



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

Citation: 2013 TMOB 144
Date of Decision: 2013-09-03

**IN THE MATTER OF AN OPPOSITION
by Canadian Council of Professional
Engineers c.o.b. Engineers Canada
(CCPE) to application No. 1,450,250 for
the trade-mark REM SURFACE
ENGINEERING in the name of REM
Chemicals, Inc.**

[1] On September 1, 2009 REM Chemicals, Inc. (the Applicant) filed an application to register the trade-mark REM SURFACE ENGINEERING (the Mark). The application for the Mark claims the following wares and services on the following bases:

Wares 1: Chemical substances for industrial use in metal finishing and metal treatment, namely, etchants, bright dips, descalers, chemical rust inhibitor compositions, conversion coating compositions, burnishing compounds, chemicals for treatment of waste streams; industrial abrasives for use in metal finishing and treatment; chemical cleaners directed to the metal finishing industries; rust removing preparations; polishing preparations. *Based on use in Canada since at least as early as February 8, 2005 and use and registration in the United States of America.*

Wares 2: Machines utilizing rotational motion for high energy surface finishing and material treatment; polishing machines for use in grinding and polishing metal, ceramics and plastics; vibratory grinding machines. *Based on proposed use in Canada and use and registration in the United States of America.*

Services: Materials treatment services, namely, superfinishing the surfaces of materials, namely, metal objects, for others; consulting services in the field of metal surface refinement and treatment. *Based on use in Canada since April 2005 and use and registration in the United States of America.*

[2] The application was advertised for opposition purposes in the *Trade-marks Journal* of September 22, 2010.

[3] On November 22, 2010, Canadian Council of Professional Engineers c.o.b. Engineers Canada (CCPE) (the Opponent) filed a statement of opposition. The Opponent was subsequently granted leave on March 15, 2013 to file an amended statement of opposition. The grounds of opposition, as amended, can be summarized as follows:

- Pursuant to sections 38(2)(a) and 30(d) of the *Trade-marks Act*, RSC 1985, c T-13 (the Act), at the filing date the Mark was not in use in the USA in association with the wares and services, alternatively, if the Mark was in use any such use has not been continuous.
- Pursuant to sections 38(2)(a) and 30(e) of the Act, the Applicant by itself or through a licensee or by itself and through a licensee did not intend to use the Mark as alleged in the application, or at all.
- Pursuant to sections 38(2)(a) and 30(i) of the Act, the Applicant could not have been satisfied of its entitlement to use the Mark in Canada in association with the wares and services in light of the fact that the terms “engineer” and “engineering” are regulated terms, the fact that the applied for wares and services are of the type that would be considered engineering services and the fact that to the Opponent’s knowledge the Applicant is not registered to practice engineering in any jurisdiction in Canada nor does the Applicant employ engineers who are licensed in any jurisdiction in Canada.
- Pursuant to sections 38(2)(b) and 12(1)(b) of the Act, the Mark is clearly descriptive or deceptively misdescriptive of the character or quality of the wares and services with which it is used or proposed to be used, or of the conditions of the persons employed in the production of the wares or provision of the services. Specifically, the wares and services fall squarely within the type of wares and services normally designed, developed, used and offered by professional engineers. In light of the facts in the statement of opposition and the fact that the Mark includes the word “engineering” (which is a regulated term in Canada), it follows that:
 - i. if members of the engineering profession in Canada are involved in the production of the wares or provision of the services, the Mark is clearly descriptive of both the character and quality of the wares and services and of the persons employed in their production
 - ii. if members of the engineering profession in Canada are not so involved then the Mark is deceptively misdescriptive of both the character and

quality of the wares and services and of the persons employed in their production.

- Pursuant to sections 38(2)(b) and 12(1)(e) of the Act, the Mark is not registrable as it is prohibited under section 10 of the Act as it has by ordinary and *bona fide* commercial use become recognized in Canada as designating the kind, quality and value of the wares and/or services. Specifically, the word “engineering” has become recognized as designating the kind, quality and value of the wares and services provided by licensed engineers, and since the Applicant is not licensed anywhere in Canada to practice engineering, the use of the Mark would likely be misleading.
- Pursuant to sections 38(2)(d) and 2 of the Act, the Mark is not distinctive within the meaning of section 2 in that it does not distinguish, nor is it adapted to distinguish, nor is it capable of distinguishing the wares and services from those of others, including other professional engineers and other entities which are licensed to practice engineering in Canada. In addition, any use of the Mark by the Applicant would be misleading, in that such use would suggest that the wares and services are provided, sold, leased, authorized or licensed by the Opponent or its constituent members as set out in the statement of opposition.

