



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

Citation: 2016 TMOB 150
Date of Decision: 2016-09-06

IN THE MATTER OF AN OPPOSITION

Heather Ruth McDowell

Opponent

and

The Body Shop International plc

Applicant

1,600,908 for HONEYMANIA

Application

Background

[1] The Opponent is the owner of registration No. TMA767,134 for the trade-mark HONEY & DESIGN and registration No. TMA767,075 for the trade-mark HONEY. In addition, the Opponent owns pending application No. 1,556,448 for the trade-mark PINK & HONEY.

[2] The Opponent's application and registrations cover goods that may be generally categorized as: clothing; footwear; headwear; jewellery; fashion accessories; hair accessories; cosmetics; giftware; and ornaments. In addition, the Opponent's application and registrations cover services which are described as "retail store services, namely, the operation of a clothing, footwear, headwear, fashion accessory and giftware outlet". A list of the specific goods and services set out in the Opponent's application and registrations is attached hereto as Schedule A.

[3] On November 2, 2012, the Applicant filed the above-identified application for the trade-mark HONEYMANIA (the Mark). The application is based upon proposed use in Canada in association with the following goods:

cosmetics, lip, skin and hair care preparations, face cream and lotion, soaps for personal care and soap bags, bath and shower gel, oils, beads, cream and effervescent powders and bubble bath, deodorants, sun-tanning preparations, shaving preparations, perfumes, eau de toilette, essential oils and perfume oils for personal use, for aromatherapy, for the manufacture of perfumes, for cosmetic purposes and for the care of skin and body, and perfume oils, nail care preparations, cotton sticks and cotton and wool swabs for personal use, powdered cosmetic tissues, and tissues impregnated with cosmetic lotions, scented room fragrances, incense sticks, potpourri and sachets, kits and gift sets containing cosmetics, lip, skin, hair and nail care preparations.

[4] The application was advertised for opposition purposes in the *Trade-marks Journal* of June 26, 2013 and the Opponent filed a statement of opposition to oppose the application under section 38 of the *Trade-marks Act*, RSC 1985, c T-13 (the Act) on November 26, 2013. The grounds of opposition are based upon sections 30(i), 12(1)(d), 16(3)(a), 16(3)(c) and 2 (distinctiveness) of the Act.

[5] On February 3 2014, the Applicant filed a counterstatement denying the allegations set out in the statement of opposition.

[6] In support of its opposition, the Opponent filed the affidavit of Elenita Anastacio, sworn June 2, 2014 (the Anastacio affidavit). Ms. Anastacio was not cross-examined. Her affidavit essentially provides copies of the particulars for the Opponent's application and registrations.

[7] In support of its application, the Applicant filed the affidavit of Peterson Eugenio, sworn October 2, 2014 (the Eugenio affidavit) and the affidavit of Nathan Haldane, sworn October 2, 2014 (the Haldane affidavit). Both were cross-examined and the transcripts of their cross-examinations have been made of record.

[8] Only the Applicant filed a written argument.

[9] Both parties attended a hearing.

[10] For reasons that follow, the opposition is rejected.

Onus

[11] 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 [*John Labatt Limited v The Molson Companies Limited* (1990), 30 CPR (3d) 293 (FCTD) at 298].

Analysis of Grounds of Opposition

Section 30(i)

[12] The Opponent submits that at the date of filing of the application, a search of the trade-mark register or a common law search would have located the existence of its trade-marks and therefore the applicant could not have been satisfied of its entitlement to use the Mark under section 30(i) of the Act.

[13] Where an applicant has provided the statement required by section 30(i) in its application, a ground of opposition based upon this section should only succeed in exceptional cases such as where there is evidence of bad faith on the part of the applicant [*Sapodilla Co Ltd v Bristol-Myers Co* (1974), 15 CPR (2d) 152 (TMOB) at 155]. The Applicant has provided the necessary statement and the Opponent has not filed any evidence to demonstrate that this is an exceptional case. Furthermore, I note that it has been held that mere knowledge of the existence of an opponent's trade-mark does not in and of itself support an allegation that an applicant could not have been satisfied of its entitlement to use a mark at the time that it filed its application [*Woot, Inc v WootRestaruants Inc Les Restaurants Woot Inc* 2012 TMOB 197 (CanLII)].

