



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2024 TMOB 93

Date of Decision: 2024-05-09

IN THE MATTER OF AN OPPOSITION

Opponent: Naborly Inc.

Applicant: Neighborly Assetco LLC

Application: 1,919,273 for NEIGHBOURLY PROPERTY MANAGEMENT

INTRODUCTION

[1] Neighborly Assetco LLC has applied to register the trademark NEIGHBOURLY PROPERTY MANAGEMENT (the Mark), in association with the following class 36 services (collectively, the Applicant's Services):

(1) Real estate management services; assessment and management of real estate; real estate management consultation; real estate rental services, namely, rental of residential housing; real estate service, namely, rental property management; real estate services, namely, property management services for condominium associations, homeowner associations and apartment buildings; real estate services, namely, rental, brokerage, leasing and management of commercial property, offices and office space

[2] Naborly Inc. (the Opponent) opposes registration of the Mark. The opposition is based primarily on allegations that the Mark is confusing with the registered trademark

NABORLY (the Opponent's Trademark), registration No. TMA1,019,654, registered in association with the following services (collectively, the Opponent's Services):

(1) Business administration services, namely the screening of tenants, the processing of tenant applications and the processing tenant lease reassignment and subletting applications; processing of insurance applications.

(2) Financial credit scoring services; financial risk assessment services; rent collection services; administrative processing of insurance claims and payment data.

(3) Software as a service provider in the field of financial credit scoring services and risk assessment services; software as a service featuring software for enabling online commerce in the nature of credit reporting and tenant screening services, for receiving and processing tenant applications, for receiving and processing rental payments and rent guarantee payments, for receiving and processing lease reassignment and subletting applications and for receiving and processing tenant and landlord insurance applications.

[3] For the reasons that follow, the application is refused.

THE RECORD

[4] The application was filed on September 11, 2018. It was advertised for opposition purposes in the *Trademarks Journal* on February 10, 2021. On August 10, 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).

[5] The grounds of opposition are summarized below.

- Pursuant to sections 38(2)(a.1) of the Act, the application was filed in bad faith as the Applicant would have been aware, or ought to have been aware, at the time of filing that the Opponent enjoyed prior rights in the Opponent's Trademark which conflicted with the Applicant's claimed entitlement to use and register the Mark.
- Pursuant to sections 38(2)(b) and 12(1)(d) of the Act, the Mark is not registrable because it is confusing with the Opponent's Trademark.

- Pursuant to sections 38(2)(c) and 16(1)(a) of the Act, the Applicant is not entitled to registration of the Mark in Canada because the Opponent's Trademark had been used and made known prior to the filing date of the application.
- Pursuant to sections 38(2)(d) and 2 of the Act, the Mark is not distinctive because it does not distinguish, nor is it adapted to distinguish, the Applicant's Services from the Opponent's Services in association with which the Opponent had previously used and made known the Opponent's Trademark in Canada.
- Pursuant to section 38(2)(e) of the Act, the Applicant was not using and did not propose to use the Mark in Canada in association with the Applicant's Services.
- Pursuant 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 Applicant's Services given the Opponent's prior rights acquired through use of the Opponent's Trademark.

[6] On June 13, 2022, the Applicant served and filed a counter statement. Both parties filed evidence; however, the Opponent's evidence was limited to a certified copy of the Opponent's Trademark. No cross examinations were conducted with respect to any evidence filed in this proceeding. Only the Applicant filed written representations; no oral hearing was held.

APPLICANT'S EVIDENCE

[7] As its evidence in this proceeding, the Applicant filed the affidavit of Mary Thompson, Chief Operating Officer of Dwyer Franchising LLC, the parent company of the Applicant, sworn May 11, 2023. She explains that the Applicant "is a home services network that connects consumers to service professionals in their communities who cater to their specific home maintenance, repair, and enhancement needs", and acts as "a single source for consumers to connect with high quality vetted home service experts and provides the information they need to make informed choices, including ratings, reviews, and licence information".

[8] Ms. Thompson states that the Applicant and its predecessors have operated in Canada for three decades, and began providing its services to individual homeowners

and other customers in association with the “NEIGHBOURLY” brand at least as early as 2018. The Applicant has a number of “sub brands” that provide services including home cleaning, drains, glass, restoration, lawn, and other services. She states that the Applicant’s service offerings include all of the Applicant’s Services, which are provided to the public through locally owned and operated franchisees, including the sub brands. She further states that the Applicant controls the character and quality of services provided by the franchisees in association with the Mark.

