

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

Citation: 2015 TMOB 197
Date of Decision: 2015-10-29

IN THE MATTER OF AN OPPOSITION

Sobeys West Inc. **Opponent**

and

Schwan's IP, LLC **Applicant**

1,448,716 for EDWARDS & Design **Application**

[1] On August 19, 2009, Schwan's IP, LLC (the Applicant) filed application No. 1,448,716 to register the trade-mark EDWARDS & Design (the Mark) shown below:



[2] The application is for the following Goods.

(1) Baked goods, namely pies.

(2) Dessert products, namely pies, apple crisp, creme pies, cheesecakes, brownies, cakes and cobblers.

Goods (1) are filed for on the basis of the Applicant's use and registration in the United States. Goods (2) are filed for on the basis of the Applicant's proposed use in Canada.

[3] The application was advertised for opposition purposes in the *Trade-marks Journal* on January 26, 2011.

[4] Canada Safeway Limited filed a statement of opposition against the application for the Mark on June 27, 2011. The Registrar granted leave for the filing of an amended statement of opposition updating the opponent from Canada Safeway Limited to Sobeys West Inc. following assignment. For simplicity, the Opponent is used to reference either Canada Safeway Limited or Sobeys West Inc. throughout this decision. Where it is necessary to refer to one or the other of these entities by name, I have done so.

[5] The Applicant filed and served a counter statement in which it denied the Opponent's allegations and was granted leave to file an amended counter statement denying the allegations in both the statement of opposition and the amended statement of opposition.

[6] In support of its opposition, the Opponent filed affidavits of Generosa Castigione, Julie Léger and Dave Pullar. Ms. Léger and Mr. Pullar were cross-examined and the transcripts, exhibits and undertakings have been filed.

[7] In support of its application, the Applicant filed affidavits of Hallee Eileen Lauriola, Sandro Romeo, and Caroline D'Amours. Ms. Lauriola was cross-examined and the transcript has been filed.

[8] As its reply evidence, the Opponent filed affidavits of Jamie-Lynn Kraft, Nick Todorovic, and Jane Buckingham. No cross-examinations of these affiants were conducted.

[9] Each party filed a written argument and participated in an oral hearing held on June 10, 2015.

Summary of Grounds of Opposition and Applicable Material Dates

[10] The grounds of opposition pleaded by the Opponent pursuant to the *Trade-marks Act*, RSC 1985, c T-13 (the Act) are summarized below:

1. The application is not in compliance with section 30(i) of the Act, since the Applicant could not have been satisfied it was entitled to use the Mark in view of sections 7 and 20 of the Act and in view of the Applicant's knowledge (actual or constructive) of the prior registration and use of the EDWARDS trade-mark.
2. The application is not in compliance with section 30(b) of the Act because, the Applicant had used the Mark in association with the Goods and the dates of first use are not set out in the application.
3. The application is not in compliance with section 30(d) of the Act because the Applicant had not used the Mark in the United States with the Goods.
4. Contrary to section 12(1)(d) of the Act, the Mark is not registrable because it is confusing with registration No. UCA17115.
5. Contrary to sections 16(2)(a) and 16(3)(a) of the Act, the Applicant is not the person entitled to registration of the Mark because the Mark is confusing with the Opponent's EDWARDS trade-mark previously used in Canada.
6. Contrary to section 2 of the Act, the Mark is not distinctive. The Mark does not distinguish, nor is it adapted to distinguish, the Goods from the goods of the Opponent.

[11] The material dates with respect to the grounds of opposition are as follows:

- section 30 - the filing date of the application [*Georgia-Pacific Corp v Scott Paper Ltd* (1984), 3 CPR (3d) 469 (TMOB) at 475];
- section 12(1)(d) - the date of my decision [*Park Avenue Furniture Corporation v Wickes/Simmons Bedding Ltd and The Registrar of Trade Marks* (1991), 37 CPR (3d) 413 (FCA)];
- sections 16(2)(a) and 16(3)(a) – the filing date of the application [section 16 of the Act];
- section 2 - the date of filing of the opposition [*Metro-Goldwyn-Mayer Inc v Stargate Connections Inc* (2004), 34 CPR (4th) 317 (FC)].

Onus

[12] 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 CPR (3d) 293 (FCTD) at 298].

