care preparations; oils for toiletry purposes; skin care preparations; skin creams; skin emollients; skin lotions; skin soap; soaps for body care; soaps for personal use.</p>
<p>Class 30: (13) Edibles made with marijuana, marijuana extracts, marijuana resins, marijuana oils, marijuana waxes, namely chocolate confections, pastries, candies; non-alcoholic beverages infused with marijuana, namely teas and herbal teas, tisanes</p>	<p>(8) Food products containing cannabis, cannabis resins and cannabis oils, namely chocolates, cookies, brownies, candy and food energy bars; tea; cannabis related products, namely teas containing cannabis, and teas containing derivatives of cannabis namely resins and oils</p>
<p>Class 31: (14) Live marijuana plants; marijuana seeds</p>	<p>(9) Live cannabis plants; live marijuana plants; cannabis seeds</p>
<p>Class 32: (15) Non-alcoholic beverages infused with marijuana, marijuana extracts, marijuana resins, marijuana oils, marijuana waxes, namely carbonated waters, cola beverages, energy drinks, flavoured waters, fruit beverages, soft drinks; alcoholic beverages infused with marijuana, namely, beer</p>	<p>(10) Smoothies, fruit beverages and fruit juices, carbonated soft drinks, and energy drinks each containing derivatives of cannabis; smoothies, fruit beverages and fruit juices, carbonated soft drinks, and energy drinks each containing resins and oils derived from cannabis</p>
<p>Class 34: (17) Marijuana paraphernalia, namely, pipes, bongs, rolling papers, vaporizers, lighters, torches, ashtrays; Dried marijuana; marijuana extracts, namely shatter, wax and oils for smoking; marijuana resins for smoking; marijuana oils, namely pre-loaded dosing capsules for vaporizers, dosing capsules for vaporizers</p>	<p>(11) Derivatives of cannabis, namely resins and oils, for oral vaporizers for smoking; cannabis and marijuana for recreational use; smokers' articles, namely, smoking pipes, pouches for use with marijuana and cannabis, lighters for smokers; smokers' articles, namely, oral vaporizers for smokers; dried marijuana, dried cannabis; smokers' articles namely, grinders for use with cannabis and marijuana.</p>

[23] In addition to the Goods noted above by the Opponent, I note that the following applied-for Goods of the Applicant also relate to cannabis:

- (2) Online, and downloadable publications, namely, newsletters, brochures, flyers, and pamphlets about marijuana and research related to marijuana; [...]
- (6) [...] printed publications, namely, newsletters, brochures, flyers, and pamphlets about marijuana and research related to marijuana; [...]
- (16) Alcoholic beverages infused with marijuana, marijuana extracts, marijuana resins, marijuana oils, marijuana waxes, namely alcoholic coolers, cider, liqueurs, and wine

[24] I concur with the Opponent that each of the Applicant's Goods noted above, namely, the cannabis-related portions of Goods (2) and (6), and Goods (1) and (13)-(17) (collectively, the Applicant's Cannabis Goods) are closely related to the Opponent's cannabis-related goods. I also find that they are likely to be sold through similar channels of trade, in view of the nature of the cannabis trade in Canada as described in the Opponent's evidence, and in the absence of evidence from the Applicant to the contrary.

[25] I note as well that the Applicant's Services and the registered services of the Opponent largely comprise production and sale of cannabis and cannabis-related products, and providing information related to cannabis. Thus, I consider each of the Applicant's Services to be of a similar nature to the Opponent's registered services, and find that they would likely be provided through similar channels of trade.

[26] By contrast, the following applied-for Goods have no obvious connection to cannabis:

- (2) [...] sunglasses; mouse pads; fridge magnets; visor clips; headphones; audio speakers
- (3) Condoms
- (4) License plate holders
- (5) Leather and metal key fobs; lapel pins; lanyards for holding keys
- (6) Books; decals; stickers; bumper stickers; calendars; memo pads; re-sealable plastic bags for packaging; plastic bags for packaging; banners of paper; [...] coasters made of paper; pencils and pens; flags of paper

- (7) Umbrellas; wallets; tote bags; messenger bags; duffel bags; sports bags; key cases
- (8) Beverage can holders; coffee mugs; drinking glasses; water bottles; travel mugs
- (9) Banners of textile
- (10) Clothing, namely, shirts, t-shirts, sweat shirts, hooded sweatshirts, pants, sweat pants, jackets, jeans, belts, hats, caps, toques, scarves, undergarments, tank tops, casual clothing, athletic clothing, outdoor winter clothing, sports clothing; wrist bands, bandanas
- (11) Novelty pins; crests; lanyards for holding badges
- (12) Playing cards; golf balls

[27] With respect to Goods (10), I note that the Opponent's registered goods include "Athletic apparel; baseball caps; beachwear; caps; casual wear; coveralls; flip-flops; gloves; golf caps; golf shirts; hats; headbands; long-sleeved t-shirts; mittens; novelty hats; sandals; shirts; sweatshirts; toques; t-shirts". I consider these goods to be of a similar nature to the Applicant's Goods (10) (the Applicant's Clothing Goods), and could be sold through similar channels of trade.

[28] With respect to the remainder of the Goods listed above, namely, Goods (3)-(5), (7)-(9), (11), and (12), and the non-cannabis-related portions of Goods (2) and (6) (collectively, the Applicant's Non-Overlapping Goods), I find that these are of a different nature than any of the Opponent's registered goods.

[29] Accordingly, I find that these factors favour the Opponent with respect to the Applicant's Cannabis Goods and the Applicant's Clothing Goods, and with respect to the Applicant's Services. I find that these factors favour the Applicant with respect to the Applicant's Non-Overlapping Goods.

