



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

Citation: 2014 TMOB 263
Date of Decision: 2014-11-28

**IN THE MATTER OF OPPOSITIONS
by Loblaws Inc. to application
Nos. 1,521,871 and 1,521,872 for the
trade-marks EUROPEAN FLAVORS
and SAVEURS D'EUROPE in the name
of Agri-Mondo Inc.**

Introduction

[1] Agri-mondo Inc. (the Applicant) has applied to register the trade-marks EUROPEAN FLAVORS and SAVEURS D'EUROPE (the Marks) in association with fresh fruits and vegetables and packaged fresh fruits and vegetables.

[2] Loblaws Inc. (the Opponent) has opposed the applications primarily on the basis that the Marks describe or deceptively misdescribe the character and quality of the Applicant's fruits and vegetables and are terms that have been used widely and for many years in the food and beverage industry.

[3] For the reasons that follow, I find that these oppositions should be rejected.

Background

[4] On April 1, 2011, the Applicant filed application Nos. 1,521,871 and 1,521,872 for the registration of the Marks based on proposed use in association with fresh fruits and fresh vegetables and packaged fresh fruits and packaged fresh vegetables.

[5] The applications were advertised in the *Trade-marks Journal* on November 16, 2011, and the Opponent filed statements of opposition on April 16, 2012, based on the following grounds of opposition set out under section 38 of the *Trade-marks Act*, RSC 1985, c T-13 (the Act): non-registrability under sections 12(1)(b) and section 12(1)(e), non-compliance with section 30(e) and section 30(i), and non-distinctiveness under section 38(2)(d) and section 2. All of these grounds are based on the premise that the Marks clearly describe or deceptively misdescribe a characteristic or quality of the Applicant's wares.

[6] In support of both of its oppositions, the Opponent filed the affidavit of Liliana Mulé. Ms. Mulé was not cross-examined.

[7] As its evidence in each file, the Applicant filed certified copies of 41 trade-mark registrations and applications.

[8] Only the Opponent filed a written argument in both cases but both the Applicant and the Opponent were represented at an oral hearing for both files.

Onus and Material Dates

[9] The Applicant bears the legal onus of establishing, on a balance of probabilities, that its applications comply with the requirements of the Act. There is however an initial 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 [*John Labatt Ltd v Molson Companies Ltd* (1990), 30 CPR (3d) 293 (FCTD) at 298; *Dion Neckwear Ltd v Christian Dior, SA* (2002), 20 CPR (4th) 155 (FCA)].

[10] The material dates that apply to the grounds of opposition are as follows:

- Section 38(2)(a)/Section 30 - the filing date of the application [*Georgia-Pacific Corp v Scott Paper Ltd* (1984), 3 CPR (3d) 469 (TMOB) at 475];
- Section 38(2)(b)/Sections 12(1)(b) – the filing date of the application [*Havana Club Holdings SA v Bacardi & Co* (2004), 35 CPR (4th) 541 (TMOB); *Fiesta Barbeques Ltd v General Housewares Corp* (2003), 28 CPR (4th) 60 (FCTD)]; and

- Section 38(2)(d)/non-distinctiveness - the filing date of the opposition [*Metro-Goldwyn-Mayer Inc v Stargate Connections Inc* (2004), 34 CPR (4th) 317 (FC)].

[11] With respect to the material date for the ground of opposition pursuant to section 10 and section 12(1)(e), Board Member Herzig stated the following in *Lockheed Martin Corp, Re* (2013), 114 CPR (4th) 293 (TMOB):

This Board has accepted that the material date for determining the "ordinary and bona fide commercial usage" of the mark in Canada for the purposes of s.10 is the date of the Board's decision: see, for example, *Sealy Canada Ltd./Ltée . Simmons IP Inc* (2005), 47 CPR (4th) 296 (TMOB); which follows *Canadian Olympic Assn/Assoc Olympique Canadienne v Olympus Optical Co* (1991), 38 CPR (3d) 1, 136 N.R. 231, (Fed. C.A.); contra, see *ITV Technologies Inc v WIC Television Ltd.* (2003), 29 CPR (4th) 182 (FC) where the material date is the date when the mark is first used in Canada, affirmed (2005), 38 CPR (4th) 481, 332 N.R. 1, (FCA), which follows *Carling Breweries Ltd v Molson Cos.* (1984), 1 CPR (3d) 191, (Fed. T.D.), reversing (1982), 70 CPR (2d) 154, (T.M. Opp. Bd.), affirmed (1988), 19 CPR (3d) 129, 16 C.I.P.R. 157, 93 N.R. 25, (Fed CA).

