Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2026 TMOB 18

Date of Decision: 2026-01-30

IN THE MATTER OF OPPOSITIONS

Opponent: Sesame Workshop

Applicant: Advanced New Technologies Co., Ltd.

Applications: 1,756,603 - ZHIMA

1,659,741 - Chinese Characters (sesame)

OVERVIEW

[1] Advanced New Technologies Co., Ltd. (the Applicant) seeks to register the trademarks ZHIMA and Chinese Characters (sesame) set out below (the Marks), for use in association with hundreds of goods and services falling in nine different classes (the Goods and Services).

芝麻

The translation of the Chinese Characters trademark is sesame. The transliteration of this trademark is Zhi Ma.

[2] Sesame Workshop (the Opponent) opposes the registration of the Marks. The Opponent produces the children's television show SESAME

STREET, and owns a range of registered trademarks incorporating the word SESAME, set out in Schedule A to this decision (the Opponent's SESAME Marks), that it uses in association with its television show and other related goods and services. The Opponent alleges that the Marks are confusing with its SESAME Marks. The Opponent also alleges that the Applicant does not intend to use the Marks with each of the Goods and Services and was acting in bad faith in filing its applications as it is seeking to unfairly extend its trademark rights in Canada.

[3] For the following reasons, the applications are refused in respect of the goods and services relating to television programmes and music, as set out in paragraph 35 of this decision, on the basis of confusion with the Opponent's registered trademarks SESAME and SESAME STREET.

THE PROCEEDINGS

[4] The application for Chinese Characters (sesame) was filed on January 15, 2014, and was advertised for opposition purposes on April 21, 2021. The application for ZHIMA was filed on November 25, 2015 and was advertised for opposition purposes on April 1, 2020.

[5] The Opponent filed a statement of opposition pursuant to section 38 of the *Trademarks Act*, RSC 1985, c T-13 (the Act) on October 18, 2021 against the trademark application for Chinese Characters (sesame) and on December 31, 2020 against the trademark application for ZHIMA.

[6] The Opponent filed as its evidence in each case an affidavit of John M. Gallacher, Senior Counsel for Sesame Workshop. The affidavits filed were largely the same and are referred to as the "Gallacher Affidavit" throughout this decision. Mr. Gallacher was cross-examined on his affidavits in one examination and the transcripts and exhibits were filed.

[7] The Applicant filed as its evidence in each case, an affidavit of Lim Chiew Hwa, Legal Director of the Ant Group Co., Ltd, the parent of a group of companies that includes the Applicant. The affidavits filed were largely the same and are referred to as the "Lim Affidavit" throughout this decision. Ms. Lim was cross-examined on her affidavits in one examination and the transcripts and undertakings were filed.

[8] Both parties submitted representations in writing and at a hearing.

THE RELATED APPLICATION FOR SESAME

[9] At the hearing both parties made submissions on the opposition decision for the Applicant's application for SESAME opposed by the Opponent [*Sesame Workshop v Advanced New Technologies Co., Ltd*, 2025 TMOB 41]. In deciding the subject oppositions, I am aware that each case must be decided on its own facts and merits.

THE EVIDENCE

The Gallacher Affidavit

[10] Mr. Gallacher explains that the Opponent is the non-profit educational organization behind the children's television show SESAME STREET [para 2]. Mr. Gallacher provides the following information:

(a) The Sesame Street television show has been broadcast since 1969. It is broadcast twice daily in Canada on YTV's *Treehouse* channel. Average viewership per show in Canada from 2013-2020 has ranged between 8,000-24,000 viewers [para 4].

(b) Sesame Street launched its first YouTube channel in June 2008. Since then Canadians have streamed over 22 Million hours of this channel [para 7].

(c) Sesame Street holds live performances and meet and greets across Canada [paras 9-10].

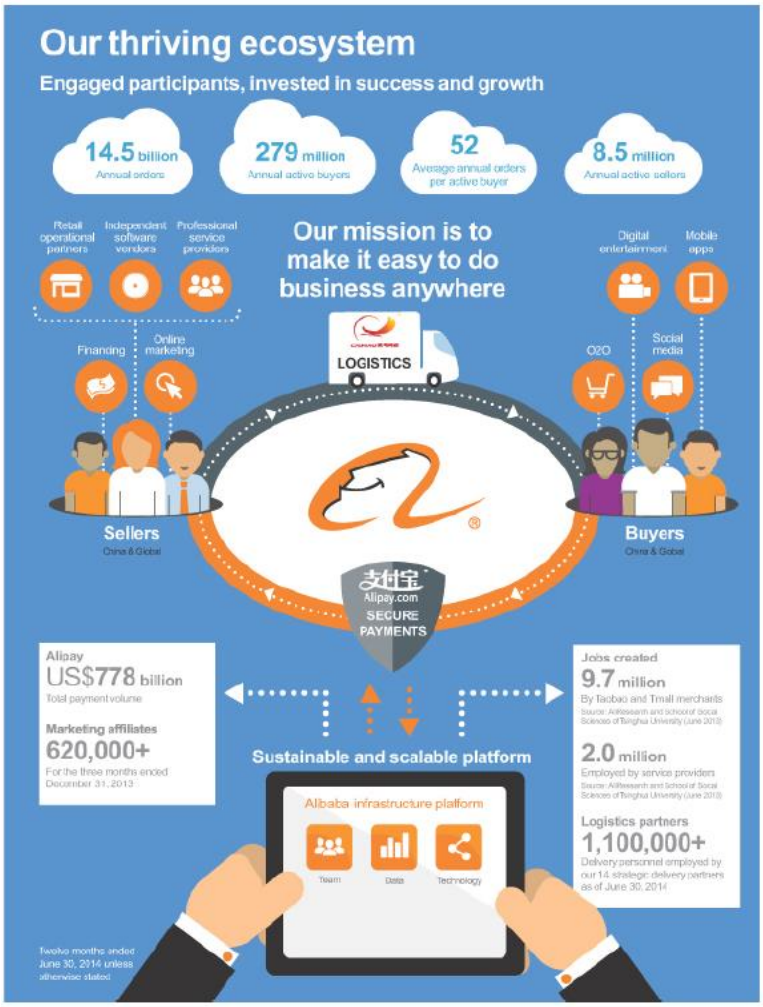
(d) PBS' Sesame Street website had more than 440,000 visits from Canadians each year between 2015-2019 [para 16].

