



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2025 TMOB 185

Date of Decision: 2025-09-12

IN THE MATTER OF AN OPPOSITION

Opponent: Curaleaf, Inc.

Applicant: Robert Crown

Application: 1938007 for CURALEAF

OVERVIEW

[1] Curaleaf, Inc. (the Opponent) opposes the registration of the trademark CURALEAF, application No. 1938007 (the Trademark).

[2] The application is based on proposed use of the Trademark in association with cannabis-related goods and retail sale services, along with other goods having varying degrees of connection to consuming cannabis and merchandising a cannabis business; from ashtrays and matches, to clothing, backpacks, and skateboard decks, as well as related retail sale services. The full statements of goods and services are set out in Schedule A to this decision.

[3] For the reasons that follow, the opposition is successful.

RECORD

[4] On December 21, 2018, the subject application was filed by Stephen Burri on the basis of proposed use in Canada.

[5] On September 25, 2020, the Registrar received correspondence from Mr. Burri, in which he (i) requested the transfer of ownership of the subject application from himself to Christopher O'Grady dba CROWN OG, and, concurrently (ii) appointed himself as the trademark agent for the application. The application was eventually assigned to Robert Crown (the Applicant), the current owner of the application, by way of an assignment dated March 1, 2023.

[6] The application was advertised for opposition purposes in the *Trademarks Journal* on July 13, 2022. On September 21, 2022, the Opponent opposed the application by filing a statement of opposition pursuant to section 38 of the *Trademarks Act*, RSC 1985, c T-13 (the Act). The statement of opposition was amended on August 24, 2023 by the Opponent, with leave from the Registrar dated October 13, 2023.

[7] The grounds of opposition raised by the Opponent are based on non-compliance with the requirements of section 30(2)(a) of the Act, bad faith filing, non-distinctiveness, that the applicant at the time of filing was not using and did not propose to use the Trademark, and non-entitlement to use the Trademark. Many of the grounds rely on the fact that the subject application was filed in the name of Stephen Burri, a trademark agent and the current trademark agent of record for the subject application.

[8] A counter statement was filed and served on January 26, 2023.

[9] Both parties filed evidence and written representations. Only the Opponent was represented at a hearing.

BURDEN

[10] In an opposition proceeding, an applicant bears the legal onus of showing that its application complies with the provisions of the Act.

[11] However, an opponent has the initial burden of establishing the merits of its opposition. In particular, the opponent must ensure that each of its grounds of opposition is properly pleaded and must adduce sufficient admissible evidence from which it could reasonably be concluded that the facts alleged to support each ground of opposition exist. Once the opponent's initial burden is met, the onus falls on the applicant to establish, on a balance of probabilities, that none of the pleaded grounds presents an obstacle to registering the trademark in question [*John Labatt Ltd v Molson Companies Ltd* (1990), 30 CPR (3d) 293 at 298, 1990 CanLII 11059 (FCTD); *Dion Neckwear Ltd v Christian Dior, SA*, 2002 FCA 29].

EVIDENCE OVERVIEW

[12] In support of its opposition, the Opponent filed:

- an affidavit of Eunice Lee, Senior Trademark Paralegal with the law firm Fish & Richardson PC, sworn on August 17, 2023 (the Lee Affidavit) and notably attaching photocopies of certified copies of trademark applications filed by the Opponent in the United States Patent and Trademark Office (USPTO);
- an affidavit of Nicholas Tucker, licensed Private Investigator and Regional Manager at Xpera Risk Mitigation and Investigation LP, sworn on August 21, 2023 (the Tucker Affidavit) and providing results from Mr. Tucker's investigation to identify Canadian media references to the keyword "curaleaf" between September 21, 2013 and September 21, 2022. The Tucker Affidavit also provides circulation and distribution information; and

- an affidavit of Stephen Rodger, licensed Private Investigator at Xpera Risk Mitigation and Investigation LP, sworn on July 11, 2023 (the Rodger Affidavit) and providing results from Mr. Rodger's "background investigation into Mr. Stephen R. Burri".

[13] In support of its application, the Applicant filed:

- an affidavit of Cory Alden Hanson, an employee of the Applicant's agent firm, sworn on May 22, 2024 (the Hanson Affidavit). This affidavit essentially purports to show that Mr. Burri registered the domain name *curaleaf.ca*. I will return to this point in my analysis below.

[14] No cross-examinations were conducted.

ANALYSIS OF THE GROUNDS OF OPPOSITION

Applicant was not using and did not propose to use

[15] Pursuant to section 38(2)(e) of the Act, the Opponent pleads that Stephen Burri, the applicant at the filing date of the application, was not using and did not propose to use the Trademark in Canada in association with the goods or services specified in the application.

