Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2026 TMOB 26

Date of Decision: 2026-02-12

INTERLOCUTORY RULING

Opponent: Wellness Pet, LLC

Applicant: Medvant Inc.

Application: 2,298,445 for WellnessVet & Design

INTRODUCTION

[1] This matter involves opposition by Wellness Pet, LLC (the Opponent) to an application in the name of Medvant Inc. (the Applicant), namely application No. 2,298,445 for the trademark WellnessVet & Design shown below:

[2] The Mark has been applied for in association with the services of wholesale and retail sale of dietary supplements for animals for general health and well-being; wholesale and retail sale of probiotic bacterial formulations for veterinary purposes.

[3] The Opponent filed its statement of opposition under section 38 of the *Trademarks Act*, RSC 1985, c T-13 (the Act), as amended June 17, 2019, on October 31, 2025. This was subsequently forwarded to the Applicant. On January 2, 2026, the Applicant sought an extension of time to file its counterstatement as well as an interlocutory ruling on the sufficiency several of the grounds of opposition. In response to a request for comments from the Registrar, the Opponent advised on January 22, 2026, that it wished to file a revised statement of opposition. It also provided its submissions in support of the pleadings.

LEAVE TO AMEND STATEMENT OF OPPOSITION GRANTED

[4] Noting the amendments to the statement of opposition are responsive to the Applicant's request for an interlocutory ruling and that the proceeding is at an early stage, I am satisfied that it is in the interests of justice to grant the Opponent leave to amend its statement of opposition. The amended statement of opposition, dated January 22, 2026, is therefore made of record, and I shall rely on it when addressing the sufficiency of pleadings.

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

[6] An interlocutory ruling of this nature considers only the sufficiency of pleadings and does not consider whether a particular ground will succeed.

ANALYSIS

[7] 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* (1975), 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].

[8] Having considered the submissions of both parties in the context of the revised statement of opposition I refuse the Applicant's request to strike the pleadings for the reasons that follow.

Distinctiveness Ground

[9] The Opponent pleads, at paragraph 3 of its statement of opposition, that the Mark is not distinctive within the meaning of section 2 of the Act because it does not, nor is it adapted to, distinguish the Applicant's services from the goods and/or services of the Opponent. The goods and services of the Opponent associated with the Opponent's various WELLNESS trademarks are set out under the non-registrability and non-entitlement grounds of opposition.

[10] The Applicant relies on *Cabel Hall Citrus Ltd v Latchman*, 2009 CanLII 90399 (*Cabel Hall*) to argue that the pleading is deficient since it merely

restates the language of the Act. It also is critical of the Opponent's failure to specifically plead a substantial, significant or sufficient reputation in support of this ground.

[11] The Opponent argues that to succeed, the Opponent will need to prove its trademarks are sufficiently known so as to negate the distinctiveness of the Mark. It submits that this burden can only be met with evidence. It relies on the recent cases of *Industria de Diseño Textil, SA v Sara Ghassai*, 2024 TMOB 150 and *Monster Energy Company v Pacific Smoke International Inc*, 2024 TMOB 211 where similar pleadings were, at the interlocutory ruling stage, considered acceptable.

[12] Under this ground, the Opponent specifically alleges that it is its own goods and services that prevent the Mark from actually distinguishing or being adapted to distinguish the Applicant's services. Therefore, when the statement of opposition is read in its entirety, the basis for the non-distinctiveness ground of opposition has been established.

[13] I do not believe the *Cabel Hall* decision is particularly pertinent. Unlike the facts in *Cabel Hall*, the Opponent's pleadings in respect of this ground go beyond the mere restatement of the language of the Act. The Opponent's trademarks and its goods and services restrict this ground, whereas in *Cabel Hall*, the pleadings did not specify that it was the opponent's goods that would prevent the applicant's trademark from actually distinguishing or being adapted to distinguish its goods.

[14] This ground of opposition is validly pleaded and is set out in sufficient detail to enable the Applicant's reply. The request to strike paragraph 3 of the amended statement of opposition is therefore refused.

Non-Use or Proposed Use

[15] The Opponent pleads the following in respect of its 38(2)(e) ground:

> 4. At the date of the filing of the opposed application in Canada (and at any relevant time), contrary to paragraph 38(2)(e) of the Act,
>
> 4.1 the Applicant (itself and/or its predecessors in title and/or their respective licensees) did not use the TRADEMARK in Canada in association with each of the services specified in the application or, if the Applicant had used the TRADEMARK, it was abandoned;
>
> 4.2 the Applicant (itself and/or its predecessors in title and/or their respective licensees) did not intend to use the TRADEMARK in Canada in association with each of the services specified in the opposed application. Any such intention, if it existed, appears to have been limited to the WELLNESSVET.CA variant.