Degree of resemblance

[30] When considering the degree of resemblance, the law is clear that the trademarks must be considered in their totality; it is not correct to lay them side by side and compare and observe similarities or differences among the elements or components of the trademarks. The Supreme Court of Canada in *Masterpiece* has

advised that the preferable approach when comparing trademarks is to begin by determining whether there is an aspect of the trademark that is particularly striking or unique.

[31] The Opponent submits that both trademarks consist of a capital “A” comprised of two thick, slanted vertical lines with a sharp point at the top. The Opponent further submits that circles, fonts, and minor stylistic differences have been held to be details which are generally not considered the most striking or unique feature of a trademark [citing *Groupe Première Moisson Inc. v Pumpnickel’s Franchise Corporation*, 2019 TMOB 99 (*Groupe Première Moisson*)] and, furthermore, to emphasize such differences is to perform an impermissible side-by-side analysis. The Opponent submits that the most striking element is the capital “A” in both parties’ trademarks, and any differences amount to minor details which would not be obvious to an average customer.

[32] The Opponent acknowledges that the scope of protection afforded to a single letter trademark may be limited, it submits that enforceable and proprietary rights remain, especially where a senior trademark has accrued “massive goodwill”. In support, the Opponent cites a number of cases involving single letter design marks, where the marks were found to be confusing with each other, including *Zeal Optics, Inc v Taojing International Limited*, 2023 TMOB 34; *Honda Giken Kogyo Kabushiki Kaisha also trading as Hondo Motor Co, Ltd v Chongqing Changan Automobile Co, Ltd*, 2022 TMOB 70; and the aforementioned *Quiz Franchisor* and *Groupe Première Moisson* cases.

[33] Visually, the trademarks are not identical. However, given that both trademarks include a stylized “A” or inverted “V” design with thick lines, as discussed above, I accept that there is some degree of visual resemblance between the two trademarks, especially when considered from the standpoint of a casual consumer who is somewhat in a hurry. Phonetically, to the extent that both trademarks would be considered as stylized capital “A”s, the trademarks are identical. As for ideas suggested, neither trademark is suggestive of any idea in particular.

[34] Ultimately, I am of the view that there is some degree of resemblance between the two trademarks. Bearing in mind that small differences may be accepted to distinguish one letter-based trademark from another [*GSW Ltd v Great West Steel Industries Ltd* (1975), 22 CPR (2d) 154 (FCTD)], I find that this factor favours the Opponent to some extent.

Surrounding Circumstance: State of the register and marketplace evidence

[35] 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), 41 CPR (3d) 432 (TMOB); and *Welch Foods Inc v Del Monte Corp* (1992) 44 CPR (3d) 205 (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), 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].

[36] In this case, of the 45 trademarks referenced in Ms. Buckingham's affidavit, at least ten are registered or allowed and based on use; of these, only three incorporate a stylized "A" or triangle design without any additional text and are registered in association with cannabis goods or services. I am not prepared to make any inferences concerning the state of the marketplace on the basis of this evidence.

Surrounding Circumstance: No evidence of actual confusion

[37] Mr. Croome states in his affidavit that he is "not aware of a single instance of customer confusion between [the Applicant]'s goods and services and those of [the Opponent]". However, as noted in *Dion Neckwear Ltd v Christian Dior, SA* (2002), 20 CPR (4th) 155 (FCA) at 164, an adverse inference may normally only be drawn from the absence of evidence of confusion when concurrent use of both parties' trademarks has been extensive. In this case, however, the Applicant's evidence only shows sales of its

cannabis goods from May 2019 through 2021. As the use of the Applicant's and Opponent's trademarks only appears to have been co-extensive for approximately two and a half years, I am not prepared to draw any inference based on the absence of evidence of actual confusion in this case.

Conclusion

[38] In applying the test for confusion, I have considered it as a matter of first impression and imperfect recollection and have considered all of the surrounding circumstances. In most instances, it is the degree of resemblance between the trademarks that is the most crucial factor in determining the issue of confusion [*Masterpiece; Beverley Bedding & Upholstery Co v Regal Bedding & Upholstery Ltd* (1980), 47 CPR (2d) 145 (FCTD) at 149, aff'd 60 CPR (2d) 70 (FCA)]. Furthermore, section 6(2) of the Act is not concerned with confusion between the trademarks themselves, but rather confusion as to the source of the goods.

[39] In this case, I find that the Applicant has not discharged its burden to show that there is not a reasonable likelihood of confusion between the parties' trademarks with respect to the Applicant's Cannabis Goods, the Applicant's Clothing Goods, and the Applicant's Services. In reaching this conclusion, I note the similar nature of the Opponent's goods and services and the Applicant's Cannabis Goods, Clothing Goods, and Services, as well as their respective channels of trade, the resemblance between the trademarks and the greater acquired distinctiveness and length of time in use of the Opponent's A Design Mark. However, with respect to the Applicant's Non-Overlapping Goods, I find that the different nature of these goods as compared to the Opponent's goods, as well as their respective channels of trade, are sufficient to shift the balance of probabilities regarding confusion in favour of the Applicant.

[40] As such, this ground of opposition succeeds with respect to the Applicant's Cannabis Goods, the Applicant's Clothing Goods, and the Applicant's Services, and is rejected with respect to the Applicant's Non-Overlapping Goods.

Ground of Opposition: Section 16(1)(a)

[41] Pursuant to sections 38(2)(c) and 16(1)(a) of the Act, the Opponent pleads that the Applicant is not the person entitled to registration of the Mark because, as of the filing date of the application, the Mark was confusing with the Opponent's Marks, which had been previously used in Canada since before the filing date of the application, and were not abandoned on the day on which the application was advertised for opposition purposes.

