

Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2024 TMOB 88

Date of Decision: 2024-05-06

IN THE MATTER OF AN OPPOSITION

Opponent: Rose Lifescience Inc.

Applicant: BlackRose Reserve Inc.

Application: 1915902 for BLACKROSE RESERVE

INTRODUCTION

[1] Rose Lifescience Inc. (the Opponent) opposes registration of the trademark BLACKROSE RESERVE (the Mark) which is the subject of application No. 1915902 filed by BlackRose Reserve Inc. (the Applicant).

[2] The Mark is applied for in association with an extensive array of goods and services including agricultural products, personal care products, cannabis products, apparel, alcoholic and non-alcoholic beverages, wholesale and retail sale of cannabis, providing packaging for cannabis, breeding and growing cannabis, and social networking services (the Goods and Services). A full list of the Goods and Services is attached as Schedule A.

[3] The opposition is based on several grounds, the majority of which are rooted in an allegation of confusion with the Opponent's ROSE-formative trademarks (the ROSE Marks) previously used, applied for and registered in Canada. A full list of the 13 ROSE Marks is attached as Schedule B.

[4] For the reasons set out below, I reject the opposition.

THE RECORD

[5] The application for the Mark was filed on August 21, 2018 and was advertised for opposition purposes on December 22, 2021.

[6] On June 22, 2022, the Opponent opposed the application by filing a statement of opposition under section 38 of the *Trademarks Act*, RSC 1985, c T 13 as amended June 17, 2019 (the Act).

[7] The Applicant filed a counter statement denying the grounds of opposition.

[8] In support of its opposition, the Opponent filed the affidavit of Mathilde Garneau Le Bel, executed December 22, 2022 (the Le Bel Affidavit). For its part, the Applicant filed the affidavit of Kyle Rozon, sworn April 19, 2023 (the Rozon Affidavit). No cross-examinations were conducted.

[9] Both parties filed written representations. No hearing was held.

OVERVIEW OF THE EVIDENCE

Opponent's Evidence –The Le Bel Affidavit

[10] Ms. Le Bel is a paralegal in the trademarks sector of the Opponent's agent.

[11] The Le Bel Affidavit contains a description of and results of searches of the Strategis trademark database for each of the Opponent's 13 ROSE Marks.

Applicant's Evidence – The Rozon Affidavit

[12] Mr. Rozon is the Vice President of Finance of the Applicant, a position he has held since July 2018.

[13] Mr. Rozon conducted internet searches using the website *google.ca* in an effort to identify entities in Canada operating cannabis dispensaries or producing or selling cannabis products under a name containing the word ROSE or a visual representation of a rose.

[14] The Rozon Affidavit contains a chart with the websites accessed and screenshots of the web pages accessed by Mr. Rozon.

EVIDENTIAL BURDEN AND LEGAL ONUS

[15] In accordance with the usual rules of evidence, there is an evidential burden on the Opponent to prove the facts inherent in its allegations pleaded in the statement of opposition [*John Labatt Ltd v Molson Companies Ltd*, 1990 CarswellNat 1053 (FC)]. The presence of an evidential burden on the Opponent with respect to a particular issue means that in order for the issue to be considered at all, there must be sufficient admissible evidence from which it could reasonably be concluded that the facts alleged to support that issue exist [*John Labatt* at 298].

[16] For those allegations for which the Opponent has met its evidential burden, the legal onus is on the Applicant to show that the application does not contravene the provisions of the Act as alleged in the statement of opposition. The presence of a legal onus on an Applicant means that, if a determinate conclusion cannot be reached once all the evidence has been considered, then the issue must be decided against it.




ASSESSMENT OF THE GROUNDS OF OPPOSITION

Sections 38(2)(b) and 12(1)(d) – Registrability

[17] The Opponent pleads that the Mark is not registrable since it is confusing with the Opponent’s registrations for trademarks containing the word ROSE.

[18] The relevant date for this ground of opposition is date of the Registrar's decision [*Park Avenue Furniture Corp v Wickers/Simmons Bedding Ltd*, 1991 CanLII 11769, 37 CPR (3d) 413 (FCA)].

[19] I have exercised my discretion to confirm that the following registrations relied on by the Opponent (the Registered ROSE Marks) are owned by the Opponent and extant [*Quaker Oats Co Ltd of Canada v Menu Foods Ltd* (1986), 11 CPR (3d) 410 (TMOB)]:

Trademark	Reg. No. (Appl. No.)
ROSE SCIENCEVIE	1,088,504 (Appl. No. 1,896,125)
ROSE LIFE SCIENCE VIE (& DESIGN) 	1,123,553 (Appl. No. 1,932,902)
ROSE LIFE SCIENCE (& DESIGN) 	1,128,688 (Appl. No. 1,932,903)
ROSE SCIENCE VIE (& DESIGN) 	1,088,503 (Appl. No. 1,932,904)

[20] A full list of the goods and services associated with the Registered ROSE Marks is attached as Schedule C. Note that the goods and services associated with each of the Registered ROSE Marks are identical with the exception of registration

no. 1,088,504, which does not include the goods “Marijuana and cannabis extracts, namely natural resins”.

