



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

Citation: 2016 TMOB 66
Date of Decision: 2016-04-25

IN THE MATTER OF AN OPPOSITION

TCC Holdings Inc.

Opponent

and

Deutsche Telekom AG

Applicant

1,518,065 for The Great Experience

Application

Introduction

[1] TCC Holdings Inc. (the Opponent) opposes registration of the trade-mark The Great Experience (the Mark).

[2] The application was filed by Deutsche Telekom AG (the Applicant) on March 7, 2011 on the basis of use in Germany and registered in OHIM (EU) and proposed use in Canada. The Applicant claimed a priority date of September 07, 2010, based on an application filed for OHIM (EU), No. 935841, seeking the registration of the same or substantially the same trade-mark for use in association with the same kind of services as described in the application.

[3] The Opponent filed a statement of opposition on November 18, 2013 under section 38 of the *Trade-marks Act*, RSC 1985, c T-13 (the Act). The grounds of opposition pleaded are based on sections: 30(a) and (e) (requirements), 12(1)(d) (registrability), 16(3) (non-entitlement), and 2 (distinctiveness). Except for the grounds based on section 30 of the Act, they all turn on the issue of likelihood of confusion with the Opponent's trade-mark GREAT EXPERIENCE MAKERS.

[4] For the reasons explained below, I reject the opposition.

The Record

[5] The application was advertised in the Trade-marks Journal on October 9, 2013. The Opponent filed its statement of opposition on November 18, 2013. The Applicant filed and served a counter statement on February 19, 2014 in which it denied each and every ground of opposition pleaded by the Opponent.

[6] The Opponent filed as evidence the affidavit of Alain Sutton sworn June 17, 2014.

[7] The Applicant filed as evidence the affidavit of Dane Penney sworn on February 26, 2015.

[8] None of the deponents were cross-examined.

[9] On February 27, 2015 the Applicant filed a revised application to amend the list of services covered by this application. The list of services now reads:

human resource management, excluding services related to the operation of a convention/congress centre; human resource consultation, excluding services related to the operation of a convention/congress centre; human resource services, namely, facilitating the employment of others, excluding services related to the operation of a convention/congress centre; professional personnel recruitment, excluding services related to the operation of a convention/congress centre; (the Services).

[10] Both parties filed written arguments and no hearing was requested.

Preliminary remarks

[11] I wish to point out that in reaching my decision I have considered all the evidence in the file but I will only refer in my reasons for this decision to the relevant portions of the evidence.

[12] Both parties in their written arguments discussed the weight to be given to the content of Mr. Sutton's affidavit, the Opponent's President. The Registrar issued on August 27, 2014, at the Applicant's request, an order for his cross-examination. The Applicant elected not to proceed. As such, the Opponent argues, referring to the Registrar's decision in *Pfizer v Pierre Fabre SA* (1978), 46 CPR 236 (TMOB), that the statements made by Mr. Sutton must be taken at face

value. The Applicant pleads that some of the allegations made by Mr. Sutton are not supported by the evidence filed and Mr. Sutton would not be qualified to provide opinions on the legal issues raised in this opposition.

[13] I will discuss later those issues. Suffice to say at this stage, that if facts alleged by Mr. Sutton that have not been contradicted by the Applicant, they are to be taken at their face value. However, as far as statements made by Mr. Sutton which are conclusions in law on questions to be determined by the Registrar, those statements will not be given any weight.

[14] Sections 30 and 30(a) are the only references to the Act in the Opponent's statement of opposition. The Opponent refers to sections 16(2), 16(3)(a) and 12(1)(d) in its written argument. The Applicant, in addition to those sections, also makes reference to section 30(d) of the Act in its written argument. I shall discuss all those references in this decision.

[15] Finally, I wish to point out that Mr. Sutton refers in his affidavit to the list of services as it existed when he signed his affidavit (June 17, 2014). Since then (February 27, 2015), the application has been amended to cover the Services as defined above.

The Opponent's evidence

[16] Mr. Sutton alleges that he has 'reviewed various websites of the Applicant and collateral and other material published by the Applicant...' and he has conducted a search in Germany to try to determine if the Mark has been used by the Applicant in association with the Services, as claimed in the application. Moreover, he filed a recording of an extract taken from a website, which he alleges, that appears to have been published by the Applicant, as well as a screenshot taken from such recording.

[17] The Applicant raises several issues with respect to that portion of the Opponent's evidence, including the fact that Mr. Sutton did not identify which websites he visited; what other material published by the Applicant he reviewed; and what type of search he conducted in Germany. I agree with the Opponent that those allegations must be taken at their face value. If the Applicant wanted to obtain additional information on these allegations, it was at liberty to conduct the cross-examination it requested.

[18] Mr. Sutton concludes that he found no evidence that the Applicant has used the Mark in Germany as a trade-mark in association with the services as claimed in the application. This is a conclusion in law as the terms ‘use’ and ‘trade-mark’ are legal terms defined in the Act. Mr. Sutton has not established himself as an expert in trade-mark law. I shall ignore his conclusion.

[19] Mr. Sutton goes on to state that he reviewed the statement of services listed in this application as published. He alleges that ‘business management services and the remaining services are so vague and indefinite that they could represent any type of services offered by a plurality of companies’. He adds that reference to ‘personal communication services’ is so indefinite and vague, it does not indicate the specific services proposed to be used by the Applicant in association with the Mark. Finally, he alleges that similar comments apply to the remaining services in the application and in particular to ‘facilitating the employment of others’ as it has no meaning in the trade and does not describe the services in specific terms as required by section 30(a) of the Act. I will comment on those allegations when assessing the ground of opposition based on section 30(a) of the Act.

[20] Mr. Sutton states that the Opponent is the registered owner of the trade-mark GREAT EXPERIENCE MAKERS registered in Canada on September 21, 2004 under registration number TMA620,156 for use in association with the operation of a convention/congress centre. He adds that the Opponent has licensed the use of that mark to Congress Centres Inc., also known as the Toronto Congress Centre. He alleges that the Opponent exercises care and control over the use of its mark and sets standards as to the quality of the services associated with and performed in association with that mark. He filed a print out of the registration particulars for Canadian trade-mark registration TMA620,156.

[21] Mr. Sutton claims that the Opponent and its licensee have extensively used the trade-mark GREAT EXPERIENCE MAKERS in Canada since at least as early as February 18, 2003.

[22] Mr. Sutton asserts that the Opponent uses the trade-mark GREAT EXPERIENCE MAKERS on its literature, promotional material, collateral material and proposals to promote its business. He filed as exhibit D a collection of material published by the Opponent allegedly showing the use of that mark in Canada. He concludes that as a result of the continuous use and

exclusive use by the Opponent, the mark GREAT EXPERIENCE MAKERS has become distinctive of the Opponent in Canada and the USA.

[23] I agree with the Applicant that I shall ignore such conclusion. It is a conclusion in law to be determined by the Registrar. I will comment later the extent of the use of the Opponent's mark according to the evidence in the record.

[24] Mr. Sutton alleges that the Opponent has spent at least \$500,000 annually in advertising and promoting its business. However, he goes on to state that it is impossible to accurately state the value of the advertising for the Opponent's mark GREAT EXPERIENCE MAKERS since it forms part of the entire effort of the Opponent to promote its business and its culture since the date of first use of February 18, 2003. Since Mr. Sutton is unable to determine the amount spent to advertise the Opponent's services in association with its trade-mark GREAT EXPERIENCE MAKERS, I am giving very little probative value to the amount allegedly spent by the Opponent and mentioned by Mr. Sutton.

[25] Mr. Sutton filed as exhibit E printouts from the Internet showing use of the words GREAT EXPERIENCE by two third parties in association with business services. Neither party commented this portion of the evidence in their written arguments.

[26] Finally, Mr. Sutton asserts that the Opponent has established its mark GREAT EXPERIENCE MAKERS as a symbol of its corporate culture for the operation of its convention/congress centre.

The Applicant's evidence

[27] Mr. Penney describes himself as a 'Trademark Search Specialist' employed by the Applicant's agent firm. He alleges that he has regularly conduct searches of various databases, including Canadian and foreign trade-mark office databases.

[28] Mr. Penney states that, on February 24, 2015, he was asked to locate and print the following entries from the Canadian Intellectual Property Office Goods and Services Manual:

- employment agencies
- employment management agencies

- employment outplacement services
- personnel recruitment services and employment agencies
- human resources management
- human resources outsourcing services.

[29] Mr. Penney explains how he performed those searches and filed as exhibit A copies of the results obtained.

Ground of opposition based on section 30(e) of the Act

[30] The ground of opposition pleaded by the Opponent reads as follow:

The application does not conform to the requirements of Section 30 of the Trade-marks Act. In particular, the Opponent states and the fact is that the Applicant, by itself or through a licensee, or by itself and through a licensee, did not intend to use the alleged trade mark in Canada in association with all of the services set forth in the application as of the date of filing of the application in Canada (my underlines).

[31] I consider such language to be in line with a ground of opposition based on section 30(e) of the Act.

[32] In its written argument, the Opponent has not specifically addressed this ground of opposition. While describing the content of Mr. Sutton's affidavit, the Opponent asserts that there is no evidence of use of the Mark in Germany. Consequently, 'the Registrar of Trade Marks must rule that the Section 16(2) claim contained in the Applicant's application was invalid and the Registrar of Trade Marks must strike this claim from the application of the Applicant' (my underlines).

[33] The fact that the Mark may not have been used in Germany as alleged in the application is not relevant in the context of a ground of opposition based on section 30(e) of the Act. The application contains a statement that the Applicant intends to use the Mark in Canada and there is no evidence in the record contradicting such statement, nor are there any arguments in the Opponent's written submissions that would support a conclusion maintaining this ground of opposition.

[34] The Opponent having not met its initial burden, I dismiss the ground of opposition based on section 30(e) of the Act.

Ground of opposition based on section 16(2) or 30(d) of the Act

[35] The ground of opposition pleaded in the statement of opposition reads as follow:

e) The Applicant is not the person entitled to registration of the alleged trade-mark. In particular, the Opponent states and the fact is that at the date of filing of the application, it was confusing with the trade mark that have been previously used in Canada or made known in Canada by any other person, namely the trade mark GREAT EXPERIENCE MAKERS which has been used by the Opponent in Canada in association with the operation of a convention/congress centre since at least as early as February 18, 2003.

[36] The ground of opposition as pleaded is in line with the wording of section 16(3) of the Act which I will discuss later. There is no specific reference to sections 16(2) or 30(d) of the Act in the Opponent's statement of opposition. The only reference to section 16(2) is contained in the Opponent's written argument in the context described in paragraph 32 above. As decided in *Le Massif Inc v Station Touristique Massif du Sud (1993) Inc* 2011 FC 424, 95 CPR (4th) 249 (FCTD), the Registrar has no jurisdiction to adjudicate on a ground of opposition not specifically pleaded in a statement of opposition.

[37] In any event as raised by the Applicant, the issue whether the Applicant has ever used the Mark in Germany should have been raised as a ground of opposition under section 30(d) of the Act, which has not been pleaded by the Opponent in its statement of opposition.

[38] Consequently, any ground of opposition based on sections 16(2) or 30(d) of the Act is dismissed.

Ground of opposition based on section 30(a) of the Act

[39] The Opponent pleads in its statement of opposition:

- a) The application does not conform to the requirements of Section 30 of the *Trade Marks Act*. In particular, the Opponent states and the fact is that the application does not contain a statement in ordinary commercial terms of the specific services in association with which the mark is proposed to be used in Canada;
- b) The application does not conform to the requirements of Section 30 of the *Trade Marks Act*. In particular, the Opponent states and the fact is that reference to 'facilitating the employment of others' and 'personal communications services' does not describe the services in ordinary and in

specific commercial terms as required by Section 30(a) of the *Trade marks Act* (my underlines).

[40] Sub-paragraph a) does not constitute a proper ground of opposition. It does not allege any facts to support such contention. Therefore, it is dismissed.

[41] Sub-paragraph b) does refer to specific facts. Therefore, the ground of opposition based on section 30(a) shall be reviewed on the basis of the facts alleged in sub-paragraph b).

[42] As mentioned before, the Applicant amended its list of services subsequent to the Opponent's filing of its statement of opposition. Despite the fact that, in general, the relevant date to assess a ground of opposition based on section 30(a) is the filing date of the application [see *Delectable Publications Ltd v Famous Events Ltd*, (1989) 24 CPR (3d) 274 (TMOB)], the date of filing of the amended application will be considered the material date in situations where an amended application has been filed [see *Eaton Williams (Millibank) Ltd v Nortec Air Conditioning Industries Ltd* (1982), 73 CPR (2d) 70 (TMOB)]. Consequently, I must refer to the Services and not the list of services as described in the original application.

[43] For ease of reference, I reproduce the Services as defined previously:

human resource management, excluding services related to the operation of a convention/congress centre; human resource consultation, excluding services related to the operation of a convention/congress centre; human resource services, namely, facilitating the employment of others, excluding services related to the operation of a convention/congress centre; professional personnel recruitment, excluding services related to the operation of a convention/congress centre.

[44] As it appears from the Services, 'personal communications services' is no longer part of the Services. Therefore, I do not need to determine whether such services are worded in ordinary commercial terms.

[45] As for the reference to 'facilitating the employment of others', it must be read in the context of the services described in the amended application which are: human resource services, namely, facilitating the employment of others, excluding services related to the operation of a convention/congress Centre.

[46] In its written argument, the Opponent did not submit any argument on this issue. However, as mentioned above, Mr. Sutton asserts that ‘facilitating the employment of others’ has no meaning in the trade and does not describe the services in specific terms as required by section 30(a) of the Act. Mr. Sutton did not elaborate on what he meant by ‘...no meaning in the trade’. To what trade was he specifically referring to? As I will discuss later, it appears to me that the parties’ businesses are quite different: the Opponent is in the business of operating a convention/congress centre while the Applicant is in the business of human resources and personnel recruitment services.

[47] From a plain reading of the Services, I am of the opinion that they are described in ordinary commercial terms. The Applicant will be offering human resource services in the form of job search for the benefit of others.

[48] One final note: As described above, Mr. Penney attached to his affidavit some extracts of the *Goods and Services Manual*. I do not need to refer to those extracts and the argumentation developed by the Applicant based on those extracts. I am satisfied that the description of the Services is in ordinary commercial terms.

[49] Consequently, the ground of opposition based on section 30(a) is also dismissed.

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

[50] This ground of opposition must be assessed at 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)].

[51] Mr. Sutton attached to his affidavit a copy of the particulars for registration TMA620,156 for the trade-mark GREAT EXPERIENCE MAKERS covering the operation of a convention/congress centre. I exercised the Registrar’s discretion and checked the register. I confirm that this registration is extant. Therefore, the Opponent has met its initial burden.

[52] 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 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 goods, services, or business; the nature of the trade; and the degree of resemblance between the trade-marks 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 [see *Mattel Inc v 3894207 Canada Inc*, 2006 SCC 22 (CanLII), 49 CPR (4th) 321 (SCC); *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée*, 2006 SCC 623(CanLII), 49 CPR (4th) 401 (SCC); and *Masterpiece Inc v Alavida Lifestyles Inc et al*, 2011 SCC 27 (CanLII), 92 CPR (4th) 361 (SCC)].

[53] 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, with an imperfect recollection of the Opponent's GREAT EXPERIENCE MAKERS mark, who sees the Applicant's Services in association with the Mark, would think they emanate from, or are sponsored by, or approved by the Opponent.

[54] As stated in *Masterpiece, supra*, in most instances the degree of resemblance is considered to be the most important factor. As such, I shall begin my analysis with this factor.

The degree of resemblance

[55] The parties' marks share the words GREAT EXPERIENCE. However as argued by the Applicant, when the marks are viewed as a whole, they differ in the ideas suggested. The Mark suggests a singular 'great experience' and the Opponent's mark describes the Opponent as 'makers' of 'great experience'.

[56] Moreover, I have to take into consideration the fact that the common portion of the marks, namely GREAT EXPERIENCE, is made up of a laudatory term and a common English word. In those instances, small differences might be sufficient to overcome the similarities in the marks.

[57] Overall and at best for the Opponent, this factor would slightly favour it because of the common portion GREAT EXPERIENCE.

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

[58] The Opponent has not discussed this factor in its written argument. As for the Applicant, it argues that the Mark has a slightly higher degree of inherent distinctiveness. The Applicant alleges that the Opponent's mark means that the Opponent 'makes' 'great experiences' for its customers, while the Mark is of a more unique linguistic construction as the result of the definite singular article 'The'.

[59] I note that both marks are made of common English words. I do not consider the use of the definite article 'The' creates a trade-mark more inherently distinctive than the Opponent's trade-mark 'GREAT EXPERIENCE MAKERS'.

[60] As to the extent the marks have become known, there is no evidence of use of the Mark in Canada. Concerning the use of the Opponent's trade-mark GREAT EXPERIENCE MAKERS, I agree with the Applicant that the evidence contained in Mr. Sutton's affidavit, except for the material filed as exhibit D, are bald assertions of use not supported by evidence. Exhibit D is described by Mr. Sutton as 'a collection of collateral material published by the Opponent'. However, we have no information on the scope of distribution of this marketing material, when it was distributed, where and how. Only one document bears a date, namely April 3, 2014.

[61] In all, even if the material filed as exhibit D shows use of the Opponent's mark, going back to at least April 3, 2014, this criterion only favours the Opponent to a minimal degree and it does not constitute a determining factor in the overall assessment of the relevant criteria listed under section 6(5) of the Act.

The length of time the marks have been in use

[62] The documentary evidence establishes that the Opponent has used its mark since at least April 3, 2014, and the Applicant has not used the Mark. This factor favours the Opponent.

[63] I wish to point out that even if I were to consider the fact that the registration of the Opponent's mark makes reference to its use since at least as early as February 18, 2003, the mere existence of a registration can establish no more than *de minimis* use and cannot give rise to an inference of significant and continuous use of a trade-mark [see *Entre Computer Centers Inc v Global Upholstery Co* (1991), 40 CPR (3d) 427 (TMOB) at 430].

[64] Finally, the allegation made by Mr. Sutton that the Opponent has used its trade-mark since February 18, 2003 is not supported by the documentary evidence filed. As stated earlier, ‘use’ of a trade-mark is a conclusion in law derived from facts. I do not have evidence in the record that support an allegation of use, within the meaning of section 4(2) of the Act, of the Opponent’s trade-mark since that date.

The nature of the services and their channels of trade

[65] I must compare the services covered by registration TMA620,156 of the Opponent with the Services [see *Mr Submarine Ltd v Amandista Investments Ltd* (1987), 19 CPR (3d) 3 (FCA); *Miss Universe Inc v Bohna* (1994), 58 CPR (3d) 381 (FCA)]. Registration TMA620,156 covers the operation of a convention/congress centre while the Services are related to human resource management, human resource consultation and professional personal recruitment services.

[66] The Opponent states at paragraph 7.21 of its written argument:

7.21 It is not unreasonable to assume that [the Services] could be provided at employment fairs and gatherings which could be held in convention and congress centres. Therefore, it is not unreasonable for the Registrar of Trade Marks to assume that one of the channels of distribution of the [Services] would be through the facilities provided by the Opponent in association with its trade mark. Thus, the channels of distribution and the respective nature of the wares, services and businesses favours (sic) the Opponent.

[67] I make mine the comments made by my colleague Jill W. Bradbury in *Unisys Corp v Northwood Technologies Inc* (2003), 29 CPR (4th) 115 (TMOB) where she stated:

When considering the wares, services and trades of the parties, it is the statement of wares or services in the parties' trade-mark application or registration that govern in respect of the issue of confusion arising under paragraph 12(1)(d) [*Henkel Kommanditgesellschaft auf Aktien v. Super Dragon Import Export Inc.* (1986), 12 C.P.R. (3d) 110 (Fed. C.A.); *Mr. Submarine Ltd. v. Amandista Investments Ltd.* (1987), 19 C.P.R. (3d) 3 (Fed. C.A.); *Miss Universe Inc. v. Bohna* (1994), 1994 CanLII 3534 (FCA), 58 C.P.R. (3d) 381 (Fed. C.A.)]. However, those statements must be read with a view to determining the probable type of business or trade intended by the parties rather than all possible trades that might be encompassed by the wording. In this regard, evidence of the actual trades of the parties is useful, particularly where there is an ambiguity as to the wares or services covered in the application or registration at issue [*McDonald's Corp. v. Coffee Hut Stores Ltd.* (1996), 1996 CanLII 3963 (FCA), 68 C.P.R. (3d) 168 (Fed. C.A.); *Procter & Gamble Inc. v. Hunter Packaging Ltd.* (1999), 2 C.P.R. (4th) 266 (T.M. Opp. Bd.);

American Optical Corp. v. Alcon Pharmaceuticals Ltd. (2000), 5 C.P.R. (4th) 110 (T.M. Opp. Bd.)] (my underlines).

[68] I reviewed the content of the marketing documentation filed as exhibit D to Mr. Sutton's affidavit and they all relate to the promotion of the Toronto Congress Centre describing its unique features and how the Opponent is a 'Great Experience Makers'. The scenario described above by the Opponent is one amongst all possible events that could be held in its convention centres. There is no evidence that it would be the type of events held in the Opponent's congress centre. Finally, there is no evidence that the parties' services would be offered to the same group of customers.

[69] I agree with the Applicant that its Services and the Opponent's services are not related in any reasonable way.

[70] Given that there is no overlap in the nature of the parties' respective services, and in the absence of evidence to the contrary, it is reasonable to conclude that there is no overlap in the parties' respective channels of trade. The Opponent is in the business of operating a congress centre where fairs and trade shows are held while the Applicant is offering human resource and personnel recruitment services to its clients.

[71] These factors clearly favour the Applicant.

Conclusion

[72] From this analysis of the relevant factors, I conclude, on a balance of probabilities, that the average consumer of ordinary intelligence when confronted with the Mark, with an imperfect recollection of the Opponent's trade-mark GREAT EXPERIENCE MAKERS, would not assume that the Services offered in association with the Mark originate from the Opponent or that there is some relationship between the Services and the Opponent. I reach this conclusion based on the fact that neither marks are inherently distinctive, that there is no overlap in the respective parties' services and their channels of trade, and finally despite the presence of the common portion GREAT EXPERIENCE, which are two common English words, the marks when viewed as a whole suggest different ideas.

[73] Consequently, I dismiss this ground of opposition.

Ground of opposition based on section 16(3)(a) of the Act

[74] This ground of opposition must be assessed as of the priority date claimed in the application (September 7, 2010) [see *Earthrise Farms v Saretzky* (1997), 85 CPR (3d) 269 (TMOB)].

[75] Under this ground of opposition, the Opponent has the initial burden to prove that it has used its mark GREAT EXPERIENCE MAKERS in Canada or that it had been known in Canada prior to the relevant date (September 7, 2010) and that it had not abandoned such use at the date of advertisement of the present application (October 9, 2013) [see section 16(5) of the Act].

[76] As stated earlier, aside from one document bearing a date of April 3, 2014, therefore outside the relevant period, the documents filed as exhibit D to Mr. Sutton's affidavit are undated and we have no information as to when they were distributed.

[77] Consequently, I conclude that the Opponent has failed to meet its initial burden and this ground of opposition is also dismissed.

Ground of opposition based on lack of distinctiveness of the Mark (Section 2)

[78] This ground of opposition must be assessed as of the filing date of the statement of opposition (November 18, 2013) [see *Metro-Goldwyn-Mayer Inc v Stargate Connections Inc* 2004 FC 1185, 34 CPR (4th) 317 (FC)].

[79] In *Bojangles' International, LLC v Bojangles Café Ltd*, 2006 FC 657, 48 CPR (4th) 427 the Federal Court determined that:

- A mark needs to be known in Canada to some extent at least to negate another mark's distinctiveness;
- Alternatively, a mark could negate another mark's distinctiveness if it is well known in a specific area of Canada.

[80] The Opponent had therefore the initial burden to prove that its mark GREAT EXPERIENCE MAKERS was known in Canada to some extent or it was well known in a specific area of Canada. To the reasons detailed under previous ground of opposition, to justify its dismissal, I may add that we have no information on the extent of the distribution of the

material filed as exhibit D to Mr. Sutton's affidavit. As a result, I conclude that the Opponent has failed to meet its initial burden.

[81] Therefore, this ground of opposition is also dismissed.

Disposition

[82] 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.

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

**TRADE-MARKS OPPOSITION BOARD
CANADIAN INTELLECTUAL PROPERTY OFFICE
APPEARANCES AND AGENTS OF RECORD**

No hearing

Agents of Record

Riches, McKenzie & Herbert LLP

FOR THE OPPONENT

Bereskin & Parr LLP

FOR THE APPLICANT