Preliminary Evidence Issues

Affidavit of Dave Pullar

[13] The Opponent's evidence includes the affidavit of Mr. Pullar, the Director of Consumer Brands of Canada Safeway Limited. He has been employed by Canada Safeway since 1990 and has been in the Consumer Brands Department since December 1995 (Pullar affidavit, para 1). In its Written Argument, the Applicant raises the issue that Mr. Pullar did not prepare his affidavit himself. Given Mr. Pullar's position and explanation of how his evidence was gathered (Pullar cross-examination, pg 3, line 26 – pg 4, line 9), I am satisfied that even though he did not prepare his affidavit himself it should not be given diminished weight [see, for example, *Cascades Canada Inc v Wausau Paper Towel & Tissue, LLC* (2010), 89 CPR (4th) 79 (TMOB)].

[14] The Applicant also objects to the evidence of Mr. Pullar with respect to the section 12(1)(d) ground of opposition (Applicant's Written Argument, page 20-21):

The Affidavit of Mr. Pullar was not directed to evidence in the past (as it relates to the Application) or evidence into the future. We respectfully submit that Mr. Pullar's evidence must be reviewed with that in mind. His evidence was directed solely to the time of filing his Affidavit which is not material date for this ground or for any ground.

[15] The Applicant is correct, Mr. Pullar's evidence is dated December 2011 and the material date for the section 12(1)(d) ground of opposition is today. I am not, however, significantly diminishing the weight given to the evidence of Mr. Pullar with respect to this ground of opposition, as I do not have any evidence which suggests that the sales or use of the EDWARDS trade-mark is markedly different on today's date. Although the sales of EDWARDS coffee has decreased from \$30 million per year in 1995 to \$5 million in 2011, the sales remained at

approximately \$5 million for each of the years 2008, 2009, 2010 (Pullar affidavit, para 9). Further, while the Opponent's trade-mark EDWARDS was ultimately assigned from Canada Safeway Limited to Sobeys West Inc. after the swearing of the affidavit, I am unaware of any jurisprudence which would support giving less weight to Mr. Pullar's evidence on this basis.

Affidavit of Julie Léger

[16] Ms. Léger is a professional researcher at Public History, a research firm (Léger affidavit, para 1). She received an Excel spreadsheet with a list of website links that she was asked to printout (Léger cross-examination, Qs 59-82). Attached to her affidavit are printouts from each website.

[17] With respect to the printouts from the Applicant's websites, Facebook and Twitter pages, these printouts are admissible even though they are hearsay since it may be necessary for the Opponent to file them in support of its allegations of confusion and they are reliable since the Applicant, being a party, has the opportunity to refute the evidence [*Reliant Web Hostings Inc v Tensing Holding BV*; 2012 TMOB 48 at para 35]. With respect to the remaining printouts at Exhibit I, while I find that these are evidence that the websites had this content on the dates printed out, I do not find that these are admissible for the truth of their contents as they are hearsay. I do not find the fact that Ms. Léger was provided a spreadsheet and directed to printout certain links to diminish the weight of her evidence since her evidence has not been put forward as a search performed independently.

Affidavits of Nick Todorovic and Jane Buckingham

[18] Mr. Todorovic, a student at law employed by the Opponent's agent, and Ms. Buckingham, a trade-mark searcher employed by the Opponent's agent, both submitted reply evidence in support of the Opponent's allegation that the nature of the parties' goods overlapped. The Applicant has objected to this evidence on the basis that it is not proper reply.

[19] I am of the view that proper reply evidence responds directly to points raised in the applicant's evidence which are unanticipated and it should not include evidence which could have been filed as part of the opponent's evidence in chief [see *Lemon Hart Rum v Bacardi & Co*

2015 TMOB 75 at para 22]. Section 43 of the *Trade-marks Regulations*, SOR/96-195 (the Regulations) specifically states that evidence filed pursuant to this section must be “strictly confined to matters in reply”. There is no reason why the Opponent could not have filed the evidence of Ms. Buckingham and Mr. Todorovic as evidence in chief and as such these affidavits are inadmissible.

Section 30 Grounds of Opposition

[20] For the following reasons, each of the section 30 grounds of opposition is rejected.

[21] The Opponent has not met its initial burden with respect to its section 30(b) ground of opposition because there is no evidence that supports the allegation that the Applicant had used the Mark in Canada in advance of filing.

[22] The Opponent has not met its initial burden with respect to its section 30(d) ground of opposition because there is no evidence that supports the allegation that the Applicant had not used the Mark in the United States.

