



LE REGISTRAIRE DES MARQUES DE COMMERCE  
THE REGISTRAR OF TRADE-MARKS

**Reference: 2016 TMOB 92**  
**Date of Decision: 2016-06-09**  
**[UNREVISED ENGLISH**  
**CERTIFIED TRANSLATION]**

**IN THE MATTER OF AN OPPOSITION**

**Assurant, Inc.**

**Opponent**

**and**

**Assurancia Inc.**

**Applicant**

**1,574,477 for ASSURANCIA**

**Application**

Introduction

[1] Assurancia Inc. (the Applicant) filed registration application No. 1,574,477 on April 23, 2012 for the ASSURANCIA trade-mark (the Mark).

[2] The application is based on a use of the Mark in Canada since January 2008 in association with insurance brokerage; financial services, namely financial planning, consulting services regarding insurance and financial planning (the Services).

[3] The registration application was published on March 13, 2013 in the *Trade-Marks Journal* for the purposes of opposition.

[4] Assurant, Inc. (the Opponent), on April 13, 2013, filed a statement of opposition in each of the cases, raising the same grounds of opposition based on sections 30(b) and (i), 12(1)(d), 16(1)(a) and (c) and 2 (distinctiveness) of the *Trade-marks Act*, RSC (1985), c T-13 (the Act).

[5] The Applicant filed a counter-statement denying each and every ground of opposition argued by the Opponent.

[6] The Opponent filed the affidavits of Martuza Tawawala, dated January 22, 2014, and Mary P. Noonan, dated January 22, 2014.

[7] The Applicant filed the affidavits of Michel Duciaume, dated May 21, 2014, and Guiseppe Anzuino, dated May 23, 2014. They were both cross-examined and the transcripts are on record.

[8] The parties each filed written arguments and were represented at the hearing.

[9] For the reasons described below in greater detail, I find that the registration application should be refused.

#### Evidentiary burden

[10] Under the procedure in the matter of opposition to the registration of a trade-mark, the legal onus is on the Applicant to show that the application for registration does not contravene the provisions of the Act. However, the Opponent must fulfill the initial burden of proving the facts on which it bases its claims. The fact that an initial evidentiary burden is imposed on the Opponent means that a ground of opposition will be taken into consideration only if sufficient evidence exists to allow a reasonable conclusion of the existence of the facts alleged in support of this ground of opposition [see *John Labatt Ltd v Molson Companies Ltd* (1990), 30 CPR (3d) 293 (FCTD); *Dion Neckwear Ltd v Christian Dior, SA et al* 2002 FCA 29, 20 CPR (4th) 155 (FCA); and *Wrangler Apparel Corp v The Timberland Company* 2005 FC 722, 41, CPR (4th) 223].

[11] Finally, if after analyzing all the relevant factors, the registrar is in doubt, i.e. that the probabilities of confusion between the parties' marks are as high those of absence of confusion,

this situation must be interpreted against the applicant, because the legal onus is on the applicant [see *Christian Dior, supra*].

#### Preliminary remarks

[12] I have studied all the evidence of record identified above. However, I will refer only to what I consider relevant for the purposes of my decision.

[13] Apart from the usual questions pertaining to the evidentiary burden and the analysis of the relevant factors enumerated in section 6(5) of the Act, this case also raises the following questions:

- Is there sufficient evidence of record of the existence of a license between the Opponent and the users of its trade-marks, such that it could benefit from this use?
- Are the insurance brokerage and insurer services closely linked as the Opponent claims, or on the contrary, are they totally different as the Applicant claims?

#### Grounds of opposition based on section 30(i) of the Act

[14] The relevant date for the examination of the ground of opposition is the filing date of the registration application [see *Tower Conference Management Co v Canadian Exhibition Management Inc* (1990), 28 CPR (3d) 428 (TMOB)].

[15] Section 30(i) of the Act requires only that the Applicant declares it is satisfied it has the right to use the Mark in Canada. This statement is included in the present application for registration.

[16] This section of the Act may be invoked in support of a ground of opposition and in very specific cases, such as when the Applicant's statement was made in bad faith [see *Sapodilla Co. Ltd v Bristol Myers Co* (1974), 15 CPR (2d) 152 (TMOB)].

[17] The Opponent alleges in its statement of opposition that the Applicant was aware of the existence of the Opponent's trade-marks, which all contain the word ASSURANT (see Schedule

A of this decision). I will refer to all of these marks as the ASSURANT marks. The Opponent adds that the Applicant's attempt to register a trade-mark similar to its marks constitutes an act of bad faith on the Applicant's part, because this would be a deliberate attempt to take advantage of the reputation acquired by the Opponent's ASSURANT marks over the years in order to deceive consumers by leading them to believe falsely that the Services are in some way related to, associated with or approved by the Opponent.

[18] Moreover, the Opponent argues that, given that the filing of this registration application and the use of the Mark give this false and misleading impression, the Applicant could not be satisfied that it could use or register the Mark in Canada in association with the Services, such that its registration application contravenes sections 7(b), 7(d), 20 and 22 of the Act.

[19] During the hearing, the Opponent made no representation on this point. In its written arguments, the Opponent limits itself to referring to its arguments concerning the analysis of the relevant criteria, all of which it considers are largely in its favour. It thus claims that the Applicant could not know of the existence of the Opponent's rights to its trade-marks and trade-names at the time this application was filed, which is equivalent to bad faith. I also note that the Opponent makes no reference to section 7(d) of the Act in its written representations. I will therefore refrain from determining the relevance and validity of this reference in this case.

[20] The mere fact that the Applicant might have known of the existence of the ASSURANT Marks is insufficient to establish that the Applicant could not be satisfied it had the right to use the Mark in Canada, as the Opponent alleges [see *Woot inc v WootRestaurants Inc/Les Restaurants Woot Inc* 2012 TMOB 197; 2012 CarswellNat 4875].

[21] I find the Opponent did not fulfill its burden of proving the Applicant's bad faith.

[22] Moreover, even though it is far from certain that the combination of section 30(i) with sections 7(b), 20 and 22 of the Act constitutes a valid ground of opposition, I find I do not have evidence of reduction of the goodwill value of the Opponent's ASSURANT marks [see *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée* 2006 SCC 23; (2006), 49 CPR (4th) 401 (SCC) at paragraphs 46 and 63 to 68] or of a violation of section 19 or 20 of the Act that would allow me

to consider the use of the Mark to be contrary to the Act [*Sunbeam Products, Inc v Mister Coffee Services Inc*, 2001 FCT 1218 (CanLII), 16 CPR (4d) 53 (FCTD) at paragraph 18].

