

**IN THE MATTER OF AN OPPOSITION  
by Hermetic Order of the Golden Dawn, Inc.  
to application no. 846,265 for the trade-mark  
HERMETIC ORDER OF THE GOLDEN DAWN  
filed by David Griffin (successor-in-title to  
Hermetic Order of the Golden Dawn)**

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On May 27, 1997, the original applicant Hermetic Order of the Golden Dawn filed an application to register the trade-mark HERMETIC ORDER OF THE GOLDEN DAWN, based on use in Canada since at least as early as 1982, in association with

printed publications namely, books and booklets.

The Examination Branch of the Trade-marks Office raised two objections to the subject application which the applicant overcame by (1) disclaiming the right to the exclusive use of the words HERMETIC and ORDER apart from the mark as a whole, and (2) advising the Office that the applicant is a general partnership under the laws of the State of California. The application was subsequently advertised for opposition purposes in the *Trade-marks Journal* issue dated August 26, 1998 and was opposed by Hermetic Order of the Golden Dawn, Inc. on October 26, 1998. A copy of the statement of opposition was forwarded to the applicant on November 9, 1998. The applicant responded by filing and serving its counter statement.

The opponent's pleadings are succinct and are reproduced below:

(a) The Opponent is a non-profit corporation incorporated under the laws of Florida, U.S.A.; it consists of members who meet certain criteria and standards which have been adopted by the Opponent and are administered and enforced by the directors of the Opponent.

(b) The Opponent has used the mark THE HERMETIC ORDER OF THE GOLDEN DAWN in Canada since 1985 in association with instruction and training services, and instruction and training booklets, both in the field of magic.

(c) The Applicant is the individual David Griffin who in 1992 applied for membership with the Opponent and became a member of the Opponent for a short period of time, but who was expelled from the Opponent in January, 1994. The Applicant is fully aware of the Opponent and its activities and use of the trademark THE HERMETIC ORDER OF THE GOLDEN DAWN in Canada, and elsewhere, and was so aware at the time of the filing of the subject opposed application.

(d) The Applicant has not used the trademark of the subject opposed application in Canada in association with printed publications since 1982 as alleged in the application. If the Applicant has ever used the trademark of the opposed application in Canada, such use occurred after the Opponent's first use of its said trademark THE HERMETIC ORDER OF THE GOLDEN DAWN stated in paragraph (b) herein.

(e) The trademark of the subject opposed application is confusing with the said trademark HERMETIC ORDER OF THE GOLDEN DAWN used by the Opponent.

(f) By reason of the foregoing the opposed application should be rejected on the following grounds:

(a) the application does not conform to the requirements of Section 30, paragraphs

- (b) and (i);
- (b) the Applicant is not the person entitled to registration of the trademark; and
- (c) the trademark is not and is not capable of becoming distinctive of any publication of the Applicant.

With regards to paragraph (c) of the statement of opposition, above, the file record shows that on February 21, 2000, the Trade-mark Office accepted David Griffin as the successor-in-title to the original applicant. Mr. Griffin has remained as the applicant of record since that time.

The opponent's evidence consists of the affidavit of Charles Cicero, a Director of the opponent company since 1988. The applicant chose not to file any evidence. Only the opponent submitted a written argument and neither party requested an oral hearing.

Mr. Cicero's evidence explains that the opponent company evolved from an organization begun by Mr. Cicero in 1977. The opponent is a non-profit corporation whose objective is to promote the teachings of western philosophy and magic and to that end the opponent participates in international conferences on the subject of magic. The opponent is represented by temples throughout North America, including a temple in Toronto, Ontario and one that (as I understand his affidavit) operated for a time in Hope, British Columbia. Mr. Cicero and his wife have co-authored several books on the Golden Dawn tradition and promotional material concerning their books have been circulating in Canada.

Mr. Cicero's evidence regarding the opponent's interest in the subject application,

and the opponent's involvement with the applicant Mr. Griffin, is fairly summarized at page 5 of the opponent's written argument:

The Opponent owns U.S. trademark Registration No. 2,034,866 for the mark THE HERMETIC ORDER OF THE GOLDEN DAWN & Design which registered on February 4, 1997 from an application filed on April 10, 1995 based on use since December 31, 1978 in association with instructional and teaching booklets in the field of magic and since March 22, 1988 in association with providing courses of instruction and training in the field of magic (see a copy of the particulars of this US registration provided as Exhibit E to Mr. Cicero's affidavit).

