



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2025 TMOB 187

Date of Decision: 2025-09-16

IN THE MATTER OF AN OPPOSITION

Opponent: 629952 Saskatchewan Ltd.

Applicant: The Original Farm Hillside Ltd.

Application: 1,887,348 for THE ORIGINAL FARM

INTRODUCTION

[1] The Original Farm Hillside Ltd. (the Applicant) has sought registration of the trademark THE ORIGINAL FARM (the Mark). Application No. 1,887,348 (the Application) covers the following goods and services:

- CI 3 Cannabis products, namely, cannabis derivatives, namely, oils, hashes, waxes, tonics, balms, salves, lotions, sprays, and ointments containing cannabinoids derived from the cannabis plant all for cosmetic purposes
- CI 5 Medical marijuana, namely, medical cannabis for temporary relief of seizures; medical cannabis for the relief of nausea caused by chemotherapy; medical cannabis for the relief of nerve pain; medical cannabis for the treatment of muscle spasms caused by multiple sclerosis; medical cannabis for general health and well-being; medical cannabis; cannabis products, namely, cannabis derivatives, namely, oils, hashes, waxes, tonics, balms, salves, lotions, sprays, and ointments containing cannabinoids derived from the cannabis plant all for the relief of pain; cannabis products, namely, cannabis derivatives, namely, oils, hashes, waxes, tonics, balms, salves, lotions, sprays, and ointments containing cannabinoids derived from the cannabis plant all for temporary

relief of seizures; cannabis products, namely, cannabis derivatives, namely, oils, hashes, waxes, tonics, balms, salves, lotions, sprays, and ointments containing cannabinoids derived from the cannabis plant all for the relief of nausea caused by chemotherapy; cannabis products, namely, cannabis derivatives, namely, oils, hashes, waxes, tonics, balms, salves, lotions, sprays, and ointments containing cannabinoids derived from the cannabis plant all for the treatment of muscle spasms caused by multiple sclerosis; cannabis products, namely, cannabis derivatives, namely, oils, hashes, waxes, tonics, balms, salves, lotions, sprays, and ointments containing cannabinoids derived from the cannabis plant all for general health and well-being

CI21 Mugs; cups

CI25 Shirts; sweaters; hats; toques

CI30 Cannabis products, namely, chocolate bars infused with cannabis, edible food products containing cannabinoids derived from the cannabis plant, namely cannabis oil for food

CI31 Cannabis products, namely, live cannabis plants

CI32 Cannabis products, namely, fruit juice containing cannabinoids derived from the cannabis plant

CI34 Lighters for smokers; rolling papers and paraphernalia, namely, pipes, namely, smoking pipes, electronic smoking pipes; bongs, namely, water pipes; rolling papers, namely, cigarette rolling papers and marijuana rolling papers; dried cannabis

CI35 Sales of medical marijuana, cannabis, and derivatives of cannabis

[2] The company 629952 Saskatchewan Ltd. (the Opponent) opposes registration of the Mark relying on the grounds of non-registrability, non-entitlement to registration owing to prior use by the Opponent of its trademark and trade name, and non-distinctiveness.

[3] For the reasons that follow, I reject the opposition.

THE RECORD

[4] The Application was advertised for opposition purposes in the *Trademarks Journal* dated October 19, 2022. On December 5, 2022, the Opponent opposed the application by filing a statement of opposition under section 38 of the *Trademarks Act*, RSC 1985, c T 13 (the Act).

Grounds of Opposition

[5] The Opponent relies on the section 38(2)(b) and 12(1)(d) ground of opposition, claiming that the Mark is not registrable as it is confusing with its ORIGINAL FAMILY FARM trademark registered under No. TMA966,747 (Opponent's Registered Trademark) covering the goods "meat; prepared meat; sausages; bison; chicken" (Opponent's Goods).

[6] The Opponent also relies on the grounds of opposition available pursuant to sections 38(2)(c) and 16(1)(a) and (c) claiming that the Applicant is not entitled to register the Mark because it is confusing with the Opponent's Registered Trademark that was previously used in Canada in association with the Opponent's Goods and with its Original Family Farm trade name also previously used in association with the Opponents Goods.

