



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2025 TMOB 113

Date of Decision: 2025-05-23

IN THE MATTER OF AN OPPOSITION

Opponent: Guru Animation Studio Ltd.

Applicant: Guru Giri Productions Inc

Application: 2,026,962 for GURU GIRI

INTRODUCTION

[1] This is an opposition brought by Guru Animation Studio Ltd. (the Opponent) in respect of application number 2,026,962 filed by Guru Giri Productions Inc (the Applicant) for the trademark GURU GIRI (the Mark).

[2] The Mark is applied for in association with the following services (the Services):

CI 41 (1) Audio and video recording services; entertainment services in the nature of non-downloadable videos and images featuring television shows and movies transmitted via wireless computer networks; film and video production; post-production editing services in the field of music, videos and film; production of musical videos; providing films, not downloadable, via video-on-demand services; providing video studios; screenplay writing; scriptwriting services; video editing; video film production; video production; video recording services; video tape editing; videotape editing; videotape editing services

[3] The primary issue in this proceeding is whether the Mark is confusing with the Opponent's previously used GURU Logo, GURU STUDIO and GURU trademarks and/or Guru Studio and/or Guru Animation Studio trade names used in association with various entertainment industry services with a focus on animation production services.

[4] For the reasons set out below, the application is refused.

THE RECORD

[5] The application for the Mark was filed on May 6, 2020 and was advertised for opposition purposes in the *Trademarks Journal* dated October 12, 2022.

[6] On September 5, 2023, the Opponent filed its statement of opposition under section 38 of the *Trademarks Act*, RSC 1985, c T 13 (the Act).

[7] The Opponent based the opposition on sections 38(2)(a) and 30(2)(a) (services not set out in ordinary commercial terms), 38(2)(c) and 16(1)(a) and (c) (non-entitlement to registration), 38(2)(d) and 2 (non-distinctiveness), and 38(2)(f) and 7(b) (non-entitlement to use).

[8] The Applicant filed a counterstatement denying the grounds of opposition.

[9] In support of its opposition, the Opponent filed the affidavit of Chetna Kadyan, a law clerk with the Opponent's agent, sworn January 19, 2024 (the Kadyan Affidavit), and the affidavit of Francesco Falcone, co-founder, president and executive creative director of the Opponent, sworn January 17, 2024 (the Falcone Affidavit).

[10] The Applicant filed and served a statement indicating that it would not be filing evidence in this proceeding.

[11] The Opponent filed written representations in which, *inter alia*, the Opponent advised it was no longer pursuing the ground of opposition based on section 38(2)(a) and 30(2).

[12] No oral hearing was held.

OVERVIEW OF THE EVIDENCE

The Falcone Affidavit

[13] Mr. Falcone has worked in the entertainment industry with a focus on animation for over 30 years. Mr. Falcone, along with two other individuals, founded the Opponent in 2000 which was incorporated on or around April 30, 2000. Since approximately this date, the Opponent has used the trademarks GURU, including the GURU Logo and/or GURU STUDIO (collectively, the Opponent's Marks, which are listed in the attached Schedule A) in association with various entertainment industry services with a focus on animation production services. Mr. Falcone became the sole owner of the Opponent in 2005 and has personal knowledge of the matters set out in his affidavit and reviewed the Opponent's business records as necessary to confirm the accuracy of the contents of his affidavit [para 1].

[14] The Falcone Affidavit contains, *inter alia*, the following statements, information and exhibits:

- The name of the Opponent was chosen as Mr. Falcone learned that the word "guru" meant "dispeller of darkness" in Sanskrit [para 2];
- Since shortly after its founding, the Opponent has been involved in the financing, creation (including screenplay writing) recording, production, distribution and/or post-production (including editing) of television shows and movies, often working with partners in the entertainment industry. The shows and movies with which the Opponent has been involved are broadcast on cable television or

through online streaming services. The characters from these shows and movies are often the subject of licensing deals for merchandising purposes [para 3].