[42] In order to meet its initial burden under this ground, the Opponent must show that at least one of its trademarks was used prior to the Applicant's filing date (May 8, 2018) and was not abandoned at the date of the advertisement of the application (January 6, 2021). Accordingly, the relevant evidence on which the Opponent can rely is evidence of use that pre-dates the filing date of the application. I will again focus my analysis on the Opponent's A Design Mark as it represents the Opponent's best case.

[43] In this case, the Opponent has provided images of medicinal cannabis products displaying the Opponent's A Design Mark and confirmed that the images are representative of how its marks were used since 2014. The Opponent has also provided invoices showing sales of its medicinal cannabis products in Canada since as early as 2016. Accordingly, I am satisfied that the Opponent has shown use of the Opponent's A Design Mark in association with at least its goods (2) and services (1). Further, the Opponent's evidence indicates that its trademarks were not abandoned on the day on which the application was advertised.

[44] The Opponent has therefore met its burden for this ground of opposition with respect to at least goods (2) and services (1) associated with the Opponent's A Design Mark. With respect to the confusion analysis, I note that there is no evidence that the Applicant was using the Mark in association with its Goods and Services as of the material date. Accordingly, I reach the same conclusions in the confusion analysis as those set out in the section 12(1)(d) ground, with the exception of the Applicant's Clothing Goods, since the Opponent has not met its burden with respect to its clothing-related goods.

[45] Accordingly, this ground of opposition succeeds with respect to the Applicant's Cannabis Goods, and with respect to the Applicant's Services. It is rejected with respect to the Applicant's Clothing Goods and the Applicant's Non-Overlapping Goods.

Ground of Opposition: Section 16(1)(b)

[46] The Opponent pleads that the Applicant is not entitled to register the Mark because it is confusing with the previously filed applications for the Opponent's Marks. However, the Opponent has the initial burden of proving that these trademark applications were pending at the date of filing the subject application, and remained pending at the date of advertisement of that application. Since the applications for each of the Opponent's Marks matured to registration in 2019 and 2020, prior to the date of advertisement of the Applicant's application (January 6, 2021), the Opponent has not met its burden with respect to this ground of opposition.

[47] Accordingly, this ground of opposition is rejected for the Opponent's failure to meet its evidential burden.

Ground of Opposition: Section 2

[48] The Opponent has also pleaded that contrary to section 2 of the Act, the Mark does not actually serve to distinguish and is not adapted to distinguish the Goods and Services from the goods and services associated with the Opponent's Marks. The material date with respect to a distinctiveness ground of opposition is the date of filing of the opposition (March 5, 2021) [*Metro-Goldwyn-Mayer Inc v Stargate Connections Inc* (2004), 34 CPR (4th) 317 (FCTD)].

[49] In *Bojangles' International, LLC v Bojangles Café Ltd*, 2006 FC 657 at paras 33-34, the Federal Court provided that a trademark could negate another mark's distinctiveness if it was known to some extent at least and its reputation in Canada was substantial, significant or sufficient or alternatively, if it is well known in a specific area of Canada. An attack based on non-distinctiveness is not restricted to the sale of goods or services in Canada. It may also be based on evidence of knowledge or reputation of an opponent's trademark including reputation spread by means of word of mouth or

newspaper and magazine articles [*Motel 6, Inc v No 6 Motel Ltd* (1981), 56 CPR (2d) 44 (FCTD)].

[50] I will again focus my analysis on the Opponent's A Design Mark as it represents the Opponent's best case. The Opponent's evidence of use and advertising detailed in the Keith affidavit is sufficient to meet its evidential burden with respect to at least goods (2) and services (1) associated with that trademark. As the difference in material dates has no material impact on my analysis of this ground of opposition, I reach the same conclusions with respect to confusion as those set out in the section 16(1)(a) ground, namely, that this ground of opposition succeeds with respect to the Applicant's Cannabis Goods, and with respect to the Applicant's Services. It is rejected with respect to the Applicant's Clothing Goods and the Applicant's Non-Overlapping Goods.

Ground of Opposition: Section 38(2)(e)

[51] The Opponent has pleaded that the Applicant either was not using or did not intend to use the Mark in Canada in association with the Goods and Services.

[52] The Opponent has failed to meet its evidential burden with respect to this ground of opposition as there is no evidence that the Applicant did not intend to use or was not using the Mark. As such, this ground of opposition is rejected.

Ground of Opposition: Section 38(2)(f)

[53] The Opponent alleges that contrary to section 38(2)(f) of the Act, at the filing date of the application, the Applicant was not entitled to use the Mark in Canada in association with the Goods and Services because such use is likely to cause confusion with the Opponent's Marks.

[54] However, section 38(2)(f) addresses the Applicant's lawful entitlement to use the trademark (*i.e.*, in compliance with relevant federal legislation and other legal obligations) as opposed to the Applicant's entitlement to register the mark (relative to another person's trademark, pursuant to section 16 of the Act) [see *Premier Tech Home & Garden Inc v Ishihara Sangyo Kaisha, Ltd*, 2022 TMOB 25 at para 20; *DCK Concessions Limited v Hong Xia ZHANG*, 2022 TMOB 200 at para 39]. The facts as

pleaded are therefore not ones that can support a section 38(2)(f) ground of opposition. As such, this ground of opposition is rejected.