[12] For the purposes of these oppositions, it doesn't matter which date I apply as the relevant date for this particular ground.

Preliminary Issues

Admissibility of the Applicant's evidence

[13] The admissibility of the Applicant's evidence was challenged by the Opponent in its written argument and at the oral hearing. In this regard, the Applicant filed copies of 41 trade-mark registrations and applications as its evidence with the Board by its deadline of February 25, 2013, but by fax rather than in the prescribed manner (see section 3(9) of the *Trade-marks Regulations*, SOR/96-195 (Regulations)). The original certified copies of the applications and registrations were subsequently filed in the prescribed manner, but three days after the deadline, on February 28, 2013. Further, the Opponent was served in an irregular manner, that is, by e-mail and by fax (on February 25, 2013), but not in accordance with section 38 of the Regulations until February 28, 2013.

[14] In a ruling dated April 5, 2013, the Board advised the parties that the evidence filed on February 25, 2013 was admitted into the record. The Board erred in permitting the September 25, 2013 evidence into the record because it was not filed or served in the prescribed manner. However, the Opponent did not object to the irregularities until December 30, 2013 when it filed its written argument. In the circumstances, I see no prejudice to the Opponent in accepting, at this time, the evidence filed and served on February 28, 2013. In any event, at the commencement of the hearing, I exercised my discretion under section 47(2) of the Act to grant a retroactive extension of time to the Applicant and accepted the evidence filed and served on September 28, 2013 for both files into the record once the prescribed fee was paid for both files.

Admissibility of the Opponent's evidence

[15] The Applicant has objected to the fact that the affidavit of Ms. Mulé was introduced by an employee of the Opponent's firm. Ms. Mulé is a law clerk employed by the Opponent. The general argument is that employees are not independent witnesses giving unbiased evidence when they give opinion evidence on contested issues [*Cross-Canada Auto Body Supply (Windsor) Ltd v Hyundai Auto Canada* (2006), 53 CPR (4th) 286 (FCA) (*Cross-Canada*)]. The Applicant argues that as a result, little if any weight should be accorded to this affidavit.

[16] Ms. Mulé attached to her affidavit copies of online dictionary definitions for the words "European" and "flavor" and their French equivalents (Mulé, paras 2-3; Exhibits A-B). She also conducted Internet searches to locate information, products and services that contain or use the words "European flavours" (Mulé, paras 4-17 and Exhibits C-O).

[17] In *Canadian Jewellers Assn v American Gem Society* (2010), 86 CPR (4th) 131 (TMOB), former Member Bradbury addressed a similar issue as follows at para. 25:

However, I personally do not see that the concerns expressed by the Federal Court of Appeal in *Cross-Canada* legitimately apply here. I do not see how any self-interest of an agent employed by a party could be seen to bias these search results. It is quite apparent that the search was directed to see if anyone other than the Applicant has employed the phrase "certified gemologist" on Canadian websites. I do not see how the fact that this evidence was introduced by an employee of the Opponent's agent makes it less proper or open to suspicion than if the Opponent or its agent had hired an outside investigator to do such searches and swear an affidavit.

[18] This reasoning can also be applied to the facts in the present case. As I do not find that the evidence of Ms. Mulé comprises contentious opinion evidence of the type adduced in the *Cross-Canada* case, I am prepared to give some consideration to it. In doing so, I note that the Applicant did not raise any other objections to Ms. Mulé's evidence.

Non-registrable - Section 12(1)(b)

[19] The Opponent pleads that the Marks are not registrable for the applied for wares because they are clearly descriptive or deceptively misdescriptive in the English or French language of the character or quality of the wares in association with which they are proposed to be used. I note that the Opponent has not pleaded that the Marks are clearly descriptive or deceptively misdescriptive of the place of origin of the wares. Therefore, whether or not the average consumer would think upon seeing the Marks that the wares originate in or come from Europe is not at issue.