[11] Mr. Gallacher states that the Opponent also licenses its SESAME Marks to third party manufacturers, who provide a wide variety of goods such as electronic learning aids, health and wellness products such as vitamins and bandages, clothing and footwear, home accessories such as clock and posters, and children's toys [the Opponent's Licensed Products].
Mr. Gallacher provides the total annual sales revenue earned from Canadian sales of these products [para 14]. Mr. Gallacher, however, does not provide any description or examples of which SESAME Marks are associated with which Licensed Products, or how the trademarks are associated.

The Lim Affidavit

[12] Ms. Lim explains that the application was filed by Alibaba Group Holding Limited [Alibaba]. Ms. Lim also provides the following information supported by Exhibits about Alibaba.

- Alibaba was founded in 1999 [para 14].
- Since its founding, including in 2014, it grew into a large, multinational company with businesses around the world and across many industries [para 14]. Its platform has a considerable reach as shown in the infographic below [Exhibit 4].



[13] On September 23, 2019, Alibaba assigned the applications to the Applicant who is a subsidiary of Ant Group Co. Ltd. and a part of the Ant Group [para 17]. The Ant Group includes a group of companies that are a world leader in the technology and financial services industries [paras 5, 6]. Ant Group traces its roots to Alipay, a service that facilitates payments between online buyers and sellers [para 7]. Alipay was launched by Alibaba but was subsequently spun off into its own entity [para 4, Exhibit 4].

[14] Ms. Lim states that Ant Group offers a number of products, platforms and services, one of which is Zhima Credit, also known as Sesame Credit ("Zhima" is the transliteration of the Mandarin characters that mean

"Sesame" in English) [paras 11, 12 and 22]. Ms. Lim describes Zhima Credit as a private and independent credit assessment service [para 12]. Ms. Lim states that Ant Group is and has been licensed by the Applicant and its predecessor to use the Marks, and has had direct or indirect control over the character and quality of any goods or services provided by Ant Group in association with the Marks [paras 18-19].

[15] Ms. Lim describes the Zhima Credit service that has been offered in China in association with the trademark ZHIMA within the ALIPAY application and describes how that service may be expanded in the future [paras 21-29]. As for Canada, Ms. Lim states that since 2018, Chinese nationals who use Zhima Credit have had the option of submitting an English language report as part of a Canadian visitor visa application, in order to prove financial standing [para 31 and Exhibits 8-9]. Ms. Lim also states that Ant Group is in the process of expanding the goods and services that it offers in association with the Marks, both in Canada and worldwide utilizing ALIPAY and Alibaba's platforms [para 32].

GROUNDS OF OPPOSITION

[16] The Opponent raises the following grounds of opposition with respect to both applications. For ease of reference, the relevant section of the Act is listed for each ground of opposition.

- The Marks are not registrable because each is confusing with the Opponent's SESAME Marks [section 12(1)(d) of the Act].
- The Applicant is not the person entitled to register the Marks because they are confusing with the Opponent's SESAME Marks previously used in Canada [section 16(1) of the Act].
- The Marks are not distinctive as they are confusing with the Opponent's SESAME Marks [section 38(2)(d) of the Act].

- The applications do not comply with the requirements of section 38(2)(e) of the Act because, as of the application filing date, the Applicant was not using and did not propose to use the Marks in Canada in association with all of the Goods and Services.
- The applications were filed in bad faith given that the Applicant did not use or intend to use the Marks in association with the Goods and Services but rather the applications were filed as the Applicant was seeking to unfairly extend the scope of its trademark rights in Canada [section 38(2)(a.1) of the Act].
- The Goods and Services are not described in ordinary commercial terms [section 38(2)(a) of the Act].

[17] In addition, there is a ground of opposition that only applies to the trademark application for ZHIMA. This ground of opposition alleges that the application does not conform to the requirements of section 30(2)(a) of the Act. Specifically, that no translation into English or French was provided for the trademark ZHIMA which translates to "sesame" in English.

[18] For each ground of opposition, there is an initial evidential burden on the Opponent to adduce evidence from which it could reasonably be concluded that the facts alleged to support that ground of opposition are true. If this initial burden is met, then the Applicant bears the legal onus of satisfying the Registrar that, on a balance of probabilities, the ground of opposition should not prevent registration of the Marks [*John Labatt Ltd v Molson Companies Ltd* (1990), 30 CPR (3d) 293 (FCTD)].

REASONS FOR DECISION

Section 12(1)(d) Ground of Opposition

[19] The Opponent pleads that each of the Marks is not registrable pursuant to section 12(1)(d) of the Act, because it is confusing with the

Opponent's SESAME Marks. The material date for this ground of opposition is the date of this decision [*Simmons Ltd v A to Z Comfort Beddings Ltd* (1991), 37 CPR (3d) 413 (FCA)].

[20] The Opponent's SESAME Marks listed in Schedule A are in good standing. Accordingly, the Applicant bears the onus of demonstrating that each of the Marks is not confusing with any of the remaining Opponent's SESAME Marks.

[21] My analysis will focus on confusion with the Opponent's registered trademarks SESAME (TMA229,800) and SESAME STREET (TMA718,122), the particulars of which are included in Schedule B to this decision. In my view, these registrations represent the Opponent's strongest case. If the Marks are not confusing with either of these registered trademarks, they will not be confusing with any of the other Opponent's SESAME Marks.