[23] Section 30(i) of the Act merely requires that an applicant declare in its application that it is satisfied that it is entitled to use the trade-mark. Where an applicant has provided the requisite statement, a section 30(i) ground should only succeed in exceptional cases, such as where there is evidence of bad faith on the part of the applicant [see *Sapodilla Co Ltd v Bristol-Myers Co* (1974), 15 CPR (2d) 152 (TMOB) at 155]. Knowledge of the existence of the Opponent’s trade-marks whether actual or constructive does not support an allegation that the Applicant could not have been satisfied of its entitlement to use the Mark [see *Woot, Inc v WootRestaruant Inc Les Restaurants Woot Inc*, 2012 TMOB 197 (CanLII)]. With respect to the allegations that the Applicant could not have been satisfied of its entitlement in view of sections 7 and 20 of the Act, there is no evidence which supports such an allegation.

Section 12(1)(d) Grounds of Opposition

[24] An opponent’s initial burden is met with respect to a section 12(1)(d) ground of opposition if the registration upon which its relies is extant at the date of the decision.

[25] In its Written Arguments, the Applicant submits that since the owner of the registration is now Sobeys West Inc. and the statement of opposition has not been amended this ground of opposition must fail (Applicant's Written Argument, page 20). First, the amended statement of opposition accepted after the filing of the Applicant's Written Argument addresses this alleged deficiency. Second, there is no requirement set out in the Act or otherwise that requires an opponent to be the registered owner of a registration which forms the basis of a ground of opposition under section 12(1)(d).

[26] The Opponent has met its initial burden with respect to the extant registration No. UCA17115 for EDWARDS which is registered for coffee and coffee filters. The Applicant must therefore establish, on a balance of probabilities, that there is no reasonable likelihood of confusion between the Mark and this registration.

[27] Section 6(2) of the Act indicates that use of a trade-mark causes confusion with another trade-mark if the use of both trade-marks in the same area would be likely to lead to the inference that the goods or services associated with those trade-marks are manufactured, sold, leased, hired or performed by the same person, whether or not the goods or services are of the same general class.

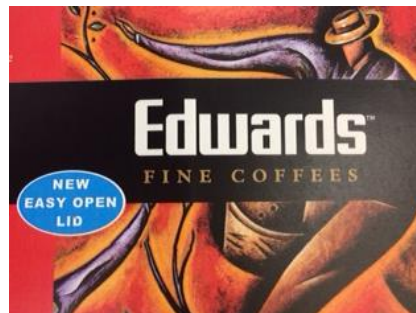
[28] The test for confusion is one of first impression and imperfect recollection. In applying the test for confusion, the Registrar must have regard to all the surrounding circumstances, including those specifically enumerated in section 6(5) of the Act, namely: (a) the inherent distinctiveness of the trade-marks and the extent to which they have become known; (b) the length of time each has been in use; (c) the nature of the goods, services or business; (d) the nature of the trade; and (e) the degree of resemblance between the trade-marks in appearance or sound or in the ideas suggested by them. These enumerated factors need not be attributed equal weight. [See, in general, *Mattel, Inc v 3894207 Canada Inc* (2006), 49 CPR (4th) 321 (SCC), *Veuve Cliquot Ponsardin v Boutiques Cliquot Ltée* (2006), 49 CPR (4th) 401 (SCC) and *Masterpiece Inc v Alavida Lifestyles Inc* (2011), 92 CPR (4th) 361 (SCC).]

inherent distinctiveness of the marks and the extent to which each mark has become known

[29] Neither mark is inherently strong since both are comprised of a surname which is commonly in use in Canada (Lauriola affidavit, para 7, Exhibit 5). To the extent that the Mark has some basic design elements it has slightly more inherent distinctiveness than the Opponent's trade-mark.

[30] A trade-mark's distinctiveness may be increased through use and promotion. Mr. Pullar provides the following evidence regarding the Opponent's EDWARDS brand:

- The EDWARDS trade-mark appears prominently on the label of coffee sold in canisters at the date the affidavit was sworn as shown below (Pullar affidavit, Exhibits E1-E10). Use of this label with the descriptive words FINE COFFEE is use of the trade-mark EDWARDS.