[23] For all these reasons, I reject this ground of opposition.

Ground of opposition based on section 12(1)(d) of the Act

[24] The relevant date for analyzing this ground of opposition is the date of my decision [see *Park Avenue Furniture Corporation v Wickes/Simmons Bedding Ltd* (1991), 37 CPR (3d) 413, on page 424 (FCA)].

[25] Ms. Noonan is a researcher in the trade-marks field, employed by the Opponent's agent. On January 16, 2014, she searched the register of trade-marks to find all the registration applications and the trade-mark registrations belonging to the Opponent and containing the name "ASSURANT". She noted 13 registrations and filed the details of each of these registrations as Exhibit 1 to her affidavit. I have reproduced in Schedule A to this decision the list of registrations appearing in paragraph 3 of her affidavit (the ASSURANT marks).

[26] For the purposes of this opposition, it is my opinion that the Opponent has better chances of success by referring to its ASSURANT word mark, which is the subject of registrations TMA594,423 and TMA695,395. The list of services for each of these registrations appears in Schedule B of this decision.

[27] I checked the Register and can confirm these registrations are still valid. The Opponent has therefore fulfilled its initial burden of proof.

[28] It is therefore incumbent on the Applicant to prove, on a balance of probabilities, that the use of the Mark in association with the Services does not risk creating confusion with the Opponent's ASSURANT word mark. The test to be applied to rule on this issue is stated in section 6(2) of the Act. This test does not address confusion between the marks themselves, but rather confusion regarding the source of the Services. Accordingly, I have to determine whether a consumer who has an imperfect memory of the Opponent's ASSURANT word mark and who sees the Mark used in association with the Services would believe they are offered or authorized by the Opponent.

[29] I must take into account all relevant circumstances, including those listed in section 6(5) of the Act, i.e. the inherent distinctiveness of the trade-marks and the extent to which they have become known; the period during which the trade-marks have been in use; the nature of the goods, services or business; the nature of the trade; and the degree of resemblance between the trade-marks in appearance or sound or in the ideas suggested by them. This list is not exhaustive and it is unnecessary to assign the same weight to each of these factors [see *Mattel Inc v 3894207 Canada Inc* 2006 SCC 22, 49 CPR (4th) 321 (SCC); *Veuve Clicquot Ponsardin, supra*; and *Masterpiece Inc v. Alavida Lifestyles Inc et al* 2011 SCC 27 (CanLII), 92 CPR (4th) 361 (SCC) for a more in-depth analysis of the general principles governing the test for confusion].

[30] As mentioned by the Supreme Court of Canada in *Masterpiece*, in most cases, the most important criterion is the degree of resemblance between the marks involved. I will therefore begin my analysis of the criteria enumerated in section 6(5) with this one.

*Degree of resemblance between the marks*

[31] The *Masterpiece* ruling also teaches us that the dominant element of each mark must be identified. It has also been determined in the past that the first element of a trade-mark is generally the most important [see *Conde Nast Publication Inc v Union des Éditions Modernes* (1979), 46 CPR (2d) 183 (FCTD)]. However, this first element loses its importance when it is commonly used in trade, descriptive or suggestive [see *Reno-Dépôt Inc v Homer TLC Inc* 2010 TMOB 11, 84 CPR (4th) 58].

[32] In its written arguments, the Applicant admits that the marks resemble each other. However, it adds that this resemblance is caused by the presence of the common particle ‘ASSURAN’, which strongly suggests the insurance field. However, the ‘CIA’ suffix of the Mark differs from the letter ‘T’ of the ASSURANT word mark. Thus, the Applicant argues, by using such a component, the Opponent must assume the risks associated with the use of such a mark. Since this is a mark with a low degree of inherent distinctiveness, the difference in the suffixes of the marks would be enough to distinguish them. I will comment on this point during the analysis of the inherent distinctiveness of the marks and the proof of the state of the register.

[33] Finally, I consider that despite a certain visual resemblance and a resemblance in the ideas they suggest, a difference exists between the sound of the parties' marks due to the difference between the suffix 'CIA' and the letter 'T'.

The inherent distinctiveness of the marks and the extent to which they have become known

[34] The inherent distinctiveness of the marks was not specifically discussed during the hearing, except for a comment by the Opponent to the effect that the marks involved have the same degree of inherent distinctiveness. However, in its written arguments, the Applicant argues that the Mark has greater inherent distinctiveness than the Opponent's ASSURANT word mark. It submits that this mark is the phonetic equivalent of the present participle of the verb 'assure', while the Mark, although suggestive, remains an invented word.

[35] The degree of inherent distinctiveness of the marks involved is relatively low, due to the suggestiveness of the parties' marks, given that they contain a first component, ASSURAN, which strongly suggests the insurance field when the marks are used in association with the parties' services. However, I agree with the Applicant. The Mark, as an invented word, nonetheless possesses an inherent distinctiveness greater than the ASSURANT word mark.

[36] The distinctiveness of a mark can be enhanced by its use and the extent to which it has become known in Canada due to its use and promotion. I will therefore proceed to analysis the evidence of record regarding the use of the parties' marks.

[37] I will discuss in more detail the Applicant's arguments on the evidence of this use of the Opponent's ASSURANT word mark, namely:

- a) the absence of evidence of the existence of a license between the Opponent and the third parties who used the Opponent's marks and the absence of evidence of means of control deployed by the Opponent would prevent it from benefiting from the provisions of section 50(1) of the Act;

- b) even if it could benefit from the evidence of use of its marks by third parties, this evidence would have too little significance to give it the importance the Opponent would wish to give it.

*Use of the Opponent's marks*

[38] Mr. Tawalala is the Marketing Manager of Assurant Solutions for Canada. He explained that Assurant Solutions is a division within the Assurant group of companies, which includes: Assurant Life of Canada; Assurant Services Canada Inc., American Bankers Life Assurance Company of Florida, and American Bankers Insurance Company of Florida.

[39] Mr. Tawalala affirmed that the Opponent is the head of the Assurant group of companies. With its subsidiaries and its associated companies, the Opponent provides specialized services in insurance in the United States and in other markets worldwide, including Canada. He gave a brief history of this organization, which dates back over 120 years.

[40] Mr. Tawalala explained that the Opponent operates in four business lines: 'Assurant Employee Benefits', 'Assurant Health', 'Assurant Solutions' and 'Assurant Specialty Property'. Together, the Assurant group of companies provides a varied range of specialized services in insurance or related to the insurance field, such as credit insurance, guarantees and service contracts, prepaid funeral expense insurance, mortgage insurance, health insurance for employees and group health insurance for small employers, group dental insurance, group disability insurance and group life insurance. As Exhibit 1, he filed excerpts from the Opponent's website describing its history, its business, its marks, its goods and the services it offers, and the awards it has obtained.