[20] The issue as to whether the Applicant's Marks are clearly descriptive or deceptively misdescriptive must be considered from the point of view of the average purchaser of the associated services. Further, the Marks must not be dissected into their component elements and carefully analyzed but must be considered in their entirety as a matter of immediate impression [*Wool Bureau of Canada Ltd v Registrar of Trade Marks*, 40 CPR (2d) 25 (FCTD) at 27-8; *Atlantic Promotions Inc v Registrar of Trade Marks*, 2 CPR (3d) 183 (FCTD) at 186]. Character means a feature, trait or characteristic of the services and "clearly" means "easy to understand, self-evident or plain" [*Drackett Co of Canada Ltd v American Home Products Corp* (1968), 55 CPR 29 at 34]. In *Canada (Registrar of Trade Marks) v Provenzano* (1977), 37 CPR (2d) 189 (FCTD) at p. 189, Addy J. said, "To be objectionable as descriptive under s. 12(1)(b) the word must be clearly descriptive and not merely suggestive and, for a word to be clearly descriptive, it must be material to the composition of the goods or product".

[21] As noted, Ms. Mulé obtained excerpts from the Concise Oxford Dictionary for the words "European" and "flavor" and from the online dictionaries wordreference.com and larousse.com excerpts for the word "saveur". The dictionary definitions of European include "of or in Europe" and "originating in or characteristic of Europe". The dictionary definitions of "flavour" (or flavor in the US) include "a distinctive mingled sensation of smell and taste" and

“an indefinable characteristic or quality”. The term is identified as a noun and a verb. The dictionaries contain definitions and English translations of “saveur” including “flavour, savoury and sweet taste” [Mulé, Exhibits A and B].

[22] Ms. Mulé also conducted Internet searches to locate information, products and services that contain or use the words “European Flavors” (or “European Flavours”) (Mulé paras 4-17 and Exhibits C-O). Some examples provided by Ms. Mulé (and pre-dating the material date for this ground) are as follows:

- an article dated 1988 in the British Food Journal appearing on the website www.emeraldinsight.com which uses the phrase “European flavours” to describe the flavour industry in Western Europe;
- an article dated October 9, 2003, appearing on the Food Navigator website (www.foodnavigator.com) where in the phrase European Flavours is used to describe the flavour business, market and industry in Europe;
- an article dated May 8, 2008, from the Food Reference website (www.foodreference.com) where the phrase “European Flavours” is used for the name of an initiative of the European Union to encourage the consumption of European fruits and vegetables in the U.S., Japan and Russia;
- a copy from a restaurant website in Cornwall, Ontario (<http://schnitzels.ca>) where the name Schnitzels European Flavours is used as the restaurant name;
- a copy of a search result from the BC Tourism Official website wherein an information guide describes where to find food and beverages in certain categories including the category of European Flavours; and
- a copy of the search result from the BC Foodie Blogger website wherein an article entitled “Street Meet Food Truck – European Flavors” describes the use of the “European Flavors” phrase by a food truck in Vancouver.

[23] The Opponent’s arguments with respect to submissions in respect of the section 12(1)(b) ground refer both to the dictionary definitions of the words “European” and “flavor” (and their French equivalents) and the evidence filed with respect to third party use of the phrase “European Flavors/Flavours”. I will begin by summarizing the Opponent’s arguments with respect to the dictionary definitions.

[24] The Opponent submits that there is no other common or ordinary meaning, other than “of or in Europe” or the other similar dictionary definitions provided in the Opponent’s evidence, that may be attributed by the general public in Canada to the word European (or its French equivalent) in the context of the Mark. The common or ordinary meaning of the word “flavors” is “a distinctive mingled sensation of smell and taste” or “an indefinable characteristic or quality”. Relying on the decision in *Staffordshire Potteries Ltd v Registrar of Trade-marks* (1976), 26 CPR (2d) 134 (FCTD), the Opponent submits that when these words are taken together they represent to the viewer or listener that the wares are either from Europe or contain flavours of traditionally European origin.

[25] With respect to third party use of the phrase “European Flavors”, the Opponent submits that Internet evidence consisting of allegedly descriptive usage of an applied for mark has been accepted by the Board, especially when it has not been challenged by the Applicant [*Pillsbury Co v Alantra Imports Co* (1999), 1 CPR (4th) 252 (TMOB)]. I also note that since the issue is not whether the words EUROPEAN FLAVORS have been used in a clearly descriptive manner in Canada, but whether such words are clearly descriptive in the English language, the fact that many of the articles provided by Ms. Mulé appear to be from non-Canadian publications does not diminish their relevancy [*General Housewares Corp v Fiesta Barbeques Ltd* (2001), 13 CPR (4th) 177 (TMOB)].