- The packaging of EDWARDS brand coffee indicates that it is prepared for Lucerne Foods which is a trade-name of the Opponent.
- Total sales of EDWARDS brand coffee from 2001-2011 exceeded \$95 million with yearly sales being over \$5 million dollars for each of the years 2005-2011 (Pullar affidavit, para 9).
- EDWARDS brand coffees are available in all 215 of Canada Safeway's supermarkets in Alberta, BC, Manitoba, Ontario and Saskatchewan (Pullar affidavit, para 7).

- Mr. Pullar states that EDWARDS brand coffee is advertised in the Canada Safeway weekly flyers and has been featured in promotions and coupons as part of the Canada Safeway eMail Direct promotions (Pullar affidavit, paras 11,13; Exhibits F-G and I-J). The samples of advertising provided are dated between 2002-2010.

[31] In contrast, there is no evidence of use of the Mark by the Applicant in Canada or that it has acquired any distinctiveness in Canada as there is no evidence that any of the websites in evidence referencing the Mark have been viewed by Canadians.

the length of time the marks have been in use

[32] Mr. Pullar states that the Opponent, or its predecessors, has used the trade-mark EDWARDS continuously since 1940 in association with coffee (Pullar affidavit para 5) and provides advertisements for EDWARDS brand coffee from 1940, 1965 and 1978 (Exhibits A-C). Even if I only considered use of the Opponent's trade-mark EDWARDS from 1988, when it was assigned to Canadian Safeway Limited, there is still a long history of use (see the certified copy of the trade-mark registration No. UCA17155 attached to the affidavit of Generosa Castiglione setting out the assignment date).

the nature of the goods, business and trade

[33] It is the Applicant's statement of goods as defined in its application versus the Opponent's registered goods and services that govern my determination of this factor.

[34] Although food items belong to the same general class of goods and are sold in the same stores, they may also be of an intrinsically different nature [*Oshawa Holdings Ltd v Fjord Pacific Marine Industries Ltd.* (1981), 55 CPR (2d) 39 at 44 (FCA); *Clorox Co v Sears Canada Inc* (1992), 41 C.P.R. (3d) 483 (FCTD) at 490]. I consider this to be the situation here since coffee is a beverage and dessert is a baked good or sweet treat. That being the case, the evidence shows that these goods are related since the Applicant's and the Opponent's goods may be served together (see, for example, comments posted on the EDWARDS website and FACEBOOK page in the Léger affidavit, Exhibits C1 and G3) [see, for example, *Cheung's Bakery Products Ltd v*

Saint Honore Cake Shop Ltd 2011 TMOB 94 at paras 114, 128-129 where a finding that the goods at issue were served together was relevant to an assessment of the nature of the goods].

[35] With respect to the nature of the trade, since the application does not contain a restriction, the nature of trade of the Applicant has the potential to overlap with the nature of trade of the Opponent since the Goods could be sold in the same locations as the Opponent's coffee, such as in supermarkets.

the degree of resemblance between the marks

[36] This factor favours the Opponent. There is high degree of resemblance in appearance and sound suggested by the marks in view of the presence of the word EDWARDS in both trade-marks. The addition of stylized lettering, background and the image of a pie server do not significantly diminish the degree of resemblance in appearance or sounded since they simply emphasize the word EDWARDS which remains the dominant element of the Mark. Further, the ideas suggested by both trade-mark is similar, products which are connected to someone with the surname EDWARDS.

other surrounding circumstances

(i) state of the register and marketplace

[37] As a surrounding circumstance, the Applicant argues that the use of EDWARDS and variations of that name is ubiquitous in Canada, even in association with food. This brings me to comment on the state of the register and marketplace evidence submitted in the Romeo, Lauriola D'Amours affidavits.

[38] Mr. Romeo, a Trade-mark Research Analyst employed by Thomson CompuMark, conducted a search of the Canadian Trade-marks Register for registered or applied-for for trade-marks including EDWARD or EDWARDS or EDWARD'S for all goods and services in Canada (Romeo affidavit, para 4). He located 144 active and inactive trade-marks (Romeo affidavit, Exhibit SR-1, Canadian Summary pages 7-14). State of the register evidence can be used to make inferences about the state of the marketplace, but only where large numbers of relevant trade-marks are located [*Ports International Ltd v Dunlop Ltd* (1992), 41 CPR (3d) 432; *Del*

Monte Corporation v Welch Foods Inc (1992), 44 CPR (3d) 205 (FCTD); *Kellogg Salada Canada Inc v Maximum Nutrition Ltd* (1992), 43 CPR (3d) 349 (FCA)]. Relevant trade-marks include those that (i) are registered or are allowed and based on use; (ii) are for similar goods and services as the marks at issue and (iii) those that include the component at issue in a material way.