[21] As the Opponent has discharged its evidentiary burden for 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 reasonable likelihood of confusion between the Mark and the Registered ROSE Marks.

[22] 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, and *Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27]. 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.

[23] However, 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 as being manufactured, licensed or endorsed by the Opponent.

[24] Finally, as per the above table, the Opponent is relying on three design mark registrations and one word mark registration. I consider the registered word mark ROSE SCIENCEVIE (the Registered Word Mark) to represent the Opponent’s greatest chance of success with respect to this ground of opposition. If the Mark is not confusing with the Registered Word Mark, it will not be confusing with the Opponent’s remaining

Registered ROSE Marks, all of which have a stylized letter O in the word ROSE which is not shared by the Mark and reduces the degree of resemblance in appearance with the Mark.

Degree of Resemblance

[25] The Opponent's Registered Word Mark is a two word, four syllable trademark with the words ROSE and SCIENCEVIE, all being dictionary words (although SCIENCE and VIE are combined as a single word) with meanings in both the words ROSE and SCIENCE being common words in English and French, and the word VIE, being the French language word for "life". I consider the word ROSE to be the most unique element of the Registered Word Mark given the suggestive nature of the SCIENCEVIE element.

[26] While the Mark also contains the word ROSE, the fact that this word is found in the blended word BLACKROSE, which I consider the most unique element of the Mark. Although comprised of common dictionary words, black is not a colour commonly associated with roses making the word unique. Considering the Mark as a whole, I find that the Mark, namely BLACKROSE RESERVE, to be notably different in appearance and sound from the Registered Word Mark.

[27] With respect to idea suggested, the Opponent submits that the Registered ROSE Marks do not describe or suggest any intrinsic quality or characteristic of the goods and services with which these trademarks are associated [Opponent's written representations, para 30]. I respectfully disagree. While the word ROSE is a common English and French language word that may not be suggestive of the goods and services covered by the Registered Word Mark, and, although not evidenced as common expressions, "life science" and "science vie" are ordinary dictionary words that are suggestive of an association to health and wellness products and services. Overall, I consider all of the Registered ROSE Marks to be suggestive of the associated goods and services to some extent as the registrations specifically cover goods for "general health and well-being" as well as numerous goods and services associated with

cannabis (which is legal in Canada for both medicinal and recreational purposes and is associated with some health benefits).

[28] The Applicant submits that the Mark and the Registered ROSE Marks suggest different ideas, with the Mark suggesting the Goods and Services are “limited edition” and/or products of high quality with an aura of exclusivity, while the Registered ROSE Marks “suggest a connection with science or a laboratory” [Applicant’s written representations, para 38].

[29] In my view, the idea suggested by the Mark is different and unrelated to that of all the Registered ROSE Marks. While I consider the Mark to be somewhat suggestive of the Goods and Services given that the word “RESERVE” is commonly used to indicate that certain products are of higher quality, special or limited in quantity, this suggestion is significantly different from that of the Registered Word Mark (and all of the Registered ROSE Marks) [Applicant’s written representations, para 38].

[30] Overall, I find the differences between the Mark and the Registered Word Mark are greater than the similarities. When the trademarks are considered in their entirety, the Mark is notably different in all of appearance, sound and idea suggested from the Registered Word Mark. As there are even more differences in appearance between the remaining Registered ROSE Marks and the Mark, my conclusion with respect to degree of resemblance for all Registered ROSE Marks is in favour of the Applicant.

Length of Time in Use

[31] Neither party filed evidence of use of their respective trademarks in Canada.

[32] In its written representations, the Opponent points to the registration dates for its Registered ROSE Marks and asserts that these dates entitle the Registrar to assume *de minimus* use of the trademarks covered by the Registered ROSE Marks [Opponent’s written representations, paras 33 and 34].

[33] However, the *de minimus* use that can be inferred by the mere existence of a registration is insufficient to give rise to an inference of significant and continuous use [see *Entre Computer Centers, Inc v Global Upholstery Co* (1991), 40 CPR (3d) 427 (TMOB)].

[34] As neither party has evidenced actual use of their trademarks, this factor favours neither party. Even if I were to give some weight to the registration dates of the Registered ROSE Marks, this factor would only nominally favour the Opponent.

