



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2025 TMOB 177

Date of Decision: 2025-09-04

IN THE MATTER OF AN OPPOSITION

Opponent: AGF Management Limited

Applicant: Tigercat International Inc.

Application: 1,925,168 for TIGER EYE LOGO

INTRODUCTION

[1] Tigercat International Inc. (the Applicant) has sought registration of the trademark TIGER EYE LOGO (the Mark), shown below in orange, black and white:



[2] The trademark application, filed on October 15, 2018, under No. 1,925,168 (the Application), claims proposed use in Canada. The Application covers an extensive listing of goods and services listed in Schedule A below, (the Goods and Services).

[3] The Goods and Services most related to those of AGF Management Limited (the Opponent), are those falling under Nice Classification 36, namely "Insurance services, namely, underwriting extended warranty contracts in the field of heavy equipment, namely, agricultural, forestry and construction equipment" (Class 36 Services). The goods and services other than those in Class 36 (Other Goods and Services) may be broadly described as a wide variety of heavy machinery, vehicles, equipment and associated parts and components falling into Nice classes 7, 9 and 12, along with what might be considered peripheral or promotional goods in the nature of cases, bags and related items, household items such as various drinking vessels and apparel, under Nice classes 18, 21 and 25, along with the services in classes 37, 39, 40, 42 and 44, all related to the Applicant's vehicles and machines.

[4] To summarize, the grounds of opposition relied upon by the Opponent include non-registrability, non-entitlement to registration and non-distinctiveness. The Opponent also alleges that the Applicant was neither using nor did it propose to use the Mark at the time of filing. Non-entitlement to use owing to contravention of section 7(b) of the *Trademarks Act*, RSC 1985, c T-13 (the Act) was also pleaded along with bad faith on the part of the Applicant.

[5] The Applicant is also the owner of co-pending application No. 1,925,182 for TCI & TIGER LOGO, also opposed by the Opponent. This application is the subject of a separately issued decision.

[6] For the reasons that follow, I allow the Application in part.

THE RECORD

[7] The Application was advertised for opposition purposes in the *Trademarks Journal* on March 15, 2023.

[8] On September 1, 2023, the Opponent opposed the Application by filing a statement of opposition under section 38 of the Act.

[9] In respect of its pleadings of non-registrability of the Mark under section 38(2)(b), the Opponent alleges the Mark is confusing with its following trademarks, individually and collectively, set out in Appendix A to the Statement of opposition (Tiger Registrations):

- TMA349,787;AGF & DESIGN
- TMA349,667;TIGER & DESIGN
- TMA359,426;TIGER DESIGN
- TMA421,204;AGF TRUST COMPANY & TIGER DESIGN
- TMA568,737;AGF AND CHINESE CHARACTERS & DESIGN
- TMA570,443;AGF & TIGER DESIGN
- TMA581,062;AGF & TIGER DESIGN
- TMA620,292;AGF What are you doing after work? & Design
- TMA620,419;AGF & DESIGN
- TMA915,990;TIGER DESIGN
- TMA938,920;AGF TIGER LOGO (French)
- TMA974,230;DIGITAL TIGER LOGO
- TMA1,080,233;AGF Invested in Discipline & ORANGE TIGER DESIGN
- TMA1,080,230;TIGER DESIGN
- TMA1,080,209;AGF Investis avec discipline & tigre orange dessin
- TMA1,080,227;AGF & TIGER DESIGN
- TMA1,080,211;AGF Invested in Discipline & DESIGN
- TMA1,080,231;AGF Investis avec discipline & dessin
- TMA1,081,008;AGF & TIGER DESIGN
- TMA1,081,009;AGF PLACEMENTS & tigre dessin
- TMA1,090,332;AGF iQ & TIGER DESIGN (in colour)

- TMA1,090,331;AGF PLACEMENTS & tigre orange dessin
- TMA1,090,333;TIGER DESIGN (in colour)
- TMA1,090,330;AGF INVESTMENTS & ORANGE TIGER DESIGN
- TMA1,092,465;AGF & TIGER DESIGN (in colour)
- TMA1,096,188;AGFiQ & TIGER DESIGN
- TMA1,096,190;AGF INVESTMENTS & TIGER DESIGN
- TMA1,096,186;AGFiQ & TIGER DESIGN
- TMA1,096,187;AGFiQ & TIGER DESIGN
- TMA1,096,193;AGFiQ & TIGER DESIGN
- TMA1,119,524;AGFiQ & TIGER DESIGN
- TMA1,119,525;AGFiQ & TIGER DESIGN

[10] The Opponent relies on the section 38(2)(c) ground of opposition, alleging non-entitlement of the Mark owing to confusion with a number of the above-listed trademarks, all of which it claims were previously used and made known in Canada. The Opponent claims use of these trademarks in association with a wide variety of financial services, as well as educational services and sponsorship services, together with goods including clothing, stationary and other promotional items distributed in relation to its other goods and services. The Opponent relies on its trademarks, listed in Appendices A and B to the statement of opposition, both individually and collectively, as different families.

[11] The Opponent also relies on the section 38(2)(d) ground of non-distinctiveness, saying the Mark does not, and is not adapted to distinguish the Goods and Services from the Opponent's own goods and services, in particular the following goods and services:

educational services, financial sponsorship services, and the clothing, stationery and other promotional items distributed in relation thereto and financial services, and which include the services of managing investment and mutual funds; selling and distributing investment and mutual funds and

investment mutual fund shares; financial asset management and transfer investment management and consultation services; founding, promoting, distributing and managing investments in portfolios; electronic transfer of funds; financial planning services; managing and accepting deposits, withdrawals and the borrowing of funds bond and currency trading and exchange; commodities and precious metal trading; and investment of deposits; investments services, namely, investment management of mutual funds of others; securities dealer services; securities agency in the fields of bonds and negotiable instruments; stock brokerage services; brokerage house in the fields of stocks, commodities and futures; research and advisory services related to securities, stocks, bonds, commodities and other instruments; underwriting, distributing and trading of securities; trading and dealing in bonds, commodities, precious metals, debentures, stocks and shares; transfer agency services rendered to issuers of investment securities; providing investment advice, and in providing seminars, webinars and courses, all in relation to the foregoing

[12] The Opponent claims these goods and services have been sold and performed in Canada in association with its trademarks identified above, as well as additional unregistered trademarks featuring the image of a tiger, in whole or in part, listed in Appendix C to the statement of opposition (Tiger Trademarks).

[13] The Opponent relies on the section 38(2)(e) ground of opposition alleging that the Applicant was not, as of the filing date, using the Mark, nor did it propose to use it in association with the Goods and Services. The Opponent claims that, despite more than four years having elapsed from the filing date, the Applicant has not commenced use of the Mark in Canada in association with any of the Goods and Services. It also alleges that the Applicant has neither secured nor attempted to secure approvals, authorizations, certifications or business approvals to sell the Goods or perform the Services.

[14] Additionally, the Opponent relies on the ground of opposition available pursuant to section 38(2)(f), alleging that the Applicant was not entitled to use the Mark in Canada in association with the Goods and Services because to do so would be contrary to section 7(b) of the Act. It claims that use of

the Mark is likely to cause confusion with the Opponent's financial services, including financial consultation and financial and business services and related goods and services which have been performed, sold and advertised by the Opponent in Canada in conjunction with its trademarks individually, and as a family, which have not been abandoned.

[15] Finally, the Opponent relies on section 38(2)(a.1) to claim the Application was filed in bad faith. In particular, it claims the Applicant filed the Application:

...with the improper purpose of securing the registration of the TIGER-Logo Mark with literally hundreds of disparate types of goods and services falling within twelve (12) distinct Nice International Classes which the Applicant had no real intention of selling or performing in the Canadian marketplace, and with the view to preventing the legitimate adoption, use and/or registration of similar marks by third parties, including the Opponent, with similar types of products and/or services, and for which the Applicant had and has no bona fide intention to sell or perform in the Canadian marketplace;...

[16] The Applicant served and filed a counterstatement indicating it intended to respond to the opposition.