The Test for Confusion

[22] A trademark causes confusion with another trademark if the use of both in the same area would be likely to lead to the inference that the goods or services associated with the trademarks are manufactured, sold, leased, hired or performed by the same person [section 6(2) of the Act]. The issue is to be considered as a matter of first impression in the mind of the average consumer somewhat in a hurry, who sees the applied-for trademark at a time when they have no more than an imperfect recollection of an opponent's trademark. This average, hurried consumer does not pause to give the matter any detailed consideration or scrutiny, nor to examine closely the similarities and differences between the trademarks [*Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée*, 2006 SCC 23 at para 20].

[23] Applying the test for confusion is an exercise in finding facts and drawing inferences [*Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27 at

para 102]. All surrounding circumstances of the case must be considered, including those listed at section 6(5) of the Act, namely:

- 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, 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.

The Average Consumer

[24] When assessing confusion, the average consumer is generally Anglophone, Francophone, or bilingual in English and French [*Pierre Fabre Médicament v SmithKline Beecham Corp* 2001 FCA 13].

[25] This is not necessarily the case, however, where there is evidence that the average consumer may have a different linguistic background. In *Cheung Kong (Holdings) Ltd v Living Realty Inc,* 1999 CanLII 9394 (FCTD), the Federal Court found that there was a reasonable likelihood of confusion between a mark comprised of Chinese characters and its English equivalent. The Federal Court reasoned that the question of whether a mark is likely to cause confusion should be asked in respect of the particular market in which the goods are offered, which would make up the appropriate "average consumer". In that case, the evidence showed that the applicant targeted the Chinese community in Toronto, which allowed the court to conclude that the particular market for those goods consisted of consumers who understood both English and Chinese.

[26] In this case, I find the average consumer to be someone who understands both English and Chinese as the ZHIMA brand credit service

exists within the ALIPAY application which requires a Chinese passport and is popular with Chinese tourists, students, visitors and those living abroad [Lim affidavit, paras 10, 12]. Further, since 2018, Chinese nationals who use Zhima Credit have had the option of submitting an English language report as part of a Canadian visitor visa application, in order to prove financial standing [para 31 and Exhibits 8-9].

Inherent Distinctiveness

[27] Trademarks are inherently distinctive when nothing about them refers the consumer to a multitude of sources. The Opponent's trademarks SESAME and SESAME STREET have no apparent connection with any of the Opponent's goods and services. Likewise, the Marks have no apparent connection with the Goods and Services. Accordingly, all of the trademarks at issue in this case possess a fair amount of inherent distinctiveness, and this factor does not favour either party.

Extent Known and Length of Use

[28] Since November 23, 2018, Chinese nationals who use Ant Group's Alipay application who have opted-in to the ZHIMA service have had the option to submit an English-language report as part of their Canadian visitor visa application showing proof of financial standing [Lim Affidavit at para 31, Exhibits 8-9]. These credit reports may also be accepted by merchants like Airbnb who operate in the Canadian marketplace as evidence of creditworthiness of a consumer and to decide whether to waive a booking deposit [Lim Cross-Examination at p. 17, lines 1-11].

[29] The evidence establishes that the Opponent's SESAME STREET television show has been broadcast in Canada for over 50 seasons. From June 2013 to June 2020, the Opponent's SESAME STREET show has had an average viewership in Canada of to 8-20,000 viewers [Gallacher Affidavit,

para 4]. As well, over 227,000 Canadians have watched the Opponent's content on YouTube for a total of over 22 million hours [Gallacher Affidavit, para 7], and the Opponent has put on live SESAME STREET performances across Canada [Gallacher Affidavit, paras 10 and 11]. Examples of use of the SESAME STREET trademark appear as Exhibits to the examination of Mr. Gallacher.

[30] On the other hand, the evidence does not establish that the Opponent's trademark SESAME has been used or become known in Canada, to any extent. Nor does the evidence show that the SESAME or SESAME STREET trademarks have been used or made known by the Opponent in connection with the Licensed Products in Canada since there is no information as to how these trademarks were associated with the products.

[31] In view of all the foregoing, the length of use and the extent which the trademarks have become known favor the Opponent in respect of television programs and live performances for children, offered in connection with the trademark SESAME STREET and the Applicant to a small extent with respect to credit reporting services offered in association with the Mark.

Nature of the Goods and Services, and Nature of the Trade

[32] When considering the goods, services, and trades of the parties, it is the statements of goods and services in the parties' respective trademark applications and registrations that govern [*Henkel Kommanditgesellschaft auf Aktien v Super Dragon Import Export Inc* (1986), 12 CPR (3d) 110 (FCA); *Mr. Submarine Ltd v Amandista Investments Ltd* (1987), 19 CPR (3d) 3 (FCA)]. That being said, the statements of goods and services must be read with a view to determining the probable type of business or trade intended, rather than all possible trades that might be encompassed by the wording. In this regard, evidence of the parties' actual use of their

respective trademarks is relevant [*McDonald's Corporation v Coffee Hut Stores Ltd* 1996 CanLII 3963 (FCA)].

[33] The Opponent is the nonprofit, educational organization behind SESAME STREET [para 2]. The Opponent's mandate is to help kids grow smarter, stronger, kinder through a wide range of media, education and social impact programs [para 2] including SESAME STREET, one of the highest rated children's programs in Canada [para 4].

[34] The Applicant's intended business is to offer the Applicant's ZHIMA branded goods and services through the ALIPAY App or through a business offering its goods and services through the ALIPAY App [Lim affidavit, para 32].

[35] While the Opponent's and Applicant's businesses vary widely, I have identified the following **bolded** goods and services in each application which by their nature appear to be the same or overlap significantly with the Opponent's goods and services (the Overlapping Goods and Services). In this regard, I note that the applications contain no restrictions so that each of the services set out below could be with respect to children's entertainment and overlap with the Opponent's goods and services including:

- "disc and sound records" and "radio and television broadcasting namely educational and entertainment programming" listed in the Opponent's registration for the trademark SESAME;

- "education services, namely, the production of radio and television programs, videos, motion pictures, sound recording and live shows for children" and "live theatrical performances directed to children, parents and families" listed in the Opponent's registration for the trademark SESAME STREET.

