



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

**Citation: 2016 TMOB 59**  
**Date of Decision: 2016-04-11**

**IN THE MATTER OF AN OPPOSITION**

**Garbo Group Inc.**

**Opponent**

**and**

**Glamour Secrets Pro Inc.**

**Applicant**

**1,536,276 for GLAMOUR SECRETS &  
Design**

**Application**

[1] Garbo Group Inc. (the Opponent) opposes registration of the trade-mark GLAMOUR SECRETS & Design (reproduced below) (the Mark) that is the subject of application No. 1,536,276.



[2] The application was originally filed by Glamour Secrets Developments Ltd. (Glamour Developments) on July 19, 2011. The application was subsequently assigned by Glamour Developments to GS Beauty Group Inc. (GS Beauty) on August 29, 2013, which in turn assigned it to Glamour Secrets Pro Inc. (the Applicant) on May 27, 2015. The assignments were recorded with the Trade-marks Office on September 25, 2013 and November 24, 2015 respectively.

[3] The application is based upon use of the Mark in Canada since at least as early as January 2001 in association with the following services:

Operation of a retail store dealing in hair, skin, beauty care and cosmetic products, supplies and accessories. (the Services)

[4] The opposition was brought by the Opponent under section 38 of the *Trade-marks Act*, RSC 1985, c T-13 (the Act) and raises grounds of opposition based upon sections 2 (non-distinctiveness); 12(1)(d) (non-registrability); 16(1)(a) and (b) (non-entitlement); and 30(a), (b), (h) and (i) (non-conformity) of the Act. I find the main issue in this proceeding is whether there is a likelihood of confusion between the Mark and the Opponent's trade-mark GLAMOUR DESIGN (reproduced below) registered under No. TMA140,681 in association with "Costume jewellery of all descriptions, including stone sets, metals and pearls".



[5] For the reasons that follow, the opposition is unsuccessful.

#### The Record

[6] The application was advertised for opposition purposes in the *Trade-marks Journal* on December 12, 2012.

[7] The Opponent opposed the application by a statement of opposition filed with the Registrar on May 13, 2013. The Applicant (through its predecessor-in-title Glamour

Developments) filed and served a counter statement on June 13, 2013 denying each of the grounds of opposition set out in the statement of opposition.

[8] In support of its opposition, the Opponent filed the affidavit of Michael Stephan, a senior investigator with the investigative firm CKR Global, sworn October 18, 2013 (the Stephan affidavit).

[9] In support of its application, the Applicant filed a first affidavit of Joseph Belloti, as former President of GS Beauty and current president of Trade Secrets Hair Care Products and Fashion Accessories Inc. (Trade Secrets), sworn July 3, 2014 (the first Belloti affidavit), as well as a second affidavit of Mr. Belloti, as President of Trade Secrets and President of Glamour Developments, sworn December 12, 2014 (the second Belloti affidavit). The second affidavit of Mr. Belloti was filed as additional evidence with leave of the Registrar granted on February 24, 2015.

[10] No cross-examinations were conducted.

[11] The only written arguments made of record are those of the Applicant [see Office letter dated May 1, 2015 advising the Opponent that the written arguments filed on its behalf could not be made of record].

[12] No hearing was held.

The parties' respective burden or onus

[13] 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 Ltd v Molson Companies Ltd* (1990), 30 CPR (3d) 293 (FCTD); and *Dion Neckwear Ltd v Christian Dior, SA et al* (2002), 20 CPR (4th) 155 (FCA)].

## Overview of the evidence

### The Opponent's evidence filed through the Stephan affidavit

[14] Mr. Stephan attests to several purchases that he made at three different store locations of Trade Secrets in Ontario. For each of these purchases, he attests that the items were “sold in a bag bearing the [Mark]” and he attaches photographs of the purchased products and bag used to carry such purchases as well as a copy of the associated invoice.

[15] Details of Mr. Stephan's purchases are outlined below:

- March 5, 2013: a pair of sunglasses and a baby butterfly clip [para 2; Exhibit “A”];
- March 7, 2013: two hair pins, a pair of earrings and a bracelet [para 3; Exhibit “B”]; and
- March 12, 2013: a pair of sunglasses [para 4; Exhibit “C”].

