



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2024 TMOB 103

Date of Decision: 2024-05-30

IN THE MATTER OF AN OPPOSITIONS

Opponent: 2718971 Ontario Inc.

Applicant: Kinde Company Ltd.

Applications: 1898017 for Kinde Logo

INTRODUCTION

[1] 2718971 Ontario Inc. (the Opponent) opposes registration of the trademark Kinde Logo (the Mark), which is the subject of application No. 1898017 by Kinde Company Ltd. (the Applicant). The Mark is shown below:



[2] All references are to the *Trademarks Act*, RSC 1985, c T-13 as amended June 17, 2019 (the Act), unless otherwise noted.

[3] The Mark is applied for in association with the following goods, shown together with the associated Nice classes:

- 3 (1) Body care products containing cannabinoids, namely body, hand and facial creams, bath and skin lotions, skin moisturizers and moisturizing lotions, topical creams, gels, salves, sprays, lip balms and ointments, soaps, massage oils
- 5 (2) Body care products containing cannabinoids, namely personal lubricants
- 16 (3) Printed publications, namely, newsletters, brochures, magazines, reports and guides in the field of cannabis
- 25 (4) 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.
- 33 (5) Alcoholic beverages namely, vodka, gin and wine.

[4] The opposition is based on various grounds, though primarily on allegations that the Mark is non-distinctive in view of the Opponent's KIND trademarks, and that the Mark is confusing with the Opponent's registered KINDER CULTURE trademark.

THE RECORD

[5] The application for the Mark was filed on May 8, 2018 and advertised for opposition purposes on September 9, 2020.

[6] On March 9, 2021, the Opponent opposed the application by filing a statement of opposition under section 38 of the Act.

[7] Following an amended statement of opposition filed on June 24, 2022 that was subsequently made of record, the grounds of opposition are based on non-conformance with section 30(2) of the Act pursuant to section 38(2)(a) of the Act; bad faith pursuant to section 38(2)(a.1) of the Act; non-distinctiveness pursuant to sections 2 and 30(2)(d) of the Act; that the Applicant was not using and did not propose to use the Mark pursuant to section 38(2)(e) of the Act; non-entitlement to use pursuant to section 38(2)(f) of the Act; and non-registrability pursuant to sections 12(1)(d) and 38(2)(b) of the Act.

[8] The Applicant filed a counter statement and later an amended counter statement denying the grounds of opposition.

[9] In support of its opposition, the Opponent initially filed the affidavit of Deborah Lecourt, sworn September 21, 2021 in Toronto (the Lecourt Affidavit). In November 2021, the Opponent requested leave to file additional evidence in the form of the affidavit of Joshua Nagel, sworn November 5, 2021 in Toronto (the First Nagel Affidavit). Notwithstanding the Applicant's objections to the Opponent's leave request, the First Nagel Affidavit was made of record on November 30, 2021. However, on December 2, 2021, the Opponent requested leave to file a "corrected" version of Mr. Nagel's affidavit, sworn on November 29, 2021 (the Corrected Nagel Affidavit). This version of the affidavit was made of record on December 6, 2021. Finally, in June 2022, the Opponent requested leave to file additional evidence in the form of a supplemental affidavit of Mr. Nagel, sworn June 24, 2022 (the Supplemental Nagel Affidavit), which was also made of record as leave evidence.

[10] Mr. Nagel was cross-examined on his affidavits in August 2022 and the cross-examination transcript and undertakings were made of record.

[11] In support of its application, the Applicant filed the affidavit of Paul Blake Wilson, sworn January 20, 2022 in Niagara-on-the-Lake, Ontario (the Wilson Affidavit).

[12] Mr. Wilson was cross-examined and the cross-examination transcripts and undertakings were made of record.

[13] Both parties submitted written representations and were represented at an oral hearing.

[14] The hearing was held jointly with respect to the opposition proceeding against application No. 1898015 for the trademark KINDE COMPANY (the Word Mark). A separate decision will be issued with respect to that proceeding.

OVERVIEW OF THE OPPONENT'S EVIDENCE

The KIND applications

[15] The Opponent has applied for registration of the word mark KIND (Application No. 2024508 and Divisional Application No. 2273578) and the trademark KIND Design (Application No. 2076679). The KIND Design is shown below.