Descriptions in ZHIMA Application

downloadable computer software to enable electronic transmission of information, documents, voice, and still images, namely, email messages, text messages, photographs, graphics, **music,** audio books, podcasts, voice messages and video in the nature of **movies, music videos, television programs, clips of movies and television programs,** video messages and user uploaded video clips to mobile phones and computers over the Internet

television broadcasting services; broadcasting of radio and television programmes; music broadcasting via radio, television and the internet;

transmission of information, namely, e-mail messages, text messages, photographs, graphics, emojis, Gifs, **music,** audio books, podcasts, voice messages and video in the nature of **movies, music videos, television programs, clips of movies and television programs**, video messages and user uploaded video clips through video communication systems via a website;

operation of a website that provides streaming of digital recorded music, not downloadable, from the Internet; operation of a website that provides non-downloadable MP3 digital music streaming; streaming of audio sound recordings, namely, music;

organizing, hosting and conducting singing competitions; arranging, organizing, hosting and conducting musical concerts; arranging, organizing, hosting and conducting game shows and quests, namely role playing games; entertainment ticket agency services; providing information in the field of entertainment, namely, **television shows, movies, musical concerts and videos, theatre productions and** comedy shows and in the field of education, namely, online courses and webinars in the field of business management, electronic commerce in the field of retail store and wholesale store services, computer information security, computer data security and intellectual property, provided online from a computer database and the Internet;

premium and pay television programming services and television programming services; entertainment and education services, namely, production and broadcasting of non-downloadable audio and voice recordings, namely, non-downloadable digital audio recordings featuring **music**, news and sports webcasts, **digital music**, live and recorded audio and voice recordings, namely, non-downloadable digital audio recordings featuring **music**, news and sports webcasts, and non-downloadable video recordings, namely, non-downloadable digital video recordings featuring

music, movies, news and sports webcasts, **music videos**, photographic images and **television shows** for broadcasting on the Internet, digital wireless and wired boxes; **production of television and radio programmes for entertainment, and educational purposes**, and documentary and news programmes for broadcasting on the Internet;

production of radio programs; film production; preparation and production of television programmes;

entertainment in the form of live performances by a musical band;

rental and leasing of motion pictures, cine-films;

rental and leasing of television programmes;

providing video games, computer games, still images, namely, photographs, streaming of audio sound recordings, namely, internet radio, podcasts, **video, namely, streaming movies and television programs** through local area networks, global computer networks and the Internet;

operation of a website that provides non-downloadable streaming of video, namely, **movies, television shows, music videos,** news and sports webcasts;

providing information in the fields of Internet, world wide web, computerized communication network security and the secure transmission of data and information, namely, email messages, text messages, photographs, graphics, **music**, audio books, podcasts, voice messages and video in the nature of **movies, music videos, television programs, clips of movies and television programs,** video messages and user uploaded video clips, via radio, telephone lines, satellite, cable network and wide area network

licensing of digital data, namely, photographs**, movies, television shows, music videos, music** and text, namely, articles and academic papers, books and journals;

Descriptions in Chinese Characters Application

Telecommunications services, namely, data transmission services over radio frequencies, wireless telephone networks, cable networks, computer networks, wide area networks and the Internet, for the transmission of data, namely, **music, motion pictures, animated movies, television shows, cartoons, musical videos, music concerts, musical shows**, news and sports events and streaming of video, voice and audio recordings, namely, **music, motion pictures, animated movies, television shows, cartoons,**

musical videos, music concerts, musical shows, news and sports events;

television broadcasting services; broadcasting of radio and television programmes; video-on-demand transmission services;

transmission and delivery of text messages, emails, photographs, emojis, Gifs, **music, music videos, movies, films, television programs**, news programs and sports programs via computer and telecommunication networks, namely, radio, telephone, cable and satellite communication networks;

providing access to an interactive website via on a global computer network for third parties to post information, namely, email messages, text messages, photographs, graphics, **music**, audio books, podcasts, voice messages and video in the nature of **movies, music videos, television programs, clips of movies and television programs**, video messages and user uploaded video clips, in the field of finance and technology, namely, processing transfer of funds to and from others, information technology, cloud computing, blockchain technology, identity authentication, biometrics authentication, data security, computer security, electronic commerce in the nature of retail store and wholesale store services and online trading in which seller posts products to be auctioned and bidding is done via the Internet, respond to requests and place and fulfill orders for products, services and business opportunities for business networking purposes;

providing access to a website that provides non-downloadable MP3 digital music streaming; hosting a website providing streaming of music;

arranging, organizing, hosting and conducting singing competitions; **arranging, organizing, hosting and conducting musical concerts;** arranging, organizing, hosting and conducting game shows and quests, namely role playing games; entertainment ticket agency services; providing information in the field of entertainment, namely, **television shows, movies, musical concerts and videos, theatre, productions and** comedy shows and in the field of education, namely, online courses and webinars in the field of business management, e-commerce namely, retail store and wholesale store services, information security, computer data security and intellectual property, provided online from a computer database and the Internet;

entertainment and education services, namely, production of non-downloadable photographic images, **digital music, music, movies**, news and sports webcasts, **music videos and television shows** for broadcasting on the Internet, digital wireless and wired boxes;

rental of sound recordings, namely CD's and DVD's containing music; production of television and radio programmes for entertainment, and educational purposes, and documentary and news programmes for broadcasting on the Internet;

production of radio programs; preparation and production of television programmes;

live performances by musical band;

rental and leasing of motion pictures, cinefilms;

rental and leasing of television programmes;

hosting a website to allow users to collaborate with others by allowing users to access computer software applications which allow users to participate in web-based meetings and classes, with access to data in the field of finance and technology, namely, processing transfer of funds to and from others, information technology , cloud computing, blockchain technology, identity authentication, biometrics authentication, data security, computer security, electronic commerce relating to retail store services and online trading, and computer file management platforms, jointly-shared documents and data, namely, email messages, text messages, photographs, graphics, **music,** audio books, podcasts, voice messages and video in the nature of **movies, music videos, television programs, clips of movies and television programs**, video messages and user uploaded video clips, task lists, and discussion forums;

licensing of digital data, namely, photographs, **movies, television shows, music videos, music** and text, namely, articles and academic papers, books and journals;

[36] I do not consider there to be any overlap with respect to the nature of the remaining Goods and Services (the Non-Overlapping Goods and Services).