[16] Mr. Stephan also attaches a printout from the website *www.tradesecrets.ca* “which identifies, inter alia, jewellery and earrings as available products at their stores” [para 5; Exhibit “D”].

### The Applicant's evidence

[17] It is to be remembered that at the time at which Mr. Belloti sworn both of his affidavits, GS Beauty was the owner of the Mark.

### The first Belloti affidavit

[18] Mr. Belloti states that he very recently vacated his position as President of GS Beauty and that he was the President of that company when the present opposition was launched by the Opponent and when the Opponent's evidence was prepared and filed [para 1].

[19] Mr. Belloti further states that he is the President of Trade Secrets and that he was also the President of that company during the year 2013 [para 5].

[20] Mr. Belloti states that GS Beauty licenses the Mark to Trade Secrets. The conditions of the license between GS Beauty and Trade Secrets include that GS Beauty is the exclusive owner of the Mark and all goodwill associated therewith, and GS Beauty maintains care and control of the nature and quality of all Services provided in association with the Mark [paras 4 and 7].

[21] Mr. Belloti states that GS Beauty provides bags, pre-printed with the Mark, to Trade Secrets for use in accordance with the license [para 8].

[22] Mr. Belloti states that he has reviewed the Stephan affidavit. He notes that Exhibits “A”, “B” and “C” show goods that Mr. Stephan purchased at one of Trade Secrets’ stores. He states that the goods shown in these exhibits are all third party products. More particularly, he states that the sunglasses shown in Exhibits “A” and “C” are “Techmo” brand; the baby butterfly clips shown in Exhibit “A” are “Lifetime Sales” brand; and the products shown in Exhibit “B” are branded as follows: the up-do pins are “Randy Mellon” brand, the rosette ball earrings are “Inverness” brand, and bracelet is “Classic D” brand [para 9].

#### The second Belloti affidavit

[23] As indicated above, Mr. Belloti is the President of both Trade Secrets and Glamour Developments.

[24] Mr. Belloti states that GS Beauty became the owner of the Mark by way of an assignment from Glamour Developments on August 29, 2013 [para 2].

[25] Prior to August 29, 2013, Trade Secrets used the Mark pursuant to a license from Glamour Developments. The license from Glamour Developments permitted Trade Secrets to use the Mark in association with the Services [para 4].

[26] Prior to August 29, 2013, Glamour Developments was the exclusive owner of the Mark and goodwill associated therewith [para 5].

[27] Mr. Belloti attests that Glamour Developments had care and control of the nature and quality of all Services provided by Trade Secrets. Trade Secrets was only permitted to use the Mark in the manner and form prescribed by Glamour Developments. Among other things,

Glamour Developments provided bags, pre-printed with the Mark, to Trade Secrets for use in its stores in accordance with the license [para 6].

### Analysis of the grounds of opposition

#### Non-distinctiveness of the Mark within the meaning of section 2 of the Act

[28] The non-distinctiveness ground of opposition, as pleaded by the Opponent, has three prongs.

[29] The first two prongs allege that the Mark is not distinctive within the meaning of section 2 of the Act in that it does not actually distinguish nor is it adapted to distinguish the Applicant's services from the Opponent's goods, which have been sold by the Opponent in Canada under i) the Opponent's trade-mark registration No. TMA140,681 referred to above, and ii) the Opponent's application No. 1,555,010 for the same mark in association with "Sunglasses".

[30] An opponent meets its evidential burden with respect to a distinctiveness ground if it shows that as of the filing of the opposition (in this case, May 13, 2013), its trade-mark had become known sufficiently to negate the distinctiveness of the applied-for mark [see *Motel 6, Inc v No 6 Motel Ltd* (1981), 56 CPR (2d) 44 (FCTD); and *Bojangles' International, LLC and Bojangles Restaurants Inc v Bojangles Café Ltd*, 2006 FC 657, 48 CPR (4th) 427].