- Attached as Exhibit A are copies of screenshots from the Opponent's current website, which was launched in or around October 2000 [para 4]. The Opponent has also continuously posted on X (formerly Twitter) since approximately April 2009, to its Facebook page since approximately January 2010, and to its Instagram account since approximately January 2014 [para 4].
- The Opponent is known as a leader in the entertainment industry, and specifically in the area of animated storytelling. Animation is considered part of the overall production process for films and television shows [para 5].
- The Opponent currently employs over 250 people with the majority located in Canada. To date, the Opponent has produced over 13,000 minutes of animation. Also, as of the current date, the Opponent's "hub channel" on YouTube has garnered over 1 billion views worldwide and over 30 million monthly views [para 5]. Attached as Exhibit B is a screenshot of the Opponent's YouTube "hub channel".
- The Opponent has been involved in many shows that have achieved widespread success in Canada and internationally [para 6]. By way of example, the Opponent has entered into creative partnerships for shows including with
 - The Canadian-headquartered Spin Master Entertainment Ltd. (Spin Master) for over 5,000 minutes of the animated production PAW Patrol, which first aired in Canada on or about August 2013 and has spanned over ten seasons [para 6(a)]. Attached as Exhibit C are screenshots from

the Opponent's website about PAW Patrol, and attached as Exhibits D-1 to D-5 are copies of screenshots from the TVO Kids website of the closing credits of PAW Patrol episodes showing "Animation by GURU STUDIO" and the GURU Logo trademark for episodes that aired in 2014, 2020, 2022 and 2023.

- Sesame Workshop for the first ever animated spin-off of Sesame Street, Mecha Builders, for which Mr. Falcone is the executive director. The Opponent is involved in design, direction, development, production and post-production for this show. Attached as Exhibit E are copies of screenshots from the Opponent's website about this show, which was originally broadcast in Canada on Crave commencing approximately May 2022 and continues to air to this date. Attached as Exhibit F is a copy of a screenshot showing the Opponent's GURU Logo trademark as it appears in the closing credits of each episode of Mecha Builders.
- Also in partnership with Spin Master, the Opponent was involved in design, direction, development and other aspects of production of two seasons of the animated production Abby Hatcher which was originally broadcast in Canada on TVO Kids in approximately January 2019 (season one) and March 2020 (season two). Certain episodes of this show are currently available in Canada through streaming services including TVO Kids and Crave. Attached as Exhibits H-1 to H-5 are copies of screenshots showing the title screen and closing credits,

- which includes the GURU Logo, from various episodes of Abby Hatcher that were released in 2020 and 2021.
- Mattel Entertainment Projects, Inc. (Mattel) for the first four seasons of Ever After High for which the Opponent was involved in design, direction, development and other aspects of production for this show which was originally broadcast in Canada in approximately 2013 and currently has episodes available in Canada through Netflix. Exhibit I contains screenshots from the Opponent's website promoting Ever After High and featuring the Opponent's GURU Logo.
 - The Opponent has also produced several original shows entirely in-house that were commissioned by broadcasters or streamers which have met with widespread success in Canada and abroad. A chart summarizing these shows including show title, name of commissioning partner, release dates (ranging from 2011 to 2021) and Exhibits J to M containing screenshots of title screens and closing credits of these shows, the latter of which depicts the Opponent's GURU Logo [para 7].
 - The Opponent has licensed its intellectual property through merchandising programs for several of the above-listed shows [para 8]. Examples of such merchandise include toys, books, costumes and games. Such merchandise is branded with references to one or more of the Opponent's Marks. Attached as Exhibit N are photographs of representative merchandise that has been sold and continues to be available for sale in Canada in major retailers and online including Walmart and Amazon.ca.

- A list of shows that the Opponent is currently involved in and which are scheduled to be released in Canada and elsewhere in 2024 is provided [para 9].
- In addition to the above, the Opponent also manages distribution and licensing the rights of third parties [para 11].
- The Opponent's approximate annual expenditures with respect to its services is in the millions and approximate annual spending for the years 2019 to 2023 is provided [para 12].
- The Opponent has regularly participated in leading events in the entertainment industry [para 14]. Such participation includes
 - sponsorship of a job fair booth and speaking at the Toronto Animation Arts Festival international (TAAFI) conference. A photograph of the Opponent's job fair booth at TAAFI from 2023 is attached as Exhibit P.
 - sponsorship of a booth and speaking at the Ottawa International Animation Festival (OIAF) conference. Photographs of the Opponent's booth and promotional materials from the 2022 and 2023 OIAF are attached as Exhibits Q and R.
- As well as participating in industry events, the Opponent became the sponsor of Sheridan College's Industry Day in or around 2020 and continues to sponsor this event. Sheridan College has multiple campuses in the Greater Toronto Area and is known for its degree programs in film television and animation [para 15].

