



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

**Citation: 2014 TMOB 127  
Date of Decision: 2014-06-25**

**IN THE MATTER OF AN OPPOSITION by  
Harman International Industries,  
Incorporated to application No. 1,463,549 for  
the trade-mark INFINIA LIVE  
BORDERLESS & Design in the name of LG  
Electronics Inc.**

Introduction

[1] This opposition relates to an application filed on December 21, 2009 by LG Electronics Inc. (the Applicant) to register the trade-mark INFINIA LIVE BORDELESS & Design as reproduced below:



[2] The application covers television receivers (the Wares). It is based on proposed use and the Applicant claims priority under section 34 of the *Trade-marks Act* RSC 1985, c T-13, (the Act) on the ground that an application for the registration of the same or substantially the same trade-mark was filed in or for Republic of Korea on December 15, 2009.

[3] The application was advertised on March 31, 2010 in the *Trade-marks Journal*. Harman International Industries, Incorporated (the Opponent) filed a statement of opposition on May 31, 2011 against this application.

[4] The grounds of opposition raised by the Opponent are based on sections 30(a), 12(1)(d), 16(3)(a) and section 2 (distinctiveness) of the Act. The specific grounds of opposition are detailed in Schedule A annexed to this decision.

[5] The Opponent filed as its evidence the affidavit of Beverly Shin while the Applicant filed the affidavits of Kevin Andrews and Jennifer Leah Stecyk.

[6] Neither party filed a written argument. There was no hearing.

[7] The first issue is to determine if the Opponent has met its evidential burden; if so, then I must assess whether the Applicant has met its legal onus.

[8] For the reasons detailed hereinafter, I conclude that the Opponent did not meet its evidential burden with respect to the grounds of opposition based on sections 30(a), 16 and 2 (distinctiveness) of the Act. While the Opponent met its evidential burden with respect to the registrability ground of opposition, the Applicant has satisfied its onus that the Mark is registrable.

#### Legal Onus and Burden of Proof

[9] The legal onus is on the Applicant to show that the application does not contravene the provisions of the Act as alleged in the statement of opposition. This means that if a determinate conclusion cannot be reached in favour of the Applicant once all the evidence is in, then the issue must be decided against the Applicant. However, there is also an evidential burden on the Opponent to prove the facts inherent to its pleadings. The presence of an evidential burden on the Opponent means that in order for a ground of opposition to be considered at all, there must be sufficient evidence from which it could reasonably be concluded that the facts alleged to support that ground of opposition exist [see *John Labatt Ltd v Molson Companies Ltd* (1990), 30 CPR (3d) 293 (FCTD); *Joseph E Seagram & Sons Ltd et al v Seagram Real Estate Ltd* (1984), 3 CPR

(3d) 325 (TMOB); *Dion Neckwear Ltd v Christian Dior, SA et al* (2002), 20 CPR (4th) 155 (FCA) and *Wrangler Apparel Corp v The Timberland Company* (2005), 41 CPR (4th) 223 (FC)].

#### Preliminary Remarks

[10] In coming to my decision I have considered all of the evidence and submissions made by the parties. Despite interesting background information on the Opponent's activities worldwide, the Opponent has failed to provide specific facts of its previous use in Canada of the trade-marks relied upon in its statement of opposition. Also the Opponent has not pleaded under the ground of opposition based on section 16 of the Act, that its trade-marks were known in Canada. As for the distinctiveness ground of opposition, the Opponent relies only on its registered trade-marks and their use in Canada.

#### Ground of Opposition Summarily Dismissed

[11] The Opponent has not provided any evidence that would support the ground of opposition based on section 30(a) of the Act. As such it failed to meet its initial evidential burden and therefore it is dismissed.

[12] In any event the Applicant's evidence as described below shows that the Wares are described in ordinary commercial terms.

[13] Mr. Andrews is Senior Brand Marketing Manager of LG Electronics Canada Inc (LG Canada) a wholly owned subsidiary of the Applicant. He has held such position since June 2010. He states that the Applicant's business includes the design, manufacture, promotion, distribution and sale of a wide variety of consumer electronics products. LG Canada's business includes the promotion, distribution and sale in Canada of consumer electronics products manufactured by or for the Applicant.