[9] In addition, Ms. Thompson’s affidavit and exhibits include the following information:

- Estimated system-wide sales figures for the years 2019 through 2023 for the Applicant’s Goods and Services, in the tens of millions USD for Canada for each year, and estimated revenues for the same years in the millions USD for Canada for each year.
- Information relating to advertising in association with the Mark, including screenshots from the Applicant’s website, social media, franchisee websites, and information showing advertising through trade shows and publications. Despite Ms. Thompson’s assertion that the Mark appears “prominently” in each of these materials, none of the exhibited materials appear to display the Mark; instead, the word “Neighbourly” or “Neighborly” is displayed without the words “property management”. Ms. Thompson states that the Applicant’s total investment in advertising and promotion in Canada between 2018 and 2022 was in excess of \$6 million CAD.
- Particulars and certified copies for seventeen “NEIGHBOURLY”-formative Canadian trademark registrations, and particulars and certificates for three “NEIGHBORLY”-formative United States trademark registrations, owned by the Applicant.
- Screenshots from a website which Ms. Thompson states is the Opponent’s website, and a news article relating to the Opponent’s acquisition by a competitor in late 2022. Ms. Thompson states that these materials suggest that the Opponent provides services related to landlord and tenant

screening, which she states are not related to the services provided by the Applicant and are not advertised to the same kinds of customers.

- Particulars and a certificate for the Opponent's United States trademark "NABORLY". Ms. Thompson states that the Opponent's NABORLY trademarks have coexisted for years with the Applicant's registrations in the United States and Canada without objection or challenge from the Opponent. She further states that the Applicant is not aware of any instances of confusion between the services of the Applicant and Opponent.

ANALYSIS

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

[10] The Opponent alleges that pursuant to section 12(1)(d) of the Act, the Mark is not registrable because it is confusing with the Opponent's registration for the Opponent's Trademark. I have exercised my discretion to check the register and confirm that this registration remains 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.

[11] 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 reasonable likelihood of confusion between the Applicant's Mark and the Opponent's Trademark. 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)].

[12] 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 (*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.

[13] 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 services sold under the Mark such that they would be thought to have emanated from the Opponent.

Inherent and acquired distinctiveness

[14] The Applicant submits that the Mark has a higher degree of inherent distinctiveness than the Opponent's Trademark. In this respect, the Applicant submits that the Opponent's Trademark consists only of a misspelling of the word "neighbourly", while the Mark is a coined phrase with a unique grammatical construction that does not, in itself, have a readily discernable meaning. However, the descriptive words "property management" reduce the degree of inherent distinctiveness of the Mark as they are suggestive of the Applicant's Services. By contrast, the Opponent's Trademark has no connotation in relation to the Opponent's Services and is a coined word (even though it is phonetically identical to the word "neighbourly"). As such, I find that the Opponent's Trademark has a greater degree of inherent distinctiveness.

[15] 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)]. However, despite the Applicant's assertion that it has provided "significant evidence" that the Mark has become well-known in Canada, the Applicant's evidence only shows use of "neighbourly" or "neighborly", without the words "property management". I do not consider the use of "neighbourly", on its own, to be use of the Mark as applied for. Although the word "neighbourly" may be the more distinctive element, the words "property management" are also a dominant element of the Mark as applied for, and I

do not find that the public would find that the trademark NEIGHBOURLY PROPERTY MANAGEMENT *per se* is being used in the absence of those words [*Promafil Canada Ltée v Munsingwear Inc* (1992), 44 CPR (3d) 59 (FCA); for similar conclusions, see *Riches, McKenzie & Herbert v Rosita's Fine Foods (1985) Ltd* (1997), 82 CPR (3d) 237 (TMOB) at para 7; *Gowling Lafleur Henderson LLP v Padcon Ltd*, 2014 TMOB 125 at paras 24-25; *People's Drug Mart (BC) Ltd v People Food Inc*, 2021 TMOB 111 at para 20]. While the Applicant has filed evidence of revenues for provision of its services “bearing the [Mark]” and of its advertising expenditures, in the absence of evidence showing use of the Mark as applied for, I am not prepared to conclude based on these figures that the Mark has acquired distinctiveness.

[16] As the Opponent has filed no evidence showing the extent of use of the Opponent’s Trademark, I find neither trademark has acquired any distinctiveness.

[17] On balance, I find that this factor favours the Opponent.