[16] Section 38(2)(e) was introduced when the Act was amended on June 17, 2019. However, the Registrar has considered cases relating to section 30(e) of the Act as it read prior to those amendments to be instructive when assessing grounds of opposition based on whether an applicant used or proposed to use an applied-for trademark under section 38(2)(e) [see *Shopify v Ubeing Mobility Ltd*, 2024 TMOB 75 at para 59, and subsequent jurisprudence of the Registrar confirming the reasoning set out in *Shopify*].

[17] Indeed, former section 30(e) grounds were decided on the basis of the Act's prior requirement that a trademark applicant state their intention to use a trademark, and the implicit requirement that the statement be true. Though not always expressed in these terms, a principle underlying many of those decisions has been that trademark applications cannot be filed in the name of "straw man" entities acting on behalf of another, because such straw men did not use, and did not intend to use the trademark in Canada [see *Dollar General Merchandising, Inc v R Steinberg* (2009), 74 CPR (4th) 341, 2009 CanLII 90472 (TMOB); see also *Cellular One Group, a partnership v Bell Mobility Cellular Inc* (1996), 69 CPR (3d) 236, 1996 CanLII 11378 (TMOB)].

[18] While the Act no longer requires such statements, section 30(1) of the Act does require that a person applying to register a trademark either use or propose to use that trademark:

30 (1) A person may file with the Registrar an application for the registration of a trademark in respect of goods or services if they are using or propose to use, and are entitled to use, the trademark in Canada in association with those goods or services.

[19] Accordingly, the question of whether an applicant genuinely used or proposed to use the trademark remains relevant under the new provisions of the Act [*Norkol Packaging LLC v 1178320 BC Ltd*, 2025 TMOB 179 at para 40; *Hello Nori Inc v Sushi Nozawa, LLC*, 2025 TMOB 95 at para 16].

[20] In essence, the Opponent's position is that Mr. Burri neither used nor proposed to use the Trademark because he in fact filed the subject application on behalf of an undisclosed third party. In support, the Opponent notably points to the following findings of private investigator Stephen Rodger regarding Mr. Burri's background:

- Mr. Burri is a lawyer who was called to the British Columbia Bar on September 4, 1998, and has been employed in the legal profession since at least 2001 [Rodger Affidavit, Exhibit A, page 2].
- On the website of Island IP Law, Mr. Burri is identified as the Principal of Island IP Law [*id.*, page 3].
- Mr. Burri specializes in trademark, patent and industrial design protection, IP licensing, copyright, and domain name dispute resolution [*id.*, page 7].
- A background search revealed no indication that Mr. Burri has been engaged in the manufacture or distribution of any of the applied-for goods, nor that Mr. Burri has ever manufactured or sold, or contemplated manufacturing or selling, goods of any sort [*id.*, page 2].

[21] In further support, the Opponent notes that the application to register the Trademark was filed by Mr. Burri immediately after an intense period of trademark filings by the Opponent in the USPTO for the same trademark, many of which in association with cannabis-related goods and services:

- **June 21, 2018:** CURALEAF word mark application (serial number 88/008,972);
- **August 7, 2018:** CURALEAF word mark application 2018 (serial number 88/068,377);
- **August 27, 2018:** CURALEAF word mark application (serial number 88/094,444);
- **September 18, 2018:** CURALEAF word mark application (serial number 88/121,665);
- **October 9, 2018:** CURALEAF design mark applications (serial numbers 88/148,369, 88/148,362, 88/148,305, 88/148,295, 88/148,263, and 88/148, 241); and

- **December 20, 2018:** CURALEAF word mark and design mark applications (serial numbers 88/013,026 and 88/148,333);

[22] At the hearing, the Opponent characterized the timing of the subject application filing in Canada on December 21, 2018 as “suspicious”. The Opponent noted that this timing is especially suspicious given that CURALEAF is a unique and invented term, and that it is difficult to explain how Mr. Burri could independently coin and innocently file a trademark application for an identical term.

[23] On that point, the Opponent added that the Applicant’s trademark filing in Canada also came on the heels of a marked increase in references to the Opponent in Canadian media in the year 2018. In fact, Mr. Tucker’s search of media references revealed less than 100 mentions of “curaleaf” in the four-year period between 2014 and the end of 2017, whereas his search identified more than 400 such mentions in the period of time starting on January 1, 2018 and leading up to the subject trademark application filing in Canada on December 21, 2018 [Tucker Affidavit, Exhibit A, Tabs 2 to 7].

[24] The Opponent further notes that the domain name *curaleaf.ca* was registered on October 30, 2018, in the midst of the increased media coverage and of the Opponent’s filing streak in the USPTO.