[4] The Applicant served and filed a counter statement in support of its application in which it denied the Opponent’s allegations and put the Opponent to the strict proof thereof.

[5] In support of its opposition, the Opponent filed affidavits of John Kizas and Jill D. Roberts. The Opponent also filed certified copies of three official marks. However, the certified copies are no longer relevant in light of the amended statement of opposition in which the grounds based on these official marks were deleted.

[6] In support of its application, the Applicant filed certified copies of seven trade-mark registrations which incorporate the word ENGINEERED.

[7] Both parties filed written arguments and were represented at an oral hearing.

Onus and Material Dates

[8] 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].

[9] The material dates that apply to the grounds of opposition are as follows:

- sections 38(2)(a)/30 - the date of filing the application [see *Georgia-Pacific Corp v Scott Paper Ltd* (1984), 3 CPR (3d) 469 at 475 (TMOB) and *Tower Conference Management Co v Canadian Exhibition Management Inc* (1990), 28 CPR (3d) 428 at 432 (TMOB)].
- sections 38(2)(b)/12(1)(b) - the filing date of the application [see *Fiesta Barbeques Ltd v General Housewares Corp* (2003), 28 CPR (4th) 60 (FC)];
- sections 38(2)(b)/12(1)(e) - the date of my decision [see *Park Avenue Furniture Corp v Wickes/Simpsons Bedding Ltd* (1991), 37 CPR (3d) 413 (FCA)];
- sections 38(2)(d)/2 - the date of filing of the opposition [see *Metro-Goldwyn-Mayer Inc v Stargate Connections Inc* (2004), 34 CPR (4th) 317 (FC)].

Preliminary Remark

[10] In coming to my decision I have considered all of the evidence and submissions made by the parties; however, only the portions of the evidence and submissions which are directly relevant to my findings will be discussed in the body of my decision.

Non-registrability Grounds of Opposition

Section 12(1)(b) of the Act – Is the Mark clearly descriptive or deceptively misdescriptive of the character or quality of the Applicant's wares and services and the persons employed in their production?

[11] The section 12(1)(b) ground of opposition has been pleaded as a two-pronged ground of opposition, namely:

- if members of the profession of engineering in Canada are involved in the production of the wares and the provision of the services, the Mark is clearly descriptive of the character or quality of the wares and services and of the persons employed in their production;
- if members of the profession of engineering in Canada are not involved in the production of the wares and the provision of the services, then the Mark is

deceptively misdescriptive of the character or quality of the wares and services and of the persons employed in their production.

[12] The following passage from the recent judgment of the Federal Court of Appeal in *Ontario Teachers' Pension Plan Board v Canada* (2012), 99 CPR (4th) 213 (FCA) clearly summarizes the test to be applied when assessing whether a trade-mark violates section 12(1)(b) of the Act [*Ontario Teachers'*, *supra* at para 29]:

It is trite law that the proper test for a determination of whether a trade-mark is clearly descriptive is one of first impression in the mind of a normal or reasonable person. [...] One should not arrive at a determination of the issue by critically analyzing the words of the trade-mark, but rather by attempting to ascertain the immediate impression created by the trade-mark in association with the wares or services with which it is used or proposed to be used. In other words, the trade-mark must not be considered in isolation, but rather in its full context in conjunction with the wares and services.

[13] Further, I note that “character” means a feature, trait or characteristic of the wares and services and “clearly” means “easy to understand, self-evident or plain” [see *Drackett Co of Canada Ltd v American Home Products Corp* (1968), 55 CPR 29 (Ex Ct) at 34].