KIND

[16] The KIND trademark is applied for in association with a variety of goods and services, including various alcoholic beverages, publications, cannabis products and accessories, and apparel goods, as well as various advertising and publishing services.

[17] The KIND Design trademark is applied for in association with a variety of goods and services, including various cannabis products, electronic and print publications, and apparel goods, as well as various advertising and publishing services.

[18] I note that the filing dates for these applications (April 24, 2020 for the KIND trademark applications and January 11, 2021 for the KIND Design application) post-date the May 8, 2018 filing date of the application for the Mark.

KINDER CULTURE registration

[19] The Opponent is the owner of registration No. TMA1129436 for the trademark KINDER CULTURE, registered in association with the following apparel-related goods in Nice Class 25:

Athletic apparel; Athletic footwear; Bras; Jackets; Jump suits; Jumpers; Legwarmers; Leotards; Lingerie; Long-sleeved t-shirts; Men's shirts; Men's underwear; Night dresses; Panties; Polo shirts; Ponchos; Sleepwear; Sandals; Shirts; Shoes; Skirts and dresses; Socks and stockings; Swim wear for gentleman and ladies; Ties; T-shirts; Undergarments; Women's Blouses; Women's lingerie; Women's shirts; Women's sportswear; Women's suits; Tank tops; Sweatpants; Sweatshirts; Hats.

Lecourt Affidavit

[20] Ms. Lecourt is an assistant employed by the Opponent's agent of record [para 1]. The LeCourt Affidavit consists primarily of printouts from the Opponent's website, *kindmagazine.ca*, from September 2021 [Exhibits B to M]. Attached as Exhibit N are copies of the "Opponent's Magazines", which appear to be six issues of *Kind Magazine*, dated between April 2020 and July 2021.

The First Nagel Affidavit

[21] As the Corrected Nagel Affidavit has been made of record in this proceeding and the exhibits to both affidavits are the same, it is not necessary to summarize or further address the First Nagel Affidavit. Indeed, the Opponent submits that this first affidavit "should not have been filed as it was [an] old and incorrect version which had been inadvertently signed" and "should not form part of the record as it includes incorrect information" [Opponent's written representations at paras 4.2 and 4.3].

The Corrected Nagel Affidavit

[22] Mr. Nagel is the founder and director of the Opponent [para 3]. He explains that the Opponent is a media company that publishes a magazine in association with the Opponent's KIND trademarks, with the first issue having been published and distributed in February 2020 [para 11]. The Opponent offers advertising space in its magazine, which is available online and at third-party retail cannabis chains [paras 58 to 61].

[23] The Corrected Nagel Affidavit evidences the following:

- Particulars of application Nos. 2024508 for KIND and 2076679 for KIND Design [paras 6 to 10].
- The Opponent's background including circulation numbers and content "focus" of the magazine [paras 11 to 13].
- The Opponent's plans to "launch a set of cannabis products with multiple licensed producers" in 2022 [paras 14 and 15].
- The Opponent's business plan, brand development and advertising expenditures since October 2019 [paras 16 and 17].

- Media kits related to the magazine [paras 18 and 19, Exhibits D and E].
- Third-party articles relating to the Opponent’s hosting of awards highlighting “the best Canadian cannabis companies of the year” [paras 20 to 22, Exhibits F and G].
- The Opponent’s website, *kindmagazine.ca*, including various articles displayed on the website on the topics of arts & culture, food & drink, health & wellness, travel & adventure and cannabis [paras 23 to 36, Exhibits H to T].
- The Opponent’s online retail store, *kindmagazine.entripyshirts.com*, through which the Opponent sells various clothing goods [paras 37 to 39, Exhibit U].
- The seven print editions of the Opponent’s magazine, published between February 2020 and July 2021 [paras 40 to 48, Exhibits V to BB].
- The online edition of the Opponent’s magazine, published on *issuu.com* and the Opponent’s website [paras 49 to 57, Exhibits CC to II].
- The Opponent’s social media accounts [paras 64 to 69, Exhibit JJ to LL].