[25] With respect to the allegation that Mr. Burri did not use the Trademark, the Opponent submits that the private investigator’s findings, when considered together with the fact that the subject application was filed on the basis of proposed use, “strongly support the inference that Mr. Burri was not using the Trademark at the time the Application was filed” [Opponent’s written representations at para 45].

[26] Finally, the Opponent requests that an adverse inference be drawn from the fact that the Applicant did not tender any evidence from Mr. Burri with respect to the Trademark's use or proposed use [*id.* at paras 48-49].

[27] The Applicant, for its part, does not contend that the Trademark was used at any time. Instead, the Applicant argues that the subject application was filed by Mr. Burri "on his own behalf and having the intention to use the trademark through a licensee" [Applicant's written representations at para 34]. Regarding such intent to use, the Applicant submits as follows [*id.* at paras 30-31]:

30. Evidence of the intention of Mr. Burri to use the trademark may be found in the registration of the domain name *curaleaf.ca* by the applicant Stephen Burri. The Applicant, Mr. Burri, registered the domain name *curaleaf.ca* on October 30, 2018, six months [*sic*] before filing the trademark application. In the Affidavit of Cory Alden Hanson, Cory Hanson states at paragraph 4 that Stephen Burri registered the domain name *curaleaf.ca*. Exhibit A provides evidence that the domain name was registered on 30 OCT 2018. The Affiant was not cross-examined by the Opponent. Accordingly, the evidence of Stephen Burri registering the domain name *curaleaf.ca* 52 days before filing the subject trademark application on 21 DEC 2018 is uncontroverted and supports the assertion that Stephen Burri intended to use the trademark in Canada, either directly or through a licensee.

31. Securing a domain name associated with a proposed trademark is a common preparatory step evidencing a *bona fide* intention to use that trademark in association with goods or services in Canada. The Opponent has submitted no evidence to rebut this logical inference.

[28] The Applicant's evidence consists of the Hanson Affidavit. In his affidavit, Mr. Hanson identifies himself as being "employed since 2011 by Island IP Law, the firm of the Applicant's Trademark Agent Stephen R. Burri" [para 1]. Mr. Hanson states that as part of his responsibilities he is "occasionally asked to conduct searches of the publicly available online database of the [Canadian Internet Registration Authority (CIRA) database], and to access the firm's account at the Namespro.ca domain name registry" [para 2].

[29] Mr. Hanson further states that, on May 22, 2024, he conducted two searches: a search of the CIRA database for the domain name *curaleaf.ca* to obtain details regarding that domain name; and a search of the database located at *names.pro* “to obtain details of domain names registered by Stephen Robert Burri” [para 4]. He attaches the results of his searches:

- Exhibit A is a printout from the CIRA website which indicates that the domain name *curaleaf.ca* was registered on October 30, 2018. The registrar of that domain name is identified as Namespro Solutions Inc. and the registrar URL as *namespro.ca*.
- Exhibit B is a printout from the website *namespro.ca* showing the “Domain list” for a user logged in as “burri@islandip.com”. The only domain listed is *curaleaf.ca*. The registrant for that domain is identified as “Stephen Robert Burri”.

[30] The Applicant’s evidence is silent as to the operation of the *curaleaf.ca* website, including whether it was active at any time.

[31] I now turn to the Opponent’s burden under this ground. As was the case in respect of grounds of opposition under former section 30(e), the evidential burden on an opponent in respect of a section 38(2)(e) ground is light, and the amount of evidence needed to discharge it may be very slight. This is because the relevant facts for assessing whether an applicant was using or proposed to use a trademark are more readily available to, and particularly within the knowledge of, that applicant [*Shopify, supra*; see also *DK Company Vejle A/S v Urban Nest Home Lifestyle Kids Inc*, 2024 TMOB 217 at para 30, and *Hello Nori, supra*, at para 17].

[32] When assessing a section 38(2)(e) ground of opposition, the material date is the filing date of the application. However, evidence arising subsequent to that date can be considered insofar as it may indicate a

situation existing as of the material date [see *Pentastar Transportation Ltd v FCA US LLC*, 2019 TMOB 34 at para 24, aff'd 2020 FC 367, for similar reasoning in the context of a ground of opposition under former section 30(e) of the Act].

[33] The record before me in this case establishes that Mr. Burri, a lawyer and trademark agent, filed the application for the Trademark in Canada in his own name. The application was filed on the heels of heightened media coverage of the Opponent as well as the Opponent's numerous trademark filings in the USPTO. Almost two years after filing, Mr. Burri assigned the ownership of the application to another individual and immediately appointed himself as the trademark agent for the application. Mr. Burri does not appear to have ever been engaged in the manufacture, sale or provision of any of the wide variety of applied-for goods and services at the filing date of the subject application, nor does he appear to have the necessary experience or facilities to undertake such activities. In fact, despite the many years that have passed since the application was filed, the Applicant has furnished no evidence of trademark use.