Length of time in use

[18] As discussed above, while Ms. Thompson asserts that the Mark has been used since at least as early as 2018, the Applicant has not furnished any evidence demonstrating use of the Mark as applied for. As for the Opponent, while the certified copy of the Opponent’s Trademark shows a claimed date of first use of December 31, 2014, I can only infer *de minimis* use of this trademark from the certified copy submitted in evidence and, moreover, a registration in itself is not evidence that the registered trademark has been used continuously since the claimed date [see *Tokai of Canada v Kingsford Products Company, LLC*, 2018 FC 951; and *Entre Computer Centers Inc v Global Upholstery Co* (1991), 40 CPR (3d) 427 (TMOB)].

[19] Accordingly, this factor favours neither party.

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

[20] The Applicant submits that the Opponent’s Services deal exclusively with tenancy applications, financial risk assessment, rent payment, and insurance applications. Although the Applicant’s and Opponent’s Services include both include

Nice classification 36, the Applicant submits that none of its services relate to the types of services associated with the Opponent's Trademark. The Applicant submits that in the absence of substantive evidence from the Opponent, there is nothing to prove that the services of the Applicant overlap with those of the Opponent. For this proposition, the Applicant cites *Eagle's Flight, Creative Training Excellence Inc v Yara International ASA*, 2020 TMOB 125; however, in that case, the Registrar found that in the absence of evidence from the applicant, there was nothing to show that the parties' safety-focused training services would *not* overlap or involve similar channels of trade [para 42]. In any event, it is trite law that the onus is on the Applicant to show that there is no reasonable likelihood of confusion once the Opponent has met its initial burden.

[21] The Applicant submits that "there is no overlap, either direct or indirect", in the nature of the parties' services. However, although the Applicant's Services do not specifically relate to tenancy applications, financial risk assessment, rent payment, or insurance applications, I find that the Applicant's Services, which encompass real estate management services, property management services, and real estate rental services, have some overlap with the Opponent's Services relating to the processing of tenant applications, tenant lease reassignment and subletting applications, and rent collection services.

[22] In terms of channels of trade, the Applicant submits that its services are provided on site by franchisees, whereas the Opponent's Services are provided online, as shown in the screenshots of the Opponent's website attached to Ms. Thompson's affidavit. However, the fact that the parties' services may be provided in this manner is not determinative, since while evidence of the parties' actual trades may be 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)], it is the statement of services in the Applicant's application and the Opponent's registration that governs 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)]. In other words, there would be nothing preventing the Applicant from

offering its services online should the Mark proceed to registration; indeed, it is clear from the Applicant's evidence, including the website screenshots attached as Exhibit B, that part of its business is delivered through a smartphone app.

[23] In any event, it appears from the nature of the Opponent's Services that they are directed towards landlords and owners of rental properties; in my view, there is some potential for overlap, particularly with respect to the Applicant's Services which specifically include real estate management services and real estate rental services.

[24] Accordingly, I find that these factors favour the Opponent.

Degree of resemblance

[25] 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.

[26] The Applicant submits that the Mark consists of a nine-syllable phrase made up of recognizable English words, while the Opponent's Trademark consists of a single word, with an unusual spelling which would be noticed by members of the public and serves to differentiate the trademarks as a matter of first impression.

[27] I find that the most striking or unique element of the Mark is the word "NEIGHBOURLY", as the words "PROPERTY MANAGEMENT" are descriptive of the services provided by the Applicant or its licensees. I find that the parties' trademarks have some degree of visual resemblance as the Opponent's Trademark consists of a different spelling of the first word of the Mark. Phonetically, the first and most striking element of the Mark is identical to the Opponent's Trademark. To the extent that the Opponent's Trademark would be recognized as an intentional misspelling of

“neighbourly”, the parties’ trademarks convey related ideas, although, as noted above, the Mark also conveys the idea of property management services.

[28] Overall, I find that this factor favours the Opponent, but only to a limited extent.

Additional surrounding circumstance: no instances of actual confusion

[29] Evidence of instances of actual confusion is not required in order to demonstrate a likelihood of confusion. However, concurrent use of two trademarks without such instances of actual confusion is a surrounding circumstance which can suggest an absence of a likelihood of confusion, depending on the specific nature and duration of that concurrent use [see *Christian Dior SA v Dion Neckwear Ltd*, 2002 FCA 29, 20 CPR (4th) 155 (FCA) at para 19; see also *Maple Leaf Consumer Foods Inc v Kelbro Enterprises Inc*, 2012 TMOB 28, 99 CPR (4th) 424].