[14] Accordingly, this ground of opposition is rejected.

Sections 16(3)(a) and (c)

[15] The Opponent has pleaded that the Applicant is not the person entitled to registration of the Mark in view of the Opponent's prior use of its trade-marks HONEY & DESIGN (registration No. TMA767,134) and HONEY (registration No. TMA767,075). In addition, the Opponent has pleaded that the Applicant is not the person entitled to registration of the Mark in view of its prior use of its trade-name HONEY.

[16] With respect to these grounds of opposition, there is an initial burden on the Opponent to evidence use of its trade-marks or trade-name prior to the Applicant's filing date and show that it had not abandoned its trade-marks or trade-name as of the date of advertisement of the Applicant's application [section 16(5)].

[17] The Opponent has not provided any evidence of use of its trade-marks or trade-name. The Haldane affidavit filed by the Applicant provides some details pertaining to the Opponent's use. However, it is limited in nature (as will be discussed later on in my decision) and it post-dates the material date for assessing this ground of opposition. I therefore find that the Opponent has failed to meet its initial evidential burden in relation to its sections 16(3)(a) and (c) grounds of opposition.

[18] Accordingly, these grounds of opposition are rejected.

Section 2

[19] The Opponent has pleaded that the Mark is not distinctive and is not capable of distinguishing the Applicant's goods, in view of the Opponent's own trade-marks which consist of or incorporate the word HONEY.

[20] In order to meet its initial burden in support of its non-distinctiveness ground of opposition, the Opponent was required to show that as of the filing date of the statement of opposition, one or more of the trade-marks referred to therein was known to some extent, and that its reputation in Canada was substantial, significant or sufficient [*Motel 6, Inc v No 6 Motel Ltd* (1981), 56 CPR (2d) 44 (FCTD); and *Bojangles' International LLC v Bojangles Café Ltd* (2006), 2006 FC 657 (CanLII), 48 CPR (4th) 427 (FC)].

[21] Since the Opponent has not filed evidence to show that any of its trade-marks were in use or known in Canada as of the applicable material date and since the Applicant's evidence is limited in nature and post-dates the material date for assessing this ground of opposition, the Opponent has also failed to meet its initial burden in respect of this ground.

[22] Accordingly, this ground of opposition is also rejected.

Section 12(1)(d)

[23] The Opponent has pleaded that the Mark is not registrable because it is confusing with its registered trade-marks HONEY (registration No. TMA767,075) and HONEY & DESIGN (registration No. TMA767,134).

[24] The material date to assess a section 12(1)(d) ground of opposition is the date of my decision [see *Park Avenue Furniture Corporation v Wickes/Simmons Bedding Ltd and The Registrar of Trade Marks* (1991), 37 CPR (3d) 413 (FCA)].

[25] As Exhibit A to the Anastacio affidavit, the Opponent provided copies of the particulars for its registrations. I have exercised my discretion and checked the register to confirm that they are extant [*Quaker Oats Co of Canada v Menu Foods Ltd* (1986), 11 CPR (3d) 410 (TMOB)]. The Opponent has therefore met its initial evidential burden with respect to this ground.

[26] As the Opponent's evidentiary burden has been satisfied, the Applicant must therefore establish on a balance of probabilities, that there is no reasonable likelihood of confusion between its trade-mark and the Opponent's trade-marks.

[27] The test for confusion is one of first impression and imperfect recollection. Section 6(2) of the Act indicates that 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 wares or services associated with those trade-marks are manufactured, sold, leased, hired or performed by the same person, whether or not the wares or services are of the same general class.

[28] In applying the test for confusion, the Registrar must have regard to all the surrounding circumstances, including those specifically enumerated in 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 each has 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. These enumerated factors need not be attributed equal weight [*Mattel, Inc v 3894207 Canada Inc* (2006), 49 CPR (4th) 321 (SCC); and *Masterpiece Inc v Alavida Lifestyles Inc* (2011), 92 CPR (4th) 361 (SCC)].

[29] I will focus my analysis on the likelihood of confusion between the Mark and the Opponent's trade-mark HONEY (registration No.TMA767,075). Since it is a word mark, I consider it to be slightly more similar to the Mark and I am therefore of the view that it will effectively decide the outcome of this ground of opposition.