[16] The Applicant objects on the basis that the wording reproduces the language of the Act relying on findings in *10859036 Canada Inc v Defiant Supply Inc*, 2025 TMOB 24 at para 13 (*Defiant Supply*). In that decision I relied on *DMD Products, LLC v Donna Lehtonen*, 2024 TMOB 126 at paras 9 and 10 to conclude the ground was deficient because it merely replicated the language of the Act, without providing additional facts. However, in *Defiant Supply* the opponent restricted the ground to allegations that there had not been prior use of the applicant's trademark, therefore disregarding entirely the second component of section 38(2)(e) involving proposed use. This is not the case with respect to the present proceeding.

[17] The Opponent submits that it need not prove its allegations at this state, but that it must only articulate material facts that, if proven, would support refusal of the application.

[18] I agree with the Opponent. The language contained in the statement of opposition goes beyond simple claims that the Applicant had not used or had not proposed to use, including because it alleges that the Applicant's intention to use appears to have been limited to "welllessvet.ca". Leaving aside the issue of whether a claim to lack of intention to use the Mark on the part of the Applicant is adequate despite the statutory wording referencing

"propose to use " as this was not raised by the Applicant in its submissions, this ground of opposition contains sufficient material fact to enable the Applicant to reply. I therefore refuse the request to strike this ground.

Non-Entitlement to Use

[19] The grounds of opposition involving allegations that the Applicant was not entitled to lawful use of the Mark rely on contravention of sections 20, 22 and 7(b) of the Act. However, in response to the Applicant's request to consider the sufficiency of pleadings, the Opponent deleted its section 20 component of this ground. As such, the ground involving non-entitlement to use the Mark is restricted to claims of *prima facie* contravention of sections 22 and 7(b) of the Act.

[20] Section 38(2)(f) addresses an applicant's lawful entitlement to use the applied for trademark. The analogous provision under the Act as it read before June 17, 2019, was section 30(i).

Depreciation of Goodwill

[21] The Opponent pleads that in view of the Applicant's knowledge of the Opponent's rights, use of the Mark:

> … would be, was, and is likely to have the effect of depreciating the value of the goodwill attaching to the registered trademarks alleged herein by the Opponent, contrary to section 22 of the Act [the Opponent adding, inasmuch as necessary, being the beneficiary of Canadian goodwill in the registered trademarks, that the public would be misled with respect to the origin of the goods, services or business of the Applicant, and that the Opponent will suffer damages therefrom]

[22] Section 22(1) of the Act states:

> No person shall use a trademark registered by another person in a manner that is likely to have the effect of depreciating the value of the goodwill attaching thereto.

[23] The Applicant submits that generally, the pleadings are speculative and lack material facts. It also states:

> …an allegation that an applicant was or should have been aware of the opponent's trademarks does not support a ground of opposition under section 38(2)(f) of the Act…

[24] The Opponent argues that, considered it its entirety, the statement of opposition alleges prior use of its registered trademarks. In addition, the allegations of confusion imply the possibility of a connection or linkage in the mind of consumers, as well as depreciation of goodwill. As such, the statement of opposition, it submits, contains sufficient material facts which, if proven, establish the requisite elements for depreciation of goodwill.

[25] Section 22 in combination with section 30(i) of the Act prior to amendment was considered a valid ground of opposition [*McDonald's Corporation and McDonald's Restaurants of Canada Limited v Hi-Star Franchise Systems Inc*, 2020 TMOB 111 at para 28]. I see no reason to find otherwise in respect of the current section 38(2)(f).

[26] Section 22 of the Act ultimately requires proof of four elements [see *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée*, 2006 SCC 23 (*Veuve Clicquot*)]. The relied upon registered trademark must be in use and sufficiently known for significant goodwill to have attached. Additionally, there must exist a connection, linkage or mental association in the mind of the hypothetical consumer between an opponent's goodwill and the applicant's use. Finally, a likelihood of depreciation of goodwill is necessary.