[41] Mr. Tawalala affirmed that the entities Assurant Life of Canada, Assurant Services Canada Inc., American Bankers Life Assurance Company of Florida and American Bankers Insurance Company of Florida are or have been licensed for the ASSURANT marks in Canada and for any trade-name containing the word ASSURANT. He alleged that at all times, the Opponent, under licenses, had direct or indirect control over the quality of the services offered in association with these trade-marks and trade-names in Canada.



[42] Mr. Tawalala affirmed that the Assurant group of companies has been in business in Canada since at least 1968 and currently operates under the trade-name Assurant Solutions. Assurant Solutions has its principal place of business in Toronto and operates a business centre in Kingston, Ontario. He provided the annual sales figures for the Opponent's services offered in association with the ASSURANT marks in Canada since 1999 through Assurant Solutions and the amounts spent in Canada since 1999 for advertising and promotion of these services in association with said marks.

[43] Mr. Tawalala alleged that Assurant Life of Canada is an insurance company offering "end of life" insurance services to Canadian consumers under the PURPLE SHIELD mark. This type of insurance covers final expenses and pays death benefits that serve to cover funeral expenses. The predetermined life insurance offered under the FAMILYSIDE mark also covers death benefits, which are paid directly to funeral homes to defray the predetermined costs of funeral arrangements.

[44] As Exhibit 3, Mr. Tawalala filed samples of material from Assurant Life of Canada, such as confirmation certificate, application forms, brochure excerpts and promotional material sent to potential clients, all bearing the Opponent's ASSURANT marks.

[45] I wish to point out at this stage, as submitted by the Opponent during the hearing, that the use of the mark illustrated hereinafter and frequently appearing in the material filed by Mr. Tawalala constitutes a use of the ASSURANT word mark:



[see *Registrar of Trade Marks v Compagnie L'informatique CII Honeywell Bull, Société Anonyme et al* (1985), 4 CPR (3d) 523].

[46] Mr. Tawalala claimed that in 2012 alone, Assurant Life of Canada paid nearly 15,000 beneficiaries over \$74 million for coverage of funeral expenses. As Exhibit 4, Mr. Tawalala also

filed excerpts of certain website describing other information concerning Assurant Life of Canada.

[47] As Exhibit 5, Mr. Tawalala filed samples of brochures distributed by Assurant Solutions in the context of providing the services described in more detail in paragraph 94. Exhibit 6 contains copies of insurance certificates for insurance products offered in Canada in association with one or another of the Opponent's ASSURANT marks.

[48] In paragraph 23 of his affidavit, Mr. Tawalala provided an approximation of the annual sales figures in Canada for the insurance services in association with the ASSURANT marks, which total over \$9 billion from 1999 to 2013. He added that the provision of the various types of insurance services in association with the ASSURANT marks also involves the provision of financial services, such as consulting services for business administration, administrative services and marketing.

[49] Mr. Tawalala explained that the Opponent and Assurant Solutions have spent substantial amounts for promotion and advertising of the ASSURANT marks in Canada. He provided an approximation of the amounts spent annually in Canada since 1999, which total over \$1.750 million.

[50] Mr. Tawalala affirmed that the ASSURANT brands are promoted in publications on paper or on the Web and by participation in conferences and events in the insurance field. He alleged that the ASSURANT marks are used in all the promotional material distributed in Canada.

[51] For example, Mr. Tawalala mentioned that Assurant Solutions hosts an annual event for the credit industry sector in Canada, known as 'Creditor Insurance'. This event attracts representatives of financial institutions, banks and credit companies. The first conference was held in October 2004 and the 10th conference was held in June 2013. In paragraph 30 of his affidavit, he provided the location where each of these conferences was held. As Exhibit 7, he filed copies of solicitation emails addressed to potential participants for the 10th anniversary conference.

[52] As Exhibits 8 to 11 inclusive, Mr. Tawalala also filed samples of ads published in magazines or on the Opponent's website, as well as pamphlets, brochures and other printed material that Assurant Solutions mailed to its clientele over the years in Canada.

[53] Mr. Tawalala mentioned that, over the years, the Opponent has promoted its ASSURANT marks and its business names through community and philanthropic events in Canada. He filed a sampling of press releases published by Assurant Solutions regarding these events, as Exhibit 2.

[54] Concerning the promotion of the ASSURANT marks on the Web, Mr. Tawalala affirmed that these marks appear on several websites. They are enumerated in paragraph 34 of his affidavit.

[55] Mr. Tawalala declared that, over the years, the Opponent and its group of companies have been the subject of media reports published in Canada. Samples of these articles published between 1999 and 2013 were filed as Exhibit 15. He confirmed that these articles are representative of what was circulated in Canada or what was available to Canadians over the years.

[56] Mr. Tawalala alleged that the ASSURANT mark was registered in other jurisdictions around the world. He filed a table enumerating these registrations as Exhibit 16. Moreover, the ASSURANT mark and other trade-marks and trade-names containing the word ASSURANT have been used in association with the Opponent's insurance services worldwide. He provided on this subject, as Exhibit 17, a list of locations where the Opponent has places of business.

*Can the Opponent benefit from the provisions of section 50(1) of the Act?*

[57] Section 50(1) of the Act requires the owner of a trade-mark to have direct or indirect control of the character or quality of the goods or services for the use of the trade-mark by a licensee to be deemed a use by the owner.

[58] The Applicant claims the Opponent cannot benefit from all this evidence of use of the ASSURANT Mark because it did not prove the license that allegedly existed between itself and these licensees. In the event such evidence is unnecessary, the Applicant argues that the

Opponent did not prove the establishment of quality control mechanisms for the services offered by its licensees.

[59] First of all, it has been accepted in many judgments that the filing of a licensing agreement was unnecessary for the owner of a mark to take advantage of the provisions of section 50 of the Act [see *Well's Dairy, Inc v UL Canada Inc* 2000 CanLII 15538 (FC), 7 CPR (4th) 77]. The evidence of the existence of a license did not have to be proved by filing a copy of this license [see *3082833 Nova Scotia Co v Lang Michener LLP*, 2009 FC 928 (CanLII)].