[34] While each of these circumstances would alone be insufficient for the Opponent to meet its burden, I am satisfied that, when considered together, the Opponent has established sufficient facts to put this ground in issue and shift the onus on to the Applicant to demonstrate that the Applicant proposed to use the Trademark in Canada when he filed the application.

[35] I note here the Applicant's submission that securing a domain name is a "common preparatory step" and that the Opponent "has submitted no evidence to rebut this logical inference". According to the Applicant, Mr. Burri registering the domain name *curaleaf.ca* before filing the subject trademark application "supports the assertion that [he] intended to use the

trademark in Canada, either directly or through a licensee” [Applicant’s written representations at paras 30-31, reproduced above].

[36] I find the Applicant’s position problematic in many respects. First, I find troubling the proposition that an opponent be required to tender evidence to rebut an inference drawn at the request of an applicant, in order for that applicant to show that its application complies with the provisions of the Act. Such an approach is in my view tantamount to reversing the parties’ respective burdens.

[37] In any event, I am not prepared to make the inference advanced by the Applicant on the basis of the record before me. In particular, I do not find it reasonable to conclude that registering the domain name *curaleaf.ca* is sufficient to establish that the Applicant proposed to use the Trademark and that the Applicant has therefore satisfied its legal onus. Even if domain name registration may constitute a preparatory step in launching a legitimate business, other reasons could motivate an individual to secure a domain name. For example, the Opponent noted at the hearing that securing a domain name is a step which would likely be taken by trademark squatters wishing to prevent the registration of that domain by its rightful owner. Ultimately, whether an applicant proposes to use a trademark is squarely within the knowledge of that applicant and, in this case, the Applicant’s evidence is conspicuously silent on the issue.

[38] This brings us to a third problem, that is, the limited probative value of the Hanson Affidavit. The Applicant relies on this affidavit to establish that Mr. Burri registered the domain name *curaleaf.ca* – a question central to the determination of this proceeding and, according to the Applicant, to the assessment of whether Mr. Burri proposed to use the Trademark [see *Cross Canada Auto Body Supply (Windsor) Limited et al v Hyundai Auto Canada*, 2005 FC 1254, aff’d 2006 FCA 133, discussing the principle that the affidavit

of an agent's employee is admissible only to the extent that the evidence relates to non-controversial and non-central matters].

[39] Not only is Mr. Hanson an employee of the Applicant's agent, the evidenced introduced in his affidavit is largely hearsay. Indeed, Mr. Hanson provides no indication that he has knowledge of facts relevant to whether Mr. Burri proposed to use the Trademark when he filed the subject application, nor direct knowledge of when, why, or whom registered the domain name *curaleaf.ca*.

[40] I am therefore not prepared to give weight to Mr. Hanson's hearsay statement that Exhibit B of his affidavit contains a list of "domain names registered by Stephen Robert Burri". As for the exhibited materials, even if I were to set aside hearsay issues and accept those printouts for the truth of their contents, the Applicant's evidence would establish only that (1) the domain name in question was registered on October 30, 2018, and (2) that the domain name belonged to Stephen Robert Burri when Mr. Hanson conducted his searches on May 22, 2024.

[41] It would have been a simple matter for the Applicant to explain in an affidavit sworn by an individual with direct knowledge of the facts, *e.g.*, from the Applicant or a licensee, that Mr. Burri proposed to use the Trademark when he filed the application. Ultimately, I agree with the Opponent that circumstances in this case are curious, to say the least, and that the Applicant has done too little to establish that its application complies with the provisions of the Act.

[42] As the Applicant has not met its legal onus, the section 38(2)(e) ground of opposition is successful.

Bad faith

[43] Pursuant to section 38(2)(a.1) of the Act, the Opponent pleads that the application was filed in bad faith (i) because it was filed in the name of Mr. Burri, a trademark agent, solely for the purpose of concealing the true identity of the entity seeking to register the Trademark; and (ii) because it is improper for a trademark agent to file a trademark application in his or her own name on behalf of an unidentified third party.

[44] The Opponent also pleads that the application was filed in bad faith because the Applicant was aware that the Opponent had prior adoption of an identical mark in the United States in association with overlapping and/or related goods and the Applicant was seeking to prevent the Opponent from using and/or registering its own mark in Canada.

[45] At paragraph 61 of its written representations, the Opponent adds:

It is therefore highly unlikely that Mr. Burri independently and innocently coined and filed a Canadian application for the mark CURALEAF one day after the Opponent's U.S. filings in association with overlapping goods. Rather, the logical inference is that Mr. Burri intended to obtain a registration for the same mark he knew was associated with the Opponent in the U.S., with the aim of preventing the Opponent from using and/or registering its mark in Canada. This conduct can only be described as "misuse of the registration system" [citing *Shenzhen Lepower Electronic Co, Ltd v Stavros Bachtsetzis*, 2022 TMOB 180 at para 18].