The Kadyan Affidavit

[15] The Kadyan Affidavit contains

- a description of a search conducted in the Canadian Intellectual Property Office (CIPO) online database for the word "guru" in the

trademark lookup field and the word “entertainment” in the goods or services field [para 2];

- a screenshot of the above-noted CIPO search [para 3, Exhibit A]; and
- a chart with details of the trademarks revealed by the described search parameters [para 4, Exhibit B].

EVIDENTIAL BURDEN AND LEGAL ONUS

[16] 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 the issue exists [*John Labatt*, at 298].

[17] 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 the 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 GROUNDS OF OPPOSITION

Section 38(2)(c) and 16(1)(a) Ground – Confusion with Previously Used Trademark

[18] The Opponent submits the Applicant is not the person entitled to registration of the Mark since, as of the filing date of the application, the Mark was confusing with the Opponent’s Marks listed in Schedule A, namely, the GURU Logo, GURU STUDIO and GURU which had previously been used in

Canada and had not been abandoned as of the date of advertisement of the application for the Mark.

[19] The material date for this ground of opposition is either the filing date of the application for the Mark or the Applicant's date of first use, whichever is earlier. As the Applicant did not file any evidence of use of its Mark, the relevant date for this ground is May 6, 2020.

[20] To meet its burden under this ground, the Opponent must demonstrate that at least one of the Opponent's Marks had been used in Canada prior to the May 6, 2020 filing date of the application for the Mark, and that the Opponent's Mark(s) had not been abandoned as of the October 12, 2022 advertisement date of the application for the Mark.

[21] As summarized above, through the Falcone Affidavit, the Opponent has filed comprehensive evidence of use of the Opponent's Marks. I note that the Falcone Affidavit contains evidence that both pre-dates and post-dates the material date for this ground, the latter of which is not relevant to the assessment of use for this ground unless it is clear that this evidence is representative of how the Opponent's Marks were used prior to the material date. I further note that the evidence in the Falcone Affidavit only demonstrates use of the GURU Logo as a trademark (the use of GURU STUDIO as a trade name will be discussed under the section 16(1)(c) ground). Accordingly, for the purposes of this ground, the confusion assessment will focus on the Opponent's use of the GURU Logo trademark.

The Opponent Meets its Evidential Burden

[22] Despite containing a notable amount of references to use of the GURU Logo trademark post-dating the May 6, 2020 material date, the Opponent has provided evidence that:

- it launched its current website featuring the GURU Logo in July 2019;
- partnered with Spin Master as far back as 2013 to provide animation services for the show Paw Patrol and as far back as 2019 for the show Abby Hatcher, both of which include the GURU Logo in the closing credits and aired in Canada prior to the material date for this ground;
- partnered with Mattel in approximately 2013 to provide animation services for the show Ever After High, with Exhibit I showing the GURU Logo trademark on the Opponent's website promoting the show; and
- produced its own in-house original shows including "Justin Time" which commenced airing in Canada on September 2011 and "True and the Rainbow Kingdom" which commenced airing in Canada in 2017, both of which depict the GURU Logo trademark in the closing credits.

[23] Based on this evidence, I am satisfied that the Opponent has met its evidential burden of establishing that the GURU Logo trademark had been used in Canada in association with animation production services prior the May 6, 2020 material date for this ground. As the Falcone Affidavit also contains evidence of use of the GURU Logo trademark that post-dates the October 12, 2022 advertisement date of the application for the Mark, I also conclude that the Guru Logo trademark had not been abandoned as of the advertisement date. Accordingly, the Opponent has met its evidential burden for this ground.

The Test for Confusion

[24] In determining whether two trademarks are confusing, all the surrounding circumstances should be considered, 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 and services or business; the nature of the trade; and the degree of resemblance between the trademarks, including in appearance or sound or in the ideas suggested by them. These criteria 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; *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée*, 2006 SCC 23]. I also refer to *Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27 at para 49, where the Supreme Court of Canada states that section 6(5)(e), the degree of resemblance between the marks, will often have the greatest effect on the confusion analysis.