DISPOSITION

[55] In view of the above, pursuant to the authority delegated to me under section 63(3) of the Act, I refuse the application with respect to all of the Services and the Goods set out below:

- 3 (1) Topicals made with marijuana, marijuana extracts, marijuana resins, marijuana oils, marijuana waxes, namely topical face creams, body lotions, and lip balms
- 9 (2) Online, and downloadable publications, namely, newsletters, brochures, flyers, and pamphlets about marijuana and research related to marijuana [...]
- 16 (6) [...] printed publications, namely, newsletters, brochures, flyers, and pamphlets about marijuana and research related to marijuana [...]
- 25 (10) Clothing, namely, shirts, t-shirts, sweat shirts, hooded sweatshirts, pants, sweat pants, jackets, jeans, belts, hats, caps, toques, scarves, undergarments, tank tops, casual clothing, athletic clothing, outdoor winter clothing, sports clothing; wrist bands, bandanas
- 30 (13) Edibles made with marijuana, marijuana extracts, marijuana resins, marijuana oils, marijuana waxes, namely chocolate confections, pastries, candies; non-alcoholic beverages infused with marijuana, namely teas and herbal teas, tisanes
- 31 (14) Live marijuana plants; marijuana seeds
- 32 (15) Non-alcoholic beverages infused with marijuana, marijuana extracts, marijuana resins, marijuana oils, marijuana waxes, namely carbonated waters, cola beverages, energy drinks, flavoured waters, fruit beverages, soft drinks; alcoholic beverages infused with marijuana, namely, beer
- 33 (16) Alcoholic beverages infused with marijuana, marijuana extracts, marijuana resins, marijuana oils, marijuana waxes, namely alcoholic coolers, cider, liqueurs, and wine
- 34 (17) Marijuana paraphernalia, namely, pipes, bongs, rolling papers, vaporizers, lighters, torches, ashtrays; Dried marijuana; marijuana extracts, namely shatter, wax and oils for smoking; marijuana resins for smoking; marijuana oils, namely pre-loaded dosing capsules for vaporizers, dosing capsules for vaporizers

[56] I reject the opposition with respect to the remainder of the Goods set out below:

- 9 (2) [...] sunglasses; mouse pads; fridge magnets; visor clips; headphones; audio speakers
- 10 (3) Condoms
- 12 (4) License plate holders
- 14 (5) Leather and metal key fobs; lapel pins; lanyards for holding keys
- 16 (6) Books; decals; stickers; bumper stickers; calendars; memo pads; re-sealable plastic bags for packaging; plastic bags for packaging; banners of paper; [...] coasters made of paper; pencils and pens; flags of paper
- 18 (7) Umbrellas; wallets; tote bags; messenger bags; duffel bags; sports bags; key cases
- 21 (8) Beverage can holders; coffee mugs; drinking glasses; water bottles; travel mugs
- 24 (9) Banners of textile
- 26 (11) Novelty pins; crests; lanyards for holding badges
- 28 (12) Playing cards; golf balls

G.M. Melchin
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

Appearances and Agents of Record

HEARING DATE: No hearing held

AGENTS OF RECORD

For the Opponent: Fasken Martineau Dumoulin LLP

For the Applicant: Gowling WLG (Canada) LLP

SCHEDULE A

ATLAS A Design, Application number 1897974



Goods (Nice class & Statement)

- 3 (1) Topicals made with marijuana, marijuana extracts, marijuana resins, marijuana oils, marijuana waxes, namely topical face creams, body lotions, and lip balms
- 9 (2) Online, and downloadable publications, namely, newsletters, brochures, flyers, and pamphlets about marijuana and research related to marijuana; sunglasses; mouse pads; fridge magnets; visor clips; headphones; audio speakers
- 10 (3) Condoms
- 12 (4) License plate holders
- 14 (5) Leather and metal key fobs; lapel pins; lanyards for holding keys
- 16 (6) Books; decals; stickers; bumper stickers; calendars; memo pads; re-sealable plastic bags for packaging; plastic bags for packaging; banners of paper; printed publications, namely, newsletters, brochures, flyers, and pamphlets about marijuana and research related to marijuana; coasters made of paper; pencils and pens; flags of paper
- 18 (7) Umbrellas; wallets; tote bags; messenger bags; duffel bags; sports bags; key cases
- 21 (8) Beverage can holders; coffee mugs; drinking glasses; water bottles; travel mugs
- 24 (9) Banners of textile
- 25 (10) Clothing, namely, shirts, t-shirts, sweat shirts, hooded sweatshirts, pants, sweat pants, jackets, jeans, belts, hats, caps, toques, scarves, undergarments, tank tops, casual clothing, athletic clothing, outdoor winter clothing, sports clothing; wrist bands, bandanas
- 26 (11) Novelty pins; crests; lanyards for holding badges
- 28 (12) Playing cards; golf balls
- 30 (13) Edibles made with marijuana, marijuana extracts, marijuana resins, marijuana oils, marijuana waxes, namely chocolate confections, pastries, candies; non-alcoholic

beverages infused with marijuana, namely teas and herbal teas, tisanes

- 31 (14) Live marijuana plants; marijuana seeds
- 32 (15) Non-alcoholic beverages infused with marijuana, marijuana extracts, marijuana resins, marijuana oils, marijuana waxes, namely carbonated waters, cola beverages, energy drinks, flavoured waters, fruit beverages, soft drinks; alcoholic beverages infused with marijuana, namely, beer
- 33 (16) Alcoholic beverages infused with marijuana, marijuana extracts, marijuana resins, marijuana oils, marijuana waxes, namely alcoholic coolers, cider, liqueurs, and wine
- 34 (17) Marijuana paraphernalia, namely, pipes, bongs, rolling papers, vaporizers, lighters, torches, ashtrays; Dried marijuana; marijuana extracts, namely shatter, wax and oils for smoking; marijuana resins for smoking; marijuana oils, namely pre-loaded dosing capsules for vaporizers, dosing capsules for vaporizers

