



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

Citation: 2010 TMOB 197
Date of Decision: 2010-11-18

**IN THE MATTER OF AN OPPOSITION
by International News, Inc. to application
No. 1,005,609 for the trade-mark
MECCA ADVANCED TECHNICAL
GARMENTS in the name of
International Clothiers Inc.**

[1] On February 17, 1999, International Clothiers Inc. (the Applicant) filed an application to register the trade-mark MECCA ADVANCED TECHNICAL GARMENTS (the Mark) based on proposed use in association with “clothing, namely, coats, jackets, vests, suits, pants, jeans, shorts, skirts, dresses, shirts, blouses, t-shirts, sweaters, ties, hats, socks, shoes, boots and gloves” (the Wares). The Applicant disclaimed the right to the exclusive use of the word GARMENTS apart from the Mark.

[2] The application was advertised for opposition purposes in the *Trade-marks Journal* of December 13, 2000.

[3] On February 8, 2001, International News, Inc. (the Opponent) filed a statement of opposition, which pleaded the following grounds of opposition, pursuant to the indicated sections of the *Trade-marks Act*, R.S.C. 1985, c. T-13 (the Act):

1. s. 38(2)(a)/30(e): the application is not in compliance with the requirements of s. 30(e) in that the Applicant, as of the filing date of the application, had actually commenced use of the Mark in Canada in association with the Wares;

2. s. 38(2)(a)/30(a): the application is not in compliance with the requirements of s. 30(a) [*sic*] in that the Applicant could not have been satisfied that it is entitled to use the Mark in Canada in association with the Wares since at the date of filing of the application, the Applicant was or should have been aware of the Opponent's prior use of its trade-mark MECCA in association with clothing;

3. s. 38(2)(c)/16(3)(a): the Applicant is not the person entitled to registration having regard to s. 16(3)(a), on the ground that the Mark as at the date of filing of the application, was confusing with the trade-mark MECCA, which trade-mark had been previously used or made known in Canada by the Opponent in association with clothing;

4. s. 38(2)(d)/2: the Mark is not distinctive within the meaning of s. 2 by reason of the fact that the Mark does not actually distinguish the Wares of the Applicant from the wares of others, namely the Opponent's wares sold in association with the Opponent's trade-mark MECCA nor is the Mark adapted so as to distinguish the Applicant's Wares.

[4] The Applicant filed and served a counter statement in which it denied the Opponent's allegations.

[5] In support of its opposition, the Opponent filed the affidavits of Prakash Tanna and Amit Shah. The Applicant obtained an order for the cross-examination of both affiants. As the Opponent failed to produce the affiants for cross-examination, their affidavits were returned to the Opponent under cover of the office letter dated October 16, 2007. The Applicant elected to not file any evidence. Consequently, there is no evidence in the record from either party.

[6] Only the Applicant filed a written argument. An oral hearing was requested but ultimately was not held because both parties decided to not participate.

[7] The Applicant bears the legal onus of establishing, on a balance of probabilities, that its application complies with the requirements of the Act. However, there is an initial evidential burden on the Opponent to adduce sufficient admissible evidence from which it could reasonably be concluded that the facts alleged to support each ground of opposition exist [see *John Labatt Limited v. The Molson Companies Limited* (1990), 30 C.P.R. (3d) 293 (F.C.T.D.) at 298].

[8] None of the pleaded grounds can succeed in the absence of evidence. The lack of evidence means that the Opponent has not met its initial burden in respect of any of the grounds. Each of the grounds is accordingly dismissed.

[9] Pursuant to the authority delegated to me under s. 63(3) of the Act, I reject the opposition pursuant to s. 38(8) of the Act.

Jill W. Bradbury
Member
Trade-marks Opposition Board
Canadian Intellectual Property Office