Degree of Resemblance

[37] There is no question that there is absolutely no resemblance between the parties' marks visually and phonetically. However, the Opponent submits that as the word SESAME is the dominant component of each of the Marks (regardless of the language this appears in) they resemble each other. When

I consider the issue of confusion from the perspective of the average consumer of the Goods and Services, I consider that such a consumer may find that the trademarks resemble each other to some extent due to the presence of SESAME (or its Mandarin equivalent), which results in trademarks suggesting a similar idea.

Conclusion Regarding Confusion

[38] Having considered all of the surrounding circumstances of this case, I am satisfied that there is no reasonable likelihood of confusion between each of the Marks and the Opponent's SESAME and SESAME STREET trademark registrations for the vast majority of the Goods and Services. Most of the Goods and Services are entirely dissimilar to that of the Opponent, such that consumers are highly unlikely to infer that such disparate goods and services emanate from the same source.

[39] I reach a different conclusion in respect of the Overlapping Goods and Services. In my view, the Applicant has failed to meet its legal onus of proving on a balance of probabilities that there would be no reasonable likelihood of confusion for the average consumer. In this case, the Overlapping Goods and Services could include programming targeted at children and there may be a degree of resemblance in the ideas suggested by the trademarks. Therefore, the section 12(1)(d) ground of opposition succeeds for these goods and services and is rejected for all of the Non-Overlapping Goods and Services.

Entitlement and Distinctiveness Grounds of Opposition

[40] In respect of its entitlement ground of opposition, the Opponent pleads that the Applicant is not the person entitled to register the Marks pursuant to section 16(1) of the Act since, as of the filing date of the application, the Marks were confusing with the Opponent's SESAME Marks, which had been

used in Canada by the Opponent and its predecessor in title, Children's Television Workshop, since at least as early as 1969. The material date for this ground is the filing date of each application as there no evidence of use of the Marks in Canada prior to this date.

[41] In respect of the distinctiveness ground of opposition, the Opponent pleads that the Marks are not distinctive as they are likely to be confused with the Opponent's SESAME Marks. The material date for this ground of opposition is the date on which each statement of opposition was filed [*Metro Goldwyn Mayer Inc v Stargate Connections Inc*, 2004 FC 1185].

[42] The Opponent's evidence presents a challenge to it meeting its evidential burden with respect to the entitlement and distinctiveness grounds. While the Opponent has provided evidence of Canadian viewership of the SESAME STREET television show and Youtube channel and visits to its website, it has not provided any evidence of use of its SESAME STREET trademark as of the material dates.

[43] Even if I was to infer, that the SESAME STREET trademark appeared in the performance or advertising of the services referenced in Mr. Gallacher's affidavit, at the material dates, and found the Opponent had met its evidential burden with respect to these services, the Opponent would not succeed with respect to its oppositions to the Marks for the Non-Overlapping Goods and Services in either application for the same reasons as set out for the section 12(1)(d) ground of opposition.

Section 38(2)(e) Ground of Opposition

[44] In respect of this ground, the Opponent pleads that the applications do not comply with the requirements of section 38(2)(e) of the Act, since the Applicant was not using and did not propose to use the Marks in Canada in association with all of the Goods and Services when the applications were

filed. The material date for this ground of opposition is the filing date of each application.

[45] In order to file a trademark application in Canada, an applicant must either be using or propose to use the applied-for trademark in Canada with the applied-for goods and services [section 30(1) of the Act]. Section 38(2)(e) of the Act permits a trademark to be opposed on the basis that these conditions are not met.

[46] Under the Act as it was prior to June 17, 2019, there was a similar ground of opposition which permitted an application to be opposed on the basis that an applicant incorrectly stated in its application that it intended to use the applied-for trademark with the applied-for goods and services. The case law under this ground of opposition as it was worded previously established the following principles that I find pertinent to the current section 38(2)(e) ground of opposition:

(a) The evidential burden is relatively light as the facts at issue may be exclusively in the possession of the Applicant [*Canadian National Railway Co v Schwauss* (1991), 35 CPR (3d) 90 at 94-95 (TMOB)].

(b) The evidential burden can be met by reference not only to an opponent's evidence, but also to an applicant's evidence [*Labatt Brewing Co Ltd v Molson Breweries, A Partnership* (1996), 68 CPR (3d) 216 (FCTD) at 230; *Corporativo de Marcas GJB, SA de CV v Bacardi & Company Ltd*, 2014 FC 323 at paras 33-38]. To meet its evidential burden, an opponent must show that the evidence raises doubt as to the veracity of the claims in the application [*Corporativo de Marcas, supra*;

Reitmans (Canada) Limited v Atlantic Engraving Ltd, 2005 CanLII 78234 (TMOB)].

(c) The fact that the material date is the filing date of the application does not preclude the consideration of evidence arising subsequent to that date insofar as it may indicate a situation existing as of the material date [*Bacardi & Co Ltd v Jack Spratt Mfg Inc*, 1984 CanLII 5862 (TMOB)].