[39] While there are large numbers of EDWARDS trade-marks on the register, most of the results located by Mr. Romeo are not relevant since they are for unrelated goods and services, are inactive, pending or not based on use, or do not include the component EDWARD or EDWARDS in a material way. At page 30 of its Written Argument, the Applicant sets out twenty-eight trade-marks which cover food, beverage, or related services. I note that most of the trade-marks located include additional material such that they evoke ideas different from that of the Opponent's or Applicant's trade-marks. For example, over twenty of the trade-marks set out in the Applicant's Written Argument are for trade-marks including the components PRINCE EDWARD, KING EDWARD or PRINCE EDWARD CHARLES. As such, there is an insufficient number of trade-marks to conclude that EDWARD or EDWARDS is widely used on its own in the food and beverage field such that the average Canadian consumer is accustomed to distinguishing these marks.

[40] Mr. Romeo also filed printouts of domain names including EDWARD, EDWARDS or EDWARD'S. I do not consider these results relevant since there is no information as to the extent that any of these webpages have been viewed in Canada.

[41] Ms. D'Amours, a Trade-mark Research Analyst employed by Thomson CompuMark, attaches to her affidavit a How Common Search for the term EDWARD, EDWARDS, or EDWARD'S in combination with food and beverage products and services. Ms. D'Amours search, however, includes many results where it is not clear what field the located references operate in or fields which while they may have a food and beverage element are unrelated (for example, hotel services, restaurants, farms, investment services and grains). Further, many of the results located include the components KING EDWARD or PRINCE EDWARD and not EDWARDS.

[42] Ms. Lauriola provides printouts of websites including the following trade-marks in the food and beverage field: PRINCE EDWARD ISLAND COMPANY & Design (Lauriola affidavit, Exhibit 6); PRINCE EDWARD COUNTY (Lauriola affidavit, Exhibit 7); PRINCE EDWARD ISLAND POTATOES and PRINCE EDWARD ISLAND POTATO SPECIALISTS (Lauriola affidavit, Exhibit 10); and printouts of GOOGLE searches for “PEI oysters” (Lauriola affidavit, Exhibit 8) and “PEI mussels” (Lauriola affidavit, Exhibit 9) and LCBO searches for Edwards and variants and Drambuie (Exhibit 12) as well as *www.Canada411.ca* for EDWARD, EDWARDS and EDWARD’S (Exhibit 5). I do not consider the printouts referencing the clothing store brand EDWARD CHAPMAN WOMAN (Exhibit 14) or the financial services brand EDWARD JONES (Exhibit 15) to be relevant as these fields are not related to food and beverages.

[43] I am prepared to accord some weight to the Lauriola and D’Amours evidence as it seems clear that third parties are active under trade-names or use trade-marks that incorporate the word EDWARD in the general field that the parties operate within. Similar, to Mr. Romeo’s evidence, however, many of the trade-marks located include EDWARD or EDWARDS as part of expressions such as Prince Edward Island or King Edward. Further, there is no evidence that any of these third party trade-names or trade-marks has acquired a significant reputation in the marketplace.

[44] As I understand it, the Applicant wishes me to conclude from the state of the register and marketplace evidence that EDWARD and EDWARDS trade-marks are so common in Canada, that the Opponent’s trade-mark should only be granted a very narrow scope of protection. I agree that the Opponent ought not to be able to prevent the use of any trade-mark including EDWARDS. However, the state of the register and marketplace evidence does not allow me to conclude that consumers are used to distinguishing such highly similar trade-marks (consisting of EDWARDS on its own whether in a stylized format or not) in the food and beverage field since there is not sufficient examples of use of trade-marks consisting of EDWARD or EDWARDS or a variant without additional elements that evoke ideas different than that of the Mark or the trade-mark EDWARDS.

(ii) use with Liqueur

[45] The Applicant has also filed evidence that there are various liqueur and wine brands including the EDWARD or EDWARDS components including PRINCE CHARLES EDWARD brand drambuie (Romeo affidavit, SR-1) and submits that Ms. Léger's evidence shows that coffee and liqueurs are sometimes served as part of the same beverage (see, for example, Léger affidavit, Exhibit I2). Although I have found Ms. Léger's evidence inadmissible for the truth of its contents, I will comment that even if I accepted that the ordinary consumer is aware of these brands and recipes including coffee and liqueurs, I do not find that this results in an inference that consumers will be able to distinguish between the Mark and the Opponent's trade-mark EDWARDS in association with the respective goods of the parties.