[46] The material date to assess these grounds of opposition is the filing date of the subject application.

[47] Before proceeding, I will address the Applicant's submission that the bad faith grounds of opposition must fail because the application to register the Trademark was filed before the enactment of the section 38(2)(a.1) bad faith provisions [Applicant's written representations at para 10].

[48] I disagree. The transitional provisions of the Act are dispositive of this issue as they provide that the ground of opposition set out in section 38(2)(a.1) of the Act can be raised against trademark applications advertised on or after the day on which that section came into force [section 68.2 of the Act, *a contrario*; see also section 69.1 of the Act providing that the Act as amended applies to trademark applications advertised after June 17, 2019]. Given that the subject application was advertised in 2022, the Opponent was entitled to raise grounds on the basis of section 38(2)(a.1) of the Act.

[49] Turning now to the Opponent's pleaded grounds, I wish to first point out that mere knowledge of the existence of an opponent's trademark does not in and of itself support an allegation of bad faith [see, *e.g.*, *Shopify*, *supra* at para 54; see also *Blossman Gas Inc v Alliance Autopropane Inc*, 2022 FC 1794 at paras 119-129, and *Norsteel Building Systems Ltd v Toti Holdings Inc*, 2021 FC 927 at paras 64-75].

[50] Otherwise, while I agree that it is improper for a trademark agent to file a trademark application in their own name on behalf of a client or other unidentified party, I find that the Opponent has failed to meet its evidential burden under the pleaded bad faith grounds. In particular, while I have accepted that the Opponent discharged its light burden to put into issue whether Mr. Burri proposed to use the Trademark, I am not satisfied that the evidentiary basis is sufficient to reasonably conclude that the subject application was filed on behalf of Mr. Burri's client, for the purpose of concealing the true identity of the entity actually seeking to register the Trademark, or to block the Opponent from using and/or registering its trademark in Canada.

[51] In light of the above, the section 38(2)(a.1) grounds of opposition are rejected.

Non-entitlement to use the Trademark

[52] Pursuant to section 38(2)(f) of the Act, the Opponent pleads that Mr. Burri, the applicant at the filing date of the application, was not entitled to use the Trademark in Canada in association with the goods and services specified in the application, because the application was improperly filed in his own name on behalf of an unidentified third party.

[53] In its written representations, the Opponent adds as follows:

94. As the Board can appreciate, this is a novel ground of opposition for which there does not appear to be any relevant case law. That having been said, the Opponent submits that this ground of opposition is supported by all of the arguments outlined above under the grounds relating to bad faith.

95. Additionally, the Opponent notes that [section 30(1) of] the Act explicitly states that “[a] person may file with the Registrar an application for the registration of a trademark in respect of goods or services if they are using or propose to use, and are entitled to use, the trademark in Canada in association with those goods or services.” As noted above, Mr. Burri was not using, and had no intention to use, the Trademark in Canada in association with the Goods and Services. Thus, Mr. Burri’s filing was improper and intentionally misled the Canadian Trademarks Office as to the true identity of the entity seeking to register the mark. This conduct is a clear breach of the ethical standards that prohibit lawyers and agents from engaging in deceptive practices.

[54] The material date to assess this ground of opposition is the filing date of the application.

[55] At the outset, I note that it is not clear that filing an application on behalf of an unidentified third party is a proper basis for a ground of opposition pursuant to section 38(2)(f) of the Act. Indeed, this section has been consistently held by the Registrar to address an applicant’s lawful entitlement to *use* an applied-for trademark, such as, for example, in compliance with relevant federal legislation and other legal obligations prohibiting “use” of a trademark within the meaning of section 4 of the Act.

[56] That being said, even if I were to accept this ground as being validly pleaded, as noted above in respect of the bad faith grounds, I am not satisfied that the evidence is sufficient to show that the application was filed on behalf of an unidentified third party, or for the purpose of concealing the true identity of the entity seeking to register the Trademark.

[57] The Opponent has therefore failed to meet its evidential burden. Accordingly, the section 38(2)(f) ground of opposition is rejected.

Non-distinctiveness ground of opposition

[58] Pursuant to section 38(2)(d) of the Act, the Opponent pleads that the Trademark is not distinctive within the meaning of section 2 of the Act because it does not actually distinguish nor is it adapted to distinguish the goods and services of the Applicant from those of the Opponent, having regard to the Opponent's reputation in Canada in the trademark and trade name CURALEAF, and in the trade names CURALEAF, LLC, CURALEAF HOLDINGS, INC, and CURALEAF INC.

[59] The material date for assessing this ground of opposition is the filing date of the opposition, that is, September 21, 2022.

[60] To meet its evidential burden under this ground, an opponent must show that as of the material date, its trademark (or trade name) had become known to some extent in Canada, and had a reputation in Canada that was "substantial, significant or sufficient" so as to negate the distinctiveness of an applied-for trademark. When an opponent's reputation is restricted to a specific area of Canada, an opponent's evidential burden may be satisfied if its trademark (or trade name) is well known in that specific area of Canada [see *Bojangles' International LLC v Bojangles Café Ltd*, 2006 FC 657 at paras 33 and 34; and *Canadian Dental Association v*

Ontario Dental Assistants Association, 2013 FC 266 at para 42, aff'd 2013 FCA 279].

[61] The Opponent submits that the press coverage evidence tendered in the Tucker Affidavit demonstrates the requisite level of reputation in Canada. In support, the Opponent relies on a decision of the Registrar which found that an opponent had met its evidential burden under a non-distinctiveness ground on the basis of "dozens of articles" in which that opponent's trademark had been referenced [*Krauss-Maffei Wegmann GmbH & Co KG v Rheinmetall Defence Electronics GmbH*, 2017 TMOB 50 at para 32].

[62] I agree with the Opponent that neither use nor "making known" within the meanings of sections 4 and 5 of the Act are strictly necessary to satisfy the Opponent's evidential burden under this ground. Indeed, its attack based on non-distinctiveness may be founded on knowledge or reputation "spread by means of word of mouth and evidence of reputation and public acclaim and knowledge by means of newspaper or magazine articles as opposed to advertising" [*Motel 6, Inc v No 6 Motel Ltd* (1981), 56 CPR (2d) 44 at 59, 1981 CanLII 5072; see also *Bojangles' International LLC v Bojangles Café Ltd*, 2006 FC 657 at para 29].

[63] However, the issue of non-distinctiveness is not a hypothetical one; it involves a highly fact- and evidence-based analysis, and I disagree that the findings regarding reputation in *Krauss-Maffei* can be similarly made in this case. Specifically, the opponent in *Krauss-Maffei* developed and manufactured military armored vehicles. Its trademark LEOPARD was referenced in the news in the context of issues of national importance, such as the purchase of LEOPARD tanks by the Canadian military, LEOPARD tanks being transported to and from military action zones, and the strategic value of those tanks for Canadian troops on the ground.

[64] The Opponent in this case operates in the cannabis industry, and the evidenced news articles relate to the investment value of the company or developments which could affect the stock price:

- *U.S. pot firm Curaleaf debuts on CSE with \$6B valuation* (BNN Bloomberg, October 29, 2018: "... said Curaleaf CEO Joseph Lusardi in a release. "We remain committed to growing our business through aggressive organic growth and the ...";
- *These 13 stocks should be on every deal-hunter's shopping list*, Ottawa Citizen, November 27, 2018: "Holdings also appears on GMP's list, they're more bullish on Curaleaf because it is expanding operations in the U.S.";
- *U.S. bill that aims to open financial system to cannabis companies could be bad news for Canada's pot sector*, Financial Post, March 26, 2019: "American multi-state operators like Acreage (Holdings Inc.) and Curaleaf are much bigger than most Canadian cannabis companies.";
- *Curaleaf moves to solidify U.S. status; Purchases GR Companies for US\$825M*, National Post, July 18, 2019: "This marks the second transformative deal for Curaleaf in 2019 and in our opinion is the most meaningful in the cannabis industry this year ...";
- *Curaleaf Launches Medical Cannabis Tablets in Florida*, Yahoo Finance, September 17, 2019: "... Curaleaf Holdings, (CSE: CURA) (OTCQX: CURLF) is launching medical cannabis tablets in Florida.";
- *U.S. pot legalization gets frosty reception*, National Post, July 21, 2021: "...top U.S. stock picks are still the big multistate operators like Curaleaf Holdings Inc., Green Thumb Industries, Inc., Trulieve Cannabis..."

[65] Though I accept that some Canadians were exposed to articles evidenced by the Opponent, I am not satisfied that their reach and impact is as significant as the press coverage evidenced in *Krauss-Maffei*. In my view, business news regarding the cannabis industry is relevant to fewer Canadians than news of military operations of the Canadian Armed Forces and government spending on defence procurement, not to mention the fact that military tanks and companies which supply them are by far less common than cannabis products and companies.

[66] In light of the foregoing, though I accept that the Opponent's trademark and trade names were known to some extent in Canada at the material date, I am not satisfied that the Opponent has shown that any of them were sufficiently known, or alternatively that they were well known in a specific area of Canada, so as to negate the distinctiveness of the Trademark.