[14] Mr. Andrews asserts that based on his experience, people in the consumer electronics industry use the term "television receivers" to refer to what are commonly referred to by consumers as television sets or TVs to distinguish those products from what is commonly referred to as "monitor". He explains that a television set differs from a monitor in that the

former may contain a built-in receiver/antenna or tuner for converting television signals, while the latter lacks that component.

[15] Mr. Andrews filed as Exhibit H to his affidavit a copy of the entry for "television receivers" as found in the sixth edition of the *McGraw-Hill Dictionary of Scientific and Technical Terms*, where it is defined as "a receiver that converts incoming television signals into the original scenes along with the associated sounds. Also known as television set."

[16] Ms. Stecyk has been a trade-mark searcher with the Applicant's agent firm since 1988. She was asked to conduct a search using the CDNameSearch software and database system (CDNameSearch database) to identify active applications advertised after January 1, 2010 and registrations for trade-marks which contain in the list of wares the term 'television receivers'. Her search revealed 393 trade-mark applications and registrations. She reviewed each application and registration in order to confirm that the term 'television receivers' is in fact specified in the statement of wares therein. She filed as Exhibit A, a copy of the search report listing the details of the 393 citations identified in her search.

#### Grounds of opposition based on prior use

[17] There are two grounds of opposition based on prior use of the Opponent's trade-marks: entitlement to the registration of the Mark (section 16(3)(a) of the Act) and lack of distinctiveness of the Mark (section 2 of the Act). As stated earlier none of these grounds of opposition, as drafted, are based on any of the Opponent's trade-marks having been made known in Canada at any relevant time.

[18] It will become apparent from the summary of the Opponent's evidence described below, that the Opponent failed to meet its initial burden with respect to these two grounds of opposition namely, to prove that any of its trade-marks had been previously used in Canada.

[19] Ms. Shin has been since 2011 the Opponent's Director, Legal- Trademarks and Brand Protection and has been working for the Opponent since 2006. She provides some background information about the Opponent's commercial activities. As mentioned previously all of the facts

describing the Opponent's worldwide commercial activities are informative but not relevant to the grounds of opposition pleaded. In any event I will summarize some of this information.

[20] Ms. Shin alleges that the Opponent has been for decades one of the largest companies in the world in the consumer electronics industry. She states that the Opponent is a leading global provider of premium audio and infotainment solutions, engaging customers in homes, automobiles, studios and venues around the world. She provides a brief history of the Opponent's accomplishments since 1953. She alleges that the Opponent's customers include the top names in entertainment, automotive and venue design; linked by a common passion for high-fidelity sound and multimedia. The Opponent's innovative hardware, proprietary technology, applications and services enable consumers to experience high-quality audio and infotainment.

[21] Ms. Shin provides information on the distribution channels of the Opponent's products. She alleges that they are marketed to consumers and system integrators through a worldwide distribution network that includes traditional marketing channels, original equipment manufacturers (OEMs) and the Internet. The Opponent's distribution channels span the automotive, consumer and professional divisions. She asserts that the Opponent primarily sells its automotive infotainment and audio systems directly to automobile manufacturers in the United States, Europe, Japan, China and Korea, where they are installed as original equipment. The Opponent primarily sells its consumer products to dealers who sell directly to the end user in both domestic and foreign markets. It also sells to distributors who resell the products to retailers in both the Opponent's domestic and foreign markets. Lastly, in the United States, the Opponent primarily sells its professional products to dealers via manufacturer's representatives. Outside the United States, the Opponent sells directly to distributors. Manufacturer's representatives are paid sales agents and distributors that buy and hold the inventory and sell directly to dealers in their markets. Both manufacturer's representatives and distributors have a defined geographic region. In the broadcast and recording market, the Opponent primarily solicits business directly from the end users.

[22] None of the facts described up to this point relates to the Opponent's use of its trade-mark INFINITY and there are no specific facts describing the Opponent's commercial activities in Canada in relation to that trade-mark.