[60] As for the obligation to prove the establishment of quality control mechanisms for the services offered by the Opponent's licensees, the Applicant refers to the Registrar's decision in *MCI Communications Corp v MCI Multinet Communications Inc* (1995), 61 CPR (3d) (TMOB), rendered in the context of an opposition. This decision has been cited repeatedly to support the argument that the mere corporate structure of related companies is insufficient in itself to conclude the existence of a license. However, the Registrar expressed the following opinion on the evidence of the control mechanisms established by the owner of the mark.

I agree with the applicant's position. As admitted at page 8 of the undertakings to the first Willey cross-examination, there was no formal license agreement between MCIC and MCII. It was therefore incumbent on the opponent to evidence facts from which it could be concluded that an informal licensing arrangement existed and that the opponent had direct or indirect control of the character or quality of the services provided pursuant to that licensing arrangement. The opponent contends that it has met that burden by showing that MCIT and MCII are its wholly-owned subsidiaries. That fact alone is, in my view, insufficient to establish the existence of a license within the meaning of Section 50. There must also be evidence that the opponent controls the use of its trade-marks by its subsidiaries and takes steps to ensure the character and quality of the services provided. The Gradoville affidavit evidences some monitoring by the opponent's trade-mark counsel of the subsidiaries' use of MCI trade-marks to ensure proper trade-mark usage. However, she did not evidence any control of the character or quality of the services provided by the subsidiaries. Furthermore, the opponent was not even in a position to monitor its subsidiaries' use of the trade-mark MCI because that mark was apparently owned by MCIT prior to May 5, 1988 (my underlining).

[61] It is unclear whether this evidence of the existence of control mechanisms is necessary in all cases when there is evidence of the existence of a license, or whether this evidence of controls

is mandatory only in cases where the evidence of the existence of a license is inferred from the corporate structure binding the owner of the mark to the users of the mark.

[62] In the recent Federal Court decision in *Kabushiki Kaisha Mitsukan Group Honsha v Sakura-Nakaya Alimentos Ltda*, 2016 FC 20, 2016 CarswellNat 38, 262, the Court cited a passage from the judgment rendered by Mr. Justice Kelen in *Empresa Cubana del Tabaco v. Shapiro Cohen*, 2011 FC 102, 383 F.T.R. 164 (Eng.) (F.C.), in which he set out three methods to prove the control required in section 50(1) of the Act. The first method stated is the presence of a claim that the owner of the mark exercises the control specified in section 50(1) of the Act. To this effect, the Court refers to the decision in *Mantha & Associés/Associates v Central Transport Inc* (1995), 64 CPR (3d) 354 (FCA).

[63] Even if I were to conclude that it takes more than a mere claim that the Opponent controlled the quality and the characteristics of the services offered by its licensees in association with the ASSURANT marks, as the Applicant alleges, I find this additional evidence exists on the record.

[64] Indeed, in our case, contrary to the *MCI* case, as mentioned by the Opponent during the hearing, Mr. Tawalala also affirmed in paragraph 15 of his affidavit that, in the context of performance of the services in association with the ASSURANT mark, the licensees of the Opponent's marks use the sales and marketing material created and developed by the Opponent. Thus, not only did Mr. Tawalala affirm that the Opponent controls the quality and characteristics of the services offered by the licensees in association with the Opponent's marks, but there is also evidence of the existence of these control mechanisms. Finally, in *MCI*, there was a cross-examination and there was no specific claim concerning the existence of a licence. In our case, however, not only did Mr. Tawalala claim the existence of a licence, but there was no cross-examination on this claim.

[65] I consider that the creation of sales and marketing material by the Opponent and its use by the licensees constitute a quality control mechanism for the services offered by the Opponent's licensees.

[66] Consequently, it is my opinion that the Opponent may benefit from the evidence of use of its ASSURANT marks by Assurant Solutions or other companies related to the Opponent and identified by Mr. Tawalala in his affidavit, within the meaning of section 50(1) of the Act.

*Analysis of the Applicant's comments on the evidence of use of the  
ASSURANT mark*

[67] During the hearing, the Applicant presented a painstaking analysis of the evidence described above in order to minimize the scope the Opponent would like to give it. Thus, it pointed out that:

- Exhibit 3 to Mr. Tawalala's affidavit refers to Assurant Life of Canada, which is a trade-name and not a trade-mark. Moreover, the mark mentioned in this affidavit is FAMILYSIDE;
- Exhibit 4 to Mr. Tawalala's affidavit consists of excerpts from the Assurant Life of Canada websites, describing the nature of the different insurance products offered by the Opponent's licensees in Canada. However, these products are associated with distinct trade-marks, such as FAMILYSIDE and PURPLE SHIELD. Thus, the sales figures submitted by Mr. Tawalala were not broken down by trade-mark;
- the solicitation emails filed as Exhibit 7 are not examples of use of the ASSURANT mark but rather of the trade-name Assurant Solutions;
- some of the documents bear dates subsequent to the relevant dates (Exhibits 3, 5, 10 and 11 to Mr. Tawalala's affidavit);
- Mr. Tawalala did not indicate when and how the advertising material filed as Exhibit 5 was distributed;
- Exhibits 12, 13 and 14 to Mr. Tawalala's affidavit are not only recent but refer to the ASSURANT SOLUTIONS trade-mark.

[68] However, in rebuttal, the Opponent drew my attention to the following facts:

- Exhibit 3, on page 4, contains a reference to the ASSURANT trade-mark;
- one of the documents filed as Exhibit 4 contains a reference to the ASSURANT trade-mark;
- Exhibit 10 refers to the ASSURANT trademark

[69] I agree with the Opponent's claims. The evidence must be considered as a whole. The documents filed by Mr. Tawalala are illustrative of the use of the Opponent's marks and do not constitute exhaustive evidence of the use of its marks.

[70] I must also mention that, in the context of the ground of opposition under section 12(1)(d) of the Act, the fact that some of the documents filed by Mr. Tawalala and described above bear dates subsequent to the date of claim of the first use of the Mark or the filing date of the statement of opposition is irrelevant. Indeed, this ground must be analyzed on the date of my decision. It is clear that, for the analysis of the grounds of opposition under sections 16(1) and (2) (distinctiveness), I will have to disregard some of these documents.

[71] Regarding the use of ASSURANT SOLUTIONS as a trade-mark or business name, the Opponent claims this is a use of the ASSURANT word mark. I do not have to rule on this question, because we find the ASSURANT word mark in Exhibits 4 and 10, where this reference also appears. I thus have enough evidence of record to conclude that the ASSURANT word mark was used in Canada on the relevant date.