Section 6(5)(e) – the degree of resemblance between the trade-marks

[30] In *Masterpiece [supra]* the Supreme Court of Canada considered the importance of section 6(5)(e) in conducting an analysis of the likelihood of confusion (see para 49):

...the degree of resemblance, although the last factor listed in s. 6(5) 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. The other factors become significant only once the marks are found to be identical or very similar... As a result, it has been suggested that a consideration of resemblance is where most confusion analyses should start.

[31] In *Masterpiece*, the Court also advised that the preferable approach to considering resemblance “is to first consider whether there is an aspect of the trade-mark that is particularly striking and unique” (para 64).

[32] In the present case, I do not consider any one aspect of either of the parties' marks to be particularly striking or unique. The word HONEY is an ordinary English word, as is the word MANIA. While neither of those words, either alone or in combination necessarily has any clear meaning in relation to the parties' goods and services, as discussed in more detail below, the word HONEY is somewhat laudatory and/or suggestive in nature. If anything may be said to be unique about the Mark, it is the fact that it consists of a unitary coined word HONEYMANIA and is comprised of two components which typically do not appear together. In view of the foregoing, I consider it appropriate in the present case, to focus on the parties' marks as a whole, while still bearing in mind the principle that the first word or syllable of a trade-mark is often the most important, for the purpose of distinguishing [*Conde Nast Publications Inc v Union des éditions modernes* (1979), 46 CPR (2d) 183 (FCTD)].

[33] At the hearing, the Opponent submitted that there is a significant degree of resemblance between the trade-marks because the Mark incorporates the whole of its HONEY trade-mark as

its first component. The Opponent is of the view that MANIA simply serves to modify the word HONEY in the Mark and that consumers would understand HONEY to be a reference to the Opponent's brand.

[34] I consider there to be some degree of resemblance between the parties' marks, in view of the fact that they both contain the word HONEY, particularly since it appears in the dominant first position of both of the parties' trade-marks. However, I agree with the Applicant that the suffix MANIA reduces the degree of resemblance in sound and appearance between the parties' respective trade-marks and also results in differences in terms of ideas suggested.

[35] The word HONEY can be used to refer to the sweet, sticky substance produced by bees, as a term of endearment and/or as indicating something sweet or sweetness [online *Canadian Oxford Dictionary* (2 ed.); see *Tradall SA v Devil's Martini Inc* (2011), 92 CPR (4th) 408 (TMOB) at para 29 which confirms that I may take judicial notice of dictionary definitions]. It may be suggestive of any one of these meanings in the Opponent's trade-mark. The Mark also contains the word MANIA and therefore suggests the idea of an "extreme desire or enthusiasm" relating to or for "honey" [*Canadian Oxford Dictionary* (2 ed.)]. Thus, the parties' trade-marks differ somewhat in connotation.

[36] With respect to the Opponent's submission that the word MANIA in the Mark simply acts as a modifier for the word HONEY and that HONEY would be perceived by consumers as being suggestive of the Opponent's brand, I am guided by Member de Paulsen's comments in *McDowell v Laverana GmbH & Co. KG*, 2015 TMOB 56 (CanLII). In that case, in assessing the degree of resemblance between the Opponent's HONEY trade-mark and the mark HONEY MOMENTS, Member de Paulsen made the following observation:

With respect to the Opponent's submissions that a consumer is likely to think that HONEY MOMENTS indicates the time when a HONEY brand product is used, in the absence of evidence of use of the Opponent's trade-mark, I find that a Canadian consumer is unlikely to think this as there is no evidence that any consumers have been exposed to the Opponent's brand HONEY.

[37] In the present case, the Opponent did not file any evidence of use of its HONEY trade-mark. The Applicant filed the Haldane affidavit, in which Mr. Haldane (an articling student at the agent for the Applicant's law firm) provides details pertaining to visits he made to two retail

store locations of the Opponent, on October 1, 2014, to determine whether they sold any of the goods identified in the application for the Mark or any of the cosmetic related goods identified in the Opponent's registrations [para 2].