[7] The Opponent, in addition, claims the Mark is not distinctive, relying on sections 38(2)(d) and 2 of the Act. In respect of this ground, it claims as follows:

The trademark is not distinctive within the meaning of section 2 of the Trademarks Act for the following reasons:

The Applicant's trademark THE ORIGINAL FARM is not distinctive to the Applicant and does not distinguish and is not adapted to distinguish the Applicant's goods and/or services. The Opponent's trademark ORIGINAL FAMILY FARM encompasses the whole of the Applicant's trademark and therefore is a likelihood of confusion in the marketplace.

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

[9] In support of the opposition, the Opponent filed the affidavit of Regan Sloboshan, the Opponent's Director and President, and Sandra Ortiz, an employee of the Opponent's agent firm. Mr. Sloboshan and Ms. Ortiz were cross-examined, and the transcripts and associated undertakings were filed. The Applicant did not file evidence. A summary of pertinent evidence is provided below.

[10] Only the Opponent filed written representations; however, both parties attended a hearing.

Summary of Relevant Evidence

Sloboshan Affidavit

[11] Mr. Sloboshan provides the following evidence in his affidavit:

- The Opponent was incorporated on July 9, 1999 [para 3]
- The Opponent began use of the ORIGINAL FAMILY FARM trademark and trade name in 2015, promoting the sale of their meat, which includes poultry, bison, pork and beef [para5]
- The Opponent, at the time of the affidavit, was selling wieners, breakfast sausage, smokies, hamburger meat, steaks, roasts and other cuts of meat [para 5]
- Representations "showing use of the ORIGINAL FAMILY FARM trademark on the Opponent's meat products" that appear to show packaging as of the date of the affidavit for various meat products [Exhibit B]
- A copy of a certificate of registration for the Original Family Farm as a business name for a sole proprietor, showing a registration date of September 24, 2020 [Exhibit E]

- An explanation that prior to July 2015, the Opponent operated under Sloboshan Farms Ltd, and only began using the Opponent's ORIGINAL FAMILY FARM trademark and Original Family Farm trade name after that date [para 10]
- An explanation that prior to the launch of the ORIGINAL FAMILY FARM products, the Opponent applied to the Farmers' Saskatchewan Market to sell their goods, along with a copy of the approval letter (Farmers' Market Letter) dated June 25, 2015 [para 10 and Exhibit F]
- The Opponent "sells and distributes the ORIGINAL FAMILY FARM meat products to retail stores, restaurants, gas stations, farmers' markets, University of Saskatchewan Culinary caterers, golf courses, etc." [para 15]
- Images of the Opponent's website listing retailers selling its meat products in association with the Opponent's Registered Trademark, these include various markets [Exhibit J]
- Website information indicating that the Opponent also sells to consumers directly through its website [para 16]
- Promotional materials taken from Instagram, seemingly from July 24, 2015, showing what appears to be an early logo of ORIGINAL FAMILY FARM with a caption indicating "first day at the Saskatchewan Fa..." dated July 25, 2015, a later logo showing ORIGINAL FAMILY FARM dated January 2018, and other materials displaying the Opponent's Registered Trademark [para 17 and Exhibit K]
- The Opponent advertises through social media, farmers' markets and word of mouth [para 18]
- Posters used by retailers and restaurants selling the Opponent's Goods [Exhibit L]

- The Opponent's radio advertising in the form of a script and associated invoice [para 19 and Exhibit M]
- *Facebook* social media materials from a radio station involving a giveaway in which the Opponent participated [Exhibit N]
- Customer *Instagram* and *Facebook* social media pages "promoting" the Opponent's branded Goods [para 21 and Exhibit O]
- Claim of advertising expenditures of more than \$25,000 since 2015 "advertising and marketing the business and products sold under the Opponent's Registered Trademark and its trade name [para 22]
- Revenue estimate of more than \$2.6 million for the period between July 2015 and June 2023, "under the" Opponent's Registered Trademark and its trade name, with no indication of when, within that period, sales took place[para 23]
- Statement that the Opponent's Registered Trademark and trade name have been used continuously in the marketplace since 2015 [para 24]
- Statement that the evidence clearly shows use of the Opponent's Registered Trademark and/or its trade name "in association with various meat products and with the operation of a farm that includes both grain and animals." There is no evidence that anything other than meat is sold by the Opponent [para 24].
- A statement that "as a family business the Opponent is consistently expanding into other areas" and that "In July 2022, it "purchased grow op equipment to expand the ORIGINAL FAMILY FARM brand into the cannabis area" [para 25]
- A redacted invoice for equipment purchased at auction [Exhibit P]