[72] However, I agree with the Applicant that Mr. Tawalala's mere claim of use of the ASSURANT mark in Canada since 1999, without any documentary evidence to this effect, is not evidence in itself of the use of this mark in Canada since that date. I reviewed the voluminous documentary evidence attached to Mr. Tawalala's affidavit and I find that this evidence indeed mostly is comprised of documents dating from 2012, 2013 and 2014, with a few references to the year 2010.

[73] I noted that one document refers to April 1, 2006. I refer to Exhibit 4. However, this document does not constitute evidence of use of a trade-mark within the meaning of section 4(2) of the Act. The date mentioned concerns the creation of Assurant Life of Canada on April 1, 2006. The other document that could predate the first use of the Mark claimed in the Applicant's registration application is an insurance policy filed as Exhibit 6. The document contains a 2008 copyright notice. Yet without a precise date, I cannot conclude this document proves the use of the OPPONENT's ASSURANT mark prior to January 31, 2008.

[74] These findings on the evidence of use of the ASSURANT word mark will be important during the analysis of the ground of opposition based on section 16(1) of the Act.

[75] Since the relevant date is the date of my decision, I conclude from all of the Opponent's evidence that as of today's date, the ASSURANT word mark is known in Canada in the insurance field.

*Evidence of use of the Mark*

[76] Mr. Duciaume has been the President of the Applicant since November 1, 2013. He has been an insurance broker since 1986 and a chartered insurance broker since 1989. He explained that the Applicant was incorporated in December 18, 2007 and filed as Exhibit MD-1 an excerpt from the Quebec Enterprise Register.

[77] Mr. Duciaume affirmed that the Applicant has operated an insurance brokerage and financial services banner since the beginning of 2008; its member partners offer services in association with the Mark. Originally there were 11 member partners. There are now 18, operating 38 insurance brokerage offices in association with the Mark. As Exhibit MD-2, he filed the contact information of these offices, all located in the Province of Quebec.

[78] Mr. Duciaume explained that the member partners use the Mark under license from the Applicant, the whole under the terms of an agreement he filed as Exhibit MD-3. They all offer damage insurance brokerage and financial planning services in association with the Mark and use a trade-name that contains the Mark. In paragraph 9 of his affidavit, he integrated a photo of his office in Gatineau, where the Mark can be seen on the exterior wall of the building where the premises are located.

[79] Concerning the evidence of use of the Mark, Mr. Duciaume filed the following exhibits:

- an excerpt from the Applicant's website summarizing the different types of insurance offered (Exhibit MD-8);
- a copy of a pamphlet promoting the services offered and rendered under the Mark, which was distributed in at least 20,000 copies approximately in 2009 (Exhibit MD-9).



[80] Mr. Duciaume added that the Applicant, since 2008, has promoted the services rendered by its member partners on its website at *www.assurance.ca*. He attached certain excerpts as Exhibits MD-2 and MD-8.

[81] Mr. Duciaume affirmed that in 2010, the Applicant organized a television advertising campaign to promote the Services in association with the Mark by its member partners. He claimed that 30-second ads were broadcast regularly for four weeks on RDI and for three weeks on LCN. However, we do not have a copy of this message and we have no information on the broadcast days and times and the ratings of these networks. Moreover, in 2010, the Applicant allegedly organized a contest offering a trip to a southern destination, but we have no copy of the ad for this contest.

[82] Mr. Duciaume claimed that in 2011, the Applicant organized a radio advertising campaign promoting the Services in association with the Mark. This involved 30-second ads broadcast 20 times a month for a 12-month period on the Rouge FM radio network. However, he did not file a copy of this ad and the details of broadcasting of the messages. Moreover, during that year, the Applicant allegedly rented 50 billboards on Quebec highways for a 3-month period to promote the Services in association with the Mark. However, Mr. Duciaume did not file an illustration of this promotion.

[83] Mr. Duciaume alleged that, in fall 2012, the Applicant organized another television advertising campaign for the promotion of the Services in association with the Mark, which was broadcast on TVA during a television show aired on Saturday evening from October 29 to November 19, 2012. Once again, we do not have a copy of this ad.

[84] Mr. Duciaume claimed that the Applicant has its own Facebook page, on which it promotes the Services in association with the Mark and organizes promotional contests. He filed an excerpt from this Facebook page as Exhibit MD-10.

[85] Mr. Duciaume mentioned that, since 2013, the Applicant has been a partner of Fondation Jasmin Roy against bullying.

[86] Mr. Duciaume then provided the Applicant's annual sales figure from 2008 to 2013, which range between \$68 million and \$92 million. During his cross-examination, he admitted

that these figures represent the value of the insurance policies sold and that the brokers' compensation is in the form of commissions on the value of these insurance policies sold. Consequently, the Applicant's turnover is a percentage of these figures, amounting to approximately 16%.

[87] All this evidence shows that the Applicant's activities are conducted primarily in Quebec. Moreover, the Opponent's turnover is more impressive than the Applicant's. I conclude that the Opponent's ASSURANT mark is better known in Canada than the Mark.

[88] Overall, the factor described in section 6(5)(a) of the Act does not favour either of the parties, given that the Mark is inherently more distinctive than the ASSURANT word mark, while the latter is better known in Canada than the Mark.

The period during which the trade-marks were in use

[89] The evidence summarized above shows that the Opponent has used its ASSURANT marks since at least 2010, whereas the Applicant has used the Mark since 2008.

[90] This factor therefore favours the Applicant, but not very significantly.

Nature of the services or business of the parties and the nature of their trade

[91] In considering the type of services, and the nature of the business, I must compare the statement of services covered by the application being opposed with the statement of services covered by the registration(s) claimed in the statement of opposition [see *Henkel Kommanditgesellschaft auf Aktien v Super Dragon Import Export Inc* (1986), 12 CPR (3d) 110 (FCA); and *Mr Submarine Ltd v Amandista Investments Ltd* (1987), 19 CPR (3d) 3 (FCA)].

[92] However, the statements of services of the Opponent's registrations and of the Applicant's registration application must be read so as to determine the natures of the parties' business. Evidence of the nature of the commercial activities carried on by the parties is useful in this sense [see *McDonald's Corp v Coffee Hut Stores Ltd* 1996 CanLII 3963 (FCA), (1996), 68 CPR (3d) 168 (FCA) and *American Optical Corp v Alcon Pharmaceuticals Ltd* 2000 CarswellNat 3328, 5 CPR (4th) 110 (TMOB)].

[93] A large portion of the parties' arguments pertained to these criteria. However, I note that the Services include consulting services in insurance, whereas registration TMA695,395 covers other insurance services. Thus, it is apparent that there is an overlap in the nature of these services. Moreover, this same registration covers financial services, whereas the Services also include the same type of services.