[31] The Opponent has not provided any evidence of use whatsoever of its claimed GLAMOUR DESIGN mark. Therefore, it has failed to meet its evidential burden under the first two prongs of this ground of opposition.

[32] Accordingly, the first two prongs of the non-distinctiveness ground of opposition are dismissed.

[33] The third prong of the non-distinctiveness ground of opposition alleges that the Applicant "has permitted licensees or others to use the [Mark] such that the [Mark] is not distinctive of the Applicant contrary to section 50 of the Act."

[34] I find the Opponent might have framed this ground of opposition in more specific terms. However, according to *Novopharm Limited v AstraZeneca AB* (2002), 2002 FCA 387 (CanLII),

21 CPR (4th) 289, I must assess the sufficiency of this pleading in light of the evidence of record.

[35] The Stephan affidavit seemingly purports to establish that the Mark has been used by a different entity than the Applicant, namely Trade Secrets. As indicated above, Mr. Stephan's purchases at Trade Secrets were placed in a bag bearing the Mark. However, the first and second affidavits of Mr. Belloti make it clear that Trade Secrets was a duly authorized licensee of the Mark at the time Mr. Stephan's purchases were made. As indicated above, Mr. Belloti has attested to the fact each of the Applicant's predecessors-in-title had at all times care and control of the nature and quality of all Services provided by Trade Secrets in association with the Mark in accordance with the provisions of section 50 of the Act.

[36] Thus, I find the Opponent has failed to meet its evidential burden under the third prong of the non-distinctiveness ground of opposition, which is accordingly also dismissed.

Non-entitlement of the Applicant pursuant to section 16 of the Act

[37] The Opponent has pleaded that the Applicant is not the person entitled to registration of the Mark pursuant to sections 16(1)(a) and (b) of the Act in that:

[...] the [A]pplicant has not continuously used the [Mark] in association with the [Services] since the alleged date of first use claimed in the application [...]; rather, if there has been any use by the [A]pplicant in association with the [Mark], such use [...] has been in association with wares, not services that were not claimed in the subject application and which are confusingly similar to the wares covered in [(i)] the Opponent's trade-mark registration No. TMA140,681 for GLAMOUR DESIGN and that have been previously used in Canada by the Opponent; [and (ii)] [...] the Opponent's trade-mark application No. 1,555,010 for GLAMOUR Design and that have been previously used in Canada by the Opponent.

[38] The first part of the pleading alleging that the Applicant has not continuously used the Mark in association with the Services since the alleged date of first use claimed in the application is not *per se* a proper basis for challenging the Applicant's entitlement to registration under sections 16(1)(a) and (b) of the Act. Such an argument could have more properly been the basis for a ground of opposition under section 30(b) of the Act as discussed below.

[39] Furthermore, in order to meet its burden under section 16(1)(a) of the Act, the Opponent had to show that as of the alleged date of first use of the Mark in Canada, its trade-mark GLAMOUR DESIGN had been previously used or made known in Canada and had not been abandoned as of the date of advertisement of the Applicant's application, that is December 12, 2012 [section 16(5) of the Act]. As indicated above, the Opponent has not provided any evidence whatsoever of the use of its claimed GLAMOUR DESIGN trade-mark.

[40] Accordingly, the section 16(1)(a) ground of opposition is dismissed.

[41] In order to meet its burden under section 16(1)(b) of the Act, the Opponent had to show that its previously filed application was pending at the date of advertisement of the Applicant's application [section 16(4) of the Act]. As the application relied upon by the Opponent was filed on December 5, 2011, that is after the date of first use claimed in the Applicant's application for the Mark, it cannot form the basis of a section 16(1)(b) ground of opposition.

[42] Accordingly, the section 16(1)(b) ground of opposition is also dismissed.

Non-compliance of the application with section 30 of the Act

[43] As indicated above, the Opponent has pleaded that the application for the Mark does not comply with sections 30(a), (b), (h) and (i) of the Act.