[14] As for the first prong of this ground, a similar issue was dealt with in *Canadian Council of Professional Engineers v Comsol AB* [2011] TMOB 3, wherein Member Bradbury dealt with the question of whether or not the mark COMSOL REACTION ENGINEERING LAB was clearly descriptive or deceptively misdescriptive of the persons employed in the production of computer software for performing technical, mathematical calculations for use in the field of mathematics, engineering and science, and manuals and instruction handbooks sold together as a unit. In that decision, Member Bradbury held as follows [at para 34]:

Mr. Kizas has provided evidence that the Applicant is not registered to provide engineering services in any of the provinces or territories of Canada (para 43, Kizas affidavit No. 1). As there is no evidence that Canadian registered engineers are employed in the production of the Wares, I need not pursue the allegation that the Mark is clearly descriptive of the persons employed in the production of the Wares.

[15] In the present case, Mr. Kizas has provided copies of the statutes regulating the engineering profession in Canada and highlighted the provisions regulating the use of the engineering designations (Kizas affidavit, paras 10, 14 and Exhibits 2-14). He has also provided confirmation from all the constituent associations that the Applicant is not registered to engage in

the practice of engineering in Canada (Kizas affidavit, para 58 and Exhibit 39). Furthermore, in its written argument the Applicant concedes that it is not licensed to practice engineering in Canada.

[16] Applying Member Bradbury’s reasoning to the present case, in view that there is no evidence that Canadian registered engineers are employed in the production of the wares and the provision of the services, I need not pursue the allegation that the Mark is clearly descriptive of the character or quality of the wares and services and of the persons employed in their production.

[17] In view that registered members of the profession of engineering in Canada are not involved in the production of the wares, the next issue under this ground to be decided is whether the Mark is deceptively misdescriptive of the character or quality of the wares and services and of the persons employed in their production. The proper test that needs to be applied is whether deceptively misdescriptive words “so dominate the applied for trade-mark as a whole such that ... the trade-mark would thereby be precluded from registration” [see *Canadian Council of Professional Engineers v John Brooks Co* (2004), 35 CPR (4th) 507 (FC) at para 21; citing *Chocosuisse Union des Fabricants – Suisses de Chocolate v Hiram Walker & Sons Ltd* (1983), 77 CPR (2d) 246 (TMOB); citing *Lake Ontario Cement Ltd v Registrar of Trade-marks* (1976), 31 CPR (2d) 103 (FCTD)].

[18] I will discuss the importance of the element REM in further detail below. I begin my analysis by determining whether the words SURFACE ENGINEERING are deceptively misdescriptive of the Applicant’s wares and services.

[19] The Opponent submits that most people would assume that businesses using the word “engineering” in their trade-mark or trading style would offer engineering services and employ professional engineers unless the context clearly indicates otherwise [see *Canadian Council of Professional Engineers v John Brooks Co Ltd* (2004), 35 CPR (4th) 507 at 513 (FC)]. Furthermore, the Opponent cites a series of decisions in which the word “engineer” or “engineering” has been held by the Registrar and the Federal Court to have a clear meaning related to work performed by professional engineers [see *Canadian Council of Professional Engineers v Parametric Technology Corp* (1995), 60 CPR (3d) 269 at 273-274 (TMOB);

Canadian Council of Professional Engineers v John Brooks Co Ltd (2001), 21 CPR (4th) 397 at 404-405 (TMOB); *Lubrication Engineers Inc v Canadian Council of Professional Engineers* (1984), 1 CPR (3d) FCTD), aff'd 41 CPR (3d) 243 at 244 (FCA)]. I note that each case is to be decided on its own facts and merits and thus, while instructive on the legal principles, I am not bound by the specific findings made in these cases.

[20] The Applicant relies on evidence of seven certified copies of registrations for trade-marks which incorporate the word “engineered” and cover a range of wares and services. The Applicant submits that the existence of these registrations means that the Registrar must be taken to have previously accepted that trade-marks like the Mark can exist without misleading a consumer.

[21] The Opponent disagrees. The Opponent submits that most of the marks in the Applicant’s evidence cover wares and services which would not normally require the participation of professional engineers. The Opponent further submits that the jurisprudence is clear that where there are marks on the Register which incorporate the words “engineer” or “engineering” in association with wares or services which do not fall within the scope of professional engineering practice then they cannot assist the Applicant in discharging its onus to establish that the Mark is not deceptively misdescriptive [see *Canadian Council of Professional Engineers v John Brooks Co Ltd* (2004), 35 CPR (4th) 507 at 513 (FC)].

