Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2026 TMOB 25

Date of Decision: 2026-02-12

INTERLOCUTORY RULING

Opponent: Makers Holdings Inc.

Applicant: Justin Stitches Inc.

Application: 2249654 for MAKE

INTRODUCTION

[1] Makers Holdings Inc. (the Opponent) opposes registration of the trademark MAKE, application number 2,249,654 (the Mark), applied for by Justin Stitches Inc. (the Applicant).

[2] By way of correspondence dated November 25, 2025, the Applicant requests an interlocutory ruling on the statement of opposition in this proceeding. The Opponent filed comments in response, along with a request for leave to file an amended statement of opposition, on December 18, 2025. No further comments were received from the Applicant with respect to the amended statement of opposition.

[3] The Applicant submits that the statement of opposition as a whole should be struck. The Opponent submits that none of the sections of the amended statement of opposition should be struck.

LEAVE TO AMEND THE STATEMENT OF OPPOSITION

[4] Having regard to the surrounding circumstances set out in the Opponent's correspondence, I am satisfied that it is in the interests of justice to grant it leave pursuant to section 48 of the *Trademarks Regulations*, SOR/2018-227 to amend the statement of opposition as requested. Accordingly, the ruling below pertains to the grounds as pleaded in the amended statement of opposition.

PLEADINGS IN OPPOSITION MATTERS

[5] The Registrar's power to strike all or part of a statement of opposition is set out in section 38(6) of the *Trademarks Act*, RSC 1985, c T-13 (the Act), as follows:

> (6) At the applicant's request, the Registrar may … strike all or part of the statement of opposition if the statement or part of it
>
> > (a) is not based on any of the grounds set out in subsection (2); or
> >
> > (b) does not set out a ground of opposition in sufficient detail to enable the applicant to reply to it.

GROUNDS OF OPPOSITION

[6] The amended statement of opposition consists of four grounds of opposition, set out in paragraph 4, subsections (a)-(d). Each will be discussed in turn.

Paragraph 4(a)

[7] In the amended statement of opposition, the Opponent pleads that contrary to sections 38(2)(b) and 12(1)(b) of the Act, the application is clearly descriptive or deceptively misdescriptive of the Applicant's services in classes 35 and 40. The Opponent pleads that the trademark MAKE is clearly descriptive of the Applicant's custom embroidery and printing services, as

well as its retail store services featuring artisanal products. In the alternative, the Opponent pleads that if the Applicant's services do not allow a customer to "make" their own custom products or are not selling handmade products, the Mark is deceptively misdescriptive.

[8] With respect to the original statement of opposition, the Applicant submitted that ground of opposition is mistakenly pleaded under section 12(1)(d) instead of 12(1)(b), and does not specify the goods and services for which the Mark is descriptive or misdescriptive. The Applicant further submitted that, as the applied-for services do not involve the rental or provision of equipment, the Opponent has not explained how the Applicant's customers would be able to "make" their own products.

[9] The Opponent submits that in view of the amended statement of opposition, it has raised sufficient facts to allow the Applicant to respond.

[10] Given that the amended statement of opposition has corrected the section reference and specified the particular services at issue under this ground of opposition, I find that it is sufficiently clear to allow the Applicant to respond. Without making any comment on the Opponent's allegations, I am not satisfied that this ground of opposition should be struck.

Paragraph 4(b)

[11] The Opponent pleads that contrary to sections 38(2)(c) and 16(1)(a) of the Act, the Applicant is not the person entitled to registration of the Mark because it was, at all material times, confusing with the trademark "make it!" which had been previously used and made known by a third party unrelated to the parties in this proceeding. The amended statement of opposition identifies this individual and provides details about their use of the "make it!" trademark.

[12] An opponent may not rely upon use or making known of a trademark by third parties in challenging an applicant's entitlement to registration [per section 17(1) of the Act].

[13] Accordingly, paragraph 4(b) is struck from the amended statement of opposition.

Paragraph 4(c)

[14] The Opponent pleads that contrary to sections 38(2)(b) and 12(1)(d) of the Act, the Mark is not registrable because it was, at all material times, confusing with seventeen third-party trademarks, whose registration numbers, names, and owners are listed by the Opponent.

[15] The Applicant acknowledged that the material facts required to support a ground of opposition under section 12(1)(d) are few, but nonetheless submitted that the Opponent appears to be alleging confusion with a family of "MAKE" trademarks, but without providing information in that respect.

[16] The Opponent submits that it is not relying on a family of trademarks, but has specified the trademarks and registration numbers upon which it is relying, which it submits is sufficient for the purposes of this ground of opposition.

[17] An opponent need only identify extant registrations on which it intends to rely for a registrability ground to be validly pleaded [see *10859036 Canada Inc v Defiant Supply Inc*, 2025 TMOB 25 at para 10]. As the Opponent has done so, I am satisfied that this ground has been pleaded in sufficient detail to allow the Applicant's reply.

[18] The request to strike this ground is therefore denied.

Paragraph 4(d)

[19] The Opponent pleads that contrary to section 38(2)(d) of the Act, the Mark is not distinctive within the meaning of section 2 of the Act because, at all material times, it does not distinguish and is not adapted to distinguish the Applicant's goods and services from the goods and services of others because it is confusingly similar to the registered trademarks of the third parties identified in paragraphs 4(b) and 4(c) of the amended statement of opposition, and because it is clearly descriptive of the Applicant's services in Nice classes 35 and 40.

[20] The Applicant submitted that this ground of opposition is not pleaded with sufficient detail since the statement of opposition refers to "the goods and services of others"; however, the amended statement of opposition specifies that these "others" are the owners of the trademarks identified in paragraphs 4(b) and 4(c).

[21] Similarly, while the Applicant submitted that the statement of opposition refers to the Mark being clearly descriptive of the Applicant's goods and services, the amended statement of opposition refers to the Mark being clearly descriptive of the Applicant's services in classes 35 and 40.

[22] Given that the amended statement of opposition has specified the particular parties, trademarks, and services at issue under this ground of opposition, I find that it is sufficiently clear to allow the Applicant to respond. Without making any comment on the Opponent's allegations, I am not satisfied that this ground of opposition should be struck.

[23] However, as the ground of opposition set out in paragraph 4(b) is struck, any references to paragraph 4(b) in this paragraph will also be struck. To the extent that the Opponent wishes to continue to rely on the trademark described in paragraph 4(b) under the distinctiveness ground of

opposition, the Opponent may request leave to file a further amended statement of opposition.

SUMMARY

[24] For the reasons set out above, the Opponent's request for leave to file an amended statement of opposition is granted, and the amended statement of opposition is of record. The Applicant's requests to strike certain provisions of the amended statement of opposition are granted only with respect to the following portions:

- All of paragraph 4(b); and
- The following words in paragraph 4(d) identified in strikethrough: "As detailed at subparagraph~~s b) and~~ c), the Proposed Mark is confusingly similar to the prior use of and registered trademarks of a number of third parties, namely, the third parties specifically identified at subparagraph~~s b) and~~ c)."

[25] Finally, in accordance with its request dated November 25, 2025, the Applicant is hereby granted an extension of time of one month from the date of this ruling within which to file and serve its counter statement.

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

Agents of Record

For the Opponent: John H. Simpson

For the Applicant: Coastal Trademark Services Limited