Non-compliance with section 30(a) of the Act

[44] The Opponent has pleaded that the application for the Mark "does not contain a statement in the ordinary commercial terms of the specific services in association with which the [Mark] has allegedly and continuously been used by the Applicant since January 2001."

[45] No evidence or argument was filed to meet the Opponent's initial burden with respect to its claim that the Applicant's Services are not stated in ordinary commercial terms.

[46] Accordingly, the section 30(a) ground of opposition is dismissed.



Non-compliance with section 30(b) of the Act

[47] The Opponent has pleaded that the application for the Mark contravenes section 30(b) of the Act in that:

[...] the Applicant has not continuously used the [Mark] since at least as early as January 2001 in association with the [Services], and the Opponent puts the Applicant to the strict proof thereof;

[...] the Applicant had not at the date of the filing of the application continuously used the [Mark] on the [Services] since January 2001 and/or had abandoned the [Mark].

[48] The relevant date for considering the circumstances in regard to this ground of opposition is the filing date of the application [see *Georgia-Pacific Corp v Scott Paper Ltd* (1984), 3 CPR (3d) 469 (TMOB)]. The Opponent can meet its initial burden under section 30(b) by reference not only to its own evidence but also to the Applicant's evidence [see *Labatt Brewing Company Limited v Molson Breweries, a Partnership* (1996), 68 CPR (3d) 216 (FCTD)]. However, the Opponent may only successfully rely upon the Applicant's evidence to meet its initial burden if the Opponent shows that the Applicant's evidence puts into issue the claims set forth in the Applicant's application [see *Corporativo de Marcas GJB, SA de CV v Bacardi & Company Ltd* 2014 FC 323 at paras 30-38 (CanLII)].

[49] As indicated above, the Stephan affidavit seemingly purports to establish that the Mark has been used by a different entity than the Applicant. It may also arguably purport to establish that the Mark has been used in association with goods rather than services. I note that Mr. Stephan's purchases were made after the material date to be considered under the present ground of opposition. I am aware that the Registrar may take into account evidence arising subsequent to the filing date of an applicant's application insofar as it may indicate a situation existing as of the material date [see *George Weston Ltd v Corporate Foods Ltd* (1988) 19 CPR (3d) 566 (TMOB)]. It remains that each case must be decided on its own facts and merit. In the present case, whether or not Mr. Stephan's affidavit is taken into consideration does not change the ultimate outcome of the section 30(b) ground of opposition.

[50] Indeed, the evidence of record is by no means inconsistent with the statement of use of the Mark in association with the Services contained in the Applicant's application. As indicated

above, Mr. Belloti has attested to the fact each of the Applicant's predecessors-in-title had care and control of the nature and quality of all Services provided by Trade Secrets in association with the Mark in accordance with the provisions of section 50 of the Act. Mr. Belloti further attested to the fact that the goods purchased by Mr. Stephan were all third party products and that Trade Secrets had been provided with bags, pre-printed with the Mark for use in its stores. In other words, the shopping bags depicted in Exhibits "A", "B" and "C" to Mr. Stephan's affidavit were used to carry the purchases made by him of third party goods from Trade Secrets' stores at the time of sales. Transposing the comments of the Senior Hearing Officer in *Gowling, Strathy & Henderson v Karan Holdings Inc* (2001), 14 CPR (4th) 124 (TMOB) to the present case, such use of the Mark is more akin to use of the Mark in association with a service namely to distinguish Trade Secrets's retail outlets from retail outlets of others, rather than in association with specific products.

[51] To sum up, this is clearly not a case where evidence of non-use has been established on a balance of probabilities.

[52] Accordingly, the section 30(b) ground of opposition is dismissed.

#### Non-compliance with section 30(h) of the Act

[53] The Opponent has pleaded that the application for the Mark "does not contain an accurate representation of the [Mark] as allegedly and continuously used by the Applicant in Canada in association with the [Services] since at least as early as January 2001."

[54] The section 30(h) ground, as pleaded, does not raise a proper ground of opposition in that the Opponent has not pleaded any material facts in respect thereof. Furthermore, there is no evidence to support the Opponent's contention that the application does not contain an accurate representation of the Mark as used by the Applicant.

