



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2024 TMOB 35

Date of Decision: 2024-02-28

IN THE MATTER OF AN OPPOSITION

Opponent: Marchesi Antinori S.p.A.

Applicant: Bodegas Casa La Rad S.L.

Application: 1,877,894 for SOLARCE

INTRODUCTION

[1] Bodegas Casa La Rad S.L. (the Applicant) applied to register the trademark SOLARCE (the Mark) on January 17, 2018.

[2] The application is for proposed use of the Mark in Canada in association with the following goods in the Nice Classes noted below:

Class 33 - (1) Red wines; rosé wines; white wines; wine (the Goods)

[3] The application was advertised in the *Trademarks Journal* on December 30, 2020.

[4] On February 26, 2021, Marchesi Antinori S.p.A. (the Opponent), filed a statement of opposition against the Mark pursuant to section 38 of the *Trademarks Act*, RSC 1985, C. T-13 (the Act), as amended.

[5] In support of its opposition, the Opponent submitted the affidavit of Raffealla Alia. In support of its application, the Applicant submitted the affidavits of Guiseppe Calderone and Marta Castro Vilalta. As its evidence in reply, the Opponent submitted the affidavits of Walter Meliga, and a reply affidavit of Raffealla Alia. None of the affiants were cross-examined.

GROUND OF OPPOSITION

[6] The grounds of opposition are as follows:

- Pursuant to section 12(1)(d) of the Act, the Mark is not registrable as it is confusing with the Opponent's registration for SOLAIA, registered under No. TMA 302157, previously registered, used and made known in association with wine.
- Pursuant to section 16(1)(a) of the Act, the Applicant is not the person entitled to registration since at the date of first use in Canada, the Mark was confusing with the Opponent's SOLAIA trademark previously used in Canada;
- Pursuant to section 2 of the Act, the Mark is not distinctive of the Applicant owing to the Opponent's prior use of its SOLAIA trademark;
- Pursuant to section 38(2)(e) of the Act, the Applicant did not intend to use the Mark in Canada at the time the application was filed in association with the Goods; and
- Pursuant to section 38(2)(f) of the Act, the Applicant could not have been satisfied of its entitlement to use the Mark in Canada in association with the Goods in view of the prior use, application, registration and making known of the Opponent's SOLAIA trademark.

LEGAL ONUS AND EVIDENTIAL BURDEN

[7] An applicant bears the legal onus of establishing, on a balance of probabilities, that its application complies with the requirements of the Act. However, an opponent must first adduce sufficient admissible evidence from which it could reasonably be concluded that the facts alleged to support each ground of opposition exist [*John Labatt Ltd v Molson Companies Ltd* (1990), 30 CPR (3d) 293 (FCTD) at 298; *Dion Neckwear Ltd v Christian Dior, SA* (2002), 20 CPR (4th) 155 (FCA)].

PRELIMINARY ISSUE – WEIGHT TO BE GIVEN TO PARTS OF APPLICANT’S EVIDENCE (I.E., MEANING OF TERMS IN FOREIGN LANGUAGES)

[8] Both the Vilalta and Calderone affidavits provide evidence directed to the meaning of certain terms in foreign languages, including Spanish and Italian. In this regard, Ms. Vilalta, Commercial Director for the Applicant, states the following at para. 7 of her affidavit: “the Mark was coined using the term “sol”/”solar” which is a direct translation to the word “sun” in Spanish, evocating the warm climatic conditions under which the grapes grow”.

[9] Mr. Calderone, a paralegal with the Applicant’s agent who states that he is fluent in Italian and also understands Spanish, conducted Internet searches for the definitions of the terms “sol” and “solar” (the results of which are attached to his affidavit as exhibits), and also deposes that in Italian, “solaia” refers to the sun and can be translated into “a place where the energy of the sun shines”.

[10] The Opponent submits that since neither affiant has provided any evidence that would demonstrate that they are qualified to provide expert evidence of this nature, this evidence is inadmissible or should be provided no weight. The Opponent has also objected to the evidence of Mr. Calderone on the basis that he is an employee of the Applicant’s agents. The general argument is that employees are not independent witnesses giving unbiased evidence when they give opinion evidence on contested issues [*Cross-Canada Auto Body Supply (Windsor) Ltd v Hyundai Auto Canada* (2006), 2006 FCA 133 (*Cross-Canada*)]. The Opponent further submits that its reply evidence

demonstrates that Mr. Calderone's evidence relating to the meaning of "solaia" in Italian is incorrect.

[11] In response, the Applicant submits the following:

- Mr. Calderone does not claim to be an expert linguist or translator but rather relies on his native language proficiency in Italian (declared under oath) supported by reputable online translation tools to provide the translation;
- The Opponent's attempt to undermine the credibility and evidentiary value of the translation of Mr. Calderone's evidence based on his affiliation with the firm representing the Applicant is unfounded and should not be a basis for disregarding the evidence;
- Language can be subjective, and interpretations can vary depending on the use of a term in association with a specific context and the idea evoked; in this regard, other experts may hold different views on the meaning and usage of specific terms, including "solaia" and it can be asserted that the Calderone Affidavit provides a reasonable interpretation of "solaia" based on the context of the Applicant's use and the wine industry.

[12] I understand that neither Ms. Vilalta nor Mr. Calderone were put forward as experts in the Italian or Spanish language. I will begin by saying that the nature of the evidence provided does not appear to be of the type that had to be presented by a qualified expert. In this regard, Ms. Vilalta simply provides evidence of which she has personal knowledge as a result of her position and experience with the Applicant in Spain, e.g., how the Mark SOLARCE was coined. I am therefore prepared to give full weight to her evidence.

[13] As for Mr. Calderone, I do not find that the translations he provided for the words "sol" and "solar" to be problematic in view that these definitions/translations were supported by evidence of online dictionaries. I also do not consider such evidence to be the type of contentious evidence of the type presented in the *Cross-Canada* case

[*Canadian Jewellers Assn v American Gem Society* (2010), 86 CPR (4th) 131 (TMOB) at para. 25].

[14] However, his definition for the word “solaia” was simply based on his proficiency in Italian and on his own translation and was not sufficiently supported by any other evidence. Further, while Mr. Calderone was not cross-examined on his affidavit, his evidence was refuted by the Opponent’s affiant Mr. Meliga, who was put forward as an expert in linguistics and philology, and stated that based on his knowledge and experience, the word “solaia” was not a known word in the Italian language (Meliga affidavit, paras 3-4; Exhibit A).

[15] In my view, the evidence of the Opponent’s affiant Mr. Meliga regarding the meaning of the word “solaia” is simply more reliable than the evidence of Mr. Calderone because of his qualifications as an expert in the field of linguistics. I will therefore give very little weight to the definition for this word as provided by Mr. Calderone.

REGISTRABILITY GROUND

[16] The Opponent pleads that the Mark is not registrable in that, pursuant to section 12(1)(d) of the Act, it is confusing with the Opponent’s registered SOLAIA trademark. The material date for this ground of opposition is the date of my decision [*Park Avenue Furniture Corporation v Wickes/Simmons Bedding Ltd*, 1991 CanLII 11769 (FCA), 37 CPR (3d) 413 (FCA)].

[17] I have exercised my discretion to check the register and confirm this registration remains extant [*Quaker Oats Co of Canada Ltd v Menu Foods Ltd* (1986), 11 CPR (3d) 410 (TMOB)]. The Opponent has therefore met its initial evidential burden. The Applicant must therefore prove on a balance of probabilities that there is no reasonable likelihood of confusion between the Mark and the Opponent’s trademark.

Are the trademarks confusing?

[18] The test for confusion is one of first impression and imperfect recollection. 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 including in appearance or sound or in the ideas suggested by them. These enumerated factors need not be accorded equal weight [see, in general, *Mattel, Inc v 3894207 Canada Inc*, 2006 SCC 22, *Veuve Cliquot Ponsardin v Boutiques Cliquot Ltée*, 2006 SCC 23 and *Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27].

Inherent distinctiveness

[19] A trademark is inherently distinctive if it is unique or is an invented or coined word.

[20] The Applicant's evidence shows that its Mark was coined using the term "sol"/"solar", which it submits "is a direct translation/reference to the word "sun" in Spanish, evocating the warm climatic conditions under which the grapes grow" (Vilalta, para 7)). While the Applicant provided evidence of an online Spanish to English translation of the word SOL, the Applicant failed to provide evidence that the average English or French-speaking consumer of wine would be aware of the meanings of Spanish words [a similar approach was adopted in *Miguel Torres, SA v Vins Arterra Canada, division Quebec, Inc*, 2021 TMOB 22 at para 27]. I will therefore not have regard to this evidence.

[21] The Applicant also conducted an Internet search for the definition of the term "solar", and attached the results of this search to his affidavit as provided by the website www.en.wiktionary.org. Although the Registrar may not take judicial notice of foreign definitions, it may take judicial notice of English and French dictionary definitions [*Tradall SA v Devil's Martini Inc*, 2011 TMOB 65 at para 29]. While I am not aware of the online dictionary in which the Applicant conducted its search, I note that one of the definitions for the word SOLAR in the online Merriam Webster dictionary is "of, derived from, relating to, or caused by the sun".

[22] In view that the average Canadian could associate the meaning for the word “solar” with the Applicant’s Mark, I find that the Applicant’s Mark is somewhat suggestive of the conditions in which the Applicant’s wine is made. Indeed, Ms. Vilalta states that the Applicant coined the Mark to evoke the warm climatic conditions under which the grapes grow (Vilalta, para 7). I therefore find that the Mark only possesses a certain degree of inherent distinctiveness.

[23] With respect to the Opponent’s mark, the Opponent submits that it has been previously established that foreign words are inherently distinctive to the average bilingual Canadian consumer [*Thai Agri Foods Public Company Limited v Choy Foong Int’l Trading Co Inc*, 2012 TMOB 61 at para 11 and *One Sushi Burrito and Poke Inc v 9339-9541 Quebec Inc*, 2021 TMOB 125 at paras 43-45]. I agree. I also note that there is no evidence that the average Canadian consumer of wines speaks or understands Spanish or Italian.

[24] Further, as noted above, while the Applicant’s evidence also purported to show that the word SOLAIA in Italian can be translated into “a place where the energy of the sun shines” (Calderone Affidavit, para 5), this evidence was refuted by the Opponent’s affiant who stated that, based on his knowledge and experience, the word “solaia” is not a known word in the Italian language (Meliga affidavit, paras 3-4; Exhibit A).

[25] As the average consumer would not necessarily attribute any specific meaning to the Opponent’s mark, I find that the Opponent’s mark to be inherently stronger than the Mark.

[26] The acquired distinctiveness of a trademark is enhanced through use and promotion in Canada. The Opponent’s trademark SOLAIA, was registered in Canada in 1985, and appears on each bottle of wine sold by the Opponent, as well as on the wooden boxes in which the wine is shipped to customers. The Opponent’s wine, which is produced in Italy, is sold by the Opponent to customers in Canada, including provincial liquor control boards and/or corporations for retail sale to the general public in Canada. Between the years 2008 to 2020, sales of SOLAIA wine to customers in Canada ranged between over € 200,000 to over € 920,000 (Alia Affidavit, para 12).

During this period the Opponent's wine was sold to the liquor control boards and/or corporations in the provinces of British Columbia, Alberta, Ontario, Quebec, New Brunswick, Nova Scotia and Newfoundland. The Opponent's wine has also acquired distinctiveness through extensive advertisements and promotion on its website *www.antinori.it* (which shows viewership by Canadians), through promotional activities in the form of private events, including tasting events and listings in auctioning events by major auction houses, advertisements in print and online publications such as *Boat International*, and press attention due to a number of different awards and reviews.

[27] The Applicant's wine has acquired less distinctiveness and has been in use for a shorter period of time as compared to the Opponent's SOLAIA trademark. The Applicant's Mark appears on labels of wine, as it appears from the reproduction of specifications sheets downloaded from the Applicant's website *www.bodegascasalarad.com* (Vilalta Affidavit, para 8). There is no indication, however, regarding when the Applicant began using the Mark in Canada, how long its wines have been sold in Canada or the extent of the Applicant's sales in Canada. All the Applicant's evidence does show is that it has been selling small quantities of its SOLARCE brand wine in Canada at the Liquor Control Board of Ontario and Manitoba Liquor & Lotteries. Examples of representative invoices and purchase orders are attached as Exhibit A_MCV_4 to Ms. Vilalta's affidavit. The Applicant has also been promoting and marketing its wines in Canada through its agent BND Wines & Spirits in Oakville, Ontario, as well as through ratings and reviews by established industry critics on various websites, although it is not indicated how many of these reviews have been viewed by Canadians.

[28] In view of the above, this factor favours the Opponent.

Length of time the trademarks have been in use

[29] While the Opponent's mark has been registered in Canada since 1985, I am satisfied from the evidence that the Opponent's wine has been sold to customers in Canada since at least as early as 2008.

[30] It is not clear from the evidence when the Applicant began using the Mark in Canada. While the earliest dated document of the Applicant is a purchase order, I agree with the Opponent that a purchase order alone is insufficient to show use of the Mark in the normal course of trade pursuant to section 4(1) of the Act. In this regard, the purchase order does not indicate that it was fulfilled by the Applicant. I therefore consider the earliest date of use of the Applicant's Mark in Canada, as shown on the copy of an invoice attached to Ms. Vilalta's affidavit, to be December 12, 2019 (Vilalta Affidavit, Exh A-MCV-4).

[31] This factor therefore favours the Opponent.

Nature of the Goods and the channels of trade

[32] The Opponent's registered goods and the Applicant's Goods are identical and target the same consumer (adults seeking wine). While the Opponent ships its wine to customers in wooden boxes and also sells to private distributors who sell to customers located in Canada, there is also evidence that the parties' wines are sold in the same channels of trade, including provincial liquor control boards (Vilalta affidavit, para 12 and Exhibit A-MCV-4; Alia affidavit, para 10).

[33] The Applicant, seeking to distinguish the nature of the parties' channels of trade, submits that the parties' products are sold at different price points. However, the fact that the parties' goods are sold at different price points is not relevant to the issue of confusion [*Bagagerie SA v Bagagerie Willy Ltee* (1992), 45 CPR (3d) 503 (FCA) at 509-510 and *Chaussures Bellini Inc v ShoeSource Worldwide, Inc*, 2015 TMOB 65 (CanLII)]. As pointed out by the Opponent, if the Applicant's Mark were to get registered, it would give the Applicant the right to use it with wines at any price point.

[34] The Applicant also submits that the significance of the country of origin as a key distinguishing factor in the wine industry cannot be understated. In this regard, the Applicant states the following in its written representations:

"The geographical origin of wines often carries a profound influence on consumer choice and perception as a matter of first impression. As aptly pointed out in the Vilalta Affidavit, the wines bearing the SOLARCE

trademark originate from Spain, while SOLAIA wines hail from Italy, creating a clear and distinct demarcation between the two trademarks in the consumer's mind (see Vilalta Affidavit, paragraph 4-5)".

[35] I do not disagree with the Applicant on this point. However, there is no restriction in the applied for goods to indicate that the registration will only be for wines from Spain. Therefore, the registration would grant to the Applicant the right to use the Mark in association with any wine from any region. I therefore do not consider the country of origin of the wine to be relevant to the issue of confusion in this case.

[36] Accordingly, these factors favour the Opponent.

Similarity in appearance, sound or idea suggested

[37] The resemblance between the trademarks is often the statutory factor likely to have the greatest influence on the confusion analysis [*Masterpiece* at 49].

[38] 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. Further, the first component of a trademark is often the most important for the confusion analysis.

[39] The Applicant submits that parallels can be drawn between this case and the decision in *Baron Philippe de Rothschild SA v China Kweichow Moutai Distillery (Group) Co, Ltd*, 2022 TMOB where a likelihood of confusion was not found between the trademarks "MOUTON" and "MOUTAI" in association with alcoholic beverages. That case can be distinguished from the present case, however, for two main reasons. First, the applicant's mark MOUTAI in that case included a distinctive design of two dragons, whereas the mark in the present case is simply a word mark. Second, the idea suggested by the dragon design of the Applicant's Mark was considered to be very different from the idea suggested by the Opponent's mark which was that of a sheep, (the English translation of the French word MOUTON). It is also noted that the opponent in that case had not shown any acquired distinctiveness of its mark.