(d) Since, however, there is no requirement on an applicant to show use of a trademark until it has been registered [*Molson Canada v Anheuser-Busch, Inc* 2003 FC 1287, 29 CPR (4th) 315 at 334-335], the fact that an applicant has not yet commenced use of a trademark is not relevant.

(e) A consideration of what an applicant's relevant experience has been prior to the filing of an application may reinforce an inference as to whether an applicant does or does not propose to use a trademark [*Beiersdorf AG v Mitsbushi Gas Chemical Company, Inc*, 2012 TMOB 210 at paras 11-13, *Santa Barbara Restaurant Group, Inc v Jay Veto*, 2014 TMOB 286 at paras 23-25].

[47] The Opponent submits that it meets its evidential burden because of the long list of unrelated Goods and Services and in view of the fact that the Applicant has only commenced use with a single service [Opponent's written submissions with respect to the ZHIMA application, para 13-15].

> 13. The Application was based on use and registration in Hong Kong and proposed use in Canada when it was filed on November 25, 2015. It is now almost ten years later. The large number of goods and services identified in the Application, combined with the fact that there has been no evidence filed in relation to use of the subject trademark with anything other than a social credit scoring system [and even that use in Canada appears to be *de*

minimus], strongly supports the Opponent's position that the Applicant did not have a *bona fide* intention to use the mark with anything other than a social credit scoring system when it filed the Application.

14. The Application as advertised lists 508 separate goods and services. However, it seems the only service that clearly should have been included in the application is number 235 on the attached Schedule A, i.e.: "credit verification of individuals and companies via global computer information network".

15. There are many examples of goods and services which appear to be highly unlikely to be offered by a single entity. Some of the bigger outliers are: funeral services; dating services; personal and social services rendered by others to meet the needs of individuals, namely, babysitting, home sitting, social and personal networking and introduction services; provision of cigar classes, wine tasting classes; entertainment in the form of live performances by a musical band; chartering of ships and boats; air piloting, namely, passenger air transport, transportation of goods, passengers, and travelers by air; public utility services in the form of electricity distribution and supply; transmission of oil and gas through pipelines; and yacht and boat chartering services.

[48] I find that the Opponent has not met its evidential burden for the following reasons:

(a) The applications were filed by Alibaba. Given the incredibly vast scope of Alibaba and the associated goods and services, I do not find that there is any basis for me to infer that the Applicant did not propose to use the Marks in association with the hundreds of Goods and Services.

(b) There is no adverse inference to be drawn from the fact that use has not yet commenced other than with credit verification services. There is no obligation to commence use until the mark is registered [by analogy see *Molson Canada v Anheuser-Busch Inc*, *supra*]. This is underscored by section 45 of the Act which does not permit a section 45 non-use proceeding to be commenced prior to three years after the registration date.

[49] As I do not find that the Opponent has met its evidential burden, it is not necessary for the Applicant to meet a legal onus of proving that it had used or proposed to use the Marks in association with each of the Goods and Services.

Section 38(2)(a.1) Ground of Opposition

[50] The Opponent alleges that the applications were filed in bad faith since the Applicant did not use or intend to use the Marks in association with the goods and services but was seeking to unfairly extend the scope of its trademark rights in Canada.

[51] As indicated by the wording of this ground of opposition in the Act, "that the application was filed in bad faith", the material date to assess this ground of opposition is each application's filing date.

[52] The Act does not define "bad faith". In *Blossman Gas, Inc v Alliance Autopropane Inc*, 2022 FC 1794, the Federal Court provided an example where one party's actions were inconsistent with honest practices, or in other words "conduct that falls short of the standards of acceptable commercial behaviour" as it is described in UK and EU law [at paras 128-129]. The Federal Court further confirmed that it is appropriate to assess a bad faith ground on the basis of objective standards and not based on an applicant's own subjective belief as to do so would allow an applicant from relying on its own ignorance of the law, which is generally not accepted as an excuse for misconduct [*Blossman, supra* at para 129].

[53] With respect to burden, a party relying on section 18 to invalidate a registration on the basis of bad faith before the Federal Court has the burden of establishing that the application for the given mark was made in bad faith, which must be proved on a balance of probabilities with clear, convincing and cogent evidence [*Beijing Judian Restaurant Co Ltd v Meng*, 2022 FC 743

at paras 39-46]. In opposition proceedings, the onus on the opponent is evidential, meaning that all it has to do is adduce sufficient admissible evidence from which it could reasonably be concluded that the facts alleged support the bad faith ground of opposition [*John Labatt Ltd v Molson Companies Ltd*, supra, and *Dion Neckwear Ltd v Christian Dior, SA*, 2002 FCA 29, 20 CPR (4th) 155 (FCA)].

[54] In this case, I am not satisfied that the Opponent has met its evidential burden under this ground. The Registrar has previously found that an inference may be drawn that an applicant is trafficking in trademarks where the evidence shows, in part, it has applied-for trademarks covering a wide range of goods and services [*Santa Barbara Restaurant Group*, *supra* at para 20; *Mahindra & Mahindra Limited v Pawandeep Dhunna*, 2024 TMOB 69 at paras 48-52]. In these cases, however, there was evidence that the applicants at issue had applied-for multiple trademarks owned by third parties. Here, the evidence is that Alibaba operated a business that covered a vast range of goods and services. This prevents me from making the inference that this trademark filing was done to inappropriately extend its trademark rights as suggested by the Opponent. Accordingly, this ground of opposition is rejected.

Section 38(2)(a)Grounds of Opposition

[55] Section 38(2)(a) of the Act states that a statement of opposition may be based on the ground that the application does not confirm to the requirements of section 30(2) of the Act (without taking into account if it meets the requirements for grouping the Goods and Services in the Nice Classification).