[12] The remaining evidence, for example, the certification of registration, farmer's market application or approval, health region approval for chicken sales, egg license, website materials, abattoir invoices or license, do not

support a claim to use of the Opponent's Registered Trademark in association with the goods covered by the registration under the meaning of section 4(1) of the Act and is therefore not relevant. The same is true of the advertising materials in evidence.

Sloboshan Cross-Examination Evidence

[13] Relevant responses and materials arising out of the cross-examination of Mr. Sloboshan are as follows:

- He responded that he would definitely consider the Opponent to be "a family farm", a "family farm label" that was still a meaningful thing to local consumers, and that it represents that the associated products come from a "family farm" [response to questions 18, 31 and 34]
- He responded that the Opponent's Registered Trademark and its trade name had not been purchased from anyone or sold or licensed [response to questions 21 to 23]
- Sloboshan Farms Ltd. is a separate but related entity [response to question 42]
- He did not personally take the screenshots appearing in Exhibits K, L, N and O to his affidavit
- He admitted that the retail businesses that sell the Opponent's products do not sell cannabis products [response to question 72]
- He agreed that, at least in Saskatchewan, cannabis stores sell only cannabis and accessories [response to question 75]
- The Opponent is not licensed to cultivate, process or sell cannabis [response to question 79]
- When provided with a series of online food products identified as "original" he believed it to mean that it referred to flavour, in that the product did not have any particular one, and that companies

used the term to reference flavour [response to questions 109 and 111].

Ortiz Affidavit

[14] The evidence in the name of Ms. Ortiz includes the results of two searches of the Canadian Trademarks database. The first was explained as “for the works ORIGINAL FARM,” presumably intended to state “for the words” [para 2]. The results suggest the search criteria were “ORIGINAL FARM” [Exhibit A]. The results included the parties’ trademarks along with one abandoned application and one expunged registration.

[15] The second search was for pending applications and registrations covering “both meat and cannabis goods and services”. I note the results include both pending applications and registrations. I shall deal with this evidence below as a preliminary matter.

Ortiz Cross-Examination and Undertakings

[16] Ms. Ortiz’s cross-examination and undertakings confirmed:

- Of the 25 applications and registrations shown in her Exhibit B:
 - ten were filed between June 17, 2018, and June 16, 2019
 - twelve contained goods and services in five or more classes
 - 24 were three pages or more
 - eleven were ten pages or longer
 - seven share the same owner

ONUS AND LEGAL BURDEN

[17] The legal onus rests on an applicant to show that the application complies with the provisions of the Act. However, there is an initial evidential burden on an opponent to adduce sufficient admissible evidence from which

it could reasonably be concluded that the facts alleged to support each ground of opposition exist. Once this initial burden is met, an applicant must satisfy the Registrar, on a balance of probabilities, that the grounds of opposition pleaded should not prevent the registration of the trademark [*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].

Preliminary Matter – Ortiz Evidence

[18] This evidence appears to have been introduced to show a nexus or relationship between the Applicant's cannabis-related goods & services and the Opponent's Goods. Ms. Ortiz's evidence establishes that at least 25 applications and registrations exist that include both cannabis goods and services and meat. The question is, what relevance is this to the present proceeding?

[19] As argued by the Applicant at the hearing, many of the records relate to applications not yet registered. In addition, many of the records contain exceptionally lengthy listings of goods and services, frequently covering many classes. It was notable how many of these applications and registrations covered class 29 goods beginning with "abalones" and ending with "yucca chips" and covering food items as diverse as silkworm chrysalis for human consumption or edible birds' nests [see, for example, registration No. TMA 1,194,336 for Eggjoy, application No. 2,145,999 for SolFiore or application No. 2,158,886 for SUNYEAH]. One might speculate that for a number of these, every available item within a class was included in the statements of goods.