Services (Nice class & Statement)

- 35 (1) Online sales of dried marijuana, marijuana extracts, namely marijuana resins, marijuana oils, and marijuana waxes for smoking; Online sales of food made with marijuana, marijuana extracts, marijuana resins, marijuana oils, marijuana waxes; Online sales of topicals made with marijuana, marijuana extracts, marijuana resins, marijuana oils, marijuana waxes, namely topical creams, lotions, and balms; Online sale of clothing, printed publications, marijuana paraphernalia, namely pipes, bongs, rolling papers, vaporizers, lighters, torches, ashtrays, pre-loaded dosing capsules for vaporizers, dosing capsules for vaporizers; distribution of samples for publicity purposes and retail sale of dried marijuana, live marijuana plants, marijuana resins, marijuana oils for smoking, marijuana waxes for smoking; distribution of samples for publicity purposes and retail sale of edibles made with marijuana, marijuana extracts, marijuana resins, marijuana oils, marijuana waxes, namely chocolate confections, pastries, candies; distribution of samples for publicity purposes and retail sale of topicals made with marijuana, marijuana extracts, marijuana resins, marijuana oils, marijuana waxes, namely topical creams, lotions and balms
- 38 (2) Operation of an online bulletin board for publishing of information about marijuana and research related to marijuana and for users to provide commentary about the content and about subjects relating thereto
- 39 (3) Transportation by rail, air and truck of dried marijuana, live marijuana plants, marijuana resins, marijuana oils for smoking, marijuana waxes for smoking; transportation by rail, air and truck of edibles made with marijuana, marijuana extracts, marijuana resins, marijuana oils, marijuana waxes, namely chocolate confections, pastries, candies; transportation by rail, air and truck of of topicals made with marijuana, marijuana extracts, marijuana resins, marijuana oils, marijuana waxes, namely topical creams, lotions, and balms
- 40 (4) Production and processing of dried marijuana, live marijuana plants, marijuana resins, marijuana oils for smoking, marijuana waxes for smoking; Preparation and processing of edibles made with marijuana, marijuana extracts, marijuana resins, marijuana oils, marijuana waxes, namely chocolate confections, pastries, candies;

Preparation and processing of topicals made with marijuana, marijuana extracts, marijuana resins, marijuana oils, marijuana waxes, namely topical creams, lotions, and balms

- 42 (5) Providing information in the field of marijuana research and research and development of marijuana products via a website
- 44 (6) Operation of a dispensary for medical marijuana, marijuana extracts, namely marijuana resins, marijuana oils, and marijuana waxes for smoking; breeding and cultivation of dried marijuana, live marijuana plants, marijuana resins, marijuana oils for smoking, marijuana waxes for smoking

SCHEDULE B

A Design, Registration number TMA1064697



Goods (Nice class & Statement)

- 3 (1) Bath additives; bath herbs; bath oils; bath oils for cosmetic purposes; beauty care cosmetics; beauty creams for body care; beauty gels; beauty lotions; body and beauty care cosmetics; body creams; body oils; cosmetic creams; cosmetic oils; cosmetics and make-up; face and body lotions; face and body milk; face lotion; hair care preparations; hair styling preparations; hand cream; hand lotions; lip care preparations; lip conditioners; lip glosses; liquid soaps; massage creams; massage oils; non-medicated bubble bath preparations; non-medicated preparations for the care of hair; non-medicated preparations for the care of skin; non-medicated preparations for the care of the scalp; non-medicated skin care preparations; oils for toiletry purposes; skin care preparations; skin creams; skin emollients; skin lotions; skin soap; soaps for body care; soaps for personal use.

- 5 (2) Pharmaceutical cannabis, namely, medical marijuana in the form of oils for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and wellbeing, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; cannabis and marijuana for medicinal purposes, for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; cannabis related products, namely salves, concentrated pastes, tinctures, tablets and capsules, each containing cannabis for medicinal purposes, for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; salves, concentrated pastes, tinctures, tablets and capsules each containing resins derived from cannabis; nutraceuticals for medicinal purposes for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; nutraceuticals for medicinal purposes containing cannabis for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep

aid and for management of opioid addiction and relief of epilepsy; nutraceuticals for medicinal purposes containing derivatives of cannabis, namely resins and oils for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and wellbeing, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy, for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid; personal sexual lubricants; transdermal patches containing cannabis for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and wellbeing, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; oral sprays containing cannabis for medicinal use for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; oils derived from cannabis for medicinal use for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy.

- 9 (3) Electronic publications, namely, newsletters, brochures, reports and guides in the field of cannabis
- 16 (4) Printed publications, namely, newsletters, brochures, reports and guides in the field of cannabis
- 21 (5) Jars
- 25 (6) Athletic apparel; baseball caps; beachwear; caps; casual wear; coveralls; flip-flops; gloves; golf caps; golf shirts; hats; headbands; long-sleeved t-shirts; mittens; novelty hats; sandals; shirts; sweatshirts; toques; t-shirts
- 29 (7) Oils and resins derived from cannabis, for use as comestibles; food products containing cannabis, cannabis resins and cannabis oils, namely butter.
- 30 (8) Food products containing cannabis, cannabis resins and cannabis oils, namely chocolates, cookies, brownies, candy and food energy bars; tea; cannabis related products, namely teas containing cannabis, and teas containing derivatives of cannabis namely resins and oils
- 31 (9) Live cannabis plants; live marijuana plants; cannabis seeds
- 32 (10) Smoothies, fruit beverages and fruit juices, carbonated soft drinks, and energy drinks each containing derivatives of cannabis; smoothies, fruit beverages and fruit juices, carbonated soft drinks, and energy drinks each containing resins and oils derived from cannabis

- 34 (11) Derivatives of cannabis, namely resins and oils, for oral vaporizers for smoking; cannabis and marijuana for recreational use; smokers' articles, namely, smoking pipes, pouches for use with marijuana and cannabis, lighters for smokers; smokers' articles, namely, oral vaporizers for smokers; dried marijuana, dried cannabis; smokers' articles namely, grinders for use with cannabis and marijuana.