[23] Ms. Shin states that the Opponent's products include, amongst other, home theater systems, home and vehicle sound systems, DVD players, receivers, speakers, microphones, headphones, and professional sound and amplification equipment. She filed as Annex A to her affidavit printouts from the Opponent's website which refer to the Opponent's products. She also provides a list of the awards won by the Opponent over the years which include the 2008 Design and Engineering Award from the Consumer Electronics Association for the INFINITY brand.

[24] Ms. Shin alleges that the Opponent's lifestyle division manufactures loudspeakers, optical disc players, home theater systems, processors, docking stations, and amplifiers under several brand names such as HARMAN KARDON, JBL, and INFINITY. The Opponent's automotive division manufactures branded and unbranded audio and infotainment systems through several car makers, including Mercedes-Benz, Audi, BMW, Porsche, Hyundai and General Motors. The Opponent's professional division manufactures audio equipment, such as studio monitors, amplifiers, microphones, pedals, digital processors, and mixing consoles for recording and broadcast, musicians, cinema, touring sound, commercial sound and contracting applications.

[25] Ms. Shin also filed the Opponent's financial statements for 2010 and 2011.

[26] Ms. Shin alleges that the Opponent is the owner of the INFINITY trade-mark which it began using as early as 1969. In Canada, the goods bearing the INFINITY trade-mark have been sold since at least as early as 1972. This constitutes a bald statement without any evidence of a commercial transaction that occurred in Canada.

[27] Ms. Shin provides the details of the Opponent's applications and registrations for the trade-mark INFINITY around the world and filed copies of the registrations obtained under various jurisdictions. She also lists the following registrations obtained in Canada:

Trademark	Registration Number	Registration Date	Goods
INFINITY	TMA656529	13-Jan-2006	Automobile audio navigation aid and related goods

INFINITY	TMA242511	03-Apr-1980	Loudspeakers and related consumer electronics
INFINITY INTERMEZZ	TMA656998	19-Jan-2006	Automotive audio systems and related consumer electronics
INFINITY (logo)	TMA242510	03-Apr-1980	Loudspeakers and related consumer electronics
INFINITY PRIMUS	TMA656217	09-Jan-2006	Loudspeakers
INFINITY TOTAL	TMA656950	19-Jan-2006	Loudspeakers
TOTAL SOLUTIONS INFINITY &	TMA657084	20-Jan-2006	Loudspeakers and related consumer electronics

[28] As it appears from this chart none of the registrations cover services.

[29] Ms. Shin alleges that for more than 25 years the Opponent has been making extensive and continuous use of the INFINITY and INFINITY & design trade-marks in association with loudspeakers which are intended for use in home theater systems and in home and vehicle sound systems. However there is no specific allegation of use of any of the above trade-marks in Canada.

[30] Ms. Shin asserts that many of the Opponent's products are usually displayed alongside television screens. Therefore, the Opponent's trade-mark is known, amongst other, in the field of home theater systems and as a product sold together with television screens. She filed as Annex F printouts of the Opponent's website on which appear products sold under the trade-marks INFINITY and/or INFINITY & Design. There is no specific information about the number of visits made by Canadians on the Opponent's website and in particular with respect to those web pages.

[31] She provides a list of the countries wherein the products bearing the trade-mark INFINITY are sold, including Canada. She identifies the Canadian distributor of the Opponent's products bearing the trade-mark INFINITY.

[32] Ms. Shin states that the worldwide sales for the past five (5) fiscal years of goods bearing the INFINITY trade-mark by the Opponent and its affiliates/subsidiaries have been greater than \$20,000,000.00. There is no breakdown per country, and thus we are left in the dark as far as the Canadian sales are concerned.

[33] Ms. Shin affirms that the Opponent has carried out high-profile advertising and promotion of products bearing the INFINITY trade-mark in various media, including television

commercials, outdoor advertisements, internationally well-known print publications, and various promotional events for over 25 years. Additionally, goods bearing the Opponent's INFINITY trade-mark are promoted internationally over the internet at the Opponent's website. She attached as Annex G to her affidavit samples of what she describes as promotional materials, catalogues, articles, advertisements, studies, letters, lists, screen shots, awards and other evidence of the extensive promotion and reputation of the INFINITY mark around the world. Also filed as Annex H are representative samples of similar material for the promotion of the INFINITY mark in Canada.

