Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2026 TMOB 21

Date of Decision: 2026-02-02

INTERLOCUTORY RULING

Opponent: Puma SE

Applicant: Sunday Red, LLC

Applications: 2,305,422 for TIGER STRIPES LOGO and
2,305,429 for SDR TIGER STRIPES LOGO

INTRODUCTION

[1] This matter involves opposition by Puma SE (the Opponent) to two applications in the name of Sunday Red, LLC (the Applicant), namely application No. 2,305,422 for the trademark TIGER STRIPES LOGO and application No. 2,305,429 for the trademark SDR TIGER STRIPES LOGO (the Marks). The Marks are shown below:

TIGER STRIPES LOGO No. 2,305,422	SDR TIGER STRIPES LOGO No. 2,305,429

[2] The Marks have been applied for in association with the following goods and services, shown together with the associated *Nice* classification number:

Goods:

Cl 9 Cell phone cases; eyeglass frames; eyeglasses; frames for sunglasses; sports eyewear; sunglasses;

Cl18 Bags for sports; handbags; luggage; purses; umbrellas; wallets

Cl24 Golf towels; towels made of textile materials;

Cl25 Athletic footwear; casual footwear; children's footwear; dresses; golf footwear; golf pants; golf shirts; hats; hoodies; jackets; pants; polo shirts; shirts; shorts; skirts; slides being footwear; sports jackets; sweatpants; sweatshirts; toques; visors being headwear; joggers

Cl28 Golf club shafts; golf clubs, golf club grips, golf balls, golf gloves, golf tees, golf club head covers, and golf bags

Services:

Cl35 Online and retail sale of gloves; online retail store services in the field of eyewear; online retail store services offering golf clubs, golf clothes, golf bags, and golf-related merchandise; retail and online retail store services

> featuring socks; retail sale of bags; retail sale of wallets; retail services featuring golf clubs; retail services for umbrellas; retail store and online retail services featuring sportswear, clothing, footwear, headwear and sporting goods; retail store services in the field of eyewear; retail, online retail and wholesale sales of belts

[3] The Opponent relies, *inter alia*, upon grounds involving confusion with its LEAPING CAT and PUMA Design trademarks covering many of the goods specified in the Applicant's applications. It also relies on the ground of bad faith.

[4] On January 5, 2026 the Applicant sought an extension of time to file its counterstatement as well as an interlocutory ruling on the sufficiency of the Opponent's ground of opposition raised pursuant to section 38(2)(a.1) of the *Trademarks Act*, RSC 1985, c T-13 (the Act), alleging bad faith on the part of an applicant.

THE PURPOSE AND SCOPE OF INTERLOCUTORY RULINGS

[5] The sufficiency of an opponent's pleadings is governed by section 38 of the Act which provides an exhaustive enumeration of available grounds. Section 38(3) establishes that a statement of opposition must set out grounds in sufficient detail to enable the applicant's reply. Under section 38(6) the Registrar may strike all or part of a statement of opposition if it is not based on a valid ground or if the ground has not been pleaded in sufficient detail. Additionally, assuming the truth of the allegations of fact contained in the statement of opposition, a ground of opposition may be struck if there is no reasonable prospect of success when viewed in the context of the applicable law [*Manufacturers Life Insurance Company v British American Tobacco (Brands) Limited*, 2017 FC 436 at paras 57-64 (*Manufacturers*)]. That said, in *Manufacturers* the Federal Court noted at paragraph 60 that caution should be exercised when striking a pleading and

that it is preferrable to err on the side of permitting novel but arguable claims to proceed to determination.

ANALYSIS

[6] A proper pleading alleges the material facts, but not the evidence which the opponent intends to rely upon to establish those facts [*Pepsico Inc v Registrar of Trade-marks* (1976), 22 CPR (2d) 62 (FCTD)]. Pleadings define the issues and ensure an applicant is provided notice of the case it must meet. Bald assertions of conclusions are not material facts, and appropriate pleadings should establish "who, when, where, how and what" [see *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at paras 19 and 27 and *Brink v Canada*, 2024 FCA 43 at paras 53 to 56]

[7] The impugned s. 38(2)(a.1) ground reads:

> At the Filing Date and at all other material dates and times, the Applicant was fully aware of the Opponent's prior rights in the Opponent's well-known LEAPING CAT and PUMA design trademarks namely: TMA209348, TMA765716, TMA772641, TMA1121583, TMA477872, and TMA272234.
>
> The Applicant's attempt to register the Opposed Trademark represents a deliberate attempt to trade off the reputation and goodwill developed by the Opponent in their LEAPING CAT and PUMA design trademarks. Prior to filing the Opposed Trademark application, the Applicant was aware of the Opponent's LEAPING CAT and PUMA design trademarks and presence in the market. The Applicant is operating in the same industry specifically targeting not only golf related sporting goods but also apparel and accessories that directly overlap with the Opponent's goods and services. The Opponent has also long used the LEAPING CAT and PUMA design trademarks in association with goods and services related to the sport of golf (among others), and as a result, consumers have come to associate the Opponent's LEAPING CAT and PUMA design trademarks with such goods and services. The Opponent's Leaping Cat and PUMA design Trademarks, which prominently feature a feline design in a leaping position, have been used extensively and are well known in Canada and internationally for several decades. The