Inherent Distinctiveness and Extent Known

[35] The Opponent submits that all of its ROSE Marks, including the Registered ROSE Marks, “benefit from a strong inherent distinctiveness” and that these trademarks do not describe or suggest any intrinsic quality or characteristic of the associated goods and services [Opponent’s written representations, para 30].

[36] The Applicant submits that the Mark possesses somewhat greater distinctiveness than the Opponent’s Registered ROSE Marks but does not elaborate as to the reasons why [Applicant’s written representations, para 33]. The Applicant also made submissions regarding a potential connection between the goods and services of both parties that contain or are derived from cannabis, and particularly the bud or flower of cannabis, and the fact that “rose” is also a flower [Applicant’s written representations, para 33]. However, I find this suggested connection to be too tenuous to be considered a likely interpretation by the average consumer on first impression.

[37] In my view, the Registered ROSE Marks and the Mark all possess a degree of inherent distinctiveness. For the Registered ROSE Marks, I find this due to the fact that the word ROSE does not appear to have any clear association with the goods and services in the registrations. Likewise for the Mark, the term BLACKROSE has no apparent connection to the Goods and Services and, although comprised of the common English words “black” and “rose”, is a somewhat unique coined word given that black is not a colour commonly associated with roses.

[38] However, as noted above under the degree of resemblance factor, the Registered ROSE Marks all contain additional word matter, namely LIFE SCIENCE VIE, LIFE SCIENCE and SCIENCEVIE, all of which being at least suggestive of the associated goods and services. The Mark also contains a suggestive element, namely RESERVE. Accordingly, the trademarks of both parties are at least somewhat suggestive of their respective associated goods and services.

[39] Overall, as the trademarks of both parties contain some unique elements and some suggestive elements, I do not consider either party to be particularly favoured in respect of inherent distinctiveness.

[40] As neither party filed evidence of use of their respective trademarks, neither is favoured in respect of extent known in Canada.

[41] Overall, neither party is favoured by this factor.

Nature of the Goods, Services or Business

[42] A review of the goods and services associated with the trademarks of the parties demonstrates a clear overlap in respect of some goods and services, and close correlations in respect of others, given that both parties appear to be in the business of, *inter alia*, the production and sale of cannabis and products containing cannabis.

[43] However, I find the Applicant's Goods in Nice Classification classes 1, 18, 21 and 25 do not overlap with, nor are they closely related to, any of the goods and services of any of the Registered ROSE Marks regardless of class. I note that for the Goods in classes 1, 18, 21 and 25, the Opponent did not identify any goods and services in any of the Registered ROSE Marks in the chart in its written representations that were "highly similar" or "identical" to these Goods and Services as it did in respect of Goods and Services in other classes [Opponent's written representations. para 37].

[44] As there is no evidence of record in respect of the actual businesses of the parties and therefore no evidence that the goods, services or businesses of the parties

are notably different, this factor favours the Opponent, other than in respect of the Goods and Services in classes 1, 18, 21 and 25.

Nature of the Trade

[45] In its written representations, the Opponent submits that the application for the Mark does not contain any restrictions as to how the Applicant proposes to sell the Goods or offer the Services and, therefore, may operate at both the wholesale and retail level [Opponent's written representations, para 45].

[46] As I have found that the many of the goods and services of the parties overlap to some extent or are closely related, and there is no evidence of record from which I could conclude that the trades of the parties are different, this factor also favours the Opponent.

Surrounding Circumstance – The Applicant's Evidence

[47] The Opponent submits that the Rozon Affidavit should not be given any weight in the assessment of likelihood of confusion as state of the marketplace evidence can only be considered relevant if it demonstrates a "fairly representative state of the marketplace in Canada with actual evidence of use of a trademark in association with goods and services available to Canadians" [Opponent's written representations, para 60]. It is the Opponent's position that the state of the marketplace evidence filed by the Applicant cannot serve to establish that trademarks including the word "rose" or a visual representation of a rose are common in the cannabis industry in Canada [Opponent's written representations, para 61].

[48] As noted above, the Rozon Affidavit contains printouts of website screen shots from webpages from a *google.ca* search conducted by Mr. Rozon. The Rozon Affidavit does not contain any information as to the length of time the businesses referenced in the webpages have been in business, sales associated with the referenced goods, or any indication as to how many Canadians may have visited these websites or otherwise

exposed to the identified businesses or goods. For all of these reasons, the Rozon Affidavit does not assist the Applicant any more than the other factors favouring it.