[27] In its pleadings at paragraph 5.2 of the statement of opposition the Opponent appears to have included elements of sections 22 and 7(b). The pleadings in respect of section 22 include reference to goodwill, misrepresentation and damage rather than above-noted elements associated with section 22. I must, however, consider the statement of opposition in its

entirety rather than focus too narrowly on one specific pleading. The Opponent has alleged prior use of its registered trademarks under its registrability and entitlement grounds and has also referenced goodwill specifically in this portion of the 38(2)(f) ground. As such, I consider the first and second required elements of a claim to depreciation of goodwill to have been addressed. In addition, the Opponent's allegations of a likelihood of confusion, found throughout the statement of opposition, imply the possible existence of a connection, linkage or mental association in the consumer's mind and a likelihood of depreciation. As such, the third and fourth elements as set out in *Veuve Clicquot,* para 46, may be inferred from the pleadings.

[28] I do not agree with the Applicant that the ground should be rejected because an applicant's awareness of an opponent's trademark is not sufficient support. The ground is not limited to claims involving the Applicant's awareness and includes allegations corresponding to the required elements for depreciation of goodwill under section 22 of the Act. I note the reasoning applies equally to the passing off claim discussed below.

[29] I therefore refuse the Applicant's request to strike this portion of the ground and the pleading at paragraph 5.2 will be retained.

<u>Passing Off</u>

[30] The Opponent pleads the following in respect of the Applicant's use of the Mark:

> …such use would be, was, and is unlawful in that such use would direct public attention to Applicant's goods, services or business in such a way as to cause confusion in Canada between these goods, services or business and those of the Opponent, contrary to paragraph 7(b) of the Act [the Opponent adding, inasmuch as necessary, being the beneficiary of Canadian goodwill in the trademarks and the related goods and/or services, that the use of the TRADEMARK would constitute a misrepresentation to the public with respect to the goods and/or services of the Applicant leading or likely to lead the public to believe that goods and/or services offered by the Applicant are the goods and/or services of the Opponent, and that the Opponent will likely

> suffer damages by reason of the erroneous belief engendered by Applicant's use of the TRADEMARK

[31] Amongst other arguments, the Applicant submits that the pleadings are speculative and lack material facts.

[32] I note that a ground of opposition based on section 30(i) of the Act as it read before it was revised June 17, 2019 in combination with section 7(b) of the Act has been held to 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*, 2006 FC 657]. Again, I see no reason to find otherwise in respect of the current section 38(2)(f).

[33] Pleadings acceptable under this ground should comprise material facts, which, if proven, would establish the three elements described by the Federal Court in *Diageo Canada Inc v Heaven Hill Distilleries Inc*, 2017 FC 571, namely goodwill, misrepresentation creating confusion in the public and actual or potential damage to the party.

[34] The ground in question includes reference to all elements and is therefore properly pleaded. I refuse the Applicant's request to strike this ground.

[35] Finally, I note that in respect of the section 38(2)(f) ground, in its entirety, the Applicant argues that the pleadings are speculative, relying on decisions of the Board to suggest the ground should be struck on this basis. I accept the statement of opposition might be read as having a degree of speculation on the part of the Opponent if one contrasts, for example the portion of the section 38(2)(e) ground alleging non-use and the sections 38(2)(f) and 22 ground which necessitates an allegation of use of the Mark as of the material date. For example, a ground premised on section 22 would not be validly pleaded if the Applicant had not used the Mark in

Canada since depreciation of goodwill requires use of the trademark in association with goods or services [*Veuve Clicquot*, *supra*, at paras 46 to 61). To this extent, the Opponent's use of the phrase "such use would be…" is inappropriate if intended to allege proposed use on the part of the Applicant as of the material date. The phrase "such use would be" aside, I am not convinced that what the Applicant describes as speculation because of inconsistent pleadings is anything beyond a structured, strategic legal approach driven by the existence of more than one legal probability. At this early juncture, I consider the wording in section 38(2)(e), as it relates to any perceived speculation in respect of the 38(2)(f) grounds, could be properly construed as an alternative pleading. I believe the Applicant is aware of the case it must meet in respect of the 38(2)(f) ground.

[36] In making my determination, I am mindful that the striking of a pleading should be done with caution, as the law continues to evolve [*Knight v Imperial Tobacco Canada Ltd*, 2011 SCC 42 at para 21]. Therefore, at this early stage of the proceeding, on a balance of probabilities, I am not satisfied that any grounds of opposition should be struck.

[37] 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

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For the Applicant: Wilson Lu LLP