[55] Accordingly, the section 30(h) ground of opposition is dismissed.

Non-compliance with section 30(i) of the Act

[56] The Opponent has pleaded that the application for the Mark contravenes section 30(i) of the Act in that:

[...] the Applicant could not have been satisfied as at the date of filing of the application, namely July 19, 2011 that the Applicant was entitled to make the statement that the Applicant had continuously used the [Mark] in association with the [Services] since January 2001, such that the Applicant was entitled to the alleged trade-mark in association with the [Services]

[...] the Applicant could not have been satisfied as at the date of filing of the application, namely July 19, 2011 that the Applicant was entitled to make the statement that the Applicant had continuously used the [Mark] in association with the [Services] since January 2001, such that the Applicant was entitled to the alleged trade-mark given the prior use of the Opponent's trade-mark registration No. TMA140,681 for GLAMOUR DESIGN.

[57] Section 30(i) of the Act merely requires that an applicant declare in its application that it is satisfied that it is entitled to registration of its trade-mark. Where an applicant has provided the requisite statement, 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]. Mere knowledge of the existence of the Opponent's trade-mark does not in and of itself support an allegation that the Applicant could not have been satisfied of its entitlement to use the Mark [see *Woot, Inc v WootRestaurants Inc Les Restaurants Woot Inc* 2012 TMOB 197 (CanLII)].

[58] The Applicant has provided the necessary statement and the Opponent has not demonstrated that this is an exceptional case.

[59] Accordingly, the section 30(i) ground is dismissed.

Non-registrability of the Mark under section 12(1)(d) of the Act

[60] The Opponent has pleaded that the Mark is not registrable having regard to the provisions of section 12(1)(d) of the Act in that it is confusing with the Opponent's registered trade-mark GLAMOUR DESIGN referred to above in that:

[...] the Applicant has not used the [Mark] continuously in association with the services as claimed nor continuously since the alleged date of first use as claimed in the application, namely January 2001; rather if there has been any use by the Applicant in association with the [Mark], such use of the [Mark] has been in association with wares, not services that were not claimed in the subject application and which are confusingly similar to the wares covered in the Opponent's trade-mark registration No. TMA140,681 for GLAMOUR DESIGN and the Opponent's trade-mark application No. 1,555,010 for GLAMOUR Design.

[61] The first part of the pleading alleging that the Applicant has not continuously used the Mark in association with the Services since the alleged date of first use claimed in the application or else, that such use has been in association with goods, not services that were not claimed in the application is not *per se* a proper basis for challenging the registrability of the Mark under section 12(1)(d) of the Act.

[62] The last part of the pleading alleging that the Mark is confusing with the Opponent's trade-mark application No. 1,555,010 is also not *per se* a proper basis for challenging the registrability of the Mark under section 12(1)(d) of the Act.

[63] This leaves us with the pleading alleging that the Mark is confusing with the Opponent's trade-mark registration No. TMA140,681 for GLAMOUR DESIGN.

[64] The material date to assess a section 12(1)(d) ground of opposition is the date of my decision [see *Park Avenue Furniture Corp v Wickers/Simmons Bedding Ltd* (1991), 37 CPR (3d) 413 (FCA)].

[65] I have exercised my discretion to check the Register to confirm that the Opponent's registration is extant.

[66] As the Opponent's evidential burden has been satisfied, the Applicant must therefore establish, on a balance of probabilities, that there is not a reasonable likelihood of confusion between the Mark and this registered trade-mark of the Opponent.

#### The test for confusion

[67] Section 6(2) of the Act provides that:

The use of a trade-mark causes confusion with another trade-mark if the use of both trade-marks in the same area would be likely to lead to the inference that the goods or services associated with those trade-marks are manufactured, sold, leased, hired or performed by the same person, whether or not the goods or services are of the same general class.

[68] Thus, this section does not concern the confusion of the trade-marks themselves, but confusion of goods or services from one source as being from another source.