[34] However a closer look at the material filed as Annexes G and H to her affidavit reveals that they are questionnaires in the form of a survey with the results, without any information on where, how and when such survey(s) was (were) held. Also included in those exhibits are brochures, but we have no information as to their circulation in Canada. There are also advertisements but Ms. Shin failed to identify the magazines or publications in which those advertisements were published, when, if they were ever circulated in Canada and if so to what extent. In any event, advertisement or promotion of wares bearing a trade-mark does not constitute evidence of use of that trade-mark in association with wares within the meaning of section 4(1) of the Act.

[35] Ms. Shin then provides the amounts spent by the Opponent and its affiliates on advertising and promoting products and services under the INFINITY trade-mark worldwide for the past five (5) fiscal years, which have been greater than \$260,000.00. However we have no information on the amount spent in Canada during that period of time.

[36] Ms. Shin finally asserts that the Opponent has enjoyed a record of successful protection of its rights over the INFINITY mark and defends the INFINITY mark vigorously. In addition to filing court actions, the Opponent sent letters to third parties requesting a restriction of goods and/or a withdrawal of any conflicting applications and/or limitation of worldwide use, applications and registrations for marks. She filed as Annex I to her affidavit a chart listing the oppositions the Opponent filed to defend its INFINITY trade-mark. However in such chart there is no reference to actions taken in Canada. The chart does not mention, for each of the references identified, in which country the proceeding was initiated. Most of the references are identified as 'pre-opp' but no



information is provided as to the meaning of such expression. Other matters are identified as ‘closed’. Finally as part of Annex I there is a document written in a foreign language with no translation. Therefore it is impossible to determine its meaning.

[37] From all this evidence I conclude that the Opponent has failed to establish use in Canada, within the meaning of section 4(1) of the Act, of any of its trade-marks listed above in association with its corresponding wares. More particularly the Opponent has not alleged or proved a single transaction wherein the property of a product bearing the Opponent’s trade-mark INFINITY has been transferred in Canada to a third party (distributor, retailer or a consumer).

[38] The Opponent has not met its initial burden to establish prior use in Canada of any of its trade-marks at the filing date of this application [see section 16(3) of the Act] or at the filing date of its statement of opposition [see *Andres Wines Ltd v E&J Gallo Winery* (1975), 25 CPR (2d) 126 (FCA)]. Consequently the grounds of opposition, as drafted, based on section 16(3)(a) and 2 (distinctiveness) are dismissed.

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

[39] The relevant date for this ground of opposition is the date of the Registrar’s decision [see *Park Avenue Furniture Corporation v Wickes/Simmons Bedding Ltd* (1991), 37 CPR (3d) 413 at 424 (FCA)].

[40] Attached to Ms. Shin’s affidavit is a copy of a certificate of renewal for registration No. TMA242,511 for the trade-mark INFINITY covering loudspeakers, audio equipment, namely, tuners, amplifiers, and tape recorders; as well as a copy of certificate of registration No. TMA656,529 for the trade-mark INFINITY covering automobile audio navigation aid and related goods.

[41] I also used my discretion to check the register and confirm that the Opponent is the owner of registration No. TMA242,510 for the trade-mark Infinity symbol design covering amongst other speakers and speaker elements for audio systems; audio equipment, namely, tuners, amplifiers, and tape recorders.

[42] All three registrations are extant. Consequently the Opponent has met its initial burden with respect to this ground of opposition.

[43] The Opponent's best case scenario is with registration No. TMA242,511 for the trade-mark INFINITY covering loudspeakers, audio equipment, namely, tuners, amplifiers, and tape recorders. The wares listed under certificate of registration No. TMA656,529 are different than the Wares and the symbol infinity trade-mark covered by registration No. TMA242,510 is quite different in appearance from the Mark. If the Opponent is not successful in the analysis of a likelihood of confusion with its registration No. TMA242,511 it would not achieve a better result with its other two registrations or any other listed above.