Services (Nice class & Statement)

- 35 (1) Retail sale and wholesale of, and providing distribution services for, marijuana and cannabis, cannabis related products and cannabis extracts, namely hashish and cannabis resins, cannabis seeds and cannabis plants; online retail sale of dried marijuana and cannabis for smoking, for ingestion and for recreational consumption; online retail sale of marijuana and cannabis for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; providing consumer information in the field of cannabis dispensary locations; providing a web site featuring the ratings, reviews and recommendations on products and services for commercial purposes posted by users in the field of marijuana and cannabis.
- 39 (2) Providing the packaging of marijuana and cannabis, cannabis related products, derivatives of cannabis and natural health products containing cannabis
- 41 (3) Providing a website featuring entertainment information in the field of cannabis culture; providing news via a website in the nature of current event reporting in the field of cannabis and cannabis culture; operation of a website providing educational information in the field of cannabis
- 42 (4) Research services in the area of marijuana and cannabis, cannabis related products, derivatives of cannabis, and natural health products containing cannabis
- 44 (5) Providing the breeding, growing, cultivation, harvesting and production of marijuana and cannabis
- 45 (6) Computer services, namely, online social networking services for registered users to participate in discussions, get feedback from their peers, from virtual communities, and engage in social networking in the field of cannabis

A Design (colour), Registration number TMA1064944



Goods (Nice class & Statement)

- 3 (1) Bath additives; bath herbs; bath oils; bath oils for cosmetic purposes; beauty care cosmetics; beauty creams for body care; beauty gels; beauty lotions; body and beauty care cosmetics; body creams; body oils; cosmetic creams; cosmetic oils; cosmetics and make-up; face and body lotions; face and body milk; face lotion; hair care preparations; hair styling preparations; hand cream; hand lotions; lip care preparations; lip conditioners; lip glosses; liquid soaps; massage creams; massage oils; non-medicated bubble bath preparations; non-medicated preparations for the care of hair; non-medicated preparations for the care of skin; non-medicated preparations for the care of the scalp; non-medicated skin care preparations; oils for toiletry purposes; skin care preparations; skin creams; skin emollients; skin lotions; skin soap; soaps for body care; soaps for personal use.
- 5 (2) Cannabis related products, namely oils, salves, concentrated pastes, tinctures, tablets and capsules, each containing cannabis for medicinal purposes, for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; oils, salves, concentrated pastes, tinctures, tablets and capsules each containing resins and oils derived from cannabis for medicinal purposes, for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; nutraceuticals for medicinal purposes for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; nutraceuticals for medicinal purposes containing cannabis for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; nutraceuticals for medicinal purposes containing derivatives of cannabis, namely resins and oils for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; topical skin creams, bar and liquid soaps, bath additives, bath herbs, bath oils, body creams, body oils, face and body lotions, face and body milk, face lotion, and skin care preparations each containing derivatives of cannabis, for the relief of pain, for relaxation, for reducing

stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; personal sexual lubricants; transdermal patches containing cannabis for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; oral sprays containing cannabis for medicinal use for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy.

- 5 (3) Cannabis and marijuana for medicinal purposes, for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; cannabis related product, namely, oils for medicinal use for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; oils derived from cannabis for medicinal use for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy.
- 9 (4) Electronic publications, namely, newsletters, brochures, reports and guides in the field of cannabis
- 16 (5) Printed publications, namely, newsletters, brochures, reports and guides in the field of cannabis
- 21 (6) Jars
- 25 (7) Athletic apparel; baseball caps; beachwear; caps; casual wear; coveralls; flip-flops; gloves; golf caps; golf shirts; hats; headbands; long-sleeved t-shirts; mittens; novelty hats; sandals; shirts; sweatshirts; toques; t-shirts
- 29 (8) Oils and resins derived from cannabis, for use as comestibles; cannabis related product, namely, oils for use as comestibles; oils derived from cannabis for use as comestibles; food products containing cannabis, cannabis resins and cannabis oils, namely butter.
- 30 (9) Food products containing cannabis, cannabis resins and cannabis oils, namely chocolates, cookies, brownies, candy and food energy bars; tea; cannabis related products, namely teas containing cannabis, and teas containing derivatives of cannabis namely resins and oils.
- 31 (10) Live cannabis plants; live marijuana plants.

- 31 (11) Cannabis seeds
- 32 (12) Smoothies, fruit beverages and fruit juices, carbonated soft drinks, and energy drinks each containing derivatives of cannabis; smoothies, fruit beverages and fruit juices, carbonated soft drinks, and energy drinks each containing resins and oils derived from cannabis.
- 34 (13) Smokers' articles, namely, grinders for use with cannabis and marijuana
- 34 (14) Dried marijuana, dried cannabis; derivatives of cannabis, namely resins and oils, for oral vaporizers for smoking; cannabis and marijuana for recreational use; smokers' articles, namely, smoking pipes, pouches for use with marijuana and cannabis, lighters for smokers, oral vaporizers for smokers.