[17] In support of its opposition, the Opponent filed the affidavits of Christina Fradsham, sworn February 15, 2024; Julia Walters, sworn March 6, 2024; and Oriana Dalla Benetta, sworn March 4, 2024. The Opponent's agent firm employs Ms. Fradsham and Ms. Walters, while Ms. Benetta is a vice president of the Opponent. The Applicant did not cross-examine the affiants.

[18] The Applicant did not file evidence. Only the Opponent filed written representations and neither party requested to be heard.

SUMMARY OF PERTINENT EVIDENCE

Benetta Affidavit

[19] At paragraph 7 of her affidavit, Ms. Benetta describes the Opponent's business as a "financial services firm with a primary focus of providing asset management services on behalf of individuals and institutions," operating since 1957. She explains that the services expanded after 1971 to include the following (Financial and Educational Services):

Financial Services

financial investment services, financial advisory services, as well as other financial services, including without restriction the provision of investment advice, in addition to managing investment and mutual funds; selling and distributing investment and mutual funds and investment mutual fund shares; financial asset management and transfer investment management and consultation services, founding, promoting, distributing and managing investments in portfolios, electronic transfer of funds, financial planning services, managing and accepting deposits, withdrawals and the borrowing of funds bond and currency trading and exchange, commodities and precious metal trading, investment of deposits, investment services including, investment management of mutual funds of others, securities dealer services, securities agency in the fields of bonds and negotiable instruments, stock brokerage services, brokerage house in the fields of stocks, commodities and futures, research and advisory services related to securities, stocks, bonds, commodities and other instruments, underwriting, distributing and trading of securities, trading and dealing in bonds, commodities, precious metals, debentures, stocks and shares, transfer agency services rendered to issuers of investment securities, accepting deposits, withdrawals and the borrowing of funds on behalf of others

Educational Services

financial sponsorship services, and education services which include providing seminars, webinars and courses in relation to the AGF Financial Services

[20] Ms. Benetta's evidence also includes the following facts involving the Opponent:

- It has more than 40 billion in assets under management with 700,000 investors, however, as she references the US and Europe too, these figures are not necessarily exclusive to Canada [para 8]
- Its adoption and use of a tiger image as a brand identifier began around 1984 and appeared above or adjacent to "AGF" [para 9]
- Since adoption, it has used a tiger image, continuously on virtually every advertisement or performance of financial services, educational services, promotional goods and philanthropic and charitable undertakings [para 9 and Exhibits including D and G to O]
 - Generally speaking, early materials show a pacing tiger in side view, while a tiger head in three-quarter view, alone and in conjunction with AGF, appears in more recent materials [Exhibits including D and G to O]
 - Materials also show realistic depictions of tigers [Exhibits including D and G to O]
- It has applied for or secured registrations for many of these trademarks and has provided particulars [paras 10 to 12 and 16 and for example Exhibits A, B and F]
- Stylized and graphic tiger images were displayed in the advertising or performance of the Opponent's Financial and Educational Services [para 13, Exhibit D]
- It adopted the name "tiger" as a corporate identifier, as well as slogans and trademarks with the word "tiger" to reinforce the connection between the written and spoken form [para 14]
- It alleges that the use of tiger images, trademarks such as TIGER TALK and identifiers using the word "tiger" in advertising and promotion results in the tiger theme and that tigers in general are

associated with its services, providing examples [paras 15 and for example Exhibit G]

- It has advertised its services using tiger logos, trademarks and images on print publications since 1984, for the past 30 years on its website, print, electronic, digital, video advertisements, as well as phone communications [paras 18 to 24 and Exhibits G to K]
- It does not maintain separate records for sales, advertising and promotion expenses associated with individual trademarks, but indicates that the vast majority of advertising expenses would relate to materials and advertisements bearing one or more of its tiger logos or images [para 25]
- It has provided services to Canadians in excess of \$80 billion in association with its tiger logos or images since 1998 and offers a breakdown by year for 1998 to 2023 [para 26 to 28]
- Canadian promotion has been extensive for the past almost 40 years, and in 2023, it will have distributed more than 1.5 million statements and pieces of correspondence to investors bearing one or more of its trademarks, while during the period between 1984 and 2023, the number approaches 10 million [para 28]
- Total promotional expenses in Canada are listed as more than 80 million, with a yearly breakdown provided [para 29]
- Indicates its interactive website has been accessed by individual and institutional investors using the Opponent's services since 1996 and provides examples of the associated materials [para 30 and Exhibit L]
- Describes examples of use of a tiger theme for charitable and philanthropic purposes, with examples given [para 31]
- It uses photos or illustrations of tigers, which, it alleges, reinforce and promote its brand [para 32]

- It publishes corporate reporting materials which promote its brand [para 32 and Exhibit M]
- It has used the address *tiger@agf.com* for client inquiries since approximately the 1990s and provides web pages, promotional materials and client correspondence [para 33 and Exhibit N]
- Over the past three years, it has expended more than \$430,000 distributing logo merchandise such as apparel, drinkware, bags and such bearing its tiger logos and provides associated materials [paras 34 and 35 and Exhibit O]

Walters Affidavit

[21] The Walters affidavit comprises primarily the results of Google searches involving the Applicant's website. Materials include general information as well as information about warranty and extended coverage protection for its products, at Exhibit C1, page 33. Also included are materials relating to the Applicant's branded merchandise such as apparel, toys and mugs [Exhibit C2, pages 4 to 7].

Fradsham Affidavit

[22] Ms. Fradsham's affidavit evidence comprises registration particulars for the Opponent's Tiger Registrations taken from the Canadian Trademarks Office database.

ONUS AND LEGAL BURDEN

[23] An applicant ultimately bears the legal onus of establishing, on a balance of probabilities, that the application complies with the provisions of the Act. However, an opponent must first adduce sufficient admissible evidence from which it could reasonably be concluded that the facts alleged to support each ground of opposition exist [*John Labatt Ltd v Molson*

Companies Ltd (1990), 30 CPR (3d) 293 (FCTD) at 298; *Dion Neckwear Ltd v Christian Dior, SA*, 2002 FCA 29].

ANALYSIS AND REASONS FOR THE DECISION

Non-Registrability Ground

[24] The Opponent alleges in its statement of opposition that the Mark is not registrable because it is confusing with the trademarks which are the subject of its various Tiger Registrations.

[25] The material date for the section 12(1)(d) ground of opposition is the date of my decision [*Park Avenue Furniture Corporation v Wickes/Simmons Bedding Ltd* (1991), 37 CPR (3d) 413 (FCA)]. I have exercised my discretion to check the Register and confirm that aside from registration No.

TMA421,204 which was recently expunged for failure to renew, the Opponent's registrations remain extant [*Quaker Oats Co of Canada Ltd v Menu Foods Ltd* (1986), 11 CPR (3d) 410 (TMOB)]. Consequently, the Opponent has met its initial burden in respect of this ground. The Applicant must therefore prove, on a balance of probabilities, that there is no likelihood of confusion between the Mark and one or more of the Opponent's registered trademarks.

[26] In determining whether there exists a reasonable likelihood of confusion with the Mark and the Opponent's registered trademarks, I will focus on the Opponent's registration No. TMA1,080,230; TIGER DESIGN (Tiger Head Design) shown below:



[27] The Tiger Head Design registration covers the following services (Opponent's Registered Services):

CI 36 Financial and investment services, namely, investment management, portfolio management, wealth management, namely, financial planning and investment portfolio management, asset management, mutual fund sales and management, exchange-traded fund sales and management, pooled fund sales and management, segregated fund sales and management, discretionary investment management, private client investment management, investment counselling, institutional investment management, mutual fund dealing, securities dealer services; transfer agency services for mutual funds and pooled funds; retirement investment planning and advisory services; providing stock market investment information and research in the field of financial planning and financial investments; financial planning services; investment advice and analysis; financial services, namely, the development, sale and management of alternative asset funds; financial investments in the fields of infrastructure, real estate, and private equity; investment of funds for others; fund investment consultation; financial advice and consultancy services, namely, financial analysis and research services; financial sponsorship of cultural events for others, namely, theatrical, film, music, and dance performances and festivals, art and museum exhibitions; financial sponsorship of film festivals for others; charitable organization services relating to fundraising, sponsorship relating to fundraising; financial sponsorship of educational programmes in the field of business; financial sponsorship of medical research

CI 42 Educational services in the field of economics, financial planning and investment strategies; educational services namely, conducting classes, conferences and workshops in the field of investment planning, retirement planning, investment strategies and financial planning strategies; conducting seminars in the field of estate and retirement planning

[28] After considering each of the Opponent's Tiger Registrations, I believe it is the Tiger Head Design that affords the Opponent its strongest case. I note that the Applicant has claimed colour as a feature of the Mark and the Opponent's Tiger Head Design is in black and white. The Opponent's black and white formatted trademark is however entitled to protection that extends to all colours, including those claimed by the Applicant [*British Drug Houses Ltd v Battle Pharmaceuticals* (1944), 4 CPR 48 at 247 (ExCt), aff'd [1946] SCR 50]. If the Opponent is unsuccessful with this trademark, it will

not achieve a more favourable result if the confusion analysis is performed using any other of its registered trademarks.