Conclusion on Confusion

[49] Having regard to the foregoing, I find that the balance of probabilities with respect to the issue of confusion weighs in favour of the Applicant. I make this finding recognizing that the Mark contains the element ROSE which is the initial and most unique aspect of the Opponent's Registered Word Mark (as well as the remaining Registered ROSE Marks) and that there is an overlap in the goods, services, business and trade of the parties based on a review of the statements of goods and services in the application for the Mark and the registration for the Registered Word Mark (as well as all remaining Registered ROSE Marks). However, I find the overall differences in the sound, appearance and idea suggested by the trademarks to be sufficient to support a finding that the trademarks at issue are markedly more different than they are similar and, as a result, that there is no reasonable likelihood of confusion.

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

Sections 38(2)(c) and 16(1) – Non-Entitlement Grounds

[51] The Opponent pleads that the Applicant is not entitled to registration of the Mark as, at the filing date, the Mark was confusing with:

1. the ROSE Marks which had previously been used in Canada (subsection 16(1)(a) of the Act),
2. the Opponent's trade names that contain the word ROSE, namely, ROSE LIFESCIENCE and ROSE LIFESCIENCE INC. that had previously been used in Canada (subsection 16(1)(c) of the Act); and
3. the ROSE Marks for which applications were pending as of the filing date as listed in the table below (subsection 16(1)(b) of the Act):

Trademark	Appl. No.
ROSE LifeScience	1,896,125
ROSE	1,896,124

ROSE	2,169,711
ROSE	2,169,712
ROSE	2,169,713
ROSE	2,169,714
ROSE	2,169,715
ROSE	2,169,716
ROSE	2,169,717

[52] To meet its burden for each of the three different subsections of section 16(1) of the Act alleged, the Opponent must demonstrate the following, respectively:

1. that each of the ROSE Marks the Opponent wishes to rely on in support of this ground had been used in Canada prior to the filing date of the application for the Mark and had not been abandoned at the date of the advertisement of the application.
2. that the Opponent had used one or both of its trade names that contain the word ROSE, namely, ROSE LIFESCIENCE and ROSE LIFESCIENCE INC, prior to the filing date of the application for the Mark and had not abandoned the trade name(s) as of the date of advertisement of the application.
3. that each of the applications for the trademarks the Opponent wishes to rely on were pending as of the date of filing of the application for the Mark and remained pending at the date of advertisement of that application.

[53] With respect to the grounds of opposition based on subsections 16(1)(a) and (c), as there is no evidence of use of any of the Opponent's ROSE Marks or trade names of record, the Opponent has failed to meet its evidentiary burden for these grounds and, accordingly the sections 16(1)(a) and (c) non-entitlement grounds are dismissed.

[54] With respect to the remaining section 16(1) ground, namely, the section 16(1)(b) ground based on the prior filing of applications for the trademarks ROSE and ROSE LifeScience, I have confirmed that all of the applications listed in the above table were pending as of the filing date of the application for the Mark and remained pending as of

the date of advertisement of the Mark. Accordingly, the Opponent has met its initial evidential burden for the section 16(1)(b) ground of opposition.

[55] As with the section 12(1)(d) ground detailed above, the assessment of this ground of opposition now moves to assessing whether, on a balance of probabilities, the Applicant has met its legal burden establishing no reasonable likelihood of confusion between the Goods and Services associated with the Mark and those of the Opponent, considering all of the surrounding circumstances, including the factors set out in section 6(5) of the Act.

[56] For the purposes of assessing confusion for this ground, I will omit the application for the trademark ROSE LIFESCIENCE and focus on the applications for the trademark ROSE, all of which being associated with goods and services associated with cannabis. In my view, the applications for the trademark ROSE represent the Opponent's strongest case under this ground. If the Mark is not found to be confusing in respect of the applications for the trademark ROSE, it will not be confusing with the ROSE LIFESCIENCE trademark given the additional word matter in that mark that reduces the degree of resemblance with the Mark.

Degree of Resemblance

[57] The Opponent's ROSE trademark consists solely of the word ROSE. While the Mark also contains the element ROSE, it is merely an element within the Mark as a whole, being BLACKROSE RESERVE. Accordingly, while the Opponent's ROSE trademark is encompassed entirely in the Mark, there is clearly a notable difference in all of appearance, sound and idea suggested between the trademarks at issue.

[58] The Opponent's ROSE trademark consists of one, single syllable word which has, in my view, no particular association with the goods and services in the respective applications, but would be recognized as a word commonly used in English and French to describe a shade of pink or the well-known flower.

[59] In contrast, the Mark consists of two words and four syllables, with the first word arguably being a coined word (although a combination of two common words), and the second word, as described above under the section 12(1)(d) ground, can be used to indicate that certain products are of higher quality, special or limited in quantity.

[60] While the trademarks at issue share the word ROSE, in my view, when these trademarks are considered in their entirety, it is apparent that they are more different than they are similar. The Mark is notably different from the Opponent's applied-for ROSE Marks in all of appearance, sound and idea suggested.