[25] The test for confusion is assessed as a matter of first impression in the mind of a casual consumer somewhat in a hurry who sees the applicant's mark, at a time when they have no more than an imperfect recollection of the opponent's trademark, and do not pause to give the matter any detailed consideration or scrutiny, nor to examine closely the similarities and differences between the marks [*Veuve Clicquot*, para 20].

Inherent Distinctiveness and Extent Known

[26] Inherent distinctiveness refers to the originality or uniqueness of a trademark when considered in association with the goods or services. Trademarks are inherently distinctive when nothing about them refers to a multitude of sources [*United Artists Pictures Inc v Pink Panther Beauty Corp*, 1998 CanLII 9052 (FCA), [1998] 3 FC 534, at para 23]. While unique or invented trademarks are recognized as deserving of extensive protection, descriptive, suggestive or laudatory terms are generally considered to do little to aid in distinction [*Puma SE v Caterpillar Inc*, 2023 FCA 4 at para 26]. Whether a trademark is distinctive is a question of fact that is determined by

reference to the message it conveys to the casual consumer of the associated goods or services when the trademark is considered in its entirety as a matter of first impression [*Molson Breweries v John Labatt Ltd* (2000), 3 FCA 145 at para 61].

[27] Despite the Opponent's submission that the word "guru" is derived from the Sanskrit words "gu" and "ru", the word "guru" is also an English dictionary word that is arguably a laudatory term [see *Collins* online dictionary definition "*A guru is a person who some people regard as an expert or leader*"]. As such, I consider the Opponent's GURU Logo trademark to have low inherent distinctiveness given that it is suggestive of an expert in the field of animation entertainment services. Although there is a design element to the GURU Logo trademark, I do not consider the stacking of the letters GU on the letters RU to significantly increase the inherent distinctiveness of the trademark.

[28] While the Mark also contains, and commences with, the word "guru", the second element of the Mark, namely, "giri", does not appear to have a dictionary meaning and, as such, the Mark as a whole has a notable level of inherent distinctiveness. In my view, the inherent distinctiveness of the Mark outweighs that of the GURU Logo trademark to a moderate degree.

[29] With respect to extent known, the Applicant has filed no evidence of use of the Mark in Canada with the Services. Accordingly, I am unable to conclude the Mark has become known to any extent in Canada.

[30] In contrast, the Opponent's evidence demonstrates that, as of the material date for this ground, the GURU Logo trademark had been used in association with the production of

- at least three animated programs (Paw Patrol commencing in 2013, Abby Hatcher commencing in January 2019, and Ever After High commencing in 2013);
- several in-house animated programs commencing in 2011; and
- a feature film in 2017.

[31] The Opponent's evidence also establishes that the GURU Logo trademark had been used on the Opponent's website since July 2019, and various social media accounts since as early as 2009. As noted above, much of the evidence in the Falcone Affidavit post-dates the material date for this ground, does not clearly indicate an applicable date, or is not specific to Canada. Nonetheless, I am of the view that the evidence of use of the GURU Logo trademark in Canada that pre-dates the material date is sufficient to conclude that the trademark had become known to some extent, which obviously exceeds that of the Mark. I therefore find that the Opponent is favoured in respect of the extent to which the trademarks at issue had become known.

[32] Overall, I consider this factor to slightly favour the Opponent.

Length of Time in Use

[33] As there is no evidence of use of the Mark in Canada of record, and considering the Opponent's evidence establishes use of the GURU Logo trademark for several years prior to the filing of the application for the Mark, this factor favours the Opponent.

Nature of the Services or Business/Nature of the Trade

[34] In its evidence, the Opponent describes itself as being "involved in the financing, development, creation (including screenplay writing), recording, production, distribution and/or post-production (including editing) of

television shows and movies” with a focus on animated storytelling [Falcone Affidavit, para 5].