[94] In paragraph 12 of his affidavit, Mr. Tawalala described the various types of services offered by Assurant Services Canada Inc. in the insurance field, the sectors concerned and the type of clients for each of these services. Thus, this company operates in the following sectors of activity:

- insurance for creditors whose main clients are financial institutions;
- extended warranty insurance for automobile manufacturers;
- insurance for various domestic services for companies involved in the communications field;
- insurance for credit card-related benefit services for which the beneficiaries are financial institutions and credit card-issuing companies;
- home insurance for which the main clients are financial institutions;
- funeral prearrangement insurance of financial service providers.

[95] Based on the claims contained in Mr. Duciaume's affidavit, the Applicant claims that:

- the Applicant's member partners all offer vehicle, home, business, damage and life insurance brokerage services and financial planning services in association with the Mark;
- an insurance broker does not work for one insurance company in particular and does not offer the products of only one insurance company. Instead, the broker offers different insurance products of several different insurers;
- the insurance broker is a specialized vendor who must hold a license to practice obtained after training and an examination, which may vary from one province to another. In Quebec, the license to practice as an insurance broker is issued by the Autorité des marchés financiers;
- the insurance broker is bound to observe a code of ethics;
- the consumer knows the role of an insurance broker. It would therefore be impossible for even the least informed consumer to believe that an insurance broker is 'sponsored by, sanctioned by or affiliated to' an insurance company;

[96] I note that, on the Applicant's website, one can find advertisements of insurance companies identified by the Applicant as its partners [see Exhibit 2 in Mr. Duciaume's cross-examination]. On the Applicant's Facebook page (Exhibit MD-10 to Ms. Duciaume's affidavit), there is also the promotion of a discount offered by an insurance company.

[97] As for the services offered by the Opponent in association with its ASSURANT word mark, they are of two natures: insurance and financial, such as it appears from Schedule B of the statement of services covered by the registrations held by the Opponent.

[98] Mr. Duciaume explained that the Applicant offers various types of insurance (vehicle, home, business, life, etc.) and financial advice (for example, regarding mortgages).

[99] The Opponent argued that, just as it does, the Applicant offers insurance services in the life insurance, home insurance and commercial insurance fields.

[100] Despite the Applicant's valiant efforts to convince me to the contrary, I find there is a close connection between the services offered by the parties. I disagree that a difference exists between insurance services and insurance brokerage services. However, the example of the advertising found on the Applicant's website for insurance products of various insurance companies represented by brokers acting under the Applicant's banner is fairly revealing in itself. Thus, advertising concerning the types of insurance products offered by the Opponent under its ASSURANT trade-mark could be found on the Applicant's website.

[101] In the current state of affairs, it seems unlikely that the services associated with the ASSURANT word mark are offered, sold and distributed by the Applicant. However, I do not have any evidence allowing me to conclude that the Opponent's insurance services and financial services would not be offered by the Applicant's member partners.

[102] Both Mr. Tawalala and Mr. Duciaume expressed their opinions regarding the consumer's knowledge of the difference between an insurance broker and an insurance company. First of all, I have no evidence that these witnesses are experts who can express an opinion on consumers' perception of the distinctions between an insurance broker and an insurer. Moreover, even if I accepted their respective testimony, it is contradictory and I therefore could not draw a definitive conclusion.

[103] Regarding the clientele of the parties, Mr. Duciaume affirmed, on page 25 of his cross-examination, that the Applicant's clientele is composed of individuals and businesses. The same is true for the Opponent [see paragraph 9 of Mr. Tawalala's affidavit].

[104] I therefore conclude that the factors described in sections 6(5)(c) and (d) of the Act favour the Opponent.

Relevant additional circumstances

*Evidence regarding the state of the register and the market*

[105] The evidence regarding the state of the register must show a sufficient number of registrations to conclude there are numerous trade-marks on the market that include this common characteristic such that the average Canadian consumer is accustomed to distinguish between the marks that include such a characteristic [See *Welch Foods Inc v Del Monte Corp* (1993), 44 CPR (3d) 205 and *Ports International Ltd v Dunlop Ltd* (1992), 41 CPR (3d) 432].

[106] Mr. Anzuino is a paralegal employed by the firm of trade-mark agents representing the Applicant. He searched the Canadian register of trade-marks with the Onscope search engine to identify the registration applications or active trade-mark registrations containing the particle 'ASSUR' and the terms 'assurance' or 'insurance' in the description of services corresponding to the services related to the insurance field. This first search was run on May 12, 2014. He filed the path of this search as Exhibit GA-1 and the results containing the search report summary listing 406 identified registration applications or active registrations as Exhibit GA-2.

[107] The same day, Mr. Anzuino ran an Internet search, more specifically of the Canada411 telephone directory, to identify businesses with the components ASSUR or ASSURANCE or INSURANCE in their name. He filed the results of this search as Exhibit GA-3.

[108] Mr. Duciaume filed *Le guide de l'assurance 2013* (Exhibit MD-11), in which are listed 900 insurance brokerage firms practising in Quebec and 84 insurance companies carrying on activities in Quebec. He filed a list of these companies as Exhibit MD-12. He counted 37 that use the particle 'ASSURAN' in their business name or company name. As for the brokers, 130 use the particle 'ASSURAN' in their business name.

[109] According to him, there is nothing surprising in these figures, because the word ‘assurance’ and truncated expressions such as ‘assuran’ and ‘assur’ are descriptive of the services of insurance brokers and insurance products offered by insurance companies and are recognized as such by the consumer public.

[110] During the hearing, the Applicant identified 69 citations from the register of trade-marks it considered relevant. The 69 citations chosen by the Applicant contain the component ASSUR followed by another component that is also suggestive, if not descriptive. As examples, I cite ASSUR-DETTE, ASSUR-EQUI, ASSUR-LIGNE, ASSUR-PAIEMENT, ASSURAIDE, ASSURACCI, ASSURCOMMERCE, ASSURDIREKT, ASSUR-TOIT, etc.

[111] The evidence from the register shows there are a multitude of marks containing the particle ASSUR, and the addition of another element would be sufficient to distinguish one mark from another. However, the Opponent raised the point that our case only concerns the parties' marks that contain the particle ASSURAN.

[112] I find that, in the circumstances, the evidence of the state of the register is a relevant factor and proves that the particle ‘ASSUR’ is common to several registered trade-marks. Since this particle is at least highly suggestive, it is sufficient to add another element to allow them to be distinguished [see *Reno-Dépôt, supra*]. I thus conclude that the consumer is used to distinguishing all these trade-marks containing the particle ‘ASSUR’. As for the Opponent's argument concerning the particle ‘ASSURAN’, this is highly suggestive, just like the component ‘ASSUR’, and I do not believe it is expedient to distinguish between these two particles. Moreover, the particle ‘ASSUR’ is found in the component ‘ASSURANT’.