[69] The test for confusion is one of first impression and imperfect recollection [see *Pernod Ricard v Molson Breweries* (1992), 44 CPR (3d) 359 (FCTD)].

[70] In applying the test for confusion, the Registrar must have regard to all the surrounding circumstances, including those listed at section 6(5) of the Act, namely: (a) the inherent distinctiveness of the trade-marks and the extent to which they have become known; (b) the length of time the trade-marks have been in use; (c) the nature of the goods, services or business; (d) the nature of the trade; and (e) the degree of resemblance between the trade-marks in appearance or sound or in the ideas suggested by them. This list is not exhaustive and all relevant factors are to be considered. Further, all factors are not necessarily attributed equal weight as the weight to be given to each depends on the circumstances [see *Mattel, Inc v 3894207 Canada Inc* (2006), 2006 SCC 22, 49 CPR (4th) 321 (SCC); *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée* (2006), 2006 SCC 23, 49 CPR (4th) 401 (SCC); and *Masterpiece Inc v Alavida Lifestyles Inc* (2011), 2011 SCC 27, 92 CPR (4th) 361 (SCC) for a thorough discussion of the general principles that govern the test for confusion].

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

[71] Both parties' marks are inherently distinctive. However, neither of them is inherently strong, especially the Opponent's, in view of the somewhat laudatory or suggestive connotation of the word GLAMOUR in the context of the parties' respective goods and services.

[72] Indeed, the *Oxford Canadian Dictionary* defines "glamour" as: "1. Physical attractiveness, esp. when achieved by makeup, elegant clothing, etc.; 2. an attractive or exciting quality, esp. one which is inaccessible to the average person."

[73] The extent to which the trade-marks have become known does not favour either party.

[74] As indicated above, there is no evidence that the Opponent's trade-mark has been used pursuant to section 4 of the Act or that it has become known to any extent in Canada. The mere existence of the Opponent's registration can establish no more than "de minimis" use and cannot give rise to an inference of significant or continuing use of the GLAMOUR DESIGN trade-mark in Canada [see *Entre Computer Centers, Inc v Global Upholstery Co* (1992), 40 CPR (3d) 427 (TMOB)]

[75] Likewise, it is not possible to determine to what extent the Mark has been used and become known in Canada. Suffice it to say that while Mr. Belloti has attested to the fact that each of the Applicant's predecessors-in-title had care and control of the nature and quality of all Services provided by Trade Secrets in association with the Mark in accordance with the provisions of section 50 of the Act, no sales or marketing figures have been provided.

The length of time the trade-marks have been used

[76] In view of my comments above, the length of time the parties' marks have been in use is not a material circumstance in the present case.

The nature of the goods, services or business, and the nature of the trade

[77] The Applicant submits that:

44. The Opponent makes the erroneous allegation that the Applicant sells wares in association with the [Mark]. Mr. Belloti provides in his [a]ffidavit that the items purchased by Mr. Stephan are third party products. They are not GLAMOUR SECRETS Design branded items. Moreover, the [Mark does] not appear on the items purchased by Mr. Stephan.

45. It is the statement of wares and services in the trade-mark application of the Applicant and in the certificate of registration of the Opponent that govern the issue of confusion arising under section 12(1)(d). The Registrar cannot consider the issue of confusion on the basis of goods that form no part of the application.

*Apple Computer, Inc. v. Richardson* (2009), 79 C.P.R. (4th) 343 at 356 (T.M.O.B.).

46. The [Mark] is for the services: “*operation of a retail store dealing in hair, skin, beauty care and cosmetic products, supplies and accessories.*”

47. Opponent’s registration [...] covers the wares: “*costume jewellery of all descriptions, including stone sets, metals and pearls.*”

48. The Applicant operates beauty and cosmetic supply stores. It is not in the business of producing novelty jewellery items as is the Opponent. [...].

[78] I agree with the Applicant’s position and find that the overall assessment of the section 6(5)(c) and (d) factors favours it. I would add that the way the Opponent has framed its pleading by attempting to focus on goods rather than the applied-for Services seemingly supports this finding.