[22] The Opponent also submits that the word “engineered” (which is the word in the marks found in the Applicant’s evidence) is the past participle of the verb “to engineer” which does not necessarily refer to the profession of engineering. The Opponent points to the *Canadian Oxford English Dictionary* and states that the primary definition therein for the word “engineered” is “to arrange, to contrive, or to bring about artfully”. The Opponent submits that this further supports a finding that the Applicant’s evidence is essentially irrelevant to the issues at hand.

[23] The Applicant submits that to “engineer” something is a common use of the word and is meant to relate to the act of “bringing something about” (e.g. engineer a coup, engineer the result, etc.). Similarly “engineering” can be used to indicate that something is being manipulated or tweaked (e.g. financial engineering, social engineering, etc.). The Applicant submits that the average purchaser or everyday user can be presumed to understand that someone engaging in the foregoing is not a professional engineer and certainly would not be misled. In the present case,

the Applicant's wares and services all relate to bringing about a change in or manipulating a "surface" – in this context SURFACE ENGINEERING is not meant to connote the involvement of a professional engineer but merely that the surface will be engineered, in a suggestive manner. Furthermore, the Applicant submits that the usual purchasers of the Applicant's wares and services would be sophisticated users who would be more likely to appreciate this context.

[24] By contrast, the Opponent submits that the evidence supports a finding that the Applicant's wares and services fall squarely within the types of wares and services that engineering companies tend to provide and that the public expects them to provide (Kizas affidavit, paras 42-50 and Exhibit 35). The Opponent bases this submission both on the Applicant's website which includes the heading "surface engineering for optimum performance" (Kizas affidavit, Exhibit 35) and on statements made by the Applicant's President Mr. Michaud, as captured on a video which was placed on YouTube on May 20, 2009 (i.e. prior to the filing date for the application) (Kizas affidavit, Exhibit 37). In this video Mr. Michaud states that the Applicant is engaged in "surface engineering" and in fact is an international leader in surface engineering. While the materials from the Applicant's website and statements from the Applicant's President are clearly hearsay as adduced through Mr. Kizas, a representative of the Opponent, I consider it appropriate to place some weight on this evidence as the Applicant has had the opportunity to respond thereto and has chosen not to dispute the accuracy of the contents of the website and video.

[25] The Opponent also relies on sworn statements from Mr. Kizas that "surface engineering" is a sub-discipline of engineering as well as on excerpts from various reference publications (either academic or otherwise) which refer to "surface engineering" as an area of engineering (Kizas affidavit, para 33-41 and Exhibits 24-25; Roberts affidavit, paragraphs 10 – 22 and Exhibits 2 – 14). For example, Ms. Roberts located a book entitled *Surface Engineering & Heat Treatment, Past, Present and Future* published in 1991 (Ex 5); a book entitled *Surface Engineering* published in 1993 (Ex 9); a book entitled *Surface Engineering Casebook* published in 1996 (Ex 10); a book entitled *EMC '91: Non-Ferrous Metallurgy – Present and Future* featuring an article entitled "Surface Engineering of Aluminum and its Alloys" published in 1991 (Ex 11); and a book entitled *Surface Engineering Processes and Applications* published in 1995 (Ex14) .

[26] Ms. Roberts also conducted a search of the Internet for references in the calendars of the engineering faculties of Canadian universities to determine whether courses were given in surface engineering (Roberts affidavit, paragraphs 3-9; Exhibits A1-1F). The search results included a page from the website for the University of Alberta's Faculty of Engineering which described courses and research in surface science and engineering (Ex 1B). In order to determine whether these courses were offered back at the material date, Ms. Roberts also located a document on the website for the Faculty of Engineering (Chemical and Material Engineering) at the University of Alberta which includes a section on surface science and engineering with a copyright date of 2002 (Exhibit 17A). This website evidence suggests that courses in the subject area of "surface science and engineering" may have been offered as early as 2002.

[27] The Opponent submits and the Applicant concedes that the Applicant's wares and services involve the manipulation of surfaces. Furthermore, the Opponent relies on the fact that the Applicant owns six Canadian patents which describe chemicals, chemical compositions and processes for use in the services of the refinement and treatment of material services (Kizas affidavit, paras 44-45 and Exhibits 28-33). The Opponent submits that the subject matter of these patents falls within the purview of the type of activities carried out by professional engineers, including materials engineers.