[56] Section 30(2) of the Act requires in part that the application shall contain " (a) a statement in ordinary commercial terms of the goods or services in association with which the trademark is used or proposed to be

used" and "(d) any prescribed information or statement". Section 31 of the *Trademarks Regulations,* SOR/2018-227 (the Regulations) sets out the required prescribed information, including the following:

> (b) if the trademark consists in whole or in part of characters other than Latin characters, a transliteration of those other characters into Latin characters following the phonetics of the language of the application;
>
> (d) a translation into English or French of any words in any other language that are contained in the trademark;

[57] In respect of the part of the ground of opposition concerning section 30(2)(a), the Opponent alleges that the Marks are not either used or intended to be used in association with the expansive list of goods and services identified in the Application.

[58] As for section 30(2)(d) of the Act, the Opponent pleads that the application for ZHIMA does not comply with section 31(d) of the Regulations because the trademark ZHIMA translates to "sesame" in English but the Applicant has not provided the required translation.

Ordinary Commercial Terms

[59] The Opponent alleges that the Applicant intended to use the Marks with a social credit scoring system and as the applications do not include the goods or services with which the Marks are used or proposed to be used, the applications are not in ordinary commercial terms.

[60] A ground of opposition based on section 30(2)(a) of the Act involves two issues: first, whether the statement of goods and services is in ordinary commercial terms and, second, whether it adequately identifies the specific goods and services [*Whirlpool SA v Eurotherm Holdings Ltd*, 2010 TMOB 171]. The initial burden on an opponent under a section 30(2)(a) ground is a light one and it can be met through argument alone [see *McDonald's Corp v*

MA Comacho-Saldana International Trading Ltd, 1984 CanLII 5841 (TMOB), 1 CPR (3d) 101 at 104 (TMOB)].

[61] The Opponent's submissions on this ground of opposition do not address whether the goods and services are in ordinary commercial terns and whether the specific goods and services are identified. Rather, they are focussed on the Applicant's lack of use of the Marks in association with the Goods and Services. As there is no obligation to commence use until a trademark is registered and the Goods and Services include the following descriptions: "credit verification of individuals and companies via global computer information network; credit risk management consulting services;", the Opponent fails to meet its evidential burden and this ground of opposition is rejected.

Transliteration and Translation

[62] This ground of opposition is only with respect to the ZHIMA trademark application. The Opponent submits:

> 10. The Applicant in this case did not provide a translation of the Trademark into English or French even though it would have been aware of the fact that ZHIMA is a transliteration of Chinese characters that translate into SESAME in English. In response to the Examiner's request for a translation into English or French, on February 28, 2017, the Applicant provided the following statement: "Please be advised that the applicant is not aware of a translation into French or English of the word ZHIMA as it is a coined term."

[63] The Opponent submits that the statement provided by the Applicant is blatantly false and misleading. Only having the transliteration meant that the Examiner could not examine the trademark understanding that ZHIMA meant SESAME. The Regulations require that a translation into English or French be provided of any word in a foreign language that appears in a trademark [section 31(d)]. According to dictionary.com a transliteration is "the act, process, or result of writing letters or words using the

corresponding characters of another alphabet or writing system." In this case, it is important to note that the trademark ZHIMA is not, strictly speaking, a word in Mandarin. Rather, it is a transliteration of foreign characters that constitute a word in Mandarin. It may well be that examination would be facilitated by requiring that if a word is a transliteration of foreign characters, that the translation of those foreign characters be provided. However, this is not presently required. Therefore, the Opponent does not meet its evidential burden in respect of this ground of opposition. Accordingly, this ground of opposition is rejected.

DISPOSITION

[64] Pursuant to the authority delegated to me under section 63(3) of the Act, I refuse the application with respect to the Overlapping Goods and Services shown in **bold** in paragraph 34, and I reject the opposition with respect to the remainder of the Goods and Services, all pursuant to section 38(12) of the Act.

Natalie de Paulsen
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

SCHEDULE A

Opponent's Sesame Marks

Trademark	Registration No.
SESAME	TMA229800
SESAME STREET	TMA718122
SESAME PARK	TMA512602
SESAME STREET	TMA458220
SESAME STREET	TMA439174
RUE SESAME	TMA358114
SESAME STREET	TMA229653
SESAME STREET	TMA208460
Sesame 1 2 3 Beginnings	TMA808666
CTW SESAME STREET	TMA341659

SCHEDULE B

Opponent's trademark Registration Nos. 229800 and 718122

Trademark	Registration No.	**Class** - Goods and Services
SESAME	TMA229800	**9** [1] Disc and sound records. **41** [1] Radio and television broadcasting namely educational and entertainment programming.

SESAME STREET	TMA718122	**5** [1] Disposable diapers. **9** [2] Pre-recorded musical sound recordings, sound recordings, audio recordings, audio cassettes, audio discs, compact discs, audio digital discs, audio digital tapes, musical video recordings, video recordings, video discs, DVDs, CD-ROMs, and computer software, all featuring animation, educational themes and entertainment directed to children; video recordings of television programs featuring animation, educational themes and entertainment directed to children; computer game programs, cartridges, cassettes, discs, and software; CD cases, calculators; computers for children, compact disc players, radios incorporating clocks, audiotape, cassette recorders, musical recorders, tape recorders, videocassette recorders, videotape recorders, video recorders, CD recorders, VCR players/recorders and DVD players/recorders; walkie-talkies, baby monitors, bicycle helmets, life jackets, kneeling pads, cameras, computer peripheral mouse pads; eyeglasses and sunglasses; cases for children's eyeglasses, swim goggles; telephones and telephone faceplates; decorative refrigerator magnets; story books, children's books, children's activity books, coloring books and comic books. **14** [3] Key chains, key rings, key holders, key fobs; non-metal key chains, non-metal key rings. **16** [4] Printed materials, namely, magazines and newsletters; story