(iii) not used as a house brand

[46] The Applicant submits the following in its written argument (at page 23):

The Opponent does not use the EDWARDS trade-mark on any food products and never has throughout its decades of use of the mark for coffee. Since it has house brands for various food products, it could have used this mark as one of its house brands for such products and has not.

The Applicant correctly notes that EDWARDS is not a house brand of the Opponent. That being said this does not lead me to the inference that because it is not a house brand consumers will be able to distinguish the source of Goods with the Mark from the source of the Opponent's EDWARDS coffee.

conclusion

[47] I find that the Applicant has not established, on a balance of probabilities, that confusion is not likely between the Mark and the Opponent's registered trade-mark EDWARDS as of today's date. I reach this conclusion because while EDWARDS is not the type of mark that is typically afforded a broad scope of protection, only the Opponent has acquired a reputation in association with its Mark as of today's date, the Opponent Sobeys West Inc. or its predecessor in title Canada Safeway Limited has a long history of use from at least 1988, the parties goods may be served together and sold at grocery stores (even if not at the same stores or the same section

of stores specifically) and the Mark is highly similar in appearance, sound and idea suggested to the Opponent's trade-mark. As stated in *Beverley Bedding & Upholstery Co v Regal Bedding & Upholstery Ltd* (1980), 47 CPR (2d) 145 at 149 (FCTD), "Realistically appraised it is the degree of resemblance between trade marks in appearance, sound or in ideas suggested by them that is the most crucial factor, in most instances, and is the dominant factor and other factors play a subservient role in the over-all surrounding circumstances."

Section 16(2) and 16(3) Grounds of Opposition

[48] The Opponent has the initial burden to prove that it has used its trade-mark EDWARDS in Canada prior to filing date of the application, August 19, 2009, and that it has not abandoned such use at the advertisement date of the application, January 26, 2011 [see sections 16(2), 16(3) and 16(5) of the Act]. From the Opponent's evidence described in paragraph 30 of this decision, I conclude that the Opponent has met its initial burden.

[49] Therefore I have to determine if at the material date the Mark was likely to cause confusion with the Opponent's trade-mark EDWARDS. The difference in the material dates between the section 12(1)(d) ground of opposition and the section 16(2) and 16(3) grounds of opposition would not result in a different outcome. The analysis of the surrounding circumstances would generate at least the same results or better for the Opponent since it has filed evidence of sales and advertisements falling in this time period. Further, the issue of the assignment to Sobeys West Inc. is not relevant at this material date. Thus, my finding above that the trade-marks of the Applicant and the Opponent are likely to be confused applies to these grounds of opposition which therefore succeed.

Distinctiveness Ground of Opposition

[50] In order to meet its initial burden with respect to its distinctiveness ground of opposition the Opponent must evidence that its EDWARDS trade-mark had become sufficiently known as of June 27, 2011 to negate the distinctiveness of the Mark [see *Motel 6, Inc v No 6 Motel Ltd* (1981), 56 CPR (2d) 44 (FCTD) and *Bojangles' International LLC v Bojangles Café Ltd* (2006), 48 CPR. (4th) 427 (FC)]. If this burden is met, then the Applicant has a legal onus to show, on a balance of probabilities, that the Mark was not likely to create confusion with the Opponent's

trade-mark as of this date throughout Canada [see *Muffin Houses Incorporated v The Muffin House Bakery Ltd* (1985), 4 CPR (3d) 272 (TMOB)]. Mr. Pullar's evidence summarized in paragraph 30 of this decision satisfies the Opponent's initial burden.

[51] In my view, the earlier in material date for this ground as compared to the section 12(1)(d) ground of opposition do not have any significant impact on the determination of the issue of confusion between the trade-marks of the parties. Thus, my finding that the trade-marks of the Applicant and the Opponent are likely to be confused applies also to this ground of opposition as well which therefore succeeds.

Disposition

[52] Pursuant to the authority delegated to me under section 63(3) of the Act, I refuse application No. 1,448,716 pursuant to section 38(8) of the Act.

Natalie de Paulsen
Member
Trade-marks Opposition Board
Canadian Intellectual Property Office

Hearing Date: 2015-06-10

Appearances

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