[67] The Opponent has therefore failed to discharge its evidentiary burden. Accordingly, the section 38(2)(d) ground of opposition is rejected.

Goods not in ordinary terms

[68] Pursuant to section 38(2)(a) of the Act, the Opponent pleads that the application does not conform to the requirements of section 30(2)(a) of the Act and section 29 of the *Trademark Regulations*, because the goods "Anti-nauseants", "botanical supplements for general health and well-being", and "nutritional supplements for general health and well-being" are not described in ordinary commercial terms.

[69] The material date to assess this ground of opposition is the filing date of the application.

[70] An opponent's initial evidential burden under section 30(a) of the Act is a light one. An opponent can meet its burden by way of the Registrar

taking judicial notice, based on argument, of why or how each particular good or service is not in ordinary commercial terms [see *McDonald's Corporation and McDonald's Restaurants of Canada Ltd v MA Comacho-Saldana International Trading Ltd carrying on business as Macs International* (1984), 1 CPR (3d) 101 at 104, 1984 CanLII 5841 (TMOB)].

[71] The Opponent essentially argues that these descriptions are too broad and insufficiently clear. According to the Opponent, each of the identified terms “apply to very different types of goods which could be used differently and travel through distinct channels of trade” [Opponent’s written representations at para 35]. For example, the Opponent submits that the term “anti-nauseants” could refer to pharmaceutical products or medical devices (e.g. anti-nausea bracelets). As for botanical and nutritional supplements, the Opponent submits that “general health and well-being” is “so broad that it covers a wide variety of products intended to support health in different ways”, and that such supplements could be offered in diverse forms [*id.* at para 37, see also, generally, paras 31 to 39].

[72] Even if I considered that the Opponent had met its initial burden under this ground, I would nevertheless find that the contested descriptions meet the requirements of section 30(2)(a) of the Act. Additionally, I note that the contested terms are active in CIPO’s Goods and Services Manual and were included well prior to the material date [regarding the Registrar’s discretion to check the Manual see, e.g., *Effigi Inc v ZAM Urban Dynamics Inc*, 2010 TMOB 214 at para 67; and *Johnson & Johnson v Integra Lifesciences Corp*, 2011 TMOB 234 at para 29].

[73] The Applicant has therefore satisfied its onus of establishing, on a balance of probabilities, that its application complies with the requirements of section 30(2)(a) of the Act. Accordingly, the section 38(2)(a) ground of opposition is rejected.

DISPOSITION

[74] In accordance with the authority delegated to me under section 63(3) of the Act, I refuse the application pursuant to section 38(12) of the Act.

Eve Heafey
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

SCHEDULE A

Subject Application No. 1938007 for the trademark CURALEAF

GOODS

- 5 (1) Anti-nauseants; botanical supplements for general health and well-being; medicinal marijuana for temporary relief of seizures; medicinal marijuana for the relief of nausea caused by chemotherapy; medicinal marijuana for the relief of nerve pain; medicinal marijuana for the treatment of muscle spasms caused by multiple sclerosis; nutritional supplements for general health and well-being; hemostatics for medical purposes
- 5 (2) Cannabis capsules for maintaining general health and well-being; cannabis for medical purposes; cannabis oil for maintaining general health and well-being; cannabis oil for medicinal purposes; cannabis-infused drinks for medical purposes; dietary supplements for animals containing cannabis derivatives for medicinal purposes; dietary supplements for animals containing cannabis for medicinal purposes ; dietary supplements for humans containing cannabis derivatives for medicinal purposes; dietary supplements for humans containing cannabis for medicinal purposes; dietetic food and substances adapted for medical and veterinary use containing cannabis; medicinal cannabis; nutraceuticals containing cannabis for maintaining general health and well being; Nutritional supplements containing cannabis derivatives for medicinal purposes ; nutritional supplements containing cannabis for medicinal purposes
- 7 (3) Vacuum sealer machines, namely rechargeable bag sealers
- 9 (4) Wireless speakers; headphones; mobile phone covers; laptop computer covers
- 14 (5) Key chains
- 16 (6) Publications such as books, magazines, pamphlets, brochures, postcards, stickers, posters, recipe cards, calendars, paper gift bags, paper storage bags, paper compost bags, wrapping paper & special occasion cards; Evacutable [*sic*] resealable plastic storage bags for household use
- 18 (7) Backpacks; carry bags

