# Canadian Intellectual Property Office

**THE REGISTRAR OF TRADEMARKS**

**Citation:** 2026 TMOB 11

**Date of Decision:** 2026-01-28

**INTERLOCUTORY RULING**

**Opponent:** Linepharma International Limited

**Applicant:** Lupin Ltd.

**Application:** 2322875 for FEMYSO

## INTRODUCTION

[1] Linepharma International Limited (the Opponent) opposes registration of the trademark FEMYSO (the Mark), subject of application No. 2322875 (the Application) in the name of Lupin Ltd. (the Applicant).

[2] On November 25, 2025, the Applicant requested an interlocutory ruling to strike the entirety of paragraph 3(a) of the statement of opposition alleging that the Application was filed in bad faith contrary to section 38(2)(a.1) of the Trademarks Act (the Act), as well as the entirety of paragraph 3(e) of the statement of opposition, alleging that the Application contravenes section 38(2)(f) of the Act.

[3] On December 23, 2025, the Opponent responded to the request to strike by requesting leave to file an amended statement of opposition, as well as by making submissions in response the Applicant's request.

## LEAVE TO AMEND THE STATEMENT OF OPPOSITION

[4] Having regard to all the surrounding circumstances, I am satisfied that it is in the interests of justice to grant leave to the Opponent pursuant to section 48 of the *Trademarks Regulations* to amend its statement of opposition. The amended statement of opposition is therefore made of record, and this interlocutory ruling pertains to the grounds of opposition as amended.

## SCOPE OF INTERLOCUTORY RULINGS

[5] The sufficiency of a statement of opposition is governed by section 38 of the Act. Pursuant to section 38(6) of the Act, the Registrar may strike all or part of a statement of opposition if it does not raise a valid ground of opposition within the scope of section 38(2) of the Act, or does not set out a ground in sufficient detail to enable an applicant to reply to it.

[6] A proper pleading alleges material facts. Material facts differ from the evidence which an opponent intends to submit to establish those facts [*Pepsico Inc v Registrar of Trade-marks* (1976), 22 CPR (2d) 62 (FCTD)]. Likewise, material facts differ from bald allegations or mere conclusory statement of law [*Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at para 17]. As stated by the Federal Court of Appeal:

> There is no bright line between material facts and bald allegations, nor between pleadings of material facts and the prohibition on pleading of evidence. They are points on a continuum […] [*Mancuso, above* at para 18].

## SECTION 38(2)(A.1) GROUND - STRUCK IN PART

[7] This ground of opposition essentially alleges that the filing of the Application is in bad faith as the Mark "is intended to call to mind and trade off Canadian consumers' recognition of, and associations with" the Opponent's trademark. The Opponent's amended statement of opposition specifies notably that:

> […] the Applicant's filing of its application for FEMYSO, intended for use as a brand name for its generic version of the Opponent's MIFEGYMISO Product, constitutes a bad faith attempt at directly and improperly giving legitimacy to its generic copy by calling to mind the Opponent's trademark, thereby resulting in direct damage and harm to the Opponent's trademark, goodwill and market share. The Applicant's actions are nothing short of a bad faith attempt to improperly cloak itself in the goodwill of the Opponent and its trademark making it easier for consumers to consider its generic product as an acceptable substitute for the Opponent's MIFEGYMISO Product. The Applicant's conduct therefore falls short of the standards of acceptable commercial behaviour and otherwise amounts to an abuse of the Canadian trademark system.

[8] The ground of opposition then states:

> In addition, since the applied-for trademark conveys such a false, misleading or deceptive impression, any use of that trademark would be and is unlawful contrary to s. 7(b), 20, and 22(1) of the Act. […]

[9] The Applicant argues that mere prior knowledge or the filing of an application for an allegedly confusing trademark does not amount to bad faith. It further argues that pejorative and speculative language regarding alleged intentions do not constitute material facts and that the pleading must identify the nature of the alleged duty or obligation and make clear how the Applicant's actions, behaviour or conduct allegedly fell short of satisfying it. Lastly, it argues that in the present case, alleged violations of sections 7(b), 20 or 22 of the Act are speculative and lack any factual foundation to support a bad faith ground of opposition.

[10] The Opponent responds that bad faith is a flexible concept that must be assessed in the particular context; that it is not limited to dishonest conduct and may include behaviour falling short of the standards of acceptable commercial behaviour. It argues that the amended statement of opposition pleads many material facts in support of this ground.