[44] The test for confusion is outlined in section 6(2) of the Act. Some of the surrounding circumstances to be taken into consideration when assessing the likelihood of confusion between two trade-marks are described in section 6(5) of the Act: the inherent distinctiveness of the trade-marks or trade-names and the extent to which they have become known; the length of time the trade-marks or trade-names have been in use; the nature of the wares, services, or business; the nature of the trade; and the degree of resemblance between the trade-marks or trade-names in appearance, or sound or any ideas suggested by them. Those criteria are not exhaustive and it is not necessary to give each one of them equal weight but the most important factor is often the degree of resemblance between the marks [see *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée et al* (2006), 49 CPR (4th) 401 (SCC), *Mattel Inc v 3894207 Canada Inc* (2006), 49 CPR (4th) 321 (SCC) and *Masterpiece Inc v Alavida Lifestyles Inc et al* (2011), 96 CPR (4th) 361 (SCC)].

[45] The test under section 6(2) of the Act does not concern the confusion of the marks themselves, but confusion of goods or services from one source as being from another source. In the instant case, the question posed by section 6(2) is whether a consumer who sees the Applicant's Wares bearing the Mark, would think they emanate from or are sponsored by or approved by the Opponent.

*Inherent distinctiveness of the trade-marks and the extent to which they have become known*

[46] On the assumption that the first portion of the Mark is INFINIA, it is a coined word. However I will discuss in more details, under the degree of resemblance, the different possibilities as to the meaning of the first portion of the Mark. There is a design feature included in the Mark. Also the Mark contains the words 'live' and 'borderless'. Therefore the Mark, as a whole, is more inherently distinctive than the trade-mark INFINITY which is a common English word.

[47] Any mark may acquire distinctiveness through extensive use or promotion in Canada. I shall now describe the evidence filed by the Applicant with respect to the use and promotion in Canada of the Mark.

[48] Mr. Andrews alleges that the Applicant is the owner of a number of trade-marks in Canada, including a list of trade-marks that includes the element INFINIA. He refers to those trade-marks as the INFINIA Family. It includes the Mark. He filed a copy of the particulars for the present application and for each of the other trade-marks he cites.

[49] Mr. Andrews states that LG Canada is licensed by the Applicant to use the INFINIA Family in connection with the promotion, distribution and sale of the Applicant's INFINIA-branded products in Canada.

[50] Mr. Andrews affirms that in early 2010 the Applicant, through LG Canada, launched its INFINIA-branded line of television receivers in Canada (the Infinia TVs). As of the date of his affidavit (July 12, 2012), there have been in total approximately six series of Infinia TVs, each series containing approximately six to twenty-three different television receivers of various specifications.

[51] Mr. Andrews states that the Infinia TVs include television receivers that are branded with the Mark. He filed copies of representative product specification sheets for select Infinia TVs, which sheets were distributed to Canadian dealers and were available to consumers in Canada and online at the Canadian version of LG Electronics' website located at [www.lg.com/ca\\_en](http://www.lg.com/ca_en) (the "LG Website") in 2010 and 2011. Printed copies were also provided to dealers. These product specification sheets feature the Mark.

[52] Mr. Andrews goes on to state that since their launch in Canada, LG Canada has sold over 278,000 Infinia TVs in Canada. The majority of these sales were to well-known retailers that own and operate stores all across Canada, including Best Buy, Costco, Wal-Mart, The Brick Warehouse, Sears Canada and The Source. These dealers, in turn, sell Infinia TVs to consumers.

[53] Mr. Andrews alleges that the Applicant, via LG Canada, has promoted and advertised the Infinia TVs extensively in Canada since December 2009. LG Canada's promotional strategy, as it relates to Infinia TVs, includes attending dealer shows held throughout Canada to generate publicity for the Infinia TVs among dealers as well as to educate them about the features and technologies behind these television receivers. Dealer shows are typically held in the first quarter of the year in Vancouver, Toronto and Montreal. He filed pictures of LG Canada displays for Infinia TVs at two dealer shows held in 2010.

[54] Mr. Andrews filed as Exhibit E to his affidavit samples of proof for advertisements that appeared in MarketNews Magazine as part of LG Canada's campaign to launch the Infinia TVs in Canada in 2010 as well as marketing material distributed to retailers to promote the Infinia TVs at the point of purchase.