[20] Given the extraordinary breadth of the goods claimed in many of these applications and registrations, along with the relatively small number of owners making such claims, this evidence has little if any probative value. It

does not support an inference that a nexus exists between cannabis-related goods and services and meat.

Preliminary Matter – “Original” Referencing Flavour

[21] At the hearing, the Applicant argued that the term “Original” appearing on the Opponent’s meat products would indicate flavour, and that the trademark might be considered ORIGINAL FARM. In making this argument, it relied on responses to cross-examination questions put to Mr. Sloboshan to support this position. However, I consider the circular design with the word “Original” in capital letters above the words “Family Farm” in more stylized script to support the Opponent’s claim to use of the Opponent’s Registered Trademark. While the term “original” is separated from “Family Farm,” all words appear as part of a circular design, in the same colour and roughly the same size. I find the difference in font and the separation of the words above and below a bison design are not so substantial so as to render the Opponent’s Registered Trademark no longer recognizable. The dominant features have been preserved. In addition, I note the Opponent chose to register its trademark in plain block capital letter format and, as such, is not restricted to use of any particular font or colour [*Les Restaurants La Pizzaiolle Inc v Pizzaiolo Restaurants Inc*, 2015 FC 240].

ANALYSIS

Non-Registrability Ground

[22] The material date in respect of the section 12(1)(d) ground of opposition is the date of my decision [*Park Avenue Furniture Corporation v Wickes/Simmons Bedding Ltd and The Registrar of Trade Marks*, 1991 CanLII 11769 (FCA)].

[23] I have exercised my discretion to check the Register and confirm that the Opponent’s Registered Trademark remains extant [see *Quaker Oats Co*

Ltd of Canada v Menu Foods Ltd (1986), 11 CPR (3d) 410 (TMOB)]. The Opponent has therefore met its initial evidential burden with respect to this ground of opposition.

Test for Confusion

[24] 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. The assessment is a matter of first impression in the mind of a casual consumer somewhat in a hurry who sees an applicant's trademark, 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].

[25] 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:

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

- the degree of resemblance between the trademarks, including in appearance or sound or in the ideas suggested by them.

[26] These criteria are not exhaustive, and different weight may be properly accorded to each one in a context specific assessment [see *Veuve Clicquot*, at para 21 and *Mattel, Inc v 3894207 Canada Inc*, 2006 SCC 22 at para 54].

Inherent Distinctiveness and the Extent to Which Each Trademark is Known

[27] This factor involves a consideration of the combined inherent and acquired distinctiveness of the trademarks.

[28] Inherent distinctiveness refers to a trademark's originality. Those 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) (*General Motors*), 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].

[29] 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.

[30] In its written representations, the Opponent characterizes the parties' trademarks as highly suggestive of the operation of a farm. The respective trademarks are, at best, suggestive of a farm offering or providing the

associated goods and services. I note that during cross-examination, Mr. Sloboshan confirmed that the Opponent's Registered Trademark conveys the idea that the products come from a "family farm". I consider both parties' trademarks to possess a similar low level of inherent distinctiveness.

[31] The evidence suggests that the Opponent's Registered Trademark has been used and made known to some extent. More specifically, I note that the Opponent claimed that it generated revenue of more than \$2.5 million in the period between July 2015 and July 2023. While I agree with the Applicant's submission, at the hearing, that the evidence is not specific enough to conclude any precise level of early sales or that such sales took place at any particular time during the period of alleged use, considered in its entirety I am able to conclude that the Opponent's trademark acquired some level of distinctiveness attributable to its use in association with its goods. Similarly, I find that the Opponent has advertised and marketed its business over the past several years and this has resulted in the Opponent's Registered Trademark acquiring some distinctiveness. This ground, therefore, favours the Opponent.

Length of Time the Trademarks have Been in Use

[32] The Opponent's Registered Trademark issued in 2017, with the Opponent claiming use since July 2015. The evidence at paragraph 5 of Mr. Sloboshan's affidavit is that:

"In 2015 the Opponent began use of the ORIGINAL FAMILY FARM trademark and tradename to promote the sale of their meat which includes poultry, bison, pork and beef."