Test for Confusion

[29] The test for confusion is set out in section 6(2) of the Act. It provides that the use of a trademark causes confusion with another trademark if the use of both trademarks in the same area would likely lead to the inference that the goods and services associated with those trademarks are manufactured, sold, leased, hired or performed by the same person, whether or not the goods and services are of the same general class or appear in the same class of the Nice Classification. Section 6(2) of the Act does not deal with confusion between trademarks themselves but with the likelihood that the goods or services from one source will be perceived as being from another.

[30] 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 an applicant's mark, at a time when they have no more than an imperfect recollection of an 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 marks [*Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée*, 2006 SCC 23 (*Veuve Clicquot*), at para 20].

[31] In assessing the likelihood of confusion, I must take into consideration all relevant surrounding circumstances, including those listed in section 6(5) of the Act:

- a. the inherent distinctiveness of the trademarks and the extent to which they have become known;
- b. the length of time the trademarks have been in use;
- c. the nature of the goods and services or business;

- d. the nature of the trade; and
- e. the degree of resemblance between the trademarks, including in appearance or sound or in the ideas suggested by them.

[32] These criteria are not exhaustive, and different weight may be properly accorded to each one in a context-specific assessment [see *Veuve Clicquot*; and *Mattel, Inc v 3894207 Canada Inc*, 2006 SCC 22 at para 54].

Inherent Distinctiveness, the Extent to Which Each Trademark is Known and the Length of Use

[33] The factor of inherent distinctiveness and the extent to which the trademarks have become known involves a consideration of the combined inherent and acquired distinctiveness of the trademarks.

[34] The inherent distinctiveness of a trademark refers to its originality. Trademarks consisting wholly, or in part, of words that are descriptive of the associated goods or services attract a more limited scope of protection than does an invented, unique, or non-descriptive word or an original design [*General Motors Corp v Bellows*, [1949] SCR 678, 1949 CanLII 47 (SCC), citing *Office Cleaning Services Ltd v Westminster Window & General Cleaners, Ltd* (1946), 63 RPC 39 at 41 (HL); and *Fairmont Resort Properties Ltd v Fairmont Management LP*, 2008 FC 876].

[35] As noted by Justice Bédard in *Philip Morris Products SA v Imperial Tobacco Canada Limited*, 2014 FC 1237, citing *Apotex Inc v Canada (Registrar of Trademarks)*, 2010 FCA 31, whether a trademark is distinctive is a question of fact that is determined by reference to the message that it conveys to the casual consumer of the goods or services in question when the trademark is considered in its entirety and as a matter of first impression.

[36] The Opponent submits that its trademarks are highly distinctive and in no way descriptive of the associated services [Opponent's written representations, para 9.2]. To whatever extent that is true, the same can be said of the Mark. In fact, I consider the Mark to have slightly greater inherent distinctiveness as compared to the Opponents Tiger Head Design trademark due to its slightly more inventive nature comprising only one eye of a tiger and suggesting the animal is peering through an opening. I accept that a tiger design is not suggestive of the goods or services of either party.

[37] Distinctiveness may, however, be enhanced through the use and promotion of a trademark [*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)].

[38] The Opponent submits at paragraphs 9.3 and following of its written representations that it has used one or more of its Tiger Registrations for more than 40 years. It relies on its over 80 billion Canadian dollars of financial services provided since 1998. It also relies on the more than nine million individual statements or pieces of correspondence bearing one or more of its trademarks that have been distributed to Canadian investors. In addition, it says that purchasers would see the trademarks on its website and in TV, movie, newspaper, magazine and electronic advertisements associated with more than 80 million dollars in advertising since 2000. It notes that the Applicant has not evidenced use of the Mark.

[39] While the Opponent's level of sales and advertising is impressive, I cannot attribute any specific level or temporal extent of sales, advertising or promotion to the Tiger Head Design trademark, or indeed any particular trademark of the Opponent. As Ms. Benetta states, the Opponent does not maintain separate records relating to its individual sales, advertising and promotional expenses for its individual trademarks. That said, she does state

that the vast majority of advertising expenses would relate to materials and advertisements in which one of its TIGER trademarks or images would be displayed [Benetta affidavit, para 25].

[40] Considering the evidence in its entirety, I am satisfied that the Opponent's Tiger Head Design trademark has acquired distinctiveness. In particular, I note the evidence shows that this trademark appears on materials dated from approximately early 2018 and continuing thereafter. Some of the materials in evidence that I might infer have enjoyed wide Canadian circulation are monthly investment statements and quarterly or annual reports [see for example, the 2017 Annual Report of the Opponent Exhibit M, page 1198]. In this regard, the evidence suggests that the Opponent's customers regularly receive these reports [see Benetta Affidavit, Exhibit N, page 10]. The Tiger Head Design also appears on customer statements [see Benetta Affidavit, Exhibit N, page 4]. Considered together with Ms. Benetta's generalized statements pertaining to all of the Opponent's TIGER trademarks, the presence of these materials allows me to conclude that the Opponent's claim to its trademark having acquired distinctiveness in Canada is valid. I am also able to conclude that it has used its Tiger Head Design trademark since at least early 2018.

[41] I am not, however convinced, as argued by the Opponent, that the evidence is sufficient to prove its Tiger Head Design, or indeed any one of its trademarks, has become famous and is entitled to the enhanced protection it suggests [see Opponent's written representations, para 16.1 to 16.6].

[42] While the Applicant has not filed evidence in these proceedings, the Opponent has led evidence pertaining to the Applicant's business in the form of material taken from the latter's website [Walters affidavit, Exhibits A to E]. The Opponent argues that these materials show that the Applicant is not using the Mark. In this regard, I note that while materials taken from

websites are *prima facie* hearsay as the affiant collecting these is in no position to confirm the contents, the evidence pertaining to the Applicant's own website is, in my view, admissible. It is necessary inasmuch as it allows the Opponent a means of providing information about the Applicant's business. It is reliable in that the Applicant is presumably not only responsible for its creation but also had the opportunity to refute facts it considered to be inaccurate [see *Reliant Web Hostings Inc v Tensing Holding BV*, 2012 TMOB 48 at para 35].

[43] While I am able to conclude, for example, that the Applicant is a Canadian company that specializes in the design and manufacture of forestry and off-road industrial equipment with a Canadian head office and several southwestern Ontario locations [see for example Walters affidavit, Exhibit C.3], I agree the evidence does not show any use of the Mark in association with Goods or Services.

[44] In light of the Opponent's use and promotion of its Tiger Head Design trademark, and no evidence of use of the Mark, these factors favour the Opponent.

Nature of the Goods, Services, Businesses and Trades

[45] The Opponent submits that the Applicant's Class 36 Services are either identical to, or integrally provided as ancillary to the Opponent's financial, asset management and educational services [Opponent's written representations, paras 10.2 to 10.7]. The Opponent's submissions do not meaningfully address the Other Goods and Services.