[55] Mr. Andrews asserts that LG Canada has been running advertisements for the Infinia TVs in newspapers, including *The Globe and Mail* and *The Toronto Star*. He provides some circulation figures but he has not provided the source of these figures. This information appears to be inadmissible hearsay evidence. However I am prepared to take judicial notice that those newspapers have circulated in Canada [see *Milliken & Co v Keystone Industries (1979) Ltd* (1986), 12 CPR (3d) 166 (TMOB)]. He also filed copies of some of the press releases distributed in 2010. He asserts that LG Canada's expenditures for the promotion and advertisement of the Infinia TVs in Canada prior to and since the launch of the Infinia TVs in Canada has exceeded CAD \$1.75 million.

[56] Mr. Andrews alleges that the Infinia TVs have received very positive industry reviews. He filed as Exhibit G to his affidavit a copy of a review of the INFINIA 47" LW6500 3D LED TV published on PCWorld's website on September 23, 2011.

[57] As for the evidence regarding the use of the Mark Mr. Andrews:

- states that the Infinia TVs include television sets that are branded with the Mark and it has appeared on the packaging of Infinia TVs sold in Canada since 2010. To support such allegation he filed a photograph of the product packaging for the LW6500 series of Infinia TVs used in 2011;
- states that in-store point-of-purchase displays which feature the Mark alongside Infinia TVs were introduced throughout Canada in 2010. He filed as exhibit C to his affidavit examples of mock-ups for point-of-purchase displays that were found in Infinia TVs marketing guides that were distributed to Canadian dealers in 2010;
- filed as exhibit D to his affidavit copies taken from the catalogue for LG Electronics' TV and AV collection for the first half of 2010 that relate to Infinia TVs. As appears from the pages of the catalogues many Infinia TVs are illustrated in association with the Mark.

[58] I have already summarized the Opponent's evidence and concluded that there was no evidence of use of the trade-mark INFINITY in Canada in association with loudspeakers or any consumer electronic products. As for the promotion of the Opponent's mark INFINITY in Canada, as stated earlier, there is no specific information on such activities that may have taken place. Consequently this first factor favours the Applicant as it has shown that its Mark is known to some extent in Canada.

*The length of time the trade-marks have been in use*

[59] The Registrar can only assume a *de minimis* use of a trade-mark based on the date of first use mentioned in the certificate of registration [see *Entre Computer Centers, Inc v Global Upholstery Co* (1991), 40 CPR (3d) 427 (TMOB)]. Certificate of registration No TMA242,511 makes reference to the use of INFINITY since as early as July 21, 1972 in association with speakers. However it cannot give rise to an inference of significant and continuous use.

[60] The Applicant has established use of the Mark in Canada since at least 2010.

[61] Consequently, I conclude that this factor favours the Opponent but not significantly.

*The nature of the wares, services, or business; the nature of the trade*

[62] Under section 12(1)(d) ground of opposition I must compare the Wares as described in the application with the wares covered by the Opponent's registrations [See *Mr Submarine Ltd v Amandista Investments Ltd* (1987), 19 CPR (3d) 3 at 10-11 (FCA); *Henkel Kommanditgesellschaft v Super Dragon* (1986), 12 CPR (3d) 110 at 112 (FCA); *Miss Universe Inc v Dale Bohna* (1994), 58 CPR (3d) 381 at 390-392 (FCA)]. However, those statements must be read with a view to determine the probable type of business or trade intended by the parties rather than all possible trades that might be encompassed by the wording. The evidence of the parties' actual trades is useful in this respect [see *McDonald's Corp v Coffee Hut Stores Ltd* (1996), 68 CPR (3d) 168 (FCA); *Procter & Gamble Inc v Hunter Packaging Ltd* (1999), 2 CPR (4th) 266 (TMOB); and *American Optical Corp v Alcon Pharmaceuticals Ltd* (2000), 5 CPR (4th) 110 (TMOB)].

[63] Given the nature of television receivers, it is safe to say that they fall in the general category of consumer electronic equipment; as would the Opponent's wares.