[26] Relying on the decision in *York Barbell Holdings Ltd v ICON Health and Fitness, Inc* (2001), 13 CPR (4th) 156 (TMOB), the Opponent submits that it would be inappropriate to grant a monopoly to the Applicant for words that others in the trade have used to describe a feature of their wares. In this regard, the Opponent submits that its evidence shows that the phrase “European Flavors” has been extensively used for many years in the food, beverage, flavor and produce industries in Canada, including by governmental associations. The Opponent submits that the term has been use to refer to food (in particular fruit and vegetable produce) and flavors originating from Europe or derived from traditionally European cuisine, to describe food categories, and to describe the food industry in general in Europe.

[27] As its evidence the Applicant has provided certified copies of 41 trade-mark registrations or applications for various wares and services that include the words EUROPEAN

or FLAVOUR (or their French equivalents) standing in the names of several different owners. The Opponent noted that several of these registrations have either been expunged, are not for food related wares or services, or contain design matter sufficient to distinguish them from other marks.

[28] At the oral hearing the Applicant acknowledged that the fact that these marks have been registered does not mean that the Marks are also registrable. The Applicant's argument, as I understand it, is that there are about 41 trade-marks that appear on the register which comprise either the component "flavor" or "European" (or their French equivalents), including the Opponent's registration Nos. TMA445,189 ZIGGY'S EUROPEAN MARKET wherein the component EUROPEAN is not disclaimed. The Applicant submits that the inference is that the Trade-marks Office, the Opponent and other third parties do not consider that the words "European" or "flavor" to be either clearly descriptive or deceptively misdescriptive. In other words, because it can be inferred from the number of registrations that marks with these elements are being used in the marketplace, it follows that consumers are used to seeing these words as parts of trade-marks as opposed to being simply descriptive terms.

[29] While this argument may not be without merit, the issue under section 12(1)(b) is whether, as a matter of immediate impression, the Marks are clearly descriptive or deceptively misdescriptive of the wares from the point of view of an everyday user of the wares. The fact that they may contain elements that are used by other traders as part of their trade-marks does not, by itself, mean the Marks do not describe the wares of the Applicant. Further, while the Court has recognized that the Registrar must consider prior registrations when assessing descriptiveness [*Reed Stenhouse Co Ltd v Registrar of Trade-marks* (1992), 45 CPR (3d) 79 (FCTD)] the Board has previously found that it is not in a position to explain why particular trade-marks were permitted to proceed to registration by the examination section of the Trade-marks Office [*Mitel Corp v Registrar of Trade-marks* (1984), 79 CPR (2d) 202 at 206; *Wool Bureeau, supra*, at p 28; *Thomas J Lipton Inc v Boyd Coffee Co* (1991), 40 CPR (3d) 272 (TMOB) at 277; *UL Canada Inc v High Liner Foods Inc* (2001), 20 CPR (4th) 578; *Procter & Gamble Inc v Morlee Corp* (1993), 48 CPR (3d) 377 at 386 and *Benson & Hedges Inc v Imperial Tobacco Ltd* (1995), 60 CPR (3d) 567 (TMOB)].

[30] I agree with the Opponent that the term European (or d'Europe) suggests that the wares have some European characteristic [*Belvedere International Inc v Dena Corporation*, 1998 CanLII 18507 (TMOB)]. The word flavors (or saveurs) may also have a precise meaning on its own (i.e. a certain smell and taste). I do not find that the words together (in English or French), however, are clearly descriptive or deceptively misdescriptive of the applied for wares for the following reasons.

[31] While I accept that certain countries or regions in Europe may produce fruits or vegetables that have distinct flavours, the evidence does not show that the phrase “European Flavors” has any specific meaning with respect to fruits or vegetables. The Opponent’s own evidence, for example, contains a report which shows that “the flavours industry remains very country specific” (Mulé, Exhibit G). The European Flavours project described in the article attached as Exhibit M to the Mulé affidavit also refers to flavours from specific geographic locations such as Italy. In this regard, I note the following excerpts from the Opponent’s evidence:

“...Canadian consumers will be able to appreciate the extraordinary sensory characteristics and taste of Italian fruit and vegetables by means of tasting sessions and sampling events which will be scheduled in various cities throughout Canada...