Mr. Cicero states that he became aware of the individual who is currently named as the Applicant, Mr. Griffin, through a post-card received from Mr. Griffin, care of Mr. Cicero's publisher, in January of 1992, wherein Mr. Griffin stated that he wishes to apply for membership in a Golden Dawn Order (see Exhibit H to Mr. Cicero's affidavit). Mr. Griffin visited the Opponent's temple locate in Florida and there received some initiation and training on the traditions and ceremonies of the golden Order. In January of 1994, Mr. Griffin became a member of the Opponent but he was shortly thereafter expelled from the Opponent and Mr. Cicero provides , as exhibit I to his affidavit, a copy of his letter dated January 27, 1994 to Mr. Griffin notifying Mr. Griffin of his expulsion from the Opponent.

Paragraph 12 of Mr. Cicero's affidavit discusses Mr. Griffin's ventures after his expulsion from the opponent organization:

12. After Mr. Griffin's expulsion from membership with the Company he formed an association or partnership with Patricia Behman ( who also uses the name "Cris Monnastre") in California, U.S.A., through which, without the approved, authorization or endorsement of the Company, they engaged in activities relating to magic using the name "Hermetic Order of the Golden Dawn". All of said activities and use of the name "Hermetic Order of the Golden Dawn" were conducted in the U.S.A. and no use of that name was ever made in Canada by their now defunct association or partnership.

Mr.Cicero further states that he and other Directors of the opponent are familiar with Golden Dawn activities that take place in Canada, and that neither he nor other Directors have become aware of the applicant's use of the applied for mark in Canada.

With respect to the ground of opposition raised in paragraph f(a) of the statement of opposition, above, the applicant has formally complied with Section 30(b) of the *Trade-marks Act* by including a date of first use in its application, that is, since at least as early as 1982. The issue then becomes whether the applicant has substantively complied with that subsection, i.e., is that date correct?

As always, the legal onus is on the applicant to show its compliance with the provisions of the *Act*: see *Joseph Seagram & Sons v. Seagram Real Estate* (1984), 3 C.P.R.(3d) 325 at 329-330 (TMOB) and *John Labatt Ltd. v. Molson Companies Ltd.* (1990), 30 C.P.R. (3d) 293 (F.C.T.D.).

There is, however, an evidential burden on the opponent respecting its allegations of fact pleaded in support of a particular ground of opposition. That burden is lighter respecting the issue of non-compliance with Section 30(b) of the *Act* as the facts at issue may be

exclusively in the possession of the applicant: see the opposition decision in *Tune Masters v. Mr. P's Mastertune* (1986), 10 C.P.R.(3d) 84 at 89 (TMOB). Furthermore, Section 30 (b) requires that there be continuous use of the applied for trade-mark in the normal course of trade since the date claimed: see *Labatt Brewing Company Limited v. Benson & Hedges (Canada) Limited and Molson Breweries, a Partnership* (1996), 67 C.P.R. (3d) 258 at 262 (F.C.T.D.).

To meet the evidential burden upon it in relation to a particular issue, the opponent must adduce sufficient admissible evidence from which it could reasonably be concluded that the facts alleged to support that issue exist. The presence of a legal onus on the applicant means that if a determinate conclusion cannot be reached once all the evidence is in, then the issue must be decided against the applicant: see *John Labatt Ltd. v. Molson Companies Ltd.*, above, at 297-298.

In the instant case, Mr. Cicero's affidavit evidence is intelligible, concise, unambiguous and appears to be reliable given his close and long affiliation with the opponent. His evidence has not been challenged by cross-examination or refuted in any way by evidence filed by the applicant. The applicant has had ample opportunity to answer Mr. Cicero's's assertion's, as opposition procedures allow either party to request leave to file additional evidence at any stage of the proceedings. However, despite the prolonged time period elapsed since the start of this proceeding, the applicant has declined to adduce any evidence to show how and when the applicant used the applied for mark in Canada. In the circumstances, I find that the opponent has met the evidential burden on it to put the applicant's date of first use in issue, and that the applicant has not

met the legal onus on him to substantiate the date of first use as 1982. In this regard, I note that the original application does not claim use of the mark by any predecessor(s)-in-title.

Accordingly, the opponent succeeds on the first ground of opposition and it is not necessary for me to deal with the remaining grounds. I would add, however, that the opponent would likely have succeeded on the other grounds for the reason that the opponent's evidence suffices to put the remaining grounds of opposition into issue and the applicant was wholly unable to answer the opponent's case.

In view of the above, the subject application is refused.

DATED AT VILLE DE GATINEAU, QUEBEC, THIS 28<sup>TH</sup> DAY OF AUGUST,  
2002

Myer Herzig,

Member

Trade-marks Opposition Board



With regard to paragraph (c) of the statement of opposition, above, the file record shows that on February 21, 2000, the Trade-marks Office accepted David Griffin as the successor-in-title to the original applicant. Mr. Griffin has remained as the applicant of record since that time.

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