Services (Nice class & Statement)

- 35 (1) Retail sale and wholesale of, and providing distribution services for, marijuana and cannabis, cannabis related products and cannabis extracts, namely hashish and cannabis resins, cannabis seeds and cannabis plants; online retail sale of dried marijuana and cannabis for smoking, for ingestion and for recreational consumption; online retail sale of marijuana and cannabis for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; providing consumer information in the field of cannabis dispensary locations; providing a web site featuring the ratings, reviews and recommendations on products and services for commercial purposes posted by users in the field of marijuana and cannabis.
- 39 (2) Providing the packaging of marijuana and cannabis, cannabis related products, derivatives of cannabis and natural health products containing cannabis.
- 41 (3) Providing a website featuring entertainment information in the field of cannabis culture; providing news via a website in the nature of current event reporting in the field of cannabis and cannabis culture; operation of a website providing educational information in the field of cannabis.
- 42 (4) Research services in the area of marijuana and cannabis, cannabis related products, derivatives of cannabis, and natural health products containing cannabis.
- 44 (5) Providing the breeding, growing, cultivation, harvesting and production of marijuana and cannabis Computer services, namely, online social networking services for registered users to participate in discussions, get feedback from their peers, from virtual communities, and engage in social networking in the field of cannabis.

- 45 (6) Computer services, namely, online social networking services for registered users to participate in discussions, get feedback from their peers, from virtual communities, and engage in social networking in the field of cannabis.

APHRIA and A Design, Registration number TMA1085314



Goods (Nice class & Statement)

- 3 (1) Bath additives; bath herbs; bath oils; bath oils for cosmetic purposes; beauty care cosmetics; beauty creams for body care; beauty gels; beauty lotions; body and beauty care cosmetics; body creams; body oils; cosmetic creams; cosmetic oils; cosmetics and make-up; face and body lotions; face and body milk; face lotion; hair care preparations; hair styling preparations; hand cream; hand lotions; lip care preparations; lip conditioners; lip glosses; liquid soaps; massage creams; massage oils; non-medicated bubble bath preparations; non-medicated preparations for the care of hair; non-medicated preparations for the care of skin; non-medicated preparations for the care of the scalp; non-medicated skin care preparations; oils for toiletry purposes; skin care preparations; skin creams; skin emollients; skin lotions; skin soap; soaps for body care; soaps for personal use
- 5 (2) Cannabis related products, namely oils, salves, concentrated pastes, tinctures, tablets and capsules, each containing cannabis for medicinal purposes, for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; oils, salves, concentrated pastes, tinctures, tablets and capsules each containing resins and oils derived from cannabis for medicinal purposes, for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; nutraceuticals for medicinal purposes for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; nutraceuticals for medicinal purposes containing cannabis for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; nutraceuticals for medicinal purposes containing derivatives of cannabis, namely resins and oils for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; topical skin creams, bar and liquid soaps, bath additives, bath herbs, bath oils, body creams, body oils, face and body lotions, face and body milk, face lotion, and skin care preparations each containing derivatives of cannabis, for the relief of pain, for relaxation, for reducing

- stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; personal sexual lubricants; transdermal patches containing cannabis for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; oral sprays containing cannabis for medicinal use for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy
- 5 (3) Cannabis and marijuana for medicinal purposes, for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; cannabis related product, namely, oils for medicinal use for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; oils derived from cannabis for medicinal use for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy
- 9 (4) Electronic publications, namely, newsletters, brochures, reports and guides in the field of cannabis
- 16 (5) Printed publications, namely, newsletters, brochures, reports and guides in the field of cannabis
- 21 (6) Jars
- 25 (7) Athletic apparel; baseball caps; beachwear; caps; casual wear; coveralls; flip-flops; gloves; golf caps; golf shirts; hats; headbands; long-sleeved t-shirts; mittens; novelty hats; sandals; shirts; sweatshirts; toques; t-shirts
- 29 (8) Oils and resins derived from cannabis, for use as comestibles; cannabis related product, namely, oils for use as comestibles; oils derived from cannabis for use as comestibles; food products containing cannabis, cannabis resins and cannabis oils, namely butter.
- 30 (9) Food products containing cannabis, cannabis resins and cannabis oils, namely chocolates, cookies, brownies, candy and food energy bars; tea; cannabis related products, namely teas containing cannabis, and teas containing derivatives of cannabis namely resins and oils
- 31 (10) Live cannabis plants; live marijuana plants

- 31 (11) Cannabis seeds
- 32 (12) Smoothies, fruit beverages and fruit juices, carbonated soft drinks, and energy drinks each containing derivatives of cannabis; smoothies, fruit beverages and fruit juices, carbonated soft drinks, and energy drinks each containing resins and oils derived from cannabis
- 34 (13) Smokers' articles, namely, grinders for use with cannabis and marijuana
- 34 (14) Dried marijuana, dried cannabis; derivatives of cannabis, namely resins and oils, for oral vaporizers for smoking; smokers' articles, namely, smoking pipes, pouches for use with marijuana and cannabis, lighters for smokers, oral vaporizers for smokers

Services (Nice class & Statement)

- 35 (1) Retail sale and wholesale of, and providing distribution services for, marijuana and cannabis, cannabis related products and cannabis extracts, namely hashish and cannabis resins, cannabis seeds and cannabis plants; online retail sale of dried marijuana and cannabis for smoking, for ingestion and for recreational consumption; online retail sale of marijuana and cannabis for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; providing consumer information in the field of cannabis dispensary locations; providing ratings, reviews and recommendations on products and services for commercial purposes posted by users in the field of marijuana and cannabis via a website
- 39 (2) Providing the packaging of marijuana and cannabis, cannabis related products, derivatives of cannabis and natural health products containing cannabis.
- 41 (3) Providing entertainment information in the field of cannabis culture via a website; providing news via a website in the nature of current event reporting in the field of cannabis and cannabis culture; providing educational information in the field of cannabis via a website
- 42 (4) Research services in the area of marijuana and cannabis, cannabis related products, derivatives of cannabis, and natural health products containing cannabis
- 44 (5) Providing the breeding, growing, cultivation, harvesting and production of marijuana and cannabis
- 45 (6) Computer services, namely, online social networking services for registered users to participate in discussions, get feedback from their peers, from virtual communities, and engage in social networking in the field of cannabis



Goods (Nice class & Statement)

- 3 (1) Bath additives; bath herbs; bath oils; bath oils for cosmetic purposes; beauty care cosmetics; beauty creams for body care; beauty gels; beauty lotions; body and beauty care cosmetics; body creams; body oils; cosmetic creams; cosmetic oils; cosmetics and make-up; face and body lotions; face and body milk; face lotion; hair care preparations; hair styling preparations; hand cream; hand lotions; lip care preparations; lip conditioners; lip glosses; liquid soaps; massage creams; massage oils; non-medicated bubble bath preparations; non-medicated preparations for the care of hair; non-medicated preparations for the care of skin; non-medicated preparations for the care of the scalp; non-medicated skin care preparations; oils for toiletry purposes; skin care preparations; skin creams; skin emollients; skin lotions; skin soap; soaps for body care; soaps for personal use.
- 5 (2) Cannabis related products, namely oils, salves, concentrated pastes, tinctures, tablets and capsules, each containing cannabis for medicinal purposes, for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; oils, salves, concentrated pastes, tinctures, tablets and capsules each containing resins and oils derived from cannabis for medicinal purposes, for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; nutraceuticals for medicinal purposes for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; nutraceuticals for medicinal purposes containing cannabis for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; nutraceuticals for medicinal purposes containing derivatives of cannabis, namely resins and oils for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; topical skin creams, bar and liquid soaps, bath additives, bath herbs, bath oils, body creams, body oils, face and body lotions, face and body milk, face lotion, and skin care preparations each containing derivatives of cannabis, for the relief of pain, for relaxation, for reducing

- stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; personal sexual lubricants; transdermal patches containing cannabis for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; oral sprays containing cannabis for medicinal use for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy.
- 5 (3) cannabis and marijuana for medicinal purposes, for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; cannabis related product, namely, oils for medicinal use for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; oils derived from cannabis for medicinal use for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy.
- 9 (4) Electronic publications, namely, newsletters, brochures, reports and guides in the field of cannabis
- 16 (5) Printed publications, namely, newsletters, brochures, reports and guides in the field of cannabis
- 21 (6) Jars
- 25 (7) Athletic apparel; baseball caps; beachwear; caps; casual wear; coveralls; flip-flops; gloves; golf caps; golf shirts; hats; headbands; long-sleeved t-shirts; mittens; novelty hats; sandals; shirts; sweatshirts; toques; tshirts.
- 29 (8) Oils and resins derived from cannabis, for use as comestibles; cannabis related product, namely, oils for use as comestibles; oils derived from cannabis for use as comestibles; food products containing cannabis, cannabis resins and cannabis oils, namely butter.
- 30 (9) Food products containing cannabis, cannabis resins and cannabis oils, namely chocolates, cookies, brownies, candy and food energy bars; tea; cannabis related products, namely teas containing cannabis, and teas containing derivatives of cannabis namely resins and oils.
- 31 (10) Live cannabis plants; live marijuana plants

- 31 (11) Cannabis seeds
- 32 (12) Smoothies, fruit beverages and fruit juices, carbonated soft drinks, and energy drinks each containing derivatives of cannabis; smoothies, fruit beverages and fruit juices, carbonated soft drinks, and energy drinks each containing resins and oils derived from cannabis.
- 34 (13) Smokers' articles, namely, grinders for use with cannabis and marijuana.
- 34 (14) Dried marijuana, dried cannabis; derivatives of cannabis, namely resins and oils, for oral vaporizers for smoking; cannabis and marijuana for recreational use; smokers' articles, namely, smoking pipes, pouches for use with marijuana and cannabis, lighters for smokers, oral vaporizers for smokers.

Services (Nice class & Statement)

- 35 (1) Retail sale and wholesale of, and providing distribution services for, marijuana and cannabis, cannabis related products and cannabis extracts, namely hashish and cannabis resins, cannabis seeds and cannabis plants; online retail sale of dried marijuana and cannabis for smoking, for ingestion and for recreational consumption; online retail sale of marijuana and cannabis for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; providing consumer information in the field of cannabis dispensary locations; providing a web site featuring the ratings, reviews and recommendations on products and services for commercial purposes posted by users in the field of marijuana and cannabis.
- 39 (2) Providing the packaging of marijuana and cannabis, cannabis related products, derivatives of cannabis and natural health products containing cannabis.
- 41 (3) Providing a website featuring entertainment information in the field of cannabis culture; providing news via a website in the nature of current event reporting in the field of cannabis and cannabis culture; operation of a website providing educational information in the field of cannabis.
- 42 (4) Research services in the area of marijuana and cannabis, cannabis related products, derivatives of cannabis, and natural health products containing cannabis.
- 44 (5) Providing the breeding, growing, cultivation, harvesting and production of marijuana and cannabis.
- 45 (6) Computer services, namely, online social networking services for registered users to participate in discussions, get feedback from their peers, from virtual communities, and engage in social networking in the field of cannabis.