[46] The Opponent argues that paragraph 7 of the Benetta affidavit, establishes the use of its trademarks in association with the closely related services of:

financial investment services, financial advisory services, as well as other financial services, including without restriction the provision of investment advice, in addition to managing investment and mutual funds; financial asset management and transfer investment management and consultation services, founding, promoting, distributing and managing investments in portfolios, underwriting, distributing and trading of securities, trading and dealing in bonds, commodities, precious metals, debentures, stocks and shares, transfer agency services rendered to issuers of investment securities

[47] The Opponent argues that “the Applicant’s services relating to underwriting of warranty contracts would undoubtedly be offered through the same channels of trade as the Opponent’s goods and services” [Opponent’s written representations, para 10.5]. It submits that warranties are a type of financial instrument, particularly when warranty contracts are sold to third parties [Opponent’s written representations, para10.6]. The Opponent does not, however point to specific evidence in support of this statement.

[48] When considering the nature of the goods, services or businesses in respect of a registrability ground of opposition, it is the statements of goods and services listed in the application and an opponent’s registration that govern the analysis [*Mr. Submarine Ltd v Amandista Investments Ltd* (1987), 19 CPR (3d) 3 (FCA) and *Miss Universe Inc. v Bohna* (1994), 58 CPR (3d) 381 (FCA)]. The parties’ respective statements of goods and services must however be read with a view to determining the probable type of business or trade intended by the parties rather than all possible trades that the wording might encompass [*McDonald’s Corp v Coffee Hut Stores Ltd* (1994), 55 CPR (3d) 463 (FCTD), *aff’d* 68 CPR (3d) 168 (FCA) and *Mövenpick Holding AG v Exxon Mobil Corp*, 2013 FCA 6 at paras 6 and 7]. Furthermore, the assessment as to the likelihood of confusion is not done in a vacuum; instead, the manner in which the trademarks are used in the course of business must be examined [see *McDonald’s*, *supra*].

[49] While Ms. Benetta specifies the service of “underwriting” in her affidavit, I note that the Opponent’s Tiger Head Design registration does not cover such services. Furthermore, I cannot infer from the evidence at hand that one of the broader designations contained in the statement of services associated with the Opponent’s Tiger Head Design registration includes services in the nature of underwriting, and in particular, the underwriting of heavy equipment. In addition, I note that there is likewise no evidence to suggest how these services may relate to the Applicant’s Class 36 Services.

Findings in Respect of the Applicant’s Class 36 Services

[50] While the Opponent’s Tiger Head Design registration does not cover underwriting services *per se*, I consider the Applicant’s Class 36 Services to be at least generally related to the Opponent’s financial and management services in that they fall under the broad category of financial services. I note that the Applicant’s Class 36 Services are restricted to heavy machinery warranty contracts. I see no evidence that suggests the Opponent’s Registered Services, directly overlap with either underwriting services generally or those relating to heavy machinery.

[51] The Applicant’s Class 36 Services are limited to warranty contracts associated with heavy equipment while the Opponent’s customers tend to be more in the nature of individual and institutional investors. I therefore find that parties’ channels of trade do not overlap.

[52] I find that in respect of the Applicant’s Class 36 Services the factor involving the nature of the goods and services favours the Opponent, if very slightly, while the factor pertaining to the channels of trade favours the Applicant.

Findings in Respect of the Other Goods and Services

[53] As the services covered by the Opponent's Tiger Head Design registration are limited to those in the broadly defined areas of finance, investment and educational services related to finance and investment, I see no overlap or nexus between these services and the Other Goods and Services. Similarly, there is no evidence from which I might conclude that the respective trades of the parties overlap or are related. For this reason, the factors involving the nature of the goods, services and channels of trade favour the Applicant in respect of the Other Goods and Services.

Degree of Resemblance in Appearance or Sound or Ideas Suggested

[54] The Supreme Court of Canada's decision in *Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27 (*Masterpiece*) instructs that amongst the factors listed under section 6(5) of the Act, it is the degree of resemblance between the parties' trademarks which often has the greatest effect on the confusion analysis.

[55] Jurisprudence involving the analysis of the degree of resemblance is clear in that the trademarks must be considered in their totality. It is not correct to lay the trademarks side by side and compare and observe similarities or differences among the elements or components of the trademarks. 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 [*Masterpiece*, at para 64].

[56] The Opponent argues that the Mark is dominated by a visual depiction of a tiger, and this renders it very likely to be confused with the Opponent's trademarks, several of which show a striped tiger face. It submits that the only visual difference is the proximity of the tiger's face with the Mark

focusing on its eye while the Opponent's trademarks involve the tiger's entire head [Opponent's written representations paras 8.1 to 8.3].

[57] I do not find any aspect of the parties' trademarks to be particularly striking or unique. I find that while the Mark suggests a tiger, it conveys, in particular, the eye of a tiger. The Opponent's Tiger Head Design again suggests a tiger, but in particular a tiger's head. The trademarks bear some resemblance visually and in respect of the idea suggested in that they convey the idea of a tiger generally and more specifically, a part of a tiger. The resemblance of the parties' trademarks when sounded might be slightly less since the designs may be susceptible to different pronunciations, for example "tiger's eye" versus "tiger head" or "tiger face".

[58] I find, on balance, the differences in the parties' trademarks in appearance, sound and idea suggested do not outweigh the similarities in their resemblance. This factor therefore favours the Opponent, but only slightly.

Surrounding Circumstances – No Family of Marks

[59] The Opponent alleges it owns a family of TIGER trademarks. Where a family of trademarks exists, there may be a greater likelihood that the public would consider the trademark of another to be merely an additional one within the family and consequently, assume that the associated products or services are manufactured or performed by the same person [*Everex Systems Inc v Everdata Computer Inc* (1992), 44 CPR (3d) 175 at 183 (FCTD)].

[60] The trademarks in question must share the same feature to comprise a "family" [*Molnlycke Aktiebolag v Kimberly-Clark of Canada Ltd* (1982), 61 CPR (2d) 42 (FCTD) at para 25]. An Opponent seeking to rely on a family of marks cannot rely on a presumption of use but rather must establish that it

is using more than one or two marks within the family [*Techniquip Ltd v Canadian Olympic Assn* (1998), 145 FTR 59 (FCTD), aff'd 250 NR 302 (FCA); *Now Communications Inc v CHUM Ltd* (2003), 32 CPR (4th) 168 (TMOB)].

[61] The Opponent's materials in evidence showing use of a tiger design might be described as generally taking a few different forms. The first is a tiger face in three-quarter view as exemplified by the Tiger Head Design. Various registrations show this depiction, alone or with other components such as AGF or AGF INVESTED IN DISCIPLINE. For the purposes of considering the composition of a possible family of TIGER trademarks I do not consider these various designs to constitute different tiger trademarks, but rather to be different manifestations of the same Tiger Head Design in three-quarter view. In this regard, I note that the registrations showing this version of a tiger which include a colour claim, are merely more restrictive versions of the registrations showing the design in black and white, rather than being different trademarks for the purposes of considering whether a family exists.

[62] The second form of tiger trademark seen in the Opponent's registered trademarks suggests a tiger in motion (Pacing Tiger Design). The Pacing Tiger Design appears in several of the Opponent's registered trademarks, alone or in conjunction with other components and with and without colour claims. An example is TMA915,990, shown below:



[63] Two other registered trademarks of the Opponent show what might be considered more realistic, as opposed to stylized, tiger designs. I refer to TMA359,426 showing a realistic version of the stylized Pacing Tiger and TMA974,230 showing a front-on view of a tiger face, shown below (Realistic Tiger Designs):



TMA359,426



TMA974,230

[64] I have already concluded that the Opponent has used its Tiger Head Design trademark for the past several years owing to, for example, its appearance on corporate reports and other documents. The question is therefore whether the evidence demonstrates use by the Opponent of additional registered trademarks containing or comprising different tiger designs.

[65] The Opponent's Pacing Tiger Design appears, for example, in corporate reports presumably distributed from 2011 to 2016 [see Benetta affidavit, Exhibit M]. The evidence, considered in its entirety, suggests that use of the Pacing Tiger Design dates back more than 20 years [see, for example, Benetta affidavit, Exhibit J, page 485, where the trademark appears on an internet archive web page capture].

[66] However, what is unclear is whether the Opponent has demonstrated more recent use of the Pacing Tiger Design. Instead, the evidence suggests that early use of the Pacing Tiger Design was then followed by progression to use of the Tiger Head Design by early 2018.