> Opposed Trademark similarly features a large feline in a leaping posture as its dominant element.
>
> The Applicant's actions go beyond mere coincidence or overlap. The filing forms part of a deliberate and aggressive attempt to misappropriate the Opponent's brand identity and goodwill.
>
> The Applicant has embarked on a vicious scheme to exploit consumer recognition of the Opponent's marks by adopting confusingly similar design elements and extending its offering into product categories in markets where the Opponent is already well known.
>
> This behaviour demonstrates dishonesty of intent and constitutes bad faith within the meaning of section 38(2)(a.1).

[8] While section 38(2)(a.1) of the Act now provides for bad faith as a specific ground of opposition, bad faith has not been defined under the statute. However, the concept of bad faith, as it relates to trademark law, is not a new one. Section 30(i) of the Act as it read prior to June 17, 2019, required an applicant to declare its entitlement to use the applied for trademark. Over time, jurisprudence evolved to allow bad faith to underpin a pleading under this ground. It is now accepted that decisions involving bad faith under the previous Act may help inform the current meaning of bad faith [see, for example *Blossman Gas Inc v Alliance Autopropane Inc*, 2022 FC 1794 at para 119 (*Blossman*) and *Norsteel Building Systems Ltd v Toti Holdings Inc*, 2021 FC 927 at paras 32–36 (*Norsteel*)].

[9] Bad faith may be considered as a breach of a legal, moral or even commercial obligation to a third party [see *Beijing Judian Restaurant Co. Ltd v Meng*, 2022 FC 743]. 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].

[10] In arguing that bad faith has not been adequately pleaded, the Applicant relies on the findings in *Norsteel, above*, along with a number of decisions of the registrar. It submits that mere awareness of an opponent's trademark is not sufficient support for a finding of bad faith.

[11] I agree with the Applicant that statements involving mere awareness on the part of the Applicant of the Opponent's trademarks and business are not sufficient support for this ground [*Norsteel* and *Blossman* above]. I note that even willful blindness or a failure to investigate a competitor's rights has been found insufficient to constitute bad faith [*Blossman*, above]. However, again as noted above, it has been recognized that an intention to cause harm or disrupt another's business may give rise to bad faith.

[12] This ground, as pleaded, contains bare or speculative allegations as well as conclusory statements of law that lack adequate supporting material facts. It would have been preferrable for the Opponent to provide better factual support for its allegation that the Applicant intended to harm or disrupt the Opponent's business and also for its claim of a "vicious scheme". However, on a plain reading of the statement of opposition in its totality, I find the balance of probabilities evenly balanced as to whether this ground is sufficiently pleaded. Without making any comment on the merits of the Opponent's allegations, I am not satisfied that this grounds should be struck in its entirety at this early stage [for similar findings see *Industria de Diseño Textil, SA v Sara Ghassai*, 2024 TMOB 150 (*Industria de Diseño Textil*) at paras 9-18; *StorageVault Canada Inc v CubeSmart*, 2025 TMOB 263 at para 13 and *Take-Two Interactive Software, Inc v GAMOMAT Holding GmbH*, 2024 TMOB 116 (*Take-Two*) at paras 11 to 13].

[13] More specifically, the allegations suggest actions beyond mere awareness by the Applicant of the Opponent's trademarks, even if these allegations are short on specific facts. The Opponent's allegations that the

Applicant's choice of a leaping feline was a deliberate, rather than coincidental attempt to trade off and misappropriate the Opponent's reputation, goodwill or brand identity, considered together with its allegation of a vicious scheme on the part of the Applicant to exploit consumer recognition, intimates that the Applicant's actions may go beyond acceptable commercial behaviour. While the Opponent will of course be required to establish facts in support, these allegations could give rise to bad faith.

[14] I consider the phrases "well known," "constitutes bad faith within the meaning of section 38(2)(a.1)," "dominant element" and "is already well known" are conclusory statements of law. Should the evidentiary record contain sufficient support for one or more of these conclusions, the Member ultimately hearing the case will make an appropriate determination. These statements are not support for the grounds alleged.

[15] The ground will be retained since I am not convinced that the ground is insufficiently particularized to allow the Applicant to know and respond to the case against it.

[16] In accordance with its request, the Applicant is granted one month from the date of this ruling within which to file and serve its counter statement.

Coleen Morrison
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

Agents of Record

For the Opponent: Lipkus Law LLP

For the Applicant: Gowling WLG (Canada) LLP