[35] In my view, the Services associated with the Mark either directly overlap or are closely related to the services of the Opponent as described in the Opponent’s evidence. This conclusion is supported by the chart included in paragraph 55 of the Opponent’s written representations, which I have reproduced in part below*:

Applicant’s Services	Opponent’s Business
Entertainment services in the nature of non-downloadable videos and images featuring television shows and movies transmitted via wireless computer networks; providing films, non downloadable, via video-on demand services; providing video studios	Financing and development of television shows and movies broadcast on cable television or through online streaming services
Audio and video recording services; video recording services	Recording of television shows and movies
Film and video production; post-production editing services in the field of music, videos and film; production of musical videos; video editing; video film production; video production video tape editing; videotape	Production, distribution and/or post-production (including editing) of television shows and movies

editing; videotape editing services	
Screenplay writing; scriptwriting services	Creation (including screenplay writing) of television shows and movies

*The Opponent's chart included a third column with the services included in the applications filed for the Opponent's Marks. As these applications were filed after the material date, they are not relevant for the purposes of assessing this ground of opposition.

[36] Given the overlap or close association of the Services to the business of the Opponent as described in the Falcone Affidavit, and considering the Applicant has filed no evidence, in my view, there is at least a potential for the overlap in the nature of the parties' services, business and trades.

[37] Accordingly, these factors favour the Opponent.

Degree of Resemblance

[38] When considering the degree of resemblance, the trademarks at issue must be considered in their entirety as a matter of first impression. They must not be carefully analyzed and dissected into their component parts [*Wool Bureau of Canada Ltd v Registrar of Trade Marks* (1978), 1978 CanLII 4115 (FC), 40 CPR (2d) 25 (FCTD)]. That being said, the preferable approach is to consider whether there is an aspect of each trademark that is particularly striking or unique [*Masterpiece*, para 64].

[39] As the Mark and the GURU Logo trademark both commence or consist of the word GURU, there is necessarily a notable degree of overlap in each of sound, appearance and idea suggested, namely that of an expert or expertise in respect of the associated services.

[40] However, in my view, the trademarks at issue do not share the same unique element, as I consider the stylization of the word GURU to be the most unique element of the Opponent's GURU Logo trademark, and the apparently coined word GIRI to be the most unique element of the Mark.

[41] Overall, I consider the similarities between the GURU Logo trademark and the Mark to be roughly equivalent to the differences. As a result, I find that neither party is significantly favoured in terms of degree of resemblance.

Conclusion on Confusion

[42] Having regard to the foregoing, I find that the balance of probabilities with respect to the issue of confusion weighs in favour of the Opponent. I make this finding despite neither party being favoured in respect of degree of resemblance and given the overlapping services, business, and trades of the parties, as well as the extent to which the Opponent's GURU Logo trademark has become known in Canada in association with animation production services. In particular, I find that the Applicant has not met its legal onus to show that it is not reasonably likely that an individual who has an imperfect recollection of the Opponent's GURU Logo trademark would, as a matter of first impression and imperfect recollection, conclude that the Applicant's Services share a common source.

[43] This ground of opposition is therefore successful.

Section 38(2)(c) and 16(1)(c) Ground – Confusion with Previously used Trade Name

[44] The Opponent pleads that the Applicant is not the person entitled to registration of the Mark as it was confusing with the trade name Guru Studio and/or Guru Animation Studio that had been previously used in Canada by

the Opponent, and which have not been abandoned as of the date of advertisement of the Application.

[45] The material date to assess an applicant's entitlement to registration is the earlier of the application's filing date and the date of first use. As I have already found the Applicant has failed to establish use of the Mark in Canada, the material date for this ground is the filing date of the application, namely, May 6, 2020.

The Opponent Meets its Evidential Burden

[46] The Opponent has demonstrated use of its trade name Guru Studio since at least as early as 2014 [Falcone Affidavit, para 6a, Exhibit D-1]. As the Opponent has also provided evidence of use of the Guru Studio name in association with animation productions after the October 12, 2022 advertisement date for the application for the Mark [see for example Falcone Affidavit, para 6(a), Exhibits D-4 and D-5], I am satisfied that the Guru Studio trade name had not been abandoned as of the advertisement date.

[47] As the Opponent's evidence with respect to use of the Guru Studio trade name is much more fulsome than in respect of the Guru Animation Studio trade name, my assessment will focus on the Opponent's reliance on its Guru Studio name. If the Opponent is unsuccessful relying on the Guru Studio name for this ground, it would also be unsuccessful relying on the Guru Animation Studio trade name.