[30] In this case, the Applicant notes that the parties’ trademarks have coexisted for more than five years, and submits that it is a relevant surrounding circumstance that there is no evidence of any instances of confusion, citing *Institute of Advanced Financial Planners v The Financial Advisors Association of Canada*, 2017 TMOB 164.

[31] However, as discussed above, it is not clear if, or for how long, the Mark as applied for has been used by the Applicant in Canada. Similarly, it is not clear how long, and to what extent, the Opponent’s Trademark has been used in Canada. As noted above, I am not prepared to conclude that the Opponent’s Trademark has been used in Canada based solely on the date of first use indicated in the certified copy for that trademark. While the Applicant has attached screenshots from the Opponent’s website retrieved in May 2023 [Exhibit P] and an article from October 2022 indicating that the Opponent was acquired by an entity called SingleKey [Exhibit Q], these documents do not show the length of time or extent of use of the Opponent’s Trademark in Canada. As such, I am not prepared to draw any conclusions on the basis of there being no evidence of actual confusion.

Additional surrounding circumstance: family of trademarks

[32] The Applicant submits that the Mark is part of a family of trademarks owned by the Applicant. In order to rely on a family of trademarks, a party must prove use of each mark of the alleged family [*McDonald's Corp v Alberto-Culver Co* (1995), 61 CPR (3d) 382 (TMOB); *McDonald's Corp v Yogi Yogurt Ltd* (1982), 66 CPR (2d) 101 (FCTD)].

[33] In this case, the trademarks in the Applicant's alleged family include NEIGHBOURLY (registration No. TMA1,051,639) and NEIGHBOURLY Design (registration No. TMA1,051,640), both registered in association with information and software services, as well as a variety of NEIGHBOURLY-formative trademarks such as NEIGHBOURLY GARAGE DOOR, NEIGHBOURLY MAIDS, NEIGHBOURLY GLASS, and the like. I accept that the Applicant's evidence, such as the Applicant's website screenshots attached as Exhibit B, at least shows use of the NEIGHBOURLY and NEIGHBOURLY Design trademarks in association with the information services of "providing consumer information to homeowners about service providers available for home repair projects and home maintenance projects", since such information is provided on the webpage where both trademarks are prominently displayed.

[34] However, the Applicant has not pointed to any example in evidence of use of any of the other NEIGHBOURLY-formative trademarks in its alleged family. While I note that certain of the posts from the Applicant's Facebook and Twitter pages [Exhibits C and D] include such tags as "#Neighborly #GlassRepair", I do not find this to constitute trademark use as the hashtags are not treated differently from any of the other hashtags in the text, and give no indication that they hold any trademark significance [see *Lost Craft Inc v 101217990 Saskatchewan Ltd dba Direct Brewing Company*, 2021 TMOB 168 at para 28, aff'd 2022 FC 1254]. Accordingly, I am not satisfied that the Applicant has proven use of any of its other NEIGHBOURLY-formative trademarks within the meaning of the Act. Since a party seeking to establish a family of marks must establish that it is using more than one or two trademarks within the alleged family [*Techniquip Ltd v Canadian Olympic Assn* (1998), 1998 CanLII 7573 (FC), 145 FTR 59 (FCTD), aff'd 250 NR 302 (FCA); *Now Communications Inc v CHUM Ltd* (2003), 32 CPR (4th) 168 (TMOB)], I do not find that this is a relevant factor in the Applicant's favour.

Conclusion

[35] The question posed by section 6(2) of the Act is whether customers of the services provided in association with the Mark NEIGHBOURLY PROPERTY MANAGEMENT would believe that these services are provided, authorized, or licensed by the Opponent owing to its NABORLY Trademark. I have assessed this as a matter of first impression in the mind of a casual consumer somewhat in a hurry who sees the Mark at a time when they have no more than an imperfect recollection of the Opponent's Trademark, and does not pause to give the matter any detailed consideration or scrutiny, nor to examine closely the similarities and differences between the trademarks.

[36] In this case, I find that at best for the Applicant, the probability of confusion between the Mark and the Opponent's Trademark is evenly balanced. In particular, I find that due to the degree of resemblance between the trademarks, the fact that the Applicant has not established any use or reputation of its Mark, and the overlapping nature of the services and the trade, the Applicant has not discharged its burden to show that there is no likelihood of confusion between the Mark and the Opponent's Trademark.