[28] The Opponent submits that surface engineering is a sub-discipline of "materials engineering" which deals with the modification of the properties of surfaces to gain or improve upon the desired surface properties from a material performance or esthetics point of view (Kizas affidavit, para 34).

[29] Based on the evidence regarding the term "surface engineering" it would seem reasonable to conclude that the Applicant's wares and services could be seen by the average consumer to fall within the category of "surface engineering".

[30] Having reviewed the evidence of record, I am prepared to accept that surface engineering is an existing sub-discipline of engineering. I am also prepared to accept that the Applicant's wares and services are of a nature that they could be seen to be related to the discipline of surface engineering. I note that, as already discussed, the evidence shows that the Applicant is not authorized to engage in the practice of engineering in Canada.

[31] Based on the foregoing, I find that the words SURFACE ENGINEERING are deceptively misdescriptive of the Applicant's wares and services.

[32] Next I must determine whether these deceptively misdescriptive words "so dominate" the Mark such that "as a whole that [the Mark] would thereby be precluded from registration" [see *John Brooks Co, supra; Chocosuisse, supra; and Lake Ontario Cement, supra*].

[33] The Mark includes the additional word element REM. The parties made submissions on the meaning and importance of this additional element.

[34] The Opponent submits that the REM element is weak and used by a number of entities in Canada in association with various services some which are similar to the Applicant's wares and services. In this regard, the evidence of Ms. Robert shows the existence of various entities, including: REM Manufacturing Limited, REM Coatings Inc., REM Enterprises Inc., REM-Tech Industries (Roberts affidavit, para 23-33 and 37-59 and Exhibits 15A – 15K and 16A – A6W).

[35] Ms. Roberts also found various entries showing REM acting as an acronym (e.g. the University of British Columbia uses REM as an acronym for **R**esource and **E**nvironmental **M**anagement; the National Research Council uses REM as an acronym for **R**adiation **E**xposure **M**onitor; Roberts affidavit paras 34-36 and 60 and Exhibits 15L – 15N and 16X).

[36] As a result, the Opponent submits that the addition of this weak element is not sufficient to sustain the registrability of an otherwise deceptively misdescriptive composite mark [see *Lake Ontario Cement, supra; John Brooks, supra; and Coca-Cola Foods Canada Inc v Tropikfruit Ltd* (1991), 36 CPR (3d) 553 at 556 (TMOB)].

[37] In response, the Applicant submits that no evidence has been submitted to establish whether any of the evidenced REM entities are actually operating and/or offering wares and/or services in Canada using REM as an element of a trade-mark. While this is true, I note that Ms. Roberts' search results reveal over 30 entities operating in association with trade-names which include the element REM. I am prepared to infer that at least some of these were offering services in Canada in association with trade-marks incorporating the element REM.

[38] The Applicant submits that the fact that the REM element sometimes serves as an acronym (thus impacting the strength of the element) does not in and of itself mean that REM cannot be distinctive. The Applicant submits that there is no evidence of record that REM has any particular meaning in association with the Applicant's wares and services. However, the Opponent points to statements made by the Applicant's President in a video previously discussed, in which he states that REM means: **R**esearch **E**ngineering **M**anufacturing.

[39] I must now determine whether in light of the presence of the additional word element REM; the words SURFACE ENGINEERING dominate the Mark.

[40] The Opponent submits that the dominant portion of the Mark is the SURFACE ENGINEERING portion. The Applicant, by contrast, submits that the REM is sufficient to ensure that the SURFACE ENGINEERING element does not dominate the Mark.

[41] Having reviewed both parties' submissions and the evidence of record, I find that REM and SURFACE ENGINEERING are of the same importance, with neither element being dominant over the other.

[42] Based on the foregoing, I am not satisfied that the Applicant has met its burden of establishing that the Mark is not deceptively misdescriptive of the Applicant's character and quality of the wares and services and of the persons employed in their production.

[43] Based on the foregoing, the ground of opposition based on section 12(1)(b) is successful.