[67] As for the Realistic Tiger Designs, it is not clear from the evidence whether these trademarks were used in Canada at any particular time or to any particular extent.

[68] I therefore find that the evidence, considered in its entirety, does not show that the Opponent has used more than one or two registered trademarks such that it can claim the benefit of a family of trademarks. Even if I am wrong, the existence of a family of trademarks would not alter the outcome of this analysis or my findings in respect of the grounds of opposition.

Conclusion on the Likelihood of Confusion

[69] The test is not whether the parties' trademarks will be mistaken one for the other. Rather the test is whether a casual Canadian consumer, having an imperfect recollection of the Opponent's Tiger Head Design trademark associated with its various services, who does not pause to give the matter any detailed consideration or scrutiny, nor examine closely the similarities and differences between the marks, when they see the Mark associated with the applied for goods and services would think that the goods and services come from the same source.

[70] Having considered all of the surrounding circumstances, in particular the resemblance of the parties' trademarks in appearance and idea suggested, as well as length and extent of use and making known of the Opponent's Tiger Head Design trademark and, in respect of the Class 36 Services, the related nature of the parties' services, I find that, at best for

the Applicant the balance of probabilities is evenly balanced and it has therefore not satisfied its legal burden of showing, on a balance of probabilities, that there is no reasonable likelihood of confusion between the parties' trademarks. This is in spite of differences in channels of trade and that the parties' trademarks could potentially be sounded differently. This ground of opposition therefore succeeds in respect of the Class 36 Services.

[71] However, with respect to the Other Goods and Services, having considered all of the surrounding circumstances, in particular the unrelated nature of the goods, services businesses and channels of trade I find that balance of probabilities shifts in the Applicant's favour and therefore otherwise reject this ground.

Non-Entitlement and Non-Distinctiveness Grounds

[72] The grounds of opposition raised pursuant to sections 2 and 16(1)(a) of the Act are based on allegations of confusion between the parties' trademarks.

[73] While the Opponent relies on a variety of trademarks in respect of these two grounds, it is again registration No. TMA1,080,230 for the Tiger Head Design, which affords the Opponent its best chance for success.

[74] To meet its evidential burden under section 16(1)(a) of the Act, the Opponent must show that as of the date of filing of the Application, its Tiger Head Design trademark had been previously used in Canada and had not been abandoned as of the date of advertisement of the Application [section 16(5) of the Act].

[75] To meet its evidential burden under section 2 of the Act, the Opponent must show that as of the date of filing the opposition, its Tiger Head Design trademark had a substantial, significant or sufficient reputation in Canada so as to negate the distinctiveness of the Mark [see *Bojangles' International*

LLC v Bojangles Café Ltd, 2006 FC 657, 48 CPR (4th) 427 at paras 33 and 34].

[76] I am satisfied that the Opponent has met its initial evidential burden for the non-entitlement ground under section 16(1)(a) of the Act, by virtue of its evidence of use and promotion associated with its Tiger Head Design trademark prior to the Applicant's filing date of October 15, 2018. I am also satisfied that the Opponent has met its initial evidential burden for the non-distinctiveness ground of opposition under section 2, by virtue of the evidence of use of and reputation associated with its Tiger Head Design prior to the filing of the statement of opposition on September 1, 2023.

[77] While the material dates differ for the non-entitlement and non-distinctiveness grounds of opposition, in my view, this does not change the outcome of the confusion analysis. As of the material dates, and in particular the earlier applicable date for the non-entitlement ground, the Opponent's Tiger Head Design trademark had acquired substantially less distinctiveness. Likewise, I recognize that the Opponent's Tiger Head Design trademark has been in use for a shorter period in respect of these grounds. However, in the absence of evidence of use or promotion of the Mark both factors nonetheless continue to favour the Opponent for both grounds, if not as strongly as is the case in respect of the non-registrability ground.

[78] While a consideration of its unregistered trademarks shown in Appendix C to the statement of opposition might afford the Opponent with a stronger position in respect of its claim to a family of marks considered in the context of the non-distinctiveness ground, I am not convinced the evidence allows me to conclude the Opponent used a sufficient number of different TIGER trademarks at any given time or to any particular extent. Regardless, as noted above, even if this factor favours the Opponent, it does not change the outcome of the analysis.

[79] Accordingly, the section 16(1)(a) and section 2 grounds of opposition again succeed in respect of the Class 36 Services and are otherwise rejected in respect of the Other Goods and Services for the same reasons as have been provided above in respect of the non-registrability ground.

Use and/or Proposed Use of the Mark

[80] The Opponent alleges that under section the 38(2)(e) ground of opposition that the Applicant was neither using, nor did it propose to use, the Mark in Canada in association with the associated Goods and Services. It alleges that four years after filing the Applicant had not implemented use of the Mark, and it had not obtained any necessary approvals, authorizations or certifications to sell its goods or perform its services.

[81] In support of this ground the Opponent relies on the evidence showing the Applicant's website contained in the Walters affidavit, arguing that as of the time of the search on February 28, 2024, there was no evidence of use of the Mark in association with any of the Goods or Services covered by the Application. It also submits that there was nothing to indicate that the Applicant provided insurance or underwriting services or that they manufactured clothing, cookware or other types of goods and services covered by the Application [Opponent's written representations, paras 20.2 to 20.6].

[82] The material date for this ground of opposition is the date on which the Application was filed.

[83] I accept that the Opponent's its burden is light because facts surrounding use are uniquely within the knowledge of the Applicant [*Molson Canada v Anheuser-Busch Inc*, 2003 FC 1287, 29 CPR (4th) 315 at paras 56-57. Nonetheless, there remains an evidential burden upon the Opponent to establish facts which, if true, would support a finding that the Applicant did

use or propose to use the Mark in Canada in association with the goods set out in the Application [*Dion Neckwear Ltd v Christian Dior SA et al* (2002), 2002 FCA 29 (CanLII), 20 CPR (4th) 155 (FCA)].

[84] While the evidence contained in the Walters affidavit does not include use of the Mark, I am not convinced that this alone meets the Opponent's initial burden of showing that as of the date of filing the Applicant had not used the Mark. First, the evidence was collected in February, 2024 several years after the filing date. In addition, even if I were to infer that the materials from 2024 reflect the website as of the filing date, the absence of a trademark at a website alone has been found to insufficient to meet an opponent's initial burden if those goods and services are not necessarily ordered online [see *Littlewoods Ltd. v. Grabish*, 2013 TMOB 34].

[85] In respect of the Applicant's proposed use, I note the evidence suggests the company is a going concern. Minimally, it has dealers and support teams in Canada and has recently announced it has shipped its 30,000th machine, albeit not indicating to which of the 40 countries in which it claims to have operations [Walters affidavit, Exhibit E.4]. I also note the materials announce the Applicant's participation at conventions and shows in Canada [Walters affidavit, Exhibit E.4]. The evidence seems consistent with the Applicant's proposed use of the Mark, and does not support the Opponent's claim that the Applicant did not propose to use the Mark.

[86] While the listing of Goods and Services is lengthy, the Applicant's classes 7, 9 and 12 goods and the services all pertain to the sort of business suggested by the website materials contained in the Walters affidavit. The goods in classes 18, 21 and 25 are the sort of peripheral products that might be offered by a company specializing in industrial machinery, or indeed many companies. In this regard I note that the Opponent itself, while involved in the financial services industry, appears to make available

peripheral goods bearing its Tiger Head Design trademark such as lunch boxes, drinking vessels, bags and cases of various sorts, as well as clothing [Benetta affidavit, Exhibit O]. I therefore find that the lengthy listing of goods does not provide meaningful support for the Opponent's burden in respect of this ground.

[87] As for the Opponent's arguments that a lengthy period of time has elapsed since filing without the Applicant evidencing use, this delay seems neither inordinate nor unreasonable to me, given the fact the Application was challenged through opposition. It would be reasonable for a cautious applicant to await the results of opposition before commencing use of the Mark. In making this finding, I am cognizant that the Applicant is an active company that uses "Tigercat" on its website and its corporate name is Tigercat International Inc. It therefore seems not unreasonable for the Applicant to propose to use a design that involves a tiger and to await the results of this proceeding before commencing use of the Mark. In any event, this time the Applicant is under no specific deadline to commence use.