[113] I would add that it is not surprising to find in Exhibit GA-3 to Mr. Anzuino's affidavit, namely the result of an Internet search of the Canada411 telephone directory, a multitude of trade-names containing the word ‘assurance’ or ‘insurance’, given the descriptiveness of these words.

*Lack of evidence of confusion*

[114] The Opponent did not submit evidence of confusion. During the hearing and in the written representations of the parties, there is no question of this lack of evidence. Although this evidence is unnecessary, an adverse conclusion can be drawn from the absence of such evidence in some cases [see *Mattel, supra*]. I find that in this case, the lack of evidence of confusion, despite the coexistence of the marks since January 2008 in Quebec, at least, is also a factor to consider favouring the Applicant.

Conclusion

[115] From all this analysis, I conclude that the Applicant has fulfilled its burden of proving, on a balance of probabilities, that there is no confusion between the Mark and the Opponent's ASSURANT word marks, registration certificates TMA594,423 and TMA695,395, when the Mark is used in Canada in association with the Services.

[116] I reach this conclusion by accounting for the fact that the Mark has greater inherent distinctiveness than ASSURANT word mark, although still low, and that the marks involved are different phonetically. Although the marks resemble each other visually and in the ideas they suggest, this resemblance is due to the common component 'ASSURAN', which is highly suggestive of the parties' services, to say the least. Although this component forms the first part of the marks involved, this factor is lessened by the fact that it is highly suggestive. In such cases, a slight difference will be enough to distinguish them and reduce the probabilities of confusion. Finally, it is expedient to remember that when a party chooses to use a non-distinctive evocative name independently of any acquired distinctiveness, it must accept some confusion without penalty [see *Man and His Home Ltd v Mansoor Electronic Ltd* 1999 CanLII 7603 (FC), 87 CPR (3d) 218].

[117] I would add that my conclusion of absence of probability of confusion is supported by the fact there is a lack of evidence of confusion, despite the coexistence of the marks in Quebec for a period of over 8 years [see *Mattel, supra*].

[118] Therefore, I reject the ground of opposition based on section 12(1)(d) of the Act

Ground of opposition based on section 16(1) of the Act

[119] The relevant date for analyzing the grounds of opposition based on section 16(1) of the Act is the date of first use claimed in support of the registration application [see section 16(1) of the Act]. In our case, this is January 2008. Since no precise date is claimed, I must refer to the last day of the month, namely January 31, 2008 [see *Khan v Turban Brand Products Ltd* (1984), 1 CPR (3d) 388 (TMOB)].

[120] In its statement of opposition, the Opponent argues that the Applicant could not be entitled to obtain registration of the Mark because, on the relevant date, the Mark was confusing with its ASSURANT marks previously used in Canada by the Opponent. It also argues, in its statement of opposition, that the Applicant not be entitled to obtain registration of the Mark because, on the relevant date, the Mark was confusing with the trade-names Assurant Inc., Assurant Solutions, Assurant Services Canada Inc., Assurant Life of Canada and Assurant Solutions Canada (ASSURANT trade-names).

[121] To satisfy its initial burden under section 16(1) of Act, the Opponent must prove the use of its trade-marks and its trade-names before the date of first use claimed by the Applicant in its registration application (January 31, 2008) or that its marks had been made known in Canada and that it had not discontinued them as of the date of publication of the Applicant's registration application (March 13, 2013) [see *Optic Nerve Art & Design Ltd v Optic Nerve Design*, 2005 CanLII 78205, 2005, CarswellNat 4726 (TMOB)].

[122] In light of the Opponent's evidence described above, I find the Opponent has not fulfilled this initial burden. On this subject, I refer to my comments in paragraphs 72 and 73 of this decision regarding the use of the ASSURANT word mark. Moreover, the evidence of record is insufficient to conclude that the Opponent's ASSURANT word mark had been made known in Canada as of January 31, 2008.

[123] As for the ASSURANT trade-names, including Assurant Solutions, I do not have to rule on the question of whether the evidence of record proves a use of Assurant Solutions as a trade-mark (ground of opposition under 16(1)(a) of the Act) or a trade-name (ground of opposition under 16(1)(c) of the Act), because none of the documents attached to Mr. Tawalala's affidavit



mentioning Assurant Solutions is dated prior to January 31, 2008. The same is true of the documents in which we find the trade-name Assurant Life of Canada (see Exhibit 3 to Mr. Tawalala's affidavit, for example).

[124] As for the other trade-names (Assurant Inc., Assurant Services Canada Inc., and Assurant Solutions Canada), I was unable to trace documents attached to Mr. Tawalala's affidavit, proving a use of these trade-names in Canada prior to the relevant date.

[125] In the circumstances, the grounds of opposition based on sections 16(1)(a) and 16(1)(c) of the Act are rejected, because the Opponent did not fulfill its initial burden.

Ground of opposition based on non-distinctiveness of the Mark (section 2 of the Act)

[126] This ground of opposition must be analyzed as of the filing date of the statement of opposition (August 13, 2013) [see *Andres Wines Ltd v E & J Gallo Winery* (1975), 25 CPR (2d) 126 (FCA) and *Metro-Goldwyn-Mayer Inc v Stargate Connections Inc*, 2004 FC 1185, 34 CPR (4th) 317].

[127] The Federal Court, in *Bojangles' International, LLC v Bojangles Café Ltd*, 2006 FC 657, 48 CPR (4th) 427, ruled that

- a mark should be known in Canada to some extent at least to negate another mark's distinctiveness; or
- a mark could negate the distinctiveness of another mark if it is well known in a specific region of Canada.

[128] The Opponent thus had the initial burden of proving that its ASSURANT marks and its ASSURANT trade-names were known in Canada to some extent or were well known in a specific region of Canada.

[129] Contrary to the previous ground of opposition, where I concluded that there was no evidence of record of use of the ASSURANT marks or the ASSURANT trade-names before January 31, 2008, there is evidence of use of the ASSURANT word mark and the ASSURANT mark and design in Canada prior to August 13, 2013. On this subject, I refer to Exhibits 3, 4 and 8 to Mr. Tawalala's affidavit as examples of use of these marks within the meaning of section

4(2) of the Act. The Opponent's annual sales figures since 2009 in Canada in association with its ASSURANT marks have always exceeded \$900 million. As for the promotion of these marks between 2009 and 2012, the Opponent annually spent over \$150,000.

