



# Canadian Intellectual Property Office

## **THE REGISTRAR OF TRADEMARKS**

**Citation:** 2025 TMOB 192

**Date of Decision:** 2025-09-24

## **INTERLOCUTORY RULING**

**Opponent:** Pacific Smoke International Inc.

**Applicant:** Zaydan Innovations Inc.

**Applications:** 2280711 for RIPPER X

## **INTRODUCTION**

[1] Pacific Smoke International Inc. (the Opponent) opposes registration of the trademark RIPPER X, application number 2,280,711 (the Mark), applied for by Zaydan Innovations Inc. (the Applicant).

[2] By way of correspondence dated August 18, 2025, the Applicant requests an interlocutory ruling on the statement of opposition in this proceeding. The Opponent filed comments in response, along with a request for leave to file an amended statement of opposition, on September 12, 2025.

[3] The Applicant submits that the following portions of the original statement of opposition should be struck:

- References to section 16(1)(b) of the *Trademarks Act*, RSC 1985, c T-13 (the Act) in the pleaded non-entitlement ground [para 10].
- The words “and related products” and “and made known” in the pleaded non-entitlement ground [para 11].
- The pleaded grounds of opposition pursuant to sections 38(2)(a.1) [paras 12 to 16], 38(2)(f) [paras 17 to 19], and 38(2)(d) [paras 20 to 21] in their entirety.

[4] The Opponent submits that none of the sections of the amended statement of opposition should be struck.

#### **LEAVE TO AMEND THE STATEMENT OF OPPOSITION**

[5] I am satisfied that it is in the interests of justice to grant the Opponent leave to amend the statement of opposition, as requested. This opposition matter is still in its early stages, and the amendments are being sought in response to the issues raised in the Applicant’s request to strike.

Furthermore, there is no appreciable prejudice to the Applicant in allowing the amendments, whereas the Opponent may be prejudiced by the striking of grounds of opposition if the amendments sought are not accepted.

[6] In view of the foregoing, and in accordance with section 48 of the *Trademarks Regulations*, the Opponent’s request for leave is granted, and the amended statement of opposition is of record. The Applicant’s request to strike will therefore be considered in relation to the amended statement of opposition.

#### **PLEADINGS IN OPPOSITION MATTERS**

[7] The Registrar’s power to strike all or part of a statement of opposition is set out in section 38(6) of the Act, as follows:

(6) At the applicant’s request, the Registrar may ... strike all or part of the statement of opposition if the statement or part of it

(a) is not based on any of the grounds set out in subsection (2);  
or

(b) does not set out a ground of opposition in sufficient detail to enable the applicant to reply to it.

#### **SECTION 16 GROUND OF OPPOSITION**

[8] With respect to the Applicant's request regarding paragraph 10 of the original statement of opposition, since all references to section 16(1)(b) of the Act have been removed from the amended statement of opposition, the Applicant's submissions with respect to this ground are moot.

[9] With respect to the Applicant's request with respect to paragraph 11 of the original statement of opposition, since the words "and made known" have been removed from the amended statement of opposition, the Applicant's submissions with respect to this section are moot. Similarly, since the reference to "and related products" has been narrowed to "and related vaping products", I am satisfied that this ground of opposition is set out in sufficient detail to enable the Applicant to reply to it. The Applicant's request to strike this section of the amended statement of opposition is therefore refused.

#### **SECTION 38(2)(A.1) GROUND OF OPPOSITION**

[10] The Opponent pleads that contrary to section 38(2)(a.1) of the Act, the application was filed in bad faith since the Applicant was fully aware of the Opponent's LEVEL X trademarks used in association with vaping products, yet filed the application for a confusingly similar X trademark for use with identical products. In this respect, the Opponent pleads that the Applicant and/or its licensees use the Mark in a font and style that is nearly identical to the Opponent's trademarks. The Opponent further pleads that the application is "but one example of a pattern of bad faith behaviour engaged in by the Applicant", noting that the Applicant's battery devices are

marketed as "COMPATIBLE WITH ALL X PODS", where the "X" is shown in the same font style as the Opponent's design marks.

[11] The Applicant submits that the pleadings recite facts that would be applicable to nearly any ground of opposition involving confusion, and that the reference to a "pattern of bad faith", with the application being "but one example" of the pattern, amounts to indefinite language. The Opponent submits that the pleading in the amended statement of opposition alleges a clear pattern of bad faith conduct and ought not to be struck.