[88] I find the Opponent has not met its initial burden and this ground is therefore rejected.

Non-entitlement to Use the Mark Owing to Statutory Passing Off

[89] The Opponent pleads that the Application does not conform with the requirements of section 38(2)(f) of the Act in that use of the Mark contravenes section 7(b) of the same Act. Section 7(b) essentially codifies the common law tort of passing off. It prevents a party from directing public attention to its goods or services in a manner which causes, or is likely to cause, confusion with those of another. The Opponent alleges that use of the Mark is likely to cause confusion between the parties' goods and services.

[90] The court has, in the past, held that it is valid to rely on a ground of opposition based on section 30(i) of the former Act in combination with section 7(b) of the Act [see *Dairy Processors Association of Canada v Producteurs Laitiers du Canada/Dairy Farmers of Canada*, 2014 FC 1054; and *Bojangles' International LLC v Bojangles Café Ltd*, 2006 FC 657]. I see no reason why the latest amendments to the Act would alter this finding.

[91] The tripartite test for passing off requires the existence of goodwill, deception of the public due to a misrepresentation and actual or potential damage [*Ciba-Geigy Canada Ltd v Apotex Inc*, [1992] 3 SCR 120 at para 33].

[92] Even if I were to accept that the ground has been properly pleaded, that the Opponent has sufficient goodwill to sustain a claim to statutory passing off and that my findings regarding confusion permit an inference of public deception, there are no facts from which I might find or infer actual or potential damage to the Opponent. For this reason, this ground is rejected.

Bad Faith

[93] The Opponent relies on the ground of opposition available pursuant to section 38(2)(a.1) of the Act, alleging that the Mark is unregistrable as the Application was filed with the improper purpose of securing registration in association with a large number of goods and services that the Applicant had no intention of selling or performing. It alleges that the Applicant's intention was to prevent the legitimate adoption, use and/or registration of similar marks by others including the Opponent.

[94] The Opponent argues that there is clearly no intention on the part of the Applicant to sell or perform the Goods and Services covered by the Application, and in light of the Opponent's association of its trademarks with

its services the Application was made in bad faith [Opponent's written representations, paras 21.2 to 21.6].

[95] I note that knowledge of another's trademark does not in and of itself support an allegation of bad faith [see *Woot Inc v Woot Restaurants Inc / Les Restaurants Woot Inc* 2012 TMOB 197]. Even willful blindness or a failure to make business inquiries as to use by others has been found to fall short in respect of claims to bad faith [see *Norsteel Building Systems Ltd v Toti Holdings Inc*, 2021 FC 927 at para 75; *Blossman Gas Inc v Alliance Autopropane Inc*, 2022 FC 1794 at para 121 and *Advanced Purification Engineering Corporation (APEC Water Systems) v iSpring Water Systems, LLC*, 2022 FC 388 at para 56]. Additionally, bad faith allegations involving purposeful filing of an application to usurp rights of others must be supported by evidence, even if behaviour suggests a pattern of conduct from which an inference of bad faith may be made [*Yiwu Thousand Shores E-Commerce Co Ltd v Lin*, 2021 FC 1040 at paras 54 and 55].

[96] I am not satisfied that the Opponent has met its initial evidential burden in respect of this ground of Opposition. To the extent the Opponent's bad faith allegations relate to knowledge of the Opponent's trademarks or those of others, there is no evidence to indicate this is the case. Likewise, there is no evidence of a pattern of conduct that might give rise to an inference of bad faith. There is also no evidence to suggest that the Application was filed in anything other than good faith, including in view of the number and extent of Goods and Services listed. The claimed Goods and Services are not outside the scope of what might be considered reasonable, given the Applicant's field of business. This ground of opposition is therefore rejected.

DISPOSITION

[97] In view of all the foregoing, pursuant to the authority delegated to me under section 63(3) of the Act and 38(12) of the Act, I refuse the Application in respect of the Class 36 Services and reject the opposition in with respect to all of the goods and with respect to the services in classes 37, 39, 40, 42 and 44.

Coleen Morrison
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

SCHEDULE A

Applicant's Goods and Services

- CI 7 Specialized power-operated forestry equipment, namely, purpose built four wheel drive-to-tree and track type log bunchers, log loading machines, skidders and other forestry industry equipment, namely, bunching saws, bunching shears and component parts thereof, earth moving, tree planting, and excavating equipment, namely, heavy duty vehicles and agricultural and forestry vehicles, and replacement parts therefor; Machines, machine tools and attachments thereof, motors, engines and generators (not for land vehicles); machine coupling and transmission components (not for land vehicles); machines, machine tools and attachments thereof, motors, engines and generators (not for land vehicles), machine coupling and transmission components (not for land vehicles) for use in agriculture, compaction, construction, demolition, earth conditioning, earth contouring, earth moving, forestry, landscaping, material scrapping, mining, mulching, oil and gas distribution, exploration and production, paving, pipelaying, power generation, road building and repair, site preparation and remediation, waste management, vegetation management, transportation, and government and defense; machines, machine tools and attachments thereof, motors, engines and generators (not for land vehicles); machine coupling and transmission components (not for land vehicles);

compressors for machines; electricity generators; pumps for machines for use in agriculture, compaction, construction, demolition, earth conditioning, earth contouring, earth moving, forestry, material handling, material scrapping, mining, mulching, oil and gas distribution, exploration and production, paving, pipelaying, power generation, road building and repair, site preparation and remediation, waste management, vegetation management, transportation, and government and defense; machines, machine tools and attachments thereof, motors, engines and generators (not for land vehicles), machine coupling and transmission components (not for land vehicles), namely, articulated trucks, asphalt pavers, backhoe loaders, cold planers, compacting machines, compacting machines for soil, landfill, and paving applications, compact track and multi terrain loaders, dozers, draglines, drills, electric rope shovels, excavators, feller bunchers, forest machines, namely processors for forest products, namely soil and trees, forwarders, harvesting machines for use in agricultural and forestry applications, highwall miners, hydraulic mining shovels, knuckleboom loaders, material handlers, motor graders, pipelayers, road reclaimers, site prep tractors, skidders, skid steer loaders, surface mining conveyor systems, telehandlers, track loaders, rock mining machines, mining machines, namely, underground longwall mining machines, underground room and pillar mining systems; mining machines, namely, earth drilling machines and mine borers; wheel dozers, wheel excavators, wheel loaders, wheel tractor scrapers, log loaders, backhoe loaders, marine engines, industrial engines, diesel engines for machines, hydraulic engines and motors; electric, industrial, diesel, gas and natural gas generators and gensets; attachments, namely, augurs, backhoes, bale grabs, bale spears, cutting blades, brooms, brushcutters, buckets, cold planers, delimbers, felling heads, flail mowers, forks, grapples, hammers, harvester heads, material handling arms, mulchers, pulverizers, rakes, rippers, saws, shears, silage defacers, snow blowers, snow plows, snow pushes, stump grinders, tillers, trenchers, truss booms, winches, integrated tool carriers, cutting jaws, and pallet forks all of the foregoing for earth moving, earth conditioning and material handling; machine parts for use in compaction, compressing gas, demolition, earth conditioning, earth contouring, earth moving, forestry, namely, cutting and clearing trees and brush, compaction, demolition, earth conditioning, earth contouring, earth moving, landscaping, lawn care, material handling, mining, mulching, paving, pipelaying, powering oil and gas drilling operations; metal sealing rings for use with turbomachinery and centrifuges; metal sealing rings for machines for use in agriculture, compaction, construction, demolition, earth conditioning, earth contouring, earth moving, forestry, landscaping, mining, mulching, oil and gas distribution, oil and gas exploration, oil and gas production, paving, pipelaying, power generation, road building and repair, site preparation and remediation, tunnel boring, and vegetation management; a full line of engine parts for backhoe loaders, skid steer loaders, multi terrain loaders, integrated tool carriers, wheel loaders, track excavators, wheeled excavators, front shovels, telescoping material