- 21 (8) Plastic storage containers for household use and insulated lunch bags, each of the foregoing excluding those for use with baked goods
- 25 (9) Adult sweatpants; baseball caps; baseball hats; beachwear; belts; button down shirts; casual clothing; coats for men and women; dress clothing; ladies' underwear; men's underwear; money belts; neckties; sandals; smoking jackets; socks; sports clothing, casual and athletic clothing; Sweatshirts, t-shirts; button-up shirts; sweaters; hooded sweatshirts; jackets; tank tops; pants; sweat pants; shorts; leggings; hats; caps; socks; underwear; bras; Men's and woman's apparel such as short sleeve t-shirts, long sleeve t-shirts, tank tops, tube tops, button up collar shirts, pull-overs sweater, zip-up hoodie sweater, sleepwear, outdoor wear, jackets, hats, bandanas, head warmers, toques, scarves, neck warmers, gloves, mittens, and socks
- 28 (10) Skateboard decks
- 29 (11) Butter; edible oils and resins derived from cannabis
- 30 (12) Condiments, candy and snack food such as chocolate, gummy candies, hard candies, mints, licorice, toffee, caramels, brittle, cookies, cake, pies, fudge, granola bars
- 30 (13) Cakes containing cannabis; candy containing cannabis; chocolate containing cannabis; chocolate containing derivatives of cannabis; coffee; coffee and tea; coffee-based beverages containing cannabis; coffee-based beverages containing derivatives of cannabis; cookies containing cannabis; granola based snack foods containing cannabis; granola-based snack foods containing derivatives of cannabis; sugar confectionery containing cannabis; sugar confectionery containing derivatives of cannabis; tea; teas infused with cannabis
- 31 (14) Live cannabis plants, natural plants and flowers, plant seeds, natural truffles
- 32 (15) Energy drinks, soda, fruit flavored carbonated and non-carbonated beverages
- 32 (16) Bottled water containing cannabis; bottled water containing derivatives of cannabis; drinking water; energy drinks containing cannabis; energy drinks containing derivatives of cannabis; energy drinks infused with cannabis oil; fruit juices; fruit-flavoured beverages infused with cannabis; mineral and aerated waters containing cannabis; mineral and aerated waters containing derivatives of cannabis

- 34 (17) Ashtrays; books of cigarette papers; cases for electronic cigarettes; cigar boxes; cigar humidifiers; cigarette boxes; cigarette lighter holders; cigarette lighters; cigarette papers; cigarette rolling machines; dried cannabis; dried marijuana; electronic cigarette cases; herbs for smoking; match books; match boxes; matchboxes; matches; pipe cleaners; smoking pipe cleaners; tobacco jars
- 34 (18) Cannabis-derived resins and oils for recreational use, for smoking; cannabis-derived resins and oils for recreational use, for vaporizing

SERVICES (Nice class & Statement)

- 35 (1) Retail sale of psychoactive and non-psychoactive drugs and medicine containing cannabis or cannabinoids, including cannabis, dried flower for smoking, cannabis and cannabinoid extracts, such as, infused pharmaceuticals, oils, hash, hash oil, bubble hash, kief, CBD, shatter, tinctures, bho concentrates, thc and cbd distillate, warm and cold pressed rosin and other derivatives of cannabis and cannabinoids; Retail and online sale of Men's and woman's apparel such as short sleeve t-shirts, long sleeve t-shirts, tank tops, tube tops, button up collar shirts, pull-overs sweater, zip-up hoodie sweater, sleepwear, outdoor wear, jackets, hats, bandanas, head warmers, toques, bini, scarves, neck warmers, gloves, mittens, socks & baseball caps; Retail and online sale of written and digital publications such as books, magazines, pamphlets, brochures, postcards, stickers, posters, recipe cards, calendars, key chains, paper gift bags, paper storage bags, paper compost bags, wrapping paper & special occasion cards; Retail and online sale of Cannabis and cannabinoid infused edible food products, condiments, candy and snack food such as butter, chocolate, gum, gummy candies, hard candies, mints, licorice, toffee, caramels, brittle, cookies, cake, pies, fudge, and granola bars; Retail and online sale of devices, tools, equipment, and appliances for the storage, extraction, and consumption of cannabis flower, dried cannabis, oils, hash, hash oil, bubble hash, kief, CBD, shatter, tinctures, bho concentrates, thc and cbd distillate, warm and cold pressed rosin and other over-the-counter derivatives of cannabis and cannabinoids such as vaporizers, vaporizer pens, rolling papers, blunt wrappers, cigarette rolling machines, pipes, bongs, electric rigs for shatter/extracts, pipes, grinders, child-safe storage containers, silicone mats, silicone storage containers, humidors and scales

Appearances and Agents of Record

HEARING DATE: June 19, 2025

APPEARANCES

For the Opponent: Jamie-Lynn Kraft

For the Applicant: No one appearing

AGENTS OF RECORD

For the Opponent: Smart & Biggar LP

For the Applicant: Stephen R. Burri (c/o Island IP Law)