[12] I agree with the Opponent that the bad faith ground as pleaded does not merely amount to an issue of confusion, but rather, alleges particular facts and a pattern of behaviour that might support a ground of bad faith. Further, although paragraph 15 of the amended statement of opposition refers to the application being "but one example of a pattern of bad faith behaviour", the following sentence clarifies this pleading by setting out further alleged facts relevant to the alleged pattern. Accordingly, I am satisfied that this ground of opposition is set out in sufficient detail to enable the Applicant to reply to it; the request to strike paragraphs 12 to 15 of the amended statement of opposition is therefore refused.

#### **SECTION 38(2)(F) GROUND OF OPPOSITION**

[13] The Opponent pleads that contrary to section 38(2)(f) of the Act, the Applicant is not entitled to use the Mark in Canada in association with the applied-for goods and services as the application was filed with the knowledge that the Mark would be likely to create confusion with the Opponent's LEVEL X Marks. The Applicant submits that the allegedly contravened section of the Act is not specifically identified and the material facts to support the allegation are not provided, and that in any event, an allegation that an Applicant was, or ought to have been, aware of the Opponent's trademarks does not support a ground of opposition under

section 38(2)(f) of the Act [citing *INTS It Is Not The Same, GmbH v Stefanyshyn Ltd*, 2022 TMOB 256 at para 54].

[14] The Opponent submits that the ground of opposition includes all material facts needed to allow the Applicant to respond to this ground of opposition, and that evidence will follow by affidavit. In this respect, the Opponent notes that paragraph 19 of the amended statement of opposition specifically refers to the Opponent's registered LEVEL X trademarks.

[15] Section 38(2)(f) addresses the Applicant's lawful entitlement to use the trademark (*i.e.*, in compliance with relevant federal legislation and other legal obligations) as opposed to the Applicant's entitlement to register the trademark (relative to another person's trademark, pursuant to section 16 of the Act) [see *Premier Tech Home & Garden Inc v Ishihara Sangyo Kaisha, Ltd*, 2022 TMOB 25 at para 20; *JTH Tax LLC and H&R Block Canada, Inc*, 2023 TMOB 139 at para 62]. Pleading only that an applied-for trademark was confusing with a previously used trademark is therefore not a fact that can support a section 38(2)(f) ground of opposition.

[16] As such, the pleading does not support a ground of opposition based on section 38(2)(f) of the Act and does not provide sufficient material facts to enable the Applicant to reply.

[17] Accordingly, paragraphs 16 to 18 of the amended statement of opposition are hereby struck.

#### **SECTION 38(2)(D) GROUND OF OPPOSITION**

[18] Finally, with respect to the section 38(2)(d) ground of opposition set out in paragraphs 19 and 20 of the amended statement of opposition, the Applicant submits that the Opponent's pleading that the trademark is not registrable is invalid, as the mere registration of a trademark does not

render another trademark non-distinctive. Further, the Applicant states that this pleading merely restates the language of the Act and is therefore invalidly pleaded [citing *Cabel Hall Citrus Ltd v Latchman*, 2009 CanLII 90399 (TMOB)]. In the alternative, the Applicant submits that the words “and related products” should be struck from paragraph 21 of the original statement of opposition (paragraph 20 of the amended statement of opposition) as they amount to indefinite language.

[19] The Opponent notes that the amended statement of opposition specifies that the trademark does not distinguish and is not adapted to distinguish the Applicant’s goods and services from those of the Opponent “in view of the prior adoption, use and registration” of its trademarks in Canada “in association with e-cigarettes and related vaping products” [underlining in original reflecting amendments]. I find that as a result of these changes, this ground of opposition is validly pleaded and is set out in sufficient detail to enable the Applicant to reply to it. In this respect, the alleged facts set out in paragraph 20 of the amended statement of opposition go beyond mere restatement of the language of the Act and are thus distinguishable from the case cited by the Applicant. The request to strike paragraphs 19 and 20 of the amended statement of opposition is therefore refused.

## **SUMMARY**

[20] For the reasons set out above, the Opponent’s request for leave to file an amended statement of opposition is granted, and the amended statement of opposition is of record. Paragraphs 16 to 18 are struck from the amended statement of opposition. The Applicant’s requests that other sections of the amended statement of opposition be struck are refused.

[21] Finally, in accordance with its request, the Applicant is hereby granted an extension of time of one month from the date of this ruling within which to file and serve its counter statement.

G.M. Melchin  
Member  
Trademarks Opposition Board  
Canadian Intellectual Property Office

## Agents of Record

**For the Opponent:** Dipchand LLP

**For the Applicant:** Wilson Lue LLP