The degree of resemblance between the trade-marks in appearance or sound or in the ideas suggested by them

[79] As noted by the Supreme Court in *Masterpiece, supra*, at paragraph 49, “the degree of resemblance, although the last factor listed in [section] 6(5) [of the Act], is the statutory factor that is often likely to have the greatest effect on the confusion analysis [...] if the marks or names do not resemble one another, it is unlikely that even a strong finding on the remaining factors would lead to a likelihood of confusion”.

[80] Moreover, as previously mentioned, it is well-established in the case law that likelihood of confusion is a matter of first impression and imperfect recollection. In this regard, “[w]hile the marks must be assessed in their entirety (and not dissected for minute examination), it is still possible to focus on particular features of the mark that may have a determinative influence on the public’s perception of it” [see *Pink Panther Beauty Corp v United Artists Corp* (1998), 1998, CanLII 9052 (FCA), 80 CPR (3d) 247 (FCA), at para 34]. Even though the first word or portion of a trade-mark is generally the most important for the purpose of distinction, the preferable approach is to first consider whether any aspect of the trade-mark is particularly striking or unique [see *Masterpiece*, above, at paragraph 64].

[81] The Applicant submits that:

35. The marks are quite different in appearance. The design components of the marks bear little resemblance to one another. The Opponent's mark is solely the word GLAMOUR in a scripted font with a star hanging from the "G". The [Mark] is the words GLAMOUR SECRETS centred on large bold geometric shapes. The effect of the scripted font and overall design of the Opponent's mark is dainty, light and fanciful. The effect of the [Mark] is solid, grounded, and conservative. The visual appearance of the respective marks give [sic] opposing messages.

36. When sounded, the marks are also dissimilar even though they share the word GLAMOUR. The addition of the word SECRETS in GLAMOUR SECRETS serves to distinguish the [Mark] from the ordinary dictionary word GLAMOUR in the Opponent's registration.

37. The ideas suggested by the marks also serve to distinguish them. The Merriam-Webster dictionary on-line defines "glamour" as "a very exciting and attractive quality". It can be said that this is the idea suggested by the Opponent's mark. Turning to the [Mark], the idea suggested by GLAMOUR SECRETS is of imparting tricks of the trade, knowledge and well-guarded methods of creating enchantment and allure.

38. When the marks are considered in their entirety, they are more different than alike in appearance, sound and connotation. [...]

[82] I agree with the Applicant's position. The only common element between the parties' marks is the word GLAMOUR, which is a weak element due to its somewhat laudatory or suggestive connotation in the context of the parties' respective goods and services.

#### Conclusion regarding the likelihood of confusion

[83] As noted by the Federal Court of Appeal in *Dion Neckwear, supra*, at page 163, the Registrar "need not be satisfied beyond doubt that confusion is unlikely. Should the 'beyond doubt' standard be applied, applicants would, in most cases, face an insurmountable burden because certainty in matters of likelihood of confusion is a rare commodity."

[84] I find that the Applicant has established, according to the balance of probabilities, that a consumer having an imperfect recollection of the Opponent's GLAMOUR DESIGN trade-mark would be unlikely to conclude that the Applicant's Services originate from the same source or are otherwise related to or associated with the Opponent's registered goods.

[85] As indicated above, the Opponent's trade-mark is not inherently strong and there is no evidence to suggest that it should be afforded a wide ambit of protection. As comparatively small



differences may suffice to distinguish between marks of low inherent distinctiveness [see *GSW Ltd v Great West Steel Industries Ltd* (1975), 22 CPR (2d) 154 (FCTD)], I find that the differences existing between the parties' marks combined with the ones existing between their respective goods and services are sufficient to avoid any reasonable likelihood of confusion in the present case.

[86] Accordingly, the section 12(1)(d) ground of opposition is dismissed.

#### Disposition

[87] In view of the foregoing and 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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Annie Robitaille  
Member  
Trade-marks Opposition Board  
Canadian Intellectual Property Office

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

**AGENTS OF RECORD**

No Agent Appointed

FOR THE OPPONENT

Moffat & Co.

FOR THE APPLICANT