...Product qualification is also the central theme of an activity launched by Oranfrizer in Canada to boost sales of the Sicilian blood orange, focusing on both fresh fruit and freshly squeezed juice.”

If fruits and vegetables from specific countries have certain flavors, in view that the term “European” could mean one or more of many different countries in Europe, then I do not see how EUROPEAN FLAVORS (or its French equivalent) can clearly describe a characteristic or quality of the wares.

[32] I have also considered whether or not traders in the fruits and vegetables industry would likely wish to use the words “European Flavors” (or its French equivalent) to describe their wares. The Opponent has shown the appearance of similar terms on the Internet in association with restaurant services, a mobile food service, and a marketing initiative designed to encourage the consumption of fruits and vegetables from Europe in the United States, Japan, Russia and China. The evidence does not show that, as of the material date, others in the fruit

and vegetable industry have used these words or would like to use these words together to describe their fruits and vegetables.

[33] In my view, the average Canadian consumer would not know what descriptive significance the word “flavors” has in association with the word “European” in association with fruits or vegetables. That is, they would not know what particular quality or characteristic a EUROPEAN FLAVOURS fruit or vegetable would have. In other words, the Mark is not easy to understand, self-evident or plain.

[34] In *1055779 Ontario Inc v Aliments Carrière Inc (2001)*, 11 CPR (4th) 404 Board Member Herzig dealt with the question of whether MARKET FRESH was clearly descriptive or deceptively misdescriptive of frozen fruits and vegetables as follows, at pages 409-410:

In my view, the combined term "market fresh" has no precise meaning. Rather, the term "market fresh", when considered apart from any associated wares, is at most suggestive of produce that is relatively fresh. The mark MARKET FRESH, when used in association with the applicant's wares, is an oxymoron because frozen products cannot be fresh. The average consumer would not be deceived in any way but would recognize the mark as a form of puffery designed to attract attention. At most, the applied for mark MARKET FRESH, used in association with the applicant's wares, merely suggests that the applicant's wares will taste relatively fresh. Of course, a mark may be suggestive without being clearly descriptive or deceptively misdescriptive.

[35] Similarly, the mark EUROPEAN FLAVORS (or its French equivalent), when considered apart from the wares, is at most suggestive of food that tastes European. The meaning of the Mark EUROPEAN FLAVORS when used in association with the Applicant's wares is not clear because fresh fruits and vegetables, in my view, cannot taste “European”. The average consumer would not be deceived in any way but would recognize the Marks as forms of puffery designed to attract attention.

[36] In view of the above, the section 12(1)(b) ground of opposition does not succeed.

Non-registrable – Section 12(1)(e) and Section 10

[37] The Opponent has also pleaded that the Marks are not registrable because the term European Flavors (or its French equivalent) has by ordinary and bona fide commercial usage become recognized in Canada as designating the kind and quality of the wares such that no person could adopt it as a trade-mark as set out in section 10 of the Act.

[38] The relevant test set out by section 10 is discussed at paragraph 88 of *ITV Technologies*, above:

Pursuant to s. 10, a mark may become a prohibited mark if as a result of ordinary and bona fide commercial usage, it has become recognized in Canada as designating the kind, quality, quantity, destination, value, place of origin or date of production of any wares or services. The statutory prohibition requires that the use of the mark in question be in Canada and that the mark must have been commonly used in Canada at the relevant time as designating an aspect of the wares or services which are the subject of the mark ...

[39] No evidence has been adduced to show the commercial use of the term EUROPEAN FLAVORS (or its French equivalent) in association with fruits and vegetables in Canada. As noted above, what the Opponent has shown is the appearance of similar terms on the Internet in association with restaurant services, a mobile food service, and a marketing initiative designed to encourage the consumption of fruits and vegetables from Europe in the United States, Japan, Russia, China and Canada.

[40] I therefore find the Opponent's evidence is insufficient to put section 10 into issue at either material date. This ground of opposition is therefore not successful.