[33] The relevant definition of "use" in association with goods is set out in section 4(1) of the Act:

4(1) A trademark is deemed to be used in association with goods if, at the time of the transfer of the property in or possession of the goods, in the

normal course of trade, it is marked on the goods themselves or on the packages in which they are distributed or it is in any other manner so associated with the goods that notice of the association is then given to the person to whom the property or possession is transferred.

[34] While Mr. Sloboshan provides depictions showing the Opponent's Registered Trademark on meat products at Exhibit B to his affidavit, given the best before dates on the products, these photos suggest that the goods reflect the manner of use of the Opponent's Registered Trademark at the time the evidence was collected, rather than 2015. The Opponent's Agent confirmed during the hearing that this was her understanding as well.

[35] I also note that the earliest depictions of the Opponent's Goods as they appeared on social media sites did not show the Opponent's Registered Trademark [see, for example, Exhibit K materials announcing the Opponent's first day at the Saskatoon farmers' market]. However, other evidence includes various depictions of the Opponent's Goods as they appear on social media sites bearing the Opponent's Registered Trademark [see, for example, Exhibit O]. Postings include dates between September 2017 and September 2022].

[36] Materials taken from websites are *prima facie* hearsay. In this case, they might be considered to be, at least to some extent, double hearsay inasmuch as Mr. Sloboshan indicated during cross-examination that someone else captured the images for him. That said, these materials some degree of reliability in that they originate from recognizable sites, are consistent with statements made by Mr. Sloboshan and are consistent with each other. These materials do not appear in any way contrived. I accept that there is an element of necessity in respect of the Opponent's reliance on such materials in light of the perishable nature of the goods. I am therefore prepared to admit the materials under the exception to the rules of hearsay, at least to the extent they are consistent with Mr. Sloboshan's statements.

Considering the evidence as a whole, I find that the Opponent's Registered Trademark appeared on the Opponent's Goods from late 2017 onward and that total sales of those goods over the years exceeded \$2.5 million.

[37] For the purposes of considering the length of time the Opponent's Registered Trademark has been in use, I have disregarded other materials in evidence, such as the farmers' market application and materials relating to abattoir services. As noted above, these materials do not support a claim to use of the Opponent's Registered Trademark, under section 4(1) of the Act, in association with the Opponent's Goods.

[38] As the Applicant has not shown use of the Mark, this factor favours the Opponent.

Nature of the Goods, Services or Business

[39] 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].

[40] The Application covers a wide range of goods and services, however, in my view, those most similar to the Opponent's meat, prepared meat, sausages, bison and chicken are its Nice class 30 goods identified as "cannabis products, namely, chocolate bars infused with cannabis, edible

food products containing cannabinoids derived from the cannabis plant, namely cannabis oil for food” and, to a lesser extent, its Nice class 32 goods, “cannabis products, namely, fruit juice containing cannabinoids derived from the cannabis plant”. I will focus my analysis on these goods since they afford the Opponent with its best case.

[41] The Applicant made extensive submissions during the hearing as to the differing nature of the parties’ goods and services. It relied upon, for example, the findings of the court in *Clorox Co v Sears Canada Inc*, 1992 FC 579 ...at paragraph 19 as follows:

Fourthly, I should observe that in my view, the "narrow protection" doctrine applies equally when dealing with the similarity of the wares test. It is quite true that fruitcake and barbecue sauce may be said to belong to the general category of foodstuffs, but the test cannot be applied on a black or white basis. One only needs to look at the thousands of different foods, meats, condiments, confectioneries, cereals and what-not found in some supermarkets to be wary of giving too much weight in some circumstances to the "same general class" test. Otherwise, in the case of a weak mark like "Masterpiece", the effect of the test standing alone would be to grant a monopoly over a particular dictionary word, a status which the courts have historically challenged.

[42] More recently, as noted by the Applicant, my colleague Member Folz, relied on this decision and others, to recognize that owing to the broad nature of the category of food products, the parties’ goods merely falling into the same general category may not be a decisive factor when performing a confusion analysis. She noted that if, for example, the parties’ goods are so different that they would be found in other areas of a store, this may mitigate the finding of a likelihood of confusion [see *Yat Sun Food Products Ltd v Griffith Foods International Inc*, 2024 TMOB194 at para 29].