		books, children's books, children's activity books, coloring books, sticker books, comic books, comic strips published periodically; address books, personal organizers, autograph books, baby books, birthday books, diaries; paper book covers, bookends, bookmarks, paperweights, desk pads, photo albums, photographs; calendars; writing paper, writing tablets, note cards, notebooks, ring binders, spiral notepads, folders and file folders of paper and plastic, file boxes, portfolios, postcards, flash cards; pens, pen ink cartridges, pencils, colored pencils, pen stands, pencil cases, pencil sharpeners, pencil caps, envelopes, erasers, ring binder dividers, rubber stamps, drawing rulers, stamp pads, glue for arts and crafts, staplers, adhesive tape for stationery purposes, tape dispensers; chalk, chalkboards, slate boards for writing, construction paper, felt tip markers, highlighting markers, modeling clay, drawing paper, drawing pads, drawing sets, arts and crafts paint kits, printing sets consisting of decorative stamps and paper, stationery notes with adhesive on one side for attachment to surfaces, paper door knob hangers, self adhesive decorative seals, vinyl non-sticker decals, vinyl coated memo board; crepe paper, gift tags, paper cake decorations, paper centerpieces, paper doilies, paper bags, paper gift bags, paper identification tags, paper lunch bags, leaf bags, paper napkins, paper party decorations, paper party hats, paper party invitations, paper place mats, paper tablecloths, shelf paper, table

		centerpieces made of paper, paper flags; facial tissue, toilet paper; craft kits for making clay pottery, craft kits for making hand-painted translucent window decorations, craft sets for decorating picture frames, craft kits for making sand art, craft kits for making and designing greeting cards consisting of glitter and glue; hobby kits, namely paper craft sets for use in making paper sculptures. **18** [5] Purses, drawstring bags, pouches, brief cases, back packs, knapsacks, luggage, traveling bags, tote bags, carry-alls, duffel bags, gym bags, sports bags, school bags, book bags, day bags, plastic bottle bags, beach bags; key cases; parasols. **20** [6] Picture frames; small figurines of plastic; air mattresses for recreational use, room mirrors, handheld mirrors, baby bath chairs, baby gates, sofa, storage boxes, curtain rods. **21** [7] Dinnerware and beverage ware of paper, plastic, ceramic, glass or earthenware, namely dishes, platters, plates, bowls, saucers, egg cups, drinking glasses; serving pitchers; cooking pots, infant cups, water bottles sold empty; water bottles with straws attached, beverage glassware with permanently attached pewter emblems; insulated and non-insulated lunch boxes, insulated and non-insulated lunch pails, insulated beverage containers, insulated bottles, foam drink holders; waste baskets; cookie cutters, cookie jars; canisters, napkin holders,

		napkin rings, both of non-precious metal; bottle openers; bed and snack trays, serving trays; statuettes and figurines of china, crystal, earthenware, glass, porcelain, and terra cotta; nonmetal savings banks; sun catchers; baby bath tubs, towel bars, towel holder, tissue box covers, soap dishes, potties for children, toothbrushes, shaving brushes, hair brushes, hair combs; bath sponges. **21** [8] Drinking straws, picnic boxes, picnic baskets, food boxes. **25** [9] Clothing, namely shirts, t-shirts, tank tops, pants, vests, overalls, jackets, socks, leggings, snowsuits, sleepwear, loungewear, jumpers, coats, dresses, skirts, underwear, sweaters, swim wear, shorts, clothing ties, clothing mufflers, berets, earmuffs, hats, workout clothes, namely gym shorts, gym suits. **28** [10] Toys, games and playthings, namely, doll clothing and costumes, doll accessories, paper dolls, return tops, craft kits for children for making and decorating fingernails and toenails, craft kits for decorating hair, craft kits for making candy, craft kits for making soap, craft kits for making perfume, craft kits for making crystals, craft kits for molding chocolate, craft sets and play kits consisting of play cosmetics, craft kits for making beads and toy jewelry, craft kits for making decorative objects with magnets, action skill games, board games, card games, manipulative games, interactive toys, hand held units for playing electronic games, electronic learning toys, toy

		computers, toy film cartridges and viewers, bath toys, beach toys, toy shovels, toy rakes, toy scoops, toy buckets, toy water guns, toy water wheels, pull toys, ride-on toys, toy vehicles, toy scooters, toy boats, toy cars, toy trains, tricycles, toy furniture, toy tables, toy chairs, toy clocks, toy telephones; toy musical instruments; toy tote bags, toy day bags, toy beach bags, other toy bags; toy purses, hand puppets, finger puppets, bean bags, bean bag plush toys, bean bag dolls, ice skates, roller skates, sports balls, beach balls, playground balls, toy foam balls, flying discs, jump ropes, kites, wind up toys, toy banks, toy building structures, toy action figures and accessories therefore, cases for play accessories, toy environments for use with action figures, play sets for action figures, role-playing game sets, masquerade games, inflatable swim floats for recreational use, inflatable swimming pools, playground sand boxes, snow sleds for recreational use, snow boards; hobby kits, namely paper craft sets for use in making playing cards. **30** [11] Cookies, cookie mix, candy, cakes, cupcakes, muffins, cake decorations made of candy, chewing gum, bubble gum, cotton candy, frozen confections, frozen yogurt, ice cream, fruit jellies, marshmallows, popcorn, pretzels, crackers, chocolate and bread; breakfast cereal, other processed grains; tea, iced tea, tea with fruit flavoring. **32** [12] Fruit juice, soft drinks.

		41 [1] Education services, namely, the production of radio and television programs, videos, motion pictures, sound recordings and live shows for children; provision of entertainment services, all relating to radio and television programs, videos, motion pictures, sound recordings and live shows for children; providing educational material and entertainment of general interest to children, parents and families via the Internet; live theatrical performances directed to children, parents and families; amusement parks.

Appearances and Agents of Record

HEARING DATE: 2025-09-17

APPEARANCES

For the Opponent: Jennifer McKay

For the Applicant: Kevin Sartorio

AGENTS OF RECORD

For the Opponent: Dentons Canada LLP

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