[11] Bad faith is not defined in the Act, however the concept as it relates to trademark law is not a new one. Bad faith may be characterized as a breach

of a legal or moral obligation towards a third party [see *Beijing Judian Restaurant Co. Ltd v Meng, 2022 FC 743*] and may include conduct that falls short of the standards of acceptable commercial behaviour, judged by ordinary standards of honest people [*Blossman Gas, Inc v Alliance Autopropane Inc*, 2022 FC 1794]. Additionally, issues such as an intention to harm or disrupt the business of another may be relevant to an assessment of bad faith [*Advanced Purification Engineering Corporation (APEC Water Systems) v iSpring Water Systems, LLC*, 2022 FC 388 at paras 54–56].

[12] With regard to pleadings alleging bad faith or abuse of power, the Federal Court of Appeal has found that conclusory wording such as "deliberately or negligently" and assertions of conclusions upon which the court is called to pronounce itself do not constitute material facts [see *Merchant Law Group v Canada Revenue Agency*, 2010 FCA 184 at para 34].

[13] Keeping these principles in mind, while I agree with the Applicant that many allegations in the amended statement of opposition constitute merely pejorative language or conclusory allegations, I nevertheless find it alleges certain material facts in support of a bad faith ground of opposition. Notably, the amended statement of opposition alleges that the Applicant's Mark calls to mind the Opponent's trademark to give itself legitimacy and make it easier for consumers to consider the Applicant's generic product as an acceptable substitute for the Opponent's product.

[14] As such, I am not persuaded that this ground of opposition is invalid or insufficiently pleaded. Therefore, without making any comment as to the merits of the Opponent's allegations, I am not satisfied that this ground should be struck in its entirety at the pleadings stage.

[15] That being said, the amended statement of opposition also alleges under this ground that use of the Mark would violate sections 7(b), 20 and

22 of the Act. Such allegations relate to the Applicant's entitlement to use the Mark, and are not proper pursuant to section 38(2)(a.1) [see *Rainbow International SPV LLC v 1394659 Ontario Inc*, 2024 TMOB 156 & 2024 TMOB 182]. They are more appropriately raised pursuant to section 38(2)(f) of the Act, also pleaded by the Opponent in this case and discussed below.

[16] The portion of paragraph 3(a) of the amended statement of opposition alleging violation of sections 7(b), 20 and 22(1) of the Act pursuant to section 38(2)(a.1) will therefore be struck.

**SECTION 38(2)(F) GROUND – NOT STRUCK**

[17] This ground of opposition originally alleged that the Applicant was not entitled to use the Mark as such use would violate sections 7(b), 20 and 22 of the Act. Allegations regarding sections 20 and 22 of the Act were then deleted in the amended statement of opposition, leaving only an alleged violation of section 7(b) of the Act.

[18] The Applicant submits that although this may form a proper ground of opposition in appropriate circumstances, in the present case, the pleading is merely speculative and therefore improper. Specifically, the Applicant submits that the Opponent has not pleaded any judicial determination holding that actual or potential use of the Mark would violate section 7(b) of the Act. The Opponent argues that to require such a pre-existing judicial determination sets too high a bar.

[19] Section 38(2)(f) of the Act is a relatively new ground of opposition addressing an applicant's lawful entitlement to use an applied for trademark. The analogous provision under the Act as it read prior to June 17, 2019 (the Old Act), was section 30(i). The jurisprudence under section 30(i) of the Old Act may therefore be instructive. It found that a ground of opposition based on sections 30(i) and 7(b) could be valid [*Dairy Processors Association of*

*Canada v Producteurs Laitiers du Canada/Dairy Farmers of Canada*, 2014 FC 1054; *Bojangles' International LLC v Bojangles Café Ltd*, (2004) 40 CPR (4th) 553 (TMOB), aff'd 48 CPR (4th) 427 (FC)]. In the absence of submissions from the Applicant distinguishing these cases or of substantive guidance from the courts to the contrary, I see no reason to apply a different treatment to section 38(2)(f).

[20] Moreover, in the present case, without making any comment as to the merits of the Opponent's allegations, I find this ground alleges material facts with respect to all three requisite elements of a claim under section 7(b) of the Act [see *Diageo Canada Inc v Heaven Hill Distilleries Inc*, 2017 FC 571; *Sadhu Singh Hamdard Trust v Navsun Holdings Ltd*, 2016 FCA 69], and is sufficiently particularized to allow the Applicant to reply thereto.

[21] The pleading set out under paragraph 3(e) of the amended statement of opposition will therefore not be struck.

**EXTENSION OF TIME TO FILE AND SERVE COUNTERSTATEMENT GRANTED**

[22] The Applicant will have one month from the date of this decision to file and serve its counterstatement.

Emilie Dubreuil
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

# Agents of Record

**For the Opponent:** Gowling WLG (Canada) LLP

**For the Applicant:** Blaze IP