handlers, track material handlers, wheeled material handlers, track-type tractors, pipelayers, track loaders, landfill compactors, soil compactors, wheel dozers, motor graders, industrial tractors, wheel tractor-scrapers, track skidders, wheeled skidders, track feller bunchers, wheeled feller bunchers, agricultural and forestry forwarders, track harvesters, knuckleboom loaders, vibratory soil compactors, soil compactors, vibratory asphalt compactors, pneumatic compactors, asphalt pavers, track asphalt pavers, screeds, cold planers, road reclaimers, windrow elevators, soil stabilizers, underground mining loaders, waste handlers, drilling augers, bale accumulators, cutting blades for use in forestry and agricultural applications, brooms, brushcutters, buckets, mowers, forks, grapples, hammers, harvester heads, mulchers, pulverizers, rakes, rippers, saws, shears, defacers, blowers, plows, stump grinders, thumbs, tillers, trenchers, and winches; motors and engines for miscellaneous uses except for use with land vehicles; machine coupling and transmission components except for land vehicles; agricultural implements other than hand-operated, namely, bale grabs, bale spears, mulchers, rakes, tillers, trenchers for use in agriculture, compaction, construction, demolition, earth conditioning, earth contouring, earth moving, forestry, landscaping, material handling, mining, mulching, oil and gas distribution, oil and gas exploration, oil and gas production, paving, pipelaying, power generation, road building and repair, site preparation and remediation, tunnel boring, and vegetation management; machine couplings and transmission components except for land vehicles; valves being parts of machines; spark plugs; air and gas filters as parts of machines and engines for mechanical purposes; air intake and exhaust assemblies for engines; oil filters; couplings for machines; starters for motors and engines; belts for machines; blades as machines parts; attachments for vehicles, namely, grapple buckets for moving earth and loose objects; combustion engine fuel nozzles; water separators for use in engines; fuel heaters for engines; air condensers; alternators for land vehicles; anti friction bearings for machines; anti-friction pads for machines; anti-pollution devices for motors and engines; axles for machines; ball rings for bearings for machines, namely, for articulated trucks, on/off highway trucks, asphalt pavers, backhoe loaders, cold planers, earth and soil compactors, track loaders, dozers, draglines, drills, shovels, excavators, feller bunchers, forest machines, forwarders, harvesters, hydraulic shovels, knuckleboom loaders, material handlers, motor graders, pipelayers, road reclaimers, skidders, skid steer loaders, wheel dozers, wheel excavators for use in agriculture, compaction, construction, demolition, earth conditioning, earth contouring, earth moving, forestry, landscaping, material handling, mining, mulching, oil and gas distribution, oil and gas exploration, oil and gas production, paving, pipelaying, power generation, road building and repair, site preparation and remediation, tunnel boring, and vegetation management; bearing brackets for machines; engine bearings; brake linings for machines other than for vehicles; brake segments for machines other than for vehicles; brake shoes for machines other than

for vehicles; carburetors; compressed air machines; compressed air pumps; connecting rods for machines, motors, and engines; engines, or motors; current generators; cylinder heads for engines; cylinders for motors and engines; centering drilling bits being parts of machines; drilling heads being parts of machines; power drilling heads for industrial applications; electric, diesel, gas, and natural gas generator belts; electric, diesel, gas, and natural gas generators; belts for motors and engines; fans for motors and engines; fuel transfer apparatus for internal combustion engines, namely, fuel pumps; transmission gears for machines, other than for land vehicles; hammers being parts of machines; hydraulic hammers; machine fly wheels; pistons for motors; pulleys being parts of machines; electric pumps for vehicles; reduction gears other than for land vehicles; shaft couplings for machines; bearings for transmission shafts being parts of machines; superchargers for motors and engines; turbochargers for motors and engines; transmission chains and shafts, other than for land vehicles; turbocompressors; mechanical engine parts for land vehicles, agricultural machinery, and earth moving machinery, namely, starting motors, alternators, pistons, cylinder heads, cooling systems parts namely, water pumps for land vehicles, water pumps for use in motors and engines, oil coolers for engines, radiators, heat exchangers for motors and engines and fans for motors and engines, turbochargers, lubricating systems parts namely, oil pumps for land vehicles, oil pumps for use in motors and engines, metal and non-metal engine seals, metal and non-metal engine gaskets for vehicles, gaskets for internal combustion engines, shaft couplings for machines, and air compressors; crank shafts for engines, engine camshafts, engine bearings; mufflers for engines and motors; engine exhaust caps; exhaust silencers for engines; radiators and radiator caps for vehicles; current generators, compressors, and pumps as parts of machines, motors, and engines, and parts therefor, for use in agriculture, compaction, construction, demolition, earth conditioning, earth contouring, earth moving, forestry, landscaping, lawn care, material handling, mining, mulching, oil and gas distribution, oil and gas exploration, oil and gas production, paving, pipelaying, power generation, road building and repair, site preparation and remediation, tunnel boring, waste management, and vegetation management; blocks, camshafts, crankshafts, cylinder heads, filters for motors and engines, frames, fuel injectors, metal engine gaskets for vehicles, piston rings, engine rods, mechanical seals, pressure switches as parts of machines, turbochargers for machines, and valves as machine components for compacting earth, compressing gas, demolition, earth conditioning, earth contouring, earth moving, forestry, namely, cutting and clearing trees, landscaping, lawn care, material handling, mining, mulching, paving, pipelaying, powering oil and gas drilling operations, producing power from engines and generators, pumping oil, waste management, and vegetation management; winches; motors for model vehicles and/or slot cars

CI 9 Pressure and temperature sensors, gauges, and meters; GPS equipment, namely, sensors for use in navigation, assets tracking, and precise timing applications; electronic equipment for remote operation, control, and monitoring of earth moving, earth conditioning, material handling, construction, mining, paving, agricultural, and forestry vehicles, equipment, and machinery, engines, power generation equipment, and off-highway trucks; equipment, namely, electronic devices and parts therefor for locating, positioning, and controlling machines, engines, machine tools, and parts therefor, for use in agriculture, compaction, construction, demolition, earth conditioning, earth contouring, earth moving, forestry, landscaping, material handling, mining, mulching, oil and gas distribution, oil and gas exploration, oil and gas production, paving, pipelaying, power generation, road building and repair, site preparation and remediation, tunnel boring, and vegetation management; batteries and battery chargers for miscellaneous use; battery jump starters; batteries for vehicles; batteries for engines and machines for compacting earth, compressing gas, demolition, earth conditioning, earth contouring, earth moving, forestry, namely, cutting and clearing trees, landscaping, lawn care, material handling, mining, mulching, paving, pipelaying, powering oil and gas drilling operations, producing power from engines and generators, pumping oil, waste management, and vegetation management; radios; electric switches; pressure switches for controlling and switching hydraulic or pneumatic systems; electrical connectors; thermostats; pressure gauges, and leveling rods; reflective mirrors to prevent accidents; power inverters; parts and fittings for land vehicles, agricultural machinery, and earth moving machinery, namely, amplifiers for wireless communications, antennas, antennas for wireless communications apparatus; electric relays; machine parts, namely, control mechanisms, namely, mechanical remote controls for machines, engines, or motors and wireless controllers for machines, engines, or motors; fuel/air ratio controls for engines; speed governors for machines, engines, and motors; sensors, namely, electronic liquid level, position, pressure, speed and timing, and temperature sensors; simulators for the steering and control of vehicles; computer hardware; handheld computers; tablet computers; computer routers; blank USB flash drives; computer stylus; computer software for facilitating operation of heavy equipment; computer software games; computer screensaver software downloadable; CD-ROM games; virtual reality training simulation software in the field of agriculture, compaction, construction, demolition, earth conditioning, earth contouring, earth moving, forestry, landscaping, material scrapping, mining, mulching, oil and gas distribution, exploration and production, paving, pipelaying, power generation, road building and repair, site preparation and remediation, waste management, vegetation management, transportation, and government and defense; eyeglasses; sunglasses; protective glasses; eyeglass lanyards; cases for eyeglasses, sunglasses, and safety glasses; binoculars; telescopes; magnifying glasses; telecommunications equipment, namely, wireless transmitters and

receivers; telephones; cordless telephones; mobile phones; mobile phone cases; mobile phone battery chargers; mouse pads; wrist rests for use with computers; protective industrial shoes; reflective safety vests; hard hats; safety helmets; protective helmets; bicycle helmets; solar panels; calculators; electric calculators; signal lanterns; optical lanterns; audio speakers; wireless speakers; headphones; headsets; wireless headphones; wireless headsets; cameras; digital cameras; rearview cameras for vehicles; electric cords; electrical power extension cords; electrical adaptors; electrical adaptor cables