[61] Accordingly, this factor favours the Applicant.

Length of Time in Use

[62] As neither party filed actual evidence of use of their respective trademarks in Canada, neither party is favoured by this factor.

Inherent Distinctiveness and Extent Known

[63] The Opponent submits that all of the ROSE Marks, including the applied-for ROSE Marks, have strong inherent distinctiveness as the trademarks do not describe nor suggest any intrinsic quality or characteristic of the associated goods and services [Opponent's written representations, para 30]. While I agree that there is no evidence that the Opponent's ROSE trademark is descriptive or particularly suggestive of the associated goods and services, and that the trademark has some inherent distinctiveness, I do not agree that this distinctiveness is particularly strong given that "rose" is a common dictionary word.

[64] As noted above in the assessment of this factor under the section 12(1)(d) ground, I consider the Mark to be inherently distinctive, as the term BLACKROSE has no apparent connection to the Goods and Services and, although comprised of the common English words "black" and "rose", is a coined word. However, as described by the Applicant, the word RESERVE in the Mark is suggestive of Goods and Services

being products that are ““limited edition” product[s] of high quality with an aura of exclusivity” [Applicant’s written representations, para 38].

[65] As neither party has filed evidence of use of any of the trademarks at issue, it has not been established that any of these trademarks have become known to any extent in Canada.

[66] Overall, I find factor favours the Applicant due to the distinctiveness of the BLACKROSE element of the Mark, but not significantly.

Nature of the Goods, Services and Business/Nature of the Trade

[67] The goods and services associated with the Opponent’s ROSE trademark directly overlap with the goods and services associated with the Registered Rose Marks considered above under the section 12(1)(d). And as noted above, with the exception of the Goods in classes 1, 18, 21 and 25, the Goods and Services also overlap with the goods and services associated with the Opponent’s ROSE trademark.

[68] As the earlier material date for these grounds of opposition do not affect my assessment of these factors, for the same reasons set out above, these factors favour the Opponent other than in respect of the Goods in classes 1, 18, 21 and 25.

Conclusion

[69] Having regard to the foregoing, I find that the balance of probabilities with respect to the issue of confusion weighs slightly in favour of the Applicant. I make this finding recognizing that the Opponent’s trademark at issue consists solely of the word ROSE which is encompassed in the Mark, and that there is an overlap in the goods, services, businesses and trades of the parties based solely on a review of the statements of goods and services in the application for the Mark and the applications for the Opponent’s ROSE trademark. However, I find the overall differences in the sound, appearance and idea suggested by the Mark and the Opponent’s ROSE trademark to

be sufficient to support a finding that the trademarks at issue are more different than they are similar and that there is no reasonable likelihood of confusion.

[70] This ground of opposition is therefore rejected.

Sections 38(2)(d) and 2 - Distinctiveness

[71] The Opponent pleads the Mark is not distinctive of the Goods and Services of the Applicant as it does not actually distinguish the Applicant's Goods and Services from those of the Opponent, nor is it adapted to distinguish them.

[72] The material date for this ground of opposition is the date of filing of the statement of opposition, namely, [see *Metro-Goldwyn-Mayer Inc v Stargate Connections Inc*, 2004 FC 1185].

[73] Section 2 of the Act defines "distinctive" in relation to trademarks as follows:

"distinctive" in relation to a trademark, describes a trademark that actually distinguishes the goods or services in association with which it is used by its owner from the goods or services of others or that is adapted so to distinguish them.

[74] In order to meet its burden in respect of this ground, the Opponent must show that the reputation of its trademark prevents the Mark from being distinctive and the required level of use must be "substantial, significant" or constitute "sufficient reputation" in association with the relevant goods and services so as to negate the distinctiveness of Mark as of the material date [*Hilton Worldwide Holding LLP v Solterra (Hastings) Limited Partnership*, 2019 TMOB 133 citing *Bojangles' International, LLC v Bojangles Café Ltd*, 2006 FC 657].

[75] As the Opponent did not file any evidence of use of its ROSE Marks, it fails to meet the evidentiary burden for this ground.

[76] This ground of opposition is therefore dismissed.

Section 38(2)(e) – No Use or Intent to Use

[77] The Opponent pleads that, as of the filing date, the Applicant was not using and did not intend to use the Mark, either itself and/or predecessors in title and/or their respective licensees.

[78] As the Opponent has failed to file any evidence in respect of this ground, it has failed to meet its evidentiary burden.

[79] This ground of opposition is therefore dismissed.