[38] In his affidavit, Mr. Haldane states that the only non-clothing/clothing accessory items he observed for sale were wax candles and salve and lip balm products which were manufactured by a different company and sold under a different brand name [paras 4-7; Exhibit A].

Mr. Haldane purchased the salve from one of the locations and a copy of the receipt for this purchase is attached as Exhibit B to his affidavit. Notably, the Opponent's HONEY & DESIGN trade-mark appears on the receipt. In addition, during cross-examination, Mr. Haldane confirmed that HONEY appeared on store signage for both of the locations he visited [Q's 15-16].

[39] In paragraph 6 of his affidavit, Mr. Haldane states that he asked a store employee at one of the locations whether it sold any cosmetics or lotions other than the salve product and he was told that it did not. In paragraph 8 of his affidavit, Mr. Haldane states that he also visited the Opponent's website to look for any references to cosmetics or any of the other products referred to in the Opponent's registration and that he was unable to find any. Attached as Exhibit C to his affidavit are various print-outs from the Opponent's website.

[40] Although the Haldane affidavit may establish that the Opponent's mark was in use in connection with at least some of the Opponent's retail store services at the time of Mr. Haldane's visits to those particular locations and to the Opponent's website, it does not establish that the Mark has been used in connection with any of the cosmetic related goods identified in the Opponent's registration, nor does it enable me to draw any meaningful conclusions with respect to the extent to which it has been used or become known in association with the Opponent's retail store services as of today's date.

[41] In view of the foregoing, I find the comments of Member de Paulsen in *McDowell v Laverana GmbH & Co KG*, to be equally applicable in the present case. In the absence of evidence to show that consumers have been sufficiently exposed to the Opponent's brand in this case, I am unable to conclude that a consumer would be likely to think that the Mark suggests an enthusiasm or desire for or relating to the Opponent's HONEY brand.

[42] In conclusion, while I find that there is a fair degree of resemblance between the parties' trade-marks due to the HONEY component, I do not find that they substantially resemble one another, as the addition of the word MANIA results in some differences in appearance, sound and ideas suggested by the marks.

Section 6(5)(a) – the inherent distinctiveness and the extent to which the marks have become known

[43] There is no evidence that either of the parties' goods contain honey as an ingredient or any evidence to explain what, if any, significance the word "honey" has in relation to the parties' trade-marks. In the absence of such evidence, I do not consider either of the parties' trade-marks to have any clear meaning in the context of their respective goods and services. In view of this, they can both be said to possess some measure of inherent distinctiveness. That being said, I do not find that either of the marks possesses a particularly high degree of inherent distinctiveness because the word HONEY has common meanings, can be laudatory in nature and may well be perceived by consumers as being suggestive in one way or another of some aspect of associated goods and/or services.

[44] The strength of a trade-mark may be increased by means of it becoming known in Canada through promotion or use. However, the application for the Mark is based upon proposed use and the Applicant has not filed any evidence to show that it has acquired any reputation in Canada. Likewise, the Opponent has not filed any evidence relating to the promotion or use of its mark, and for the reasons previously mentioned, the limited evidence filed by the Applicant in this regard is insufficient to enable me to draw any meaningful conclusions regarding the extent to which the Opponent's trade-mark has become known. In view of the foregoing, I conclude that this factor does not significantly favour either party.

Section 6(5)(b) – the length of time each of the trade-marks has been in use

[45] The Applicant has not filed any evidence of use of the Mark.

[46] I can infer only *de minimus* use of the Opponent's trade-mark in association with its goods by virtue of the existence of its registration and I cannot infer much more than that with

respect to its services solely based upon the evidence filed by the Applicant [*Entre Computer Centers Inc v Global Upholstery Co* (1991), 40 CPR (3d) 427 (TMOB) at 430]. In view of the foregoing, I conclude that this factor also does not significantly favour either party.

Sections 6(5)(c) and (d) – the nature of goods, services or business and trade

[47] It is the Applicant’s statement of goods as defined in its application versus the Opponent’s registered goods and services that governs my determination of these factors [*Henkel Kommanditgesellschaft auf Aktien v Super Dragon Import Export Inc* (1986), 12 CPR (3d) 110 (FCA); *Mr. Submarine Ltd v Amandista Investments Ