



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

Citation: 2011 TMOB 10
Date of Decision: 2011-01-24

**IN THE MATTER OF AN
OPPOSITION by Alliance
Mercantile Inc. to application
No. 1,362,831 for the trade-mark
LOVE YOUR HANDS, WE DO in
the name of Comasec SAS**

FILE RECORD

[1] On September 7, 2007, Comasec SAS filed an application to register the trade-mark LOVE YOUR HANDS, WE DO based on proposed use in Canada in association with the following wares:

protective gloves for industrial use; gloves for massage, gloves for medical use, gloves for use in hospitals; gloves for general and home use, gardening gloves, polishing gloves, gloves-opener.

[2] The subject application was advertised for opposition purposes in the *Trade-marks Journal* issue dated March 26, 2008 and was opposed by Alliance Mercantile Inc. on May 13, 2008. The Registrar forwarded a copy of the statement of opposition to the applicant on July 2, 2008, as required by s.38(5) of the *Trade-marks Act*, R.S.C. 1985, c. T-13. The applicant responded by filing and serving a counter statement generally denying the allegations in the statement of opposition. The opponent elected not to file any evidence in support of its case. The applicant's evidence consists of the affidavit of

Gay J. Owens. Only the applicant submitted a written argument. Neither party responded to the Registrar's notice, dated January 19, 2010, to schedule an oral hearing.

APPLICANT'S EVIDENCE

Gay Owens

[3] Ms. Owens identifies herself as a trade-marks searcher with the firm representing the applicant. Her affidavit serves to introduce into evidence the results of searches of the trade-marks register for marks, used in association with gloves and mitts, comprised of the components LOVE or HAND. The results of her searches are presented, *en liasse*, as Exhibits A and B to her affidavit. Her searches located about 50 such marks (applications and registrations) comprised in part of the component LOVE and about 50 such marks comprised in part of the component HAND.

STATEMENT OF OPPOSITION

[4] The statement of opposition pleads several grounds of opposition, including the pleading that the applied for mark LOVE YOUR HANDS, WE DO is not registrable, pursuant to s.12(1)(d) of the *Trade-marks Act*, because it is confusing with the opponent's registered mark LOVING HANDS, registration No. TMA584,188, for use in association with "rubber gloves."

[5] With limited exceptions, an opponent faces an initial evidential burden requiring it to adduce admissible evidence from which it might reasonably be concluded that the facts alleged to support the ground of opposition exists. As the opponent has not filed any evidence to support any of the grounds of opposition, the grounds pleaded in the statement of opposition are rejected for the reason that the opponent has failed to meet its evidential burden, with one exception discussed below.

REGISTRAR'S DISCRETION

[6] The Registrar will exercise discretion to inspect the register of trade-marks in order to confirm the existence of a registration cited by an opponent in respect of a ground of opposition relying on s.12(1)(d): see *Quaker Oats of Canada Ltd./ La Compagnie Quaker Oats du Canada Ltée v. Menu Foods Ltd.* (1986), 11 C.P.R. (3d) 410. In doing so, I have noted that registration No.TMA584,188 for the trade-mark

LOVING HANDS was registered on June 23, 2003, is presently extant and covers the wares "rubber gloves." Thus, the sole issue for decision raised in the statement of opposition is whether the applied for mark LOVE YOUR HANDS, WE DO is confusing with the opponent's mark LOVING HANDS. The test for confusion is one of first impression and imperfect recollection. The material time to assess the issue of confusion is the date of my decision.

CONSIDERATION OF THE ISSUE OF CONFUSION

[7] As the opponent has not submitted any evidence, the issue of confusion is most influenced by the resemblance between the marks in issue and the nature of the parties' wares: see s.6(5) of the *Act* for factors to be considered in deciding the issue of confusion. In my view, the parties' marks are relatively weak marks and I find that the differences between the marks in issue outweigh their similarities visually, in sounding and particularly so in ideas suggested. The applicant's evidence corroborates, at least to some extent, my view that the parties' marks are relatively weak marks.

[8] The parties' wares appear to overlap, and in the absence of evidence on point I assume that there will also be overlap in the parties' channels of trade. Generally, an overlap in the nature of the parties' wares and in the parties' channels of trade increases the likelihood of confusion. However, in the absence of evidence on point, it is not possible to determine the extent of such overlap and therefore it is not possible to meaningfully assess the increase in the likelihood of confusion. Thus, these latter factors are of secondary importance in the instant case. On the other hand, the degree of resemblance is considered to be the most important factor when assessing the likelihood of confusion between two trade-marks (see *Beverley Bedding & Upholstery Co. v. Regal Bedding & Upholstering Ltd.* (1980), 47 C.P.R. (2d) 145 (F.C.T.D.)), and in the instant case the differences in the parties' marks significantly outweigh their similarities.

DISPOSITION

[9] In view of the foregoing, I find that the applicant has met the legal onus on it to show that, on a balance of probabilities, there is no reasonable likelihood of confusion

between the applied for mark LOVE YOUR HANDS, WE DO and the opponent's mark LOVING HANDS.

[10] Accordingly the opposition is rejected. This decision has been made pursuant to a delegation of authority under s.63(3) of the *Trade-marks Act*.

Myer Herzig
Member
Trade-marks Opposition Board