Section 38(2)(f) – No Entitlement to Use

[80] The Opponent pleads that as of the filing date of the application for the Mark, the Applicant was not entitled to use the Mark in Canada in association with the Goods and Services as the Applicant was aware – or deemed to be aware – of the Opponent's ROSE Marks and trade names and use of the Mark would create confusion with the Opponent's ROSE Marks and trade names. Further, the Opponent pleads that the Applicant knew that use of the Mark would constitute an infringement of the Opponent's exclusive rights under section 20 of the Act, would have the effect of depreciating the goodwill attaching to the ROSE Marks contrary to section 22 and would direct public attention to the Goods and Services in a manner that would lead or likely lead to mislead the public into thinking the Goods and Services are those of the Opponent.

[81] Section 38(2)(f) of the Act addresses an applicant's entitlement to use its trademark (i.e., per relevant federal legislation or other legal obligations) as opposed to an applicant's entitlement to register its trademark (relative to another's trademark, pursuant to section 16 of the Act). In my view, merely pleading that an applied-for trademark was confusing with a previously used or registered trademark and/or trade name is not a fact that can support a section 38(2)(f) ground of opposition [see *DCK Concessions Ltd v Hong Xia Zhang*, 2022 TMOB 200 and *Smarte Carte, Inc v Sandals Resorts International 2000 Inc*, 2023 TMOB 67 for similar findings].

[82] In any event, as the Opponent has not evidenced use of its ROSE Marks or trade names in Canada, the Opponent would not have met its initial burden for this ground even if I considered it a proper ground of opposition.

[83] Accordingly, this ground of opposition is dismissed.

DISPOSITION

[84] Pursuant to the authority delegated to me under section 63(3) of the Act, I reject the opposition pursuant to section 38(12) of the Act.

Leigh Walters
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

SCHEDULE A

The Applicant's Goods and Services

Goods

- CI 1 (1) Agricultural products used for commercial and home cultivation, namely soil, compost, and soil remedies

- CI 3 (2) 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

- CI 5 (3) Cannabis oil for electronic cigarettes, cannabis oil for use as a sleep aid, cannabis salve for medicinal purposes, cannabis tablets and capsules for use as a sleep aid, cannabis oil for maintaining general health and well being; cannabis oil for reducing anxiety, cannabis oil for relief of nausea, cannabis oil for reducing stress, cannabis oil for pain management

- CI 9 (4) Electronic publications, namely, newsletters, brochures, scientific studies, reports and guides in the field of cannabis

- CI 10 (5) Sexual activity apparatus, devices and articles namely condoms, vibrators and dildos infused with oils that contain cannabis derivatives, sexual activity apparatus, devices and articles namely condoms, vibrators and dildos coated with oils that contain cannabis oils, namely condoms, vibrators and dildos

- CI 16 (6) Printed publications, namely, books, newsletters, brochures, scientific studies, reports and guides in the field of cannabis

- CI 18 (7) Leather and imitations of leather goods, namely, luggage and carrying bags, suitcases, trunks, travelling bags, sling bags for carrying infants, school bags, business card cases, pocket wallets, boxes, and cases

- CI 21 (8) Jars, namely glass, ceramic or pottery

- CI 25 (9) 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; shirts; skirts; pants; jackets; coats; scarves; undergarments; belts; tank tops; bags, namely, carry-all bags, knapsacks and tote bags

CI 29 (10) 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; shirts; skirts; pants; jackets; coats; scarves; undergarments; belts; tank tops; bags, namely, carry-all bags, knapsacks and tote bags

CI 30 (11) Food products containing cannabis, cannabis resins and cannabis oils, namely chocolates, cookies, brownies, cakes, chocolate confectioneries, pastry, candies, truffles, fruit jellies, jellied candies, toffee confectioneries, bread, muffins, pies, candy and food energy bars; cannabis related products, namely teas containing cannabis, and teas containing derivatives of cannabis namely resins and oils; food products

CI 31 (12) Live cannabis plants; live marijuana plants; cannabis seeds for planting and for horticultural purposes; marijuana seeds for planting and for horticultural purposes

CI 32 (13) 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; syrups for making non-alcoholic drinks containing resins, oils or other derivatives of cannabis

CI 33 (14) Alcoholic beverages derived from cannabis plants, resins, sugars, or plant material, not for medical use, namely alcoholic cocktails, vodka, rum, whiskey, gin, liqueurs, coolers, wine and beer

CI 34 (15) Dried cannabis; dried marijuana; cannabis for smoking, cannabis for mood enhancement, marijuana for smoking, marijuana for mood enhancement; oral vaporizers for smokers, namely, vaporizer pens; products and accessories for inhaling, ingesting and storing cannabis, marijuana and their derivatives, namely smoking pipes, ashtrays, cigar boxes or cases, cigar tubes, cigar humidifiers, cigarette cases, cigarette tubes, lighters, pipe cleaners, pipe pouches, machines for rolling cigarettes, rolling papers, water pipes, bongs, rolling trays, smoking utensils and tools namely, filter tips for cigarettes, vaporizers, meter-dosed inhalers containing cannabis and cannabis-based derivatives, herb grinders, scales and storage containers