Section 12(1)(e) of the Act – Is the Mark not registrable because it is prohibited contrary to section 10 of the Act?

[44] As specifically pleaded, the Opponent alleges that the Mark is prohibited contrary to section 10 of the Act because the word "engineering" has become recognized as designating the kind, quality and value of the wares and services provided by licensed engineers. However, section 12(1)(e) deals with an assessment of the mark as a whole. Thus, even if the Opponent was successful in establishing that "engineering" had become so recognized, this would not be sufficient to find that the Mark as a whole violates section 10 of the Act.

[45] Based on the foregoing, the ground of opposition based on section 12(1)(e) of the Act is accordingly dismissed.

Non-distinctiveness Grounds of Opposition

[46] While there is a legal onus on the Applicant to show that the Mark is adapted to distinguish or actually distinguishes its wares and services from those of others throughout Canada [see *Muffin Houses Incorporated v The Muffin House Bakery Ltd* (1985), 4 CPR (3d) 272 (TMOB)], there is an initial evidential burden on the Opponent to establish the facts relied upon in support of the ground of non-distinctiveness.

[47] The Opponent submits that a purely descriptive or deceptively misdescriptive trade-mark is necessarily non-distinctive [see *Canadian Council of Professional Engineers v APA-The Engineered Wood Assn* (2002), 7 CPR (4th) 239 at para 49 (FCTD)]. I agree.

[48] The Opponent reiterates its submissions in relation to the section 12(1)(b) ground of opposition in support of the non-distinctiveness ground in support of its position that the Mark was clearly descriptive or deceptively misdescriptive of the character and quality of the Applicant's wares and services and the persons employed in their production at this later material date.

[49] In support of this submission, the Opponent points to case law which the Opponent submits stands for the proposition that where a trade-mark consists primarily of unregistrable components (such as descriptive or misdescriptive words or phrases) it cannot actually distinguish, nor can it be adapted to distinguish the applicant's wares or services from those of others [see *Canadian Council of Professional Engineers v APA – The Engineered Wood Association* (2000), 7 CPR (4th) 239 at 254 (FC); *TG Bright & Co, Ltd v Institut National des Appellations d'origine des vins et eaux-de-vie* (1986), 9 CPR (3d) 239 at 243-44 (FCTD)].

[50] I have reviewed the evidence and the parties' submissions. Ultimately, my findings under the section 12(1)(b) ground of opposition apply equally at the later material date for the non-distinctiveness ground of opposition. As a result, I find that the Mark is deceptively

misdescriptive of the character and quality of the Applicant's wares and services and the persons employed in their production and thus the Mark is necessarily non-distinctive.

[51] Based on the foregoing, the non-distinctiveness ground of opposition is also successful.

Non-compliance Ground of Opposition

Sections 30(d) and (e) of the Act

[52] The Opponent has not provided any evidence or argument in support of these grounds of opposition and thus it has failed to meet its evidential burden. The grounds of opposition alleging non-compliance with sections 30(d) and (e) are accordingly dismissed.

Section 30(i) of the Act – Was the Applicant satisfied of its entitlement to use the Mark in association with the Applicant's wares and services at the date of filing the application?

[53] Where an applicant has provided the statement required by section 30(i), 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].

[54] The Opponent submits that the Applicant is in breach of the statutes which govern the practice of engineering in Canada as it is not registered as an engineering firm in Canada, nor does it employ engineers in Canada. While it is true that the violation of a piece of federal legislation can be sufficient to support a ground of opposition based on section 30(i) of the Act, allegations of non-compliance with provincial/territorial statutes are not an appropriate basis for a section 30(i) ground of opposition [see *Interprovincial Lottery Corp v Monetary Capital Corp* (2006), 51 CPR (4th) 447, (TMOB); *Canadian Council of Professional Engineers v Lubrication Engineers Inc* (1992), 41 CPR (3d) 243 (FCA), at 244].

[55] Based on the foregoing, I find that the Opponent has failed to meet its evidential burden and this ground of opposition is accordingly dismissed.

Disposition

[56] Pursuant to the authority delegated to me under section 63(3) of the Act, I refuse the application pursuant to section 38(8) of the Act.

Andrea Flewelling
Member
Trade-marks Opposition Board
Canadian Intellectual Property Office