[24] Mr. Nagel closes his affidavit by stating that the Opponent “is unaware of the Applicant operating a website or any business” [para 71].

Supplemental Nagel Affidavit

[25] The Supplemental Nagel Affidavit evidences the Opponent’s registration for the trademark KINDER CULTURE (No. TMA1129436). I note that assignment of the registration to the Opponent was recorded by the Registrar in May 2022.

OVERVIEW OF THE APPLICANT’S EVIDENCE

Wilson Affidavit

[26] Mr. Wilson is the director and co-owner of the Applicant [para 1]. The Wilson Affidavit evidences the following:

- The background of the Applicant, which was incorporated in Ontario in April 2018 [paras 4 to 8, Exhibit C].
- Mr. Wilson’s involvement in the cannabis industry since May 2015, including with Marigenix Corp. (which is seeking to be licensed as a producer of medical

cannabis) and the proposed use of SKWHERE trademarks in association with an online cannabis marketplace [paras 6 to 8, Exhibits D to F].

- The development of the Applicant's brand, in particular the choice and meaning of KINDE [paras 9 to 12, Exhibit G].
- The building of the Applicant's business, including trademark applications, website domain registrations, investor presentations, letters-of-intent and a potential license agreement with a cannabis manufacturer [para 13 to 18, Exhibits H to M].

[27] Mr. Wilson closes his affidavit by stating that the Applicant has invested significant time and resources in developing its KINDE brand since 2018, and he opines that the Opponent "has acted in bad faith and engaged in a course of conduct aimed at disrupting the Applicant's ongoing efforts to develop its business" [para 20].

EVIDENTIAL BURDEN AND LEGAL ONUS

[28] 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 (FCTD)]. 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 evidence from which it could reasonably be concluded that the facts alleged to support that issue exist.

[29] 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.

NON-CONFORMANCE – ORDINARY COMMERCIAL TERMS – SECTION 30(2)

[30] Pursuant to section 38(2)(a) of the Act, the Opponent pleads that the application does not conform to the requirements of section 30(2) of the Act, in that the application

does not include a statement in ordinary commercial terms of the specific goods – in particular, that none of the applied-for goods are in ordinary commercial terms.

[31] The material date for this ground is the filing date of the application.

[32] However, nothing in the evidence supports this ground, and I note that the Opponent's representations do not substantively address this ground.

[33] As the Opponent does not meet its initial evidential burden, the ground based on non-conformance with section 30(2) is rejected.

BAD FAITH – SECTION 38(2)(A.1)

[34] Pursuant to section 38(2)(a.1), the Opponent pleads that the Applicant's trademark is not registrable and was filed in bad faith, in that at the filing date of the application or at any time thereafter, the Applicant did not have a *bona fide* intention to use the Mark in Canada in association with the applied-for goods. In particular the Opponent pleads that:

- The applied-for goods are extensive and an overly broad list of goods.
- The Applicant's extensive and overly broad list of goods can only have been done for the purposes of cluttering the Trademarks Register and unfairly attempting to block legitimate use of various trademarks by third parties, including the Opponent.

[35] The material date for a bad faith ground of opposition is the filing date.

[36] Again, nothing in the evidence supports this ground, nor does the Opponent substantively address this ground in its representations.

[37] As the Opponent does not meet its initial evidential burden, the ground based on bad faith is rejected.

NON-DISTINCTIVENESS – SECTION 2

[38] Pursuant to section 30(2)(d) of the Act, the Opponent pleads that the Mark is not distinctive within the meaning of section 2 of the Act. In particular, the Opponent pleads that the Mark does not and is not adapted to distinguish the applied-for goods from the goods and services of others and, in particular, the goods and services provided in association with the Opponent's trademarks, which have not been abandoned.

[39] The material date for this ground of opposition is the filing of the first statement of opposition, namely March 9, 2021.

[40] Section 2 of the Act defines "distinctive" 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.

[41] A trademark "actually distinguishes" by acquiring distinctiveness through use, resulting in distinctiveness in fact. On the other hand, a trademark that is "adapted so to distinguish" is one that does not depend upon use for its distinctiveness because it is inherently distinctive [see *Astrazeneca AB v Novopharm Ltd*, 2003 FCA 57 at para 16].