Services

CI 35 (1) Wholesale and retail distribution and sale of cannabis, medical marijuana, marijuana, cannabis seeds, cannabis extracts, and tinctures, pastes, salves, oils and food products containing cannabinoids; online retail sale of cannabis, medical marijuana, marijuana, cannabis seeds, cannabis extracts, and tinctures, pastes, salves, oils and food products containing cannabinoids; 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 cannabis

CI 39 (2) Providing the packaging of marijuana and cannabis, cannabis related products, derivatives of cannabis and natural health products containing cannabis; providing the processing of marijuana and cannabis, cannabis related products, derivatives of cannabis and natural health products containing cannabis

CI 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




CI 42 (4) Providing information about research in the area of marijuana and cannabis, regarding indications and effects of particular cannabis strains via a website; Providing research services in the area of cannabis namely marijuana

CI 44 (5) Providing the breeding, growing, cultivation, harvesting and production of marijuana and cannabis

CI 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

SCHEDULE B

The Opponent's ROSE Marks

Trademark	Reg. No.
ROSE SCIENCE VIE	1,088,504 (Appl. No. 1,896,125)
ROSE LIFE SCIENCE VIE (& DESIGN) 	1,123,553 (Appl. No. 1,932,902)
ROSE LIFE SCIENCE (& DESIGN) 	1,128,688 (Appl. No. 1,932,903)
ROSE SCIENCE VIE (& DESIGN) 	1,088,503 (Appl. No. 1,932,904)
ROSE	1,147,231 (Appl. No. 1,896,124)
ROSE	1,148,263 (Appl. No. 2,169,711)
ROSE	1,148,264 (Appl. No. 2,169,712)
ROSE	1,148,265 (Appl. No. 2,169,713)
ROSE	1,148,266 (Appl. No. 2,169,714)
ROSE	1,148,267 (Appl. No. 2,169,715)
ROSE	1,148,268 (Appl. No. 2,169,716)
ROSE	1,148,269 (Appl. No. 2,169,717)
ROSE LifeScience	1,132,446 (Appl. No. 1,896,125)

SCHEDULE C

The Registered ROSE Marks Goods and Services

Goods

- CI 2 (1) Marijuana and cannabis extracts, namely natural resins*
- CI 3 (2) Moisturizing creams and lotions
- CI 5 (3) Topical analgesic creams and lotions; anti-itch creams; natural health products, namely botanical supplements for general health and well-being; marijuana and cannabis extracts, namely, anti-inflammatory salves, tinctures for pain relief; cannabidiol [CBD] oil for medical purposes; tetrahydrocannabinol [THC] oil for medical purposes
- CI 29 (4) Edible oils; edible oils and butters containing cannabis plant derivatives
- CI 30 (5) Food products all containing cannabis plant derivatives, namely, cakes, cereal bars, cookies, brownie squares, muffins, cupcakes, chocolate, chocolate bars, chocolate confectionery, sugar confectionery, chewing gum, candies and biscuits; marijuana and cannabis extracts, namely alimentary pastes
- CI 31 (6) Live cannabis plants; horticultural seeds, namely cannabis plant seeds, marijuana seeds; marijuana clones, cannabis clones
- CI 32 (7) Marijuana and cannabis extracts, namely powders for effervescing beverages, juice; carbonated and noncarbonated drinks, namely soft drinks, frozen carbonated drinks, fruit flavoured drinks
- CI 33 (8) Liqueurs
- CI 34 (9) Dried cannabis; dried marijuana; vaping oil; equipment and accessories for the preparation, use and storage of marijuana and cannabis, namely pipes, bongs, vaporizers, water pipes, rolling papers, grinders; lighters; vaping products, namely electronic cigarettes; inhalers, namely oral vaporizers for smokers; cannabidiol [CBD] oil for oral vaporizers for smoking; tetrahydrocannabinol [THC] oil for electronic cigarettes

Services

- CI 35 (1) Online and retail sales of smoking products and accessories, namely pipes, bongs, vaporizers, water pipes, rolling papers, grinders, weighing scales; online and retail sale of marijuana, marijuana-based food products, oils; retail sale of cannabis and marijuana; operation of a retail store for the sale of cannabis; distributorship in the field of cannabis

CI 39 (2) Home delivery of cannabis products by car; freight transportation of cannabis and marijuana by air, by train, by truck, and by boat