[64] As for the nature of the parties' respective trades, Mr. Andrew has identified the dealers that offer for sale the Infinia TVs. Ms. Shin on the other hand has described in general terms the various channels of trade used by the Opponent. She has not specified any retailers who would be offering for sale the Opponent's products bearing the trade-mark INFINITY in Canada except for the name of its distributor. Given that the parties' respective wares are consumer electronic products, I assume that they could be offered for sale in the same retail outlets. This factor favours the Opponent.

*The degree of resemblance*

[65] As stated earlier, in its judgment in *Masterpiece* the Supreme Court of Canada has clearly indicated that the most important factor amongst those listed under section 6(5) of the Act is often the degree of resemblance between the marks. The appropriate test is not a side by side comparison but the imperfect recollection in the mind of a Canadian consumer of the Opponent's marks. In *Pernod Ricard v Molson Breweries* (1992), 44 CPR (3d) 359, the Federal Court stated that the first portion of a trade-mark is the most relevant for purposes of distinction.

[66] Despite the fact that the first portion of the Mark has been identified as ‘INFINIA’, which is a coined word, there is a portion of an ellipse that separates the letters ‘INF’ from the letters ‘NIA’. If one wants to associate that symbol to a letter of the alphabet, it could represent the letter ‘I’ to form the word ‘INFINIA’ or the letter ‘O’ to create the word ‘INFONIA’. In both instances the first and dominant portion of the Mark would be a coined word. Also that portion of the Mark could be viewed phonetically as ‘INFNIA’. All three possibilities are certainly different visually, in sound and in the ideas suggested from the Opponent’s trade-mark INFINITY, a common English word. Also the addition of the words ‘LIVE’ and ‘BORDERLESS’, when used in association with the Wares, may suggest that the television set has no border around it and is broadcasting live events. With all these features the Mark does not resemble the Opponent’s trade-mark INFINITY.

[67] This factor favours the Applicant.

#### *Conclusion*

[68] The analysis of the relevant criteria leads me to conclude that there exists no likelihood of confusion between the Mark and the Opponent’s registered trade-mark INFINITY. Therefore the Applicant has discharged its burden to prove that the Mark is registrable. Consequently I dismiss this ground of opposition.

#### Disposition

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

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

## Schedule A

The grounds of opposition raised by the Opponent can be summarized as follow:

1. The application does not comply with the requirements of section 30(a) of the *Trade-marks Act* RSC 1985, c T-13, (the Act) in that the Wares are not in ordinary commercial terms, as they would appear to be neither ‘televisions’ nor ‘receivers’;
2. The Mark is not registrable in view of section 12(1)(d) of the Act since the Mark is confusing with the Opponent’s registered trade-marks:
  - CHARACTER INFINITY Design, certificate of registration No. TMA242,510 owned by the Opponent in association with speakers and speaker elements for audio systems; audio equipment, namely, turntables tone arms, pick-up cartridges, tuners, amplifiers, tape recorders, and cassettes;
  - INFINITY, certificate of registration No. TMA242,511 for the same wares covered by registration No. TMA242,510;
  - INFINITY PRIMUS, certificate of registration No. TMA656,217 in association with loudspeakers;
  - INFINITY, certificate of registration No. TMA656,529 in association with automobile audio navigator aid, automotive audio systems, and automobile cross-over circuits;
  - INFINITY TOTAL SOLUTIONS, certificate of registration No. TMA656,950 in association with loudspeaker systems;
  - INFINITY INTERMEZZO, certificate of registration No. TMA656,998 in association with automotive audio systems, and automobile cross-over circuits, and video display;
  - TOTAL SOLUTIONS & Design (infinity logo), certificate of registration No. TMA657,084 in association with loudspeaker systems.
3. The Applicant is not the person entitled to the registration of the Mark pursuant to section 16 of the Act in that at the filing date of the application the Mark was confusing with the trade-marks mentioned above that had been previously used in Canada;



4. Pursuant to section 38(2)(d) of the Act, the Mark is not distinctive in that does not actually distinguish nor is adapted to distinguish the Wares from the wares of others, including those of the Opponent given the likelihood of confusion between the Mark and the above-mentioned trade-marks registered and used in Canada by the Opponent.