[42] Under a non-distinctiveness ground such as this, the initial burden is on the Opponent to evidence that, as of the material date, its trademarks i) were known to some extent in Canada in association with the relevant goods and services and ii) had a reputation in Canada that was "substantial, significant or sufficient" so as to negate the distinctiveness of the Mark [see *Bojangles' International, LLC v Bojangles Café Ltd*, 2006 FC 657 at paras 33 and 34; and *Canadian Dental Association v Ontario Dental Assistants Association*, 2013 FC 266 at para 42, aff'd 2013 FCA 279].

[43] In *Auld Phillips Ltd v Suzanne's Inc*, 2005 FCA 429, albeit in the context of an expungement proceeding under section 57 of the Act, the Federal Court of Appeal stated that "Obviously, it will be a rare occurrence when one party is in a position to cause a mark to lose its distinctiveness, but nothing in principle prevents this result" [at para 7].

[44] I first note that there is no evidence of use or reputation in Canada of the Opponent's KINDER CULTURE trademark.

[45] With respect to the Opponent's KIND trademarks, in its written representations, the Opponent notes particulars regarding its magazine publication, online presence, and online clothing store [paras 7.3 to 7.7], contrasting the Opponent's use of its KIND trademarks to the fact that the Applicant has not offered its goods for sale in association with the Mark [para 7.8]. As such, the Opponent submits that the evidence establishes that its KIND trademarks had, as of the material date, "acquired a reputation in Canada that was sufficient to affect the distinctiveness of [the Mark]" [para 7.9, citing *Bojangles*].

[46] In its written representations, the Applicant submits that the Opponent does not explain how its evidence satisfies its burden and, instead, the Opponent seeks to rely on bald conclusory statements because the Opponent "has not met, and cannot possibly meet", its initial burden or the test applicable in the circumstances [paras 61 to 64]. In this respect, in part, the Applicant notes that it is not enough for the Opponent's trademark to "affect" the distinctiveness of the Mark – it is necessary to show that the Opponent's trademarks have become sufficiently well-known in Canada as of the material date to *negate* the distinctiveness of the Mark [para 64].

[47] Indeed, in this case, I accept that the Mark has at least some inherent distinctiveness in association with the applied-for goods. Although I accept that the Opponent's KIND trademarks have been known to some extent in Canada since 2020, it cannot be said that there is evidence that the reputation of the Opponent's KIND trademarks was substantial, significant or sufficient so as to *negate* such inherent distinctiveness of the Mark. In this respect, noting in part that the application is based on proposed use, there is simply no evidence of negation.

[48] As the Opponent does not meet its initial burden, the ground of opposition based on non-distinctiveness is rejected.

NOT USING AND DID NOT PROPOSE TO USE – SECTION 38(2)(E)

[49] Pursuant to section 38(2)(e) of the Act, the Opponent pleads that, at the filing date of the application or any time thereafter, the Applicant was not using and did not propose to use the Mark in Canada in association with the applied-for goods.

[50] The material date for this ground is the filing date of the application.

[51] On its own, the pleading is insufficient. In any event, nothing in the evidence supports the allegation that the Applicant did not propose or was unable to propose to use the Mark in association with the applied-for goods, and I note that the Opponent does not substantively address this ground in its representations.

[52] Accordingly, as the Opponent has not met its initial burden, the ground based on section 38(2)(e) of the Act is rejected.

NON-ENTITLEMENT TO USE – SECTION 38(2)(F)

[53] Pursuant to section 38(2)(f), the Opponent pleads that, at the filing date of the application in Canada, or any day thereafter, the Applicant was not entitled to use the Mark in Canada in association with the Applicant's goods – in particular, the Applicant did not obtain the relevant licenses or approvals to sell or offer for sale the applied-for goods in Canada at the filing date of the application.

[54] The material date for this ground is the filing date of the application.

[55] Section 38(2)(f) of the Act reads as follows:

(2) A statement of opposition may be based on any of the following grounds: ...

(f) that, at the filing date of the application in Canada, the applicant was not entitled to use the trademark in Canada in association with those goods or services.