Non-compliance – Sections 30(e) and 30(i)

[41] Both the Opponent's section 30(e) and 30(i) grounds turn on a determination about whether or not the Marks are clearly descriptive. In this regard, the Opponent pleads that the applications do not comply with section 30(e) because the Marks are not intended to be used as trade-marks but instead will function to clearly describe an intrinsic characteristic of the Applicant's produce. Under section 30(i), the Opponent argues that the Applicant could not have been satisfied that it was entitled to use the Marks as trade-marks because of their descriptive nature.

[42] In view that I have already found that the Marks are not clearly descriptive of the applied for wares, I reject both of these grounds of opposition.

Distinctiveness Ground of Opposition

[43] This ground of opposition has been pleaded as follows:

“...the advertised trade-mark EUROPEAN FLAVORS (or its French equivalent) is not distinctive since it is not adapted to distinguish and does not distinguish the wares of the Applicant from the wares of the Opponent and other marketers, traders, importers, producers and trade associations in Canada of the same and similar wares. The advertised trade-mark is not, and cannot become, distinctive of the Applicant. The alleged trade-mark is a descriptive and/or generic term used widely and for many years in the food and beverage industries.”

[44] Considering first the second part of the Opponent’s ground, it has previously been held that while it may be true that a purely descriptive or a deceptively misdescriptive trade-mark is necessarily not distinctive, it is not correct to hold that merely because a mark is adjudged *not* to be either purely descriptive or deceptively misdescriptive, it is therefore distinctive [*Canadian Council of Professional Engineers v APA – The Engineered Wood Association* (2000), 7 CPR (4th) 239 (TMOB)]. In the present case, I have found that the term “European” on its own suggests that the wares have a European characteristic. When this word is used in association with the word “flavours”, however, it is not clear what it means to the average consumer. Specifically, it is not clear how a fresh fruit or vegetable can taste European.

[45] Considering next the first part of the Opponent’s argument under this ground, the Opponent must show evidence of recognition in Canada of a mark or marks which allegedly negate the distinctiveness of the Mark [*Lockheed*, above].

[46] The Opponent submits that its Internet evidence establishes that a number of third parties are using the exact term European Flavors and the words are used by many to describe categories of food, including fruits and vegetables, with their origin in Europe or with flavors from traditionally European produce or cuisine. Some of the Opponent’s evidence was described above under the section 12(1)(b) ground. Further examples provided by the Opponent that are dated prior to the material date for this ground include the following:

- A copy of the search results from the Food Navigator website (www.foodnavigator-usa.com) wherein an article dated September 19, 2011, describes the increasing consumption and discovery of certain flavours and foods in the U.S. using the phrase “Northern European Foods and Flavours”;
- Copies of search results from the Food Processing website (www.foodprocessing.com) wherein an article dated December 22, 2011 makes reference to European Flavour in association with butter;
- Copies of search results from the website www.europeanflavours.eu wherein the website describes the “European Flavours” initiative of the European Union and Italian government to encourage the consumption of fruits and vegetables from Europe in the United States, Japan, Russia and Canada; and
- Copies of the search results from the Fruit Today website (www.fruittoday.com) wherein there is reference to the following articles “European Flavours a positive balance for 2011/2012” and “European Flavors ‘the World Tour’ of European Fruit and Vegetables Begins Again from Canada.”

[47] The Opponent’s Internet articles are evidence that as of the date of Ms. Mulé’s search the printed pages appeared on the Internet and were at the time of the search accessible from Canada. While this evidence can be good evidence on the issue of whether others use the term European Flavors in various online articles and other publications to refer to food and to flavors derived from traditionally European cuisine, it is not sufficient, by itself, to put into issue whether the Applicant’s Marks are adapted to distinguish its fruits and vegetables from those of others in Canada. In this regard, out of all of the websites evidenced, only a few appear to originate from Canada and there is no evidence regarding the number of Canadians who have accessed these pages. Even if it had been shown that Canadians had accessed these websites, the evidence does not show that the phrase “European Flavors” has been used by others in the food and beverage industry in Canada to describe fruits and vegetables or packaged fruits and vegetables.

[48] As I am not satisfied that the Opponent has met its burden under this ground of opposition, it is not successful.

Disposition

[49] In view of the above, and pursuant to the authority delegated to me under section 63(3) of the Act, I reject the oppositions pursuant to section 38(8) of the Act.

Cindy R. Folz
Member
Trade-marks Opposition Board
Canadian Intellectual Property Office