[40] The Applicant also submitted that parallels could be drawn between this case and the decision in *Baron Philippe de Rothschild, SA v Cantina Sociale Cooperativa Di Soave Societa' Cooperativa A Responsabilita' Limitata*, 2004 TMOB 71745, where the Trademark Opposition Board did not find there to be a likelihood of confusion between the applicant's CADIS mark and the cited trademark CADET owned by the opponent, both for wine. Again, in that case, the ideas suggested by the marks were different in that the opponent's mark CADET suggested "the youngest" while "cadis" was a coined word with no suggestive meaning. Further, the opponent had not shown that its mark had acquired much distinctiveness in Canada.

[41] In this case, the trademarks have some degree of resemblance in appearance given that they are both one word trademarks which begin with the letters SOLA. While the Applicant provided evidence of the graphic elements and other components which appear with the Mark on the Applicant's label, as the Mark being applied for is only a word mark and not a design mark, evidence of the Mark as used is not relevant to the determination of this factor [see *PEI Licensing Inc v Disney Online Studios Canada Inc*, 2012 TMOB 49 at para 26]. The issue of confusion is to be decided with the Mark as applied for, not as actually used.

[42] With respect to the ideas suggested by the marks, while the Opponent's mark does not have any recognized meaning in English or French, the Applicant's Mark suggests that the sun is used in the production of the grapes used to make the Applicant's wine.

Surrounding circumstance – state of the register and state of the marketplace evidence

[43] The Applicant has furnished evidence of the state of the register and the state of the marketplace in an effort to establish that trademarks including the element SOL are common in the wine industry.

[44] State of the register evidence favours an applicant when it can be shown that the presence of a common element in marks would cause consumers to pay more attention to the other features of the marks, and to distinguish between them by those other

features, therefore decreasing the likelihood of confusion [*McDowell v Laverana GmbH & Co. KG*, 2017 FC 327 at para 42 (the first *McDowell* case)]. Relevant trademarks include those that (i) are registered or are allowed and based on use; (ii) are for similar goods and services as the trademarks at issue, and (iii) include the element at issue in a material way [*Sobeys West Inc v Schwan's IP, LLC*, 2015 TMOB 197, aff'd 2017 FC 38].

[45] Where a large number of relevant trademarks are identified on the register, at least some use of the common element may be inferred [see, for example, *Kellogg Salada Canada Inc v Maximum Nutrition Ltd*, 1992 CanLii 14792 (FCA) where the evidence showed at least 47 trademarks and 42 trade names as of the filing date of the application that contained the component NUTRI as part of the mark]. Where the number of relevant trademarks identified is not large, evidence of such use needs to be furnished [see the first *McDowell* case, *supra*, and *Canada Bread Company, Limited v Dr Smood APS*, 2019 FC 306].

[46] Mr. Calderone states that he conducted a search on the CIPO Trademarks Database for wines bearing “SOL” formative names, and attached the results of his search as Exhibit A_GC_4 to his affidavit. He found the following trademark registrations for wines: SOLAR VIEJO & Design (TMA738373), SOLAR VIEJO (TMA661435), SOL DE CHILE (TMA795964), SOL & MAR & Design (TMA1059111), LA SOLATIO (TMA1111498), CASA SOLAR (TMA571938), SOLUNA (TMA871501); SOLOMBRA (TMA775770), SOLEO (TMA446289), SOLEGRIA (TMA1056789), SOLDERA (TMA983689), SOLAZ (TMA735794), SOLARA (TMA598247).

[47] The Opponent pointed out a number of deficiencies with each of these registrations which I do not consider necessary to go through in detail. Suffice it to say that 13 third party registrations are not sufficient to draw inferences as to the commonality of the component SOL in trademarks for alcoholic beverages in Canada.

[48] Mr. Calderone also conducted an Internet search for wines bearing “sol” formative names, and attached those results as Exhibit A_GC_3 to his affidavit.

[49] Mr. Calderone does not indicate which websites these results come from or which countries they pertain to. Even if I was prepared to take judicial notice that the references to SOL formative wines on print outs from the LCBO website were Canadian, there is still no indication whether or not these wines have been used in the marketplace or how many Canadians are aware of them. In considering this issue, I have had regard to the following statements of Member Osadchuk in *Specialty Program Group Canada Inc (predecessor-in-title Can-Sure Underwriting Ltd.) and Cannasure Insurance Services, LLC*, 2023 TMOB 201 at para 92:

Moreover, even if the exhibited webpages advertise services for Canadians and meet the requirements for trademark use, I find their availability to be of limited significance in itself. The existence of a webpage does not mean that it has been visited by Canadians or that any of the trademarks displayed on the page have acquired any level of reputation in the Canadian marketplace [in this regard, see *Candrug Health Solutions Inc v Thorkelson*, 2007 FC 411]. In the absence of information on webpages' reach or any indication that Canadians have actually availed themselves of the associated services, such advertising does not establish that the trademarks displayed therein have been brought to the attention of insurance brokers or consumers in Canada to any notable extent.