[56] I first note that the pleading is insufficient, even when considering the statement of opposition as a whole. At a minimum, the Opponent has not plead particulars regarding the “relevant licenses or approvals” that would have impacted the Applicant's entitlement to use the Mark as of the material date. Indeed, section 38(2)(f) of the Act

addresses an applicant's entitlement to use its trademark (e.g. in compliance with relevant federal legislation or other legal obligations prohibiting "use" of a trademark within the meaning of section 4 of the Act). When considering section 38(2)(f) of the Act, the question of whether an applicant was legally entitled to "use" its trademark as of the material date should not be conflated with questions of whether the applicant is, was or has been otherwise in compliance with potentially applicable regulations or the like regarding the operation of its business.

[57] In any event, nothing in the evidence supports this ground, and I note that the Opponent's representations do not substantively address this ground.

[58] Accordingly, the ground of opposition based on non-entitlement to use is rejected.

CONFUSION WITH A REGISTERED TRADEMARK – SECTION 12(1)(D)

[59] Pursuant to section 38(2)(b) of the Act, the Opponent pleads that the application is not registrable having regard to section 12(1)(d) of the Act in that the Mark is confusing with the Opponent's registered trademark KINDER CULTURE (registration No. TMA1129436), which has not been abandoned.

[60] As noted above, the KINDER CULTURE trademark is registered in association with a variety of apparel-related goods, including athletic apparel, hats, and various types of shirts.

[61] 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 CarswellNat 1119 (FCA)]. As the Opponent's KINDER CULTURE registration is extant on the register, the Opponent meets its initial burden.

[62] Accordingly, the Applicant must establish, on a balance of probabilities, that there is not a reasonable likelihood of confusion between the Mark and Opponent's KINDER CULTURE trademark. Primarily at issue under this ground are the various apparel,

headwear and footwear goods in Nice class 25 at goods (4) in the application for the Mark.

Test to determine confusion

[63] The test to determine the issue of confusion is set out in section 6(2) of the Act which provides that the use of a trademark causes confusion with another trademark if the use of both trademarks in the same area would be likely to lead to the inference that the goods or services associated with those trademarks are manufactured, sold, leased, hired or performed by the same person, whether or not the goods or services are of the same general class or appear in the same class of the Nice Classification.

[64] 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 applied-for goods 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 [see *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée*, 2006 SCC 23 at para 20].

[65] In making such an assessment, all the relevant surrounding circumstances must be taken into consideration, including those listed in section 6(5) of the Act: the inherent distinctiveness of the trademarks and the extent to which they have become known; the length of time the trademarks have been in use; the nature of the goods, services or business; the nature of the trade; and the degree of resemblance between the trademarks in appearance, or sound or in the ideas suggested by them.

[66] The criteria or factors in section 6(5) of the Act are not exhaustive and different weight will be given to each one in a context-specific assessment [*Mattel, Inc v 3894207 Canada Inc*, 2006 SCC 22 at para 54]. In *Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27, the Supreme Court of Canada stated that section 6(5)(e), the resemblance between the trademarks, will often have the greatest effect on the confusion analysis [at para 49] and that, while the first word in the trademark may be the most important in some cases, the preferable approach is to consider whether there is an aspect of the trademark that is particularly “striking or unique” [at para 64].

Inherent Distinctiveness and the Extent Known

[67] In this case, there is no evidence regarding the extent to which the parties' trademarks have become known in Canada.

[68] With respect to the inherent distinctiveness of the trademarks, in its written representations, the Opponent simply asserts that the Opponent's KINDER CULTURE trademark is inherently distinctive, whereas the Applicant's Mark is not [para 8.8].

[69] For its part, in its written representations, the Applicant submits that the distinctive element of the Mark is the invented term KINDE, which combines "the idea of high-quality, or highly potent cannabis products ('kind' or 'kine')" with "the idea of kindness ('kind')" [para 92], whereas the trademark KINDER CULTURE is not an invented term, and "either suggests a 'children's culture' or a 'culture exhibiting a heightened degree of kindness' [para 95]. The Applicant also notes that the Mark features visual design elements, further increasing its distinctiveness [para 94]. As such, while acknowledging that the Opponent's trademark has some inherent distinctiveness, the Applicant submits that the Mark has a greater degree of inherent distinctiveness.