CI 40 (3) Processing of cannabis and marijuana

CI 44 (4) Cultivation, breeding and dispensing of cannabis and marijuana

*Not included in registration no. 1132446

SCHEDULE D

The Applied-for ROSE Marks

Trademark	Reg. No.	Goods and Services	Filing Basis
ROSE	1,147,231 (Appl. No. 1,896,124)	(1) Marijuana and cannabis extracts, namely, natural resins	None
ROSE	1,148,263 (Appl. No. 2,169,711)	(1) Topical analgesic creams and lotions containing cannabis plants derivatives; anti-itch creams containing cannabis plants derivatives; marijuana and cannabis extracts, namely, anti-inflammatory salves, tinctures for pain relief; cannabidiol [CBD] oil for medical purposes; tetrahydrocannabinol [THC] oil for medical purposes.	None
ROSE	1,148,264 (Appl. No. 2,169,712)	(1) Edible oils and butters containing cannabis plant derivatives.	None
ROSE	1,148,265 (Appl. No. 2,169,713)	(1) Food products all containing cannabis plant derivatives, namely, cakes, cereal bars, cookies, brownie squares, muffins, cupcakes, chocolate, chocolate bars, chocolate confectionery, sugar confectionery, chewing gum, candies and biscuits; marijuana and cannabis extracts, namely alimentary pastes.	None
ROSE	1,148,266 (Appl. No. 2,169,714)	(1) Live cannabis plants; horticultural seeds, namely cannabis plant seeds, marijuana seeds; marijuana clones, cannabis clones.	None
ROSE	1,148,267 (Appl. No. 2,169,715)	(1) Dried cannabis; dried marijuana; vaping oil; equipment and accessories for the preparation, use and storage of marijuana and cannabis, namely pipes, bongs, vaporizers, water pipes, rolling papers, grinders; lighters; vaping products, namely electronic cigarettes; inhalers, namely oral vaporizers for smokers; cannabidiol [CBD] oil for oral vaporizers for smoking; tetrahydrocannabinol [THC] oil for electronic cigarettes.	None
ROSE	1,148,268 (Appl. No. 2,169,716)	(1) Processing of cannabis and marijuana.	None
ROSE	1,148,269 (Appl. No. 2,169,717)	(1) Cultivation, breeding and dispensing of cannabis and marijuana.	None
ROSE LifeScience	1,132,446 (Appl. No. 1,896,125)	(1) Moisturizing creams and lotions. (2) Topical analgesic creams and lotions; anti-itch creams; natural health products, namely botanical supplements for general health and well-being; marijuana and cannabis extracts, namely, anti-	Proposed use in Canada

		<p>inflammatory salves, tinctures for pain relief; cannabidiol [CBD] oil for medical purposes; tetrahydrocannabinol [THC] oil for medical purposes.</p> <p>(3) Edible oils; edible oils and butters containing cannabis plant derivatives.</p> <p>(4) Food products all containing cannabis plant derivatives, namely, cakes, cereal bars, cookies, brownie squares, muffins, cupcakes, chocolate, chocolate bars, chocolate confectionery, sugar confectionery, chewing gum, candies and biscuits; marijuana and cannabis extracts, namely alimentary pastes.</p> <p>(5) Live cannabis plants; horticultural seeds, namely cannabis plant seeds, marijuana seeds; marijuana clones, cannabis clones.</p> <p>(6) Marijuana and cannabis extracts, namely powders for effervescing beverages, juice; carbonated and non carbonated drinks, namely soft drinks, frozen carbonated drinks, fruit flavoured drinks.</p> <p>(7) Liqueurs.</p> <p>(8) Dried cannabis; dried marijuana; vaping oil; equipment and accessories for the preparation, use and storage of marijuana and cannabis, namely pipes, bongs, vaporizers, water pipes, rolling papers, grinders; lighters; vaping products, namely electronic cigarettes; inhalers, namely oral vaporizers for smokers; cannabidiol [CBD] oil for oral vaporizers for smoking; tetrahydrocannabinol [THC] oil for electronic cigarettes; Marijuana and cannabis extracts, namely resins for smoking.</p> <p>(1) Online and retail sales of smoking products and accessories, namely pipes, bongs, vaporizers, water pipes, rolling papers, grinders, weighing scales; online and retail sale of marijuana, marijuana-based food products, oils; retail sale of cannabis and marijuana; operation of a retail store for the sale of cannabis; distributorship in the field of cannabis.</p> <p>(2) Home delivery of cannabis products by car; freight transportation of cannabis and marijuana.</p> <p>(3) Processing of cannabis and marijuana.</p> <p>(4) Cultivation, breeding and dispensing of cannabis and marijuana.</p>	
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Appearances and Agents of Record

HEARING DATE: No hearing held

AGENTS OF RECORD

For the Opponent: Robic Agence PI S.E.C./ Robic IP Agency LP

For the Applicant: No agent appointed