[37] Accordingly, the section 12(1)(d) ground of opposition succeeds.

Ground of Opposition: Section 38(2)(a.1)

[38] The Opponent alleges that the application was filed in bad faith as the Applicant would have been aware, or ought to have been aware, at the time of filing that the Opponent enjoyed prior rights in the Opponent's Trademark which conflicted with the Applicant's claimed entitlement to use and register the Mark. The material date for the analysis under section 38(2)(a.1) of the Act is the date the application was filed.

[39] It is well established that mere knowledge of another's trademark does not in and of itself support an allegation of bad faith [*Woot Inc v Woot Restaurants Inc / Les Restaurants Woot Inc*, 2012 TMOB 197]. Mere wilful blindness or a failure to inquire into a competitor's rights is also insufficient to constitute bad faith [*Blossman Gas Inc v*

Alliance Autopropane Inc, 2022 FC 1794]. In this case, the Opponent has filed no evidence (aside from the certified copy of the Opponent's Trademark) or representations, and therefore has not met its burden with respect to this ground of opposition. As such, this ground of opposition is rejected.

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

[40] Pursuant to sections 38(2)(c) and 16(1)(a) of the Act, the Opponent pleads that the Applicant is not entitled to registration of the Mark in Canada because the Opponent's Trademark had been used and made known prior to the filing date of the application.

[41] In order to meet its initial burden under this ground, the Opponent must show that its trademark was used prior to the Applicant's filing date and was not abandoned at the date of the advertisement of the application. Accordingly, the relevant evidence on which the Opponent can rely is evidence of use that pre-dates the filing date of the application. However, the mere filing of a certified copy of the Opponent's registration is not sufficient to satisfy its evidential burden with respect to grounds of opposition based on allegations of non-entitlement [see *Roos, Inc v Edit-SRL*, 2002 CanLII 61421, 23 CPR (4th) 265 (TMOB)].

[42] As the Opponent has filed no other evidence to allow it to meet its burden, this ground of opposition is dismissed.

Ground of Opposition: Section 2

[43] The Opponent has also pleaded that pursuant to section 2 of the Act, the Mark is not distinctive because it does not distinguish, nor is it adapted to distinguish, the Applicant's Services from the Opponent's Services in association with which the Opponent had previously used and made known the Opponent's Trademark in Canada. The material date for a ground of opposition based on non-distinctiveness is the filing date of the opposition [*Metro-Goldwyn-Mayer Inc v Stargate Connections Inc*, 2004 FC 1185 at para 25].

[44] 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 was well known in a specific area of Canada.

[45] The Opponent has filed no evidence (aside from the certified copy of the Opponent's Trademark) or representations, and therefore has not met its burden with respect to this ground of opposition. Accordingly, this ground of opposition is dismissed.

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

[46] The Opponent has pleaded that the Applicant was not using and did not propose to use the Mark in Canada in association with the Applicant's Services. The material date for this ground of opposition is the filing date of the application.

[47] The principles set out in cases relating to the former section 30(e) ground of opposition, based upon whether an applicant had a *bona fide* intention to use the trademark in Canada, can be instructive in regards to this new ground. As with the former section 30(e) ground, since the relevant facts are more readily available to and particularly within the knowledge of the applicant under a section 38(2)(e) ground of opposition, the evidential burden on an opponent in respect of this ground is light and the amount of evidence needed to discharge it may be very slight [*Allergan Inc v Lancôme Parfums & Beauté & Cie, société en nom collectif* (2007), 64 CPR (4th) 147 (TMOB); *Canadian National Railway v Schwauss* (1991), 35 CPR (3d) 90 (TMOB); *Green Spot Co v John M Boese Ltd* (1986), 12 CPR (3d) 206 at 210-11 (TMOB)].

[48] However, the Opponent has filed no evidence (aside from the certified copy of the Opponent's Trademark) or representations, and therefore has not met its burden with respect to this ground of opposition. Accordingly, this ground of opposition is dismissed.

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

[49] The Opponent alleges that at the filing date of the application, the Applicant was not entitled to use the Mark in Canada in association with the Applicant's Services given the Opponent's prior rights acquired through use of the Opponent's Trademark.

[50] 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. Furthermore, the Opponent has filed no evidence (aside from the certified copy of the Opponent's Trademark) or representations to support this ground. As such, this ground of opposition is dismissed.

DISPOSITION

[51] In view of the above, 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.

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: No agent appointed

For the Applicant: Cassels Brock & Blackwell LLP