[50] In view of the above, I am unable to conclude from the evidence furnished that there is common use of the component SOL such that I can infer that consumers are accustomed to distinguishing between trademarks including this component by paying more attention to the differences between them [*Advance Magazine Publishers Inc v Farleyco Marketing Inc Eyeglasses*, 2009 FC 153 at para 78].

Surrounding circumstance – foreign registrations

[51] The Applicant's evidence includes true copies of certificates of registration for its SOLARCE trademark registrations that it owns in other jurisdictions, including the United States and Europe (Vilalta, Exh A_MCV_7). The Applicant submits, *inter alia*, that these foreign registrations support the contention that SOLARCE has gained widespread recognition and significance in the wine industry in both the United States and Europe.

[52] The Opponent points out that at least one of the Applicant's registrations had expired more than two and a half years prior to the swearing of the Vilalta affidavit. The Opponent also notes that although the Applicant filed a new European trademark application for the Mark SOLARCE in association with wine, the Opponent successfully opposed this new application on the basis of confusion with its SOLAIA mark.

[53] The Applicant maintains that the mere expiry of one registration does not invalidate the accumulated reputation garnered worldwide by the Mark over the years, particularly when other valid registrations continue to exist.

[54] I respectfully disagree with the Applicant. It has been established that in assessing the issue of confusion, foreign registrations are irrelevant and evidence thereof should be disregarded [*Ex Hacienda Los Camichines, SA v Centenario Internacional, SA*, 2010 TMOB 215; *Pitman-Moore Ltd v Cyanamid of Canada Ltd* (1977), 38 CPR (2d) 140 (TMOB)]. Accordingly, I do not consider the fact that the Applicant has registrations for the Mark in other countries to be a relevant surrounding circumstance assisting the Applicant in this case.

Conclusion – confusion

[55] The test to be applied is a matter of first impression in the mind of a casual consumer somewhat in a hurry who sees the Mark in association with the Goods when he or she has no more than an imperfect recollection of the Opponent's SOLAIA trademark, and does not pause to give the matter any detailed consideration or scrutiny [*Veuve Clicquot, supra* at para 20].

[56] The Opponent has established that its trademark is known to a significant extent in Canada and that the nature of the goods and trade overlap. In view of this, and the similarities between the trademarks, I conclude that the balance of probabilities, between finding that there is no reasonable likelihood of confusion, and finding that there is a reasonable likelihood of confusion, falls slightly in favour of the Opponent.

[57] The section 12(1(d) ground is therefore successful.

NON-ENTITLEMENT AND DISTINCTIVENESS GROUNDS

[58] The material date for a ground of opposition under section 16(3)(a) is the date of filing of the application. The material date for a section 2 ground of opposition is the date of filing of the statement of opposition [*Metro-Goldwyn-Mayer Inc v Stargate Connections Inc*, 2004 FC 1185]. Both of these grounds turn on the issue of a likelihood of confusion.

[59] The Opponent's evidence described in paragraph 26 of this decision is sufficient to meet its evidential burden under both grounds. While I acknowledge that the acquired distinctiveness and length of use of the Opponent's mark would be slightly less as of the material dates for the non-entitlement and distinctiveness grounds, I nonetheless find that there is a reasonable likelihood of confusion between the parties' marks. The non-entitlement and distinctiveness grounds are therefore also successful.

REMAINING GROUNDS OF OPPOSITION

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

DISPOSITION

[61] For the reasons provided above and 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.

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

Appearances and Agents of Record

HEARING DATE: 2024-01-16

APPEARANCES

For the Opponent: Kevin Graham

For the Applicant: No one appearing

AGENTS OF RECORD

For the Opponent: Stikeman Elliott

For the Applicant: Benoit Cote