[43] The Opponent’s Goods are likely to be found in a section of a store specializing in meat. Due to their perishable nature, they are likely to require refrigeration or freezing. The same is not true of the Applicant’s goods. Even

if the Goods happened to be available in the same retail establishments, none are likely to be sold near meat products.

[44] There is nothing in evidence to suggest a nexus or connection between the respective goods and services of the parties beyond their falling into the same general category of food and drinks. I find there to be no intrinsic similarity in the parties' goods and services and that there is no direct overlap. As such, I find this factor favours the Applicant.

Nature of the Trade

[45] I also find that overlap in the parties' trades is unlikely. In this regard I note that, on cross-examination, Mr. Sloboshan confirmed that the various outlets through which his products are sold do not sell cannabis products. He also confirmed that, at least in the geographic area he was familiar with, cannabis was sold through specialized outlets. I note that the Applicant relies on the regulatory framework established by *The Cannabis Act*, SC 2018, c. 16 and the *Cannabis Regulations*, SOR/2018-144, to argue that a specialized regime exists for the sale of the cannabis containing goods of the Applicant. The current legislative framework associated with the sale of cannabis products serves to differentiate the channels of trade. This factor, therefore, also favours the Applicant.

Degree of Resemblance

[46] The degree of resemblance between two trademarks must be assessed by considering each trademark in its totality, with a consideration as to whether there is an aspect of the marks that is particularly striking or unique [*Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27, at para 64].

[47] Of particular significance to this case is the principle that when a shared portion of two trademarks is descriptive, this minimizes the impact of the similarity [see *Venngo Inc v Concierge Connection Inc*, 2015 FC 1338,

aff'd 2017 FCA 96, 146 CPR (4th) 182; see also *Prince Edward Island Mutual Insurance Co v Insurance Co of Prince Edward Island* (1999), 86 CPR (3d) 342 (FC)]. Common descriptive words are entitled to a narrower range of protection than an invented or unique word [*Laurentide Chemicals Inc v Les Marchands Deco Inc* (1985), 7 CPR (3d) 357 (FCTD) at 365].

[48] The Opponent argues that the parties' trademarks are almost identical and that the "primary element" in both is the words "original farm". While I disagree that there is something especially striking or unique about the parties' trademarks, as these contain nothing but suggestive or descriptive terms, I agree with the Opponent's sentiment that the trademarks are alike and more specifically I consider the trademarks at issue are more alike than they are different. The presence of the term "family" in the Opponent's trademark offers some differentiation in respect of the appearance and sound of the parties' trademarks; however, when considered overall, the similarities outweigh the differences. In terms of the idea suggested, the presence of "family" does not as much differentiate, as qualify, the type of "farm" and again, when considered overall, the similarities outweigh the differences. I therefore agree with the Opponent that the trademarks at issue resemble each other in appearance, sound and idea suggested.

[49] This factor, therefore, favours the Opponent. However, because both trademarks contain common descriptive, or at best highly suggestive, wording, this factor is of less significance than what otherwise might have been the case.

Surrounding Circumstance – Presence of the Term 'Family'

[50] The Applicant argued during the hearing that the presence of the term "family" distinguished the Opponent's Registered Trademark from the Mark. It explained this was the case because the use of "family" is incongruous when considered in association with the Applicant's cannabis related goods

and services. While I agree with the Applicant that the presence of the term “family” might render confusion less likely, this factor is not so significant so as to materially affect the analysis. I would have reached the same conclusion with or without this circumstance favouring the Applicant.

Surrounding Circumstance – Natural Extension

[51] At the Hearing, the Opponent argued that it would be a natural extension for the Opponent to transition from farming to cannabis production. In this regard, I note that the evidence suggests that the Opponent recently procured equipment that could be used for growing cannabis. The Applicant responded by arguing that the goods under consideration were meats sold in stores and markets and cannabis could not be seen as a natural extension of meat.

[52] Whether considered in isolation or as a component of other factors such as the nature of the goods, services or channels of trade, I do not believe the evidence shows that consumers would consider cannabis related food and drink products to be a natural extension of meat or meat production.