[70] In association with the apparel-related goods primarily at issue under this ground, I find that the Opponent's trademark and the Word Mark have a similar degree of inherent distinctiveness, in that they both lack any clear meaning in association with apparel goods. Factoring in the additional design elements of the Mark, I find that the Mark has a greater degree of inherent distinctiveness than KINDER CULTURE.

[71] Accordingly, this factor favours the Applicant.

Length of Time in Use

[72] As there is no evidence of use of either trademark, this factor favours neither party.

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

[73] When considering the nature of the goods of the parties in respect of the issue of confusion, it is the statements of goods in the subject application and registration that

govern [*Mr Submarine Ltd v Amandista Investments Ltd*, 1987 CarswellNat 749 (FCA); *Miss Universe Inc v Bohna*, 1994 CarswellNat 1443 (FCA)].

[74] As noted above, the Opponent's registered goods overlap with the applied-for apparel goods in Nice class 25. As submitted by the Opponent, since there are no restrictions indicated as to trade channels or targeted customers, the Applicant's clothing in association with its trademark would presumably target the same consumers and trade channels as that of the Opponent [para 8.15].

[75] Accordingly, these factors favour the Opponent, albeit only with respect to goods (4) in the application.

Degree of Resemblance

[76] In its written representations, the Opponent submits that the striking portion of the Opponent's trademark is KINDER while the striking portion of the Mark is KINDE [para 8.21]. Noting that the Applicant's own affiant, Mr. Wilson, confirmed that he pronounces this as "kind" with the letter E being silent [para 8.22], the Opponent submits that "The impression that a consumer would have when confronted with the marks of both parties would largely be influenced by this striking similarity" [para 8.23]. With respect to the ideas suggested, the Opponent further submits that both trademarks "evoke feelings of a benevolent company culture in relation to the goods (i.e. that the Opponent's goods emanate from a 'KINDER' CULTURE brand while the Applicant's goods emanate from a 'KINDE' COMPANY)", arguing that since the letter E is silent it is of no assistance to the Applicant [para 8.25].

[77] However, the Opponent's submissions tend to improperly dissect the trademarks rather than consider them in their entireties. With respect to the degree of resemblance in sound, to the extent that the average consumer may not pronounce the letter E in the Mark, they would nevertheless pronounce the element COMPANY. Although the first portion of both Marks is "kind" or even "kinde", there are sufficient visual and phonetic differences that reduce their resemblance overall, in particular considering the appearance of the design elements in the Mark.

[78] With respect to the ideas suggested, while “company culture” is an idea and it could be used to connect the dots between a “kinder culture” and a “kind company”, the idea of a benevolent or “kind company culture” is not actually present in either trademark. To the extent it is even necessary to consider the idea(s) suggested beyond the words themselves in a word mark, although both trademarks are arguably rooted in the word “kind”, the idea of a “kind company” and a “kinder culture” are nonetheless different ideas. Furthermore, whatever idea may be suggested by the leaf design in the Mark is not present in the Opponent’s trademark.

[79] In my view, the differences in the trademarks are greater than their similarities in appearance, in sound, and in ideas suggested.

[80] Accordingly, this factor favours the Applicant.

Conclusion – Confusion with the Opponent’s Trademark

[81] Having considered all of the surrounding circumstances, I find that the Applicant has met its legal burden with respect to the likelihood of confusion between the parties’ trademarks. I reach this conclusion due to the inherent distinctiveness of the Mark, the low degree of resemblance between the trademarks and notwithstanding the overlap in the nature of the parties’ apparel goods.

[82] Accordingly, the section 12(1)(d) ground of opposition based on confusion with the Opponent’s KINDER CULTURE trademark is rejected.

DISPOSITION

[83] 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.

Andrew Bene
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

Appearances and Agents of Record

HEARING DATE: 2024-03-05

APPEARANCES

For the Opponent: Marta Tandori Cheng

For the Applicant: John H. Simpson

AGENTS OF RECORD

For the Opponent: Riches, McKenzie & Herbert LLP

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