[130] The Applicant pointed out that the Opponent uses other trade-marks in association with its insurance products, such as FamilySide and Purple Shield. Since the sales figures provided by Mr. Tawalala are not broken down by mark, it is impossible to determine whether the amount of annual sales of the Opponent's services are only in association with the ASSURANT marks. However, I notice that Mr. Tawalala clearly mentioned that the sales and promotion figures for the services enumerated in paragraphs 23 and 28 of his affidavit concern the ASSURANT marks. Mr. Tawalala was not cross-examined and therefore I must presume these figures only concern the ASSURANT marks.

[131] I find the Opponent fulfilled its initial burden of proof. However, in my opinion, the difference between the relevant dates and the ground of opposition based on section 12(1)(d) has very little effect on the analysis of each of the criteria enumerated in section 6(5). The conclusions supported in the context of the ground of opposition under section 12(1)(d) concerning the various factors of section 6(5) of the Act also apply to this ground of opposition.

[132] In the circumstances, I also reject this ground of opposition.

Disposal

[133] In exercising the authority delegated to me pursuant to the provisions of section 63(3) of the Act, I reject the opposition according to the provisions of section 38(8) of the Act.

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Jean Carrière  
Member  
Trade-marks Opposition Board  
Canadian Intellectual Property Office

Certified true translation  
Arnold Bennett

## SCHEDULE A

Trade-mark	Reg. No.	Reg. Date
ASSURANT GROUP	TMA654,593	December 7, 2005
 ASSURANT	TMA684,891	March 28, 2007
ASSURANT EMPLOYEE BENEFITS	TMA674,951	October 16, 2006
 ASSURANT	TMA684,161	March 20, 2007
 ASSURANT	TMA684,892	March 28, 2007
ASSURANT SOLUTIONS	TMA651,333	October 25, 2005
 ASSURANT	TMA695,038	August 2, 2007
ASSURANT PRENEED	TMA640,294	May 24, 2005
 ASSURANT	TMA685,517	April 4, 2007
ASSURANT, ON YOUR TERMS.	TMA823,916	May 11, 2012



**SCHEDULE B**

<b>Trade-mark</b>	<b>Registration number</b>	<b>Services</b>
ASSURANT	TMA594,423	<p>Business management and marketing services for financial institutions, namely, administration of captive insurance companies and direct mail advertising; telemarketing services, namely product design and product development, the design, execution and analysis of marketing and direct marketing programs, the receipt or initiation of telephone calls for the purposes of order processing, marketing research, client services, response measurement, the fulfillment of requests arising out of the abovementioned services including communicating with clients or their customers by means of letters, faxes and other means of communication, shipping or arranging for the delivery of documents and marketing material relating to service contracts, membership, and/or insurance, the performance of management information systems services such as data entry, data collection, analysis and reporting, consulting on the performance of any of the abovementioned services; sales volume tracking, and database marketing services namely, application of algorithms in order to ascertain the propensity of customers and potential customers to purchase specific financial products or services based on various criteria.</p> <p>Insurance underwriting services in the fields of involuntary unemployment, disability, accidental death and dismemberment, property and life insurance; providing and administration of extended service contracts in the fields of consumer appliance and electronics; hazard and flood insurance tracking and placement services.</p>
ASSURANT	TMA695,395	<p>Insurance services; Business management and marketing services for financial institutions, namely, administration of captive insurance companies and direct mail advertising; Telemarketing services, namely product design and product development, the design, execution and analysis of marketing and direct marketing programs, the receipt or initiation of telephone calls for the purposes of order processing, marketing research, client services, response measurement, the fulfillment of requests arising out of the abovementioned services including communicating with clients or their customers by means of letters, faxes and other means of communication, shipping or arranging for the delivery of documents and marketing material relating to service contracts, membership, and/or insurance, the</p>

		<p>performance of management information systems services such as data entry, data collection, analysis and reporting, consulting on the performance of any of the abovementioned services; Sales volume tracking, and database marketing services namely, application of algorithms in order to ascertain the propensity of customers and potential customers to purchase specific financial products or services based on various criteria.</p> <p>Financial services, namely, business management consulting, administration and marketing services of insurance and risk management policies for financial institutions, automobile dealers, retailers and other vendors of consumer and commercial goods and services and manufactured housing vendors; Financial services, namely, database marketing, namely, algorithms application and creation for provision or administration of specific financial products or services based on various criteria; Financial services, namely, design administration and implementation of debt protection contracts and programs, design, administration and implementation of supplemental debt protection administration products and programs; Financial services, namely, design and implementation of financial products in the field of insurance; Consultation services in the field of advertising, telemarketing, sales volume tracking, customer service administration, e-commerce marketing of the goods and services of others; Consultation services in the field of licensing and invention of marketing and enrollment application processes and debt protection, claims and services, repair and replacement contract administration and other patented insurance and administration processes; Business management, consulting, administration, and marketing services, namely, providing marketing strategies and product design services for financial institutions, automobile dealers, retailers and other vendors of consumer and commercial goods and services, and manufactured housing vendors; Insurance company and reinsurance company management; Advertising, namely, advertising the wares and services of others, telemarketing, sales volume tracking, customer service administration; Extended service contract and warranty management and sales; Product design and implementation; Motor club, towing, roadside assistance and repair, and membership services; Provision and administration of home warranties and service, repair and replacement contracts on motorized and non-motorized vehicles, electronics, appliances, wireless and other communication devices, tires, jewelry,</p>
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		<p>furniture, computers, and other consumer and commercial products; Provision and administration of, and product design for warrant-type products, extended service, repair and replacement contracts in the fields of consumer appliances, electronics, computers, wireless and other communication devices, tires, furniture, jewelry, motor vehicles, non-motorized vehicles, and other consumer and commercial products; Business management and marketing services, namely, providing marketing strategies to others, administration services for automobile dealers, retailers and other vendors of consumer and commercial goods and services, and manufactured housing vendors; Benefits, administration and claim service consulting; Customer service administration, algorithms application and creation for provision or administration of specific financial products or services based on various criteria; Insurance product design and implementation; Reinsurance of, and reinsurance management services; Creation, operation and maintenance of health maintenance organizations and other managed care organizations and preferred provider, prepaid and discount plan networks and operations; Third-party administration of self-funded group plan benefit plans; Disability claim rehabilitation management.</p>
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**TRADE-MARKS OPPOSITION BOARD  
CANADIAN INTELLECTUAL PROPERTY OFFICE  
APPEARANCES AND AGENTS OF RECORD**

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**HEARING DATE:** 2016-04-27

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