Conclusion – 12(1)(d) Ground

[53] Having considered all of the surrounding circumstances, I find that the Applicant has satisfied its legal burden to show that there is no reasonable likelihood of confusion between the parties’ trademarks. In reaching this conclusion, I note in particular that when choosing its trademark, the Opponent reached inside the common descriptive trade vocabulary. Not only is it seeking to prevent others in its own field from using descriptive or highly suggestive terms, but it seeks to prevent the Opponent who operates in a widely divergent field. The properly accorded range of protection available to the Opponent is narrower than would have been the case had it

adopted a unique or non-descriptive trademark. In spite of the several years of use of the Opponent's Registered Trademark, the distinctiveness it acquired and any resemblance in the appearance, sound or idea suggested by the parties' trademarks, because of the difference in the goods, services and channels of trades of the parties, I conclude that no reasonable likelihood of confusion exists. In making this finding, I am also mindful that a party adopting a weak trademark is held to accept some risk of confusion [*General Motors, supra*].

Non-Entitlement Grounds Under Sections 16(1)(a) and 16(1)(c)

[54] The material date applicable to the section 16(1)(a) and (c) grounds of opposition is the filing date of the application, namely March 9, 2018, since there is no evidence that the Applicant commenced use of the Mark before this date.

[55] To meet its initial evidential burden under the non-entitlement grounds of opposition, an opponent is required to demonstrate use of its trademark or trade name prior to the filing date of the opposed application.

[56] I find the Opponent's use of its Registered Trademark supports its non-entitlement ground under section 16(1)(a). As noted above, the Opponent has used this trademark in association with the Opponent's Goods since late 2017. While the Opponent, in its written representations, and at the hearing, argued that its activities extended into other areas such as grain, I agree with the Applicant's submissions during the hearing that there is no evidence that the Opponent's Registered Trademark was used in association with anything beyond its meat products.

[57] The Opponent has met its initial evidential burden for the section 16(1)(a) ground of opposition. The analysis of confusion is essentially identical to that set out above for the section 12(1)(d) ground. The earlier

material date for the non-entitlement ground does not have a significant impact on the analysis. The shorter period of trademark use by the Opponent results in a weaker case for it and the outcome of the analysis remains the same. I therefore reject the section 16(1)(a) ground of opposition.

[58] In respect of the Opponent's use of its trade name, I agree with the Applicant's submissions made at the hearing. There may be some uncertainty as to whether use of the trade name Original Family Farm enured to the Opponent, for example, because a registration certificate indicates a sole proprietorship. However, even if I infer that the trade name Original Family Farm has been used since at least as early as late 2017, and that such use in association with the sale of various meat products enured to the Opponent, the result would nonetheless be a weaker case for the Opponent than in respect of its non-registrability ground. This is again attributable to the shorter period of use by the Opponent of its trademark, given the earlier material date. I therefore reject the section 16(1)(c) ground as well.

Section 2 Ground of Opposition

[59] The material date for the section 38(2)(d) ground is the filing date of the opposition, namely December 5, 2022, [*Metro-Goldwyn-Mayer Inc v Stargate Connections Inc*, 2004 FC 1185].

[60] In order to meet its evidential burden with respect to the section 2 ground, an opponent must show that its trademark had a substantial, significant or sufficient reputation in Canada in association with the relevant goods as of the filing date of the opposition [see *Bojangles' International, LLC and Bojangles' Restaurants, Inc v Bojangles Café Ltd*, 2006 FC 657 at para 34].

[61] In this case, even if I were to find that the Opponent has met its initial evidential burden, since this ground ultimately turns on the allegation of confusion with the Opponent's Registered Trademark, I would come to the same conclusions as I have above in respect of the sections 12(1)(d), 16(1)(a) and 16(1)(c) grounds. Therefore, I reject the section 2 ground of opposition as well.

DISPOSITION

[62] For the reasons set out above, pursuant to the authority delegated to me under section 63(3) of the Act, I reject the opposition pursuant to section 38(12) of the Act.

Coleen Morrison
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

Appearances and Agents of Record

HEARING DATE: 2025-06-12

APPEARANCES

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