CI 12 Off road industrial vehicles, namely, skidders and purpose-built prime movers, carrying aerial devices, mulchers and sprayers; Vehicles, apparatus for locomotion by land, air or water, and repair and replacement parts for the aforementioned goods; vehicles for use in agriculture, compaction, construction, demolition, earth conditioning, earth contouring, earth moving, forestry, landscaping, material handling, material scrapping, mining, mulching, oil and gas distribution, exploration and production, paving, pipelaying, power generation, road building and repair, site preparation and remediation, waste management, vegetation management, transportation, and government and defense; vehicles, tractors, marine vehicles and apparatus for locomotion by land, air or water for use in agriculture, compaction, construction, demolition, earth conditioning, earth contouring, earth moving, forestry, landscaping, material handling, material scrapping, mining, mulching, oil and gas distribution, exploration and production, paving, pipelaying, power generation, road building and repair, site preparation and remediation, waste management, vegetation management, transportation, and government and defense; vehicles, apparatus for locomotion by land, air or water, namely, trucks, off- highway trucks, articulated trucks, underground mining trucks, internal combustion fork-lift trucks, electric fork-lift trucks, electric pallet movers, manual pallet movers, asphalt pavers, backhoe loaders, cold planers, compact track and multi terrain loaders, dozers, draglines, drills, electric rope shovels, excavators, feller bunchers, forest machines, forwarders, harvesters, highwall miners, hydraulic mining shovels, knuckleboom loaders, material handlers, motor graders, pipelayers, road reclaimers, site prep tractors, agricultural tractors, combines, windrowers, balers, disc mowers and conditioners, sickle mowers and conditioners, bale accumulators, skidders, skid steer loaders, surface mining conveyors, telehandlers, track loaders, underground hard rock mining machines, underground longwall mining machines, underground room and pillar mining systems, wheel dozers, wheel excavators, wheel loaders, wheel tractor scrapers, log loaders, backhoe loaders; structural, repair and replacement and remanufactured

parts for engines for the foregoing vehicles; transmissions for land vehicles and structural, repair and replacement parts therefor; locomotives; railcars; Engines for land vehicles; diesel engines for land vehicles, rocket engines for land vehicle propulsion; vehicle parts, namely, tracks for tracked land vehicles; hydraulic circuits and hydraulic adapters for connecting components of hydraulic systems in vehicles; horns for vehicles; rearview mirrors; side view mirrors for vehicles; seats and seat belts for vehicles; seat suspension, seat cushions and seat arm rests all for vehicles; fitted seat covers for vehicles; vehicle head rest covers; brakes for vehicles; brake linings for vehicles; brake air compressors for land vehicles; land vehicle structural parts; hydraulic apparatus for use in moving work tools attached to vehicles and not for engines or motors, namely, hydraulic drives, hydraulic gears, hydraulic pumps, and hydraulic shock absorbers; parts and fittings for land vehicles, namely, engines, connecting rods for vehicles other than parts of motors and engines, transmissions for land vehicles; repair, and replacement parts for land vehicles, namely, a full line of structural parts for articulated trucks, on/off highway trucks, asphalt pavers, backhoe loaders, cold planers, track loaders, dozers, draglines, drills, shovels, excavators, feller bunchers, forest machines, forwarders, harvesters, hydraulic shovels, knuckleboom loaders, material handlers, motor graders, pipelayers, road reclaimers, skidders, skid steer loaders, wheel dozers, wheel excavators for use in agriculture, compaction, construction, demolition, earth conditioning, earth contouring, earth moving, forestry, landscaping, earth and soil lifting and handling, mining, mulching, oil and gas distribution, oil and gas exploration, oil and gas production, paving, pipelaying, power generation, road building and repair, site preparation and remediation, tunnel boring, and vegetation management; wheelbarrows; hitch covers; mud flaps; license plate holders; covers for vehicle steering wheels; automobile windshield sunshades; bicycles; tricycles; motor scooters; push scooters; air pumps; bicycle horns; bicycle bells; bicycle training wheels

CI 18 Luggage; bags for carrying tools; wallets; credit card cases; business card cases; coin holders in the nature of wallets; briefcases; garment bags for travel; shoe bags for travel; back packs; duffel bags; flight bags; tote bags; traveling bags; athletic bags; sport bags; dry bags; bags for climbers and campers; book bags; shoulder bags; purses; briefcase-type portfolios; luggage tags; umbrellas; collars, leashes and clothing for animals

CI 21 Cookware, except forks, knives and spoons; unworked or semi-worked glass, except building glass; earthenware; beverage stirrers; pitchers; drinking glasses; cups; mugs; tumblers; insulated containers for beverages; water bottles sold empty; drinking bottles for sports; hydration packs containing a fluid reservoir, delivery tube, and mouthpiece; bottle openers non-electric; shot glasses; insulating sleeve

holders for beverages; salt and pepper shakers; grill scrapers; grill covers; chamois leather for cleaning; figurines of porcelain, ceramic, earthenware, terra-cotta or glass; trash cans; soap dish; soap dispenser; glassware, namely, cups, mugs, drinking glasses, pint glasses; porcelain, namely, mugs; thermal insulated containers for beverages, insulated mugs, thermal insulated bottles sold empty

CI 25 Apparel, footwear and headwear, namely, workwear, sport, dress, casual, children, and infant clothing; caps being headwear; baseball hats; hats; visors; knit hats; sun hats; work uniforms; one piece jumpsuits; shirts; t-shirts; golf shirts; dress shirts; sport shirts; polo shirts; collared shirts; night shirts; sweatshirts; wind shirts; sweaters; pullovers; jumpers; fleece pullovers; pants; dress pants; sport pants; casual pants; jeans; lounge pants; sleep pants; sweatpants; wind pants; shorts; jackets; fleece jackets; parkas; vests; rainwear; bathing suits; underwear; gloves; work gloves; ski gloves; mittens; socks; sock liners; footwear, namely, shoes, casual shoes; sandals, boots, work boots, sport shoes, hiking shoes, hiking boots; insoles for shoes and boots; belts; leather belts; fabric belts; ties; scarves; bandanas; wrist bands

CI 36 Insurance services, namely, underwriting extended warranty contracts in the field of heavy equipment, namely, agricultural, forestry and construction equipment

CI 37 Repair and maintenance of vehicles, engines, and industrial machines; rental of construction, demolition, earth conditioning, earth moving, forestry, natural material handling, material scrapping, mulching, oil and gas distribution, exploration and pipelaying, road building and repair, environmental site preparation and remediation, waste management and vegetation management equipment

CI 39 Rental of vehicles

CI 40 Rental of power generators

CI 42 Testing and inspection of engines and machinery, namely, construction, demolition, earth conditioning, earth moving, forestry, natural material handling, material scrapping, mulching, oil and gas distribution, exploration and pipelaying, road building and repair, environmental site preparation and remediation, waste management and vegetation management equipment; testing, remote control, diagnosis and calibration of vehicles, equipment, and machines used for agriculture, compaction, construction, demolition, earth conditioning, earth contouring, earth moving, lifting, forestry, landscaping, lawn care, marine propulsion, natural material handling, mining, oil and gas production, paving, pipelaying, power generation, and road building and repair;

testing, remote control, diagnosis and calibration of engines, power generation equipment, vehicle fleets, trucks, and trucking fleets; rental of equipment, machines, and machine tools for use in mining exploration

CI 44 Rental of forestry machines, namely, cut-to-length tree harvesting machines, full tree forest harvesting machines, forwarders for transporting felled logs, timber harvesting machinery, knuckleboom loaders, pipelayers, site prep tractors, skid steer loaders, track loaders

Appearances and Agents of Record

No hearing held

AGENTS OF RECORD

For the Opponent: Riches, McKenzie & Herbert LLP

For the Applicant: Miller Thomson LLP