Confusion Analysis

[48] As with the section 16(1)(a) 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 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.

[49] Based on the evidence of record, and considering the material date for this ground of opposition is the same as that for the section 16(1)(a) ground, my conclusions with respect to the assessment of the Length of Time in Use, Nature of the Services or Business and Nature of the Trade apply equally to this ground. I will therefore only address the factors of Inherent Distinctiveness and Extent Known, and Degree of Resemblance separately for this ground.

Inherent Distinctiveness and Extent Known

[50] The Opponent's Guru Studio trade name consists of two English words and, as noted above, the word "Guru" is laudatory in nature. Accordingly, the Guru Studio trade name is fairly low in inherent distinctiveness.

[51] While the Mark also commences with the laudatory dictionary word "GURU", as the second element of the Mark, namely "GIRI", appears to be a coined term with no specific meaning, I consider the Mark to have a higher level of inherent distinctiveness than the Opponent's Guru Studio trade name.

[52] With respect to extent known, as noted above, there is no evidence of record that the Mark has become known to any extent in Canada as there is no evidence that the Mark has even been used in Canada, or elsewhere.

[53] The Opponent's evidence provides that the Opponent was incorporated under the name Guru Animation Studio Ltd. in 2000 [Falcone Affidavit, para 1]. However, as much of the Opponent's evidence post-dates the material date for this ground, is undated, or does not specifically indicate that the referenced use was in Canada, there is limited evidence to support the assertions of use in the Falcone Affidavit. Nonetheless, there is evidence

that the name Guru Studio was used in association with animation services as early as August 2014 [Falcone Affidavit, para 6(a), Exhibit D-1].

[54] As it is difficult to conclude that the Opponent's Guru Studio trade name had become known to a significant extent based on the evidence that pre-dates the material date, while the Opponent's Guru Studio name may have been known to some extent as of the material date, I cannot conclude that the Opponent is significantly favoured in respect of extent known.

[55] Overall, I find that neither party is significantly favoured by this factor.

Degree of Resemblance

[56] As the Mark and the Guru Studio trade name both commence with the word GURU, there is necessarily a notable degree of overlap in each of sound, appearance and idea suggested, namely that of an expert or expertise in respect of the associated services.

[57] However, in my view, as with the section 16(1)(a) ground above, I consider the apparently coined word GIRI to be the most unique element of the Mark. For the Guru Studio trade name, I consider the most unique element to be the name as a whole.

[58] Overall, I consider the similarities between the Guru Studio trade name and the Mark to be roughly equivalent to the differences. As a result, I find that neither party is significantly favoured in terms of degree of resemblance.

Conclusion on Confusion

[59] In applying the test for confusion, I have considered it as a matter of first impression and imperfect recollection of the average consumer in somewhat of a hurry, and have considered all of the surrounding circumstances. Factors are not necessarily to be attributed equal weight; in

most instances, it is the degree of resemblance between the trademarks and/or trade names that is the most crucial factor in determining the issue of confusion [*Masterpiece; Beverley Bedding & Upholstery Co v Regal Bedding & Upholstery Ltd* (1980), 1980 CanLII 2596 (FC), 47 CPR (2d) 145 (FCTD) at 149, aff'd 1982 CanLII 3052 (FCA), 60 CPR (2d) 70]. Here, the nature of services and business, nature of trade, extent known, and length of time in use factors favour the Opponent, while the inherent distinctiveness factor favours the Applicant. Neither party is favoured in respect of degree of resemblance. As such, I find that the assessment is evenly balanced between a finding of confusion and a finding of no confusion. In the absence of evidence or representations from the Applicant to support its position that there would be no reasonable likelihood of confusion, I find that the Applicant has not discharged its burden with respect to this ground of opposition.

[60] Accordingly, the section 16(1)(c) ground of opposition is successful.

Remaining Grounds of Opposition

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


DISPOSITION

[62] 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.

Leigh Walters
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

SCHEDULE A

The Opponent's Marks

Trademark
GURU STUDIO
GURU


Appearances and Agents of Record

HEARING DATE: No hearing held

AGENTS OF RECORD

For the Opponent: Keyser Mason Ball, LLP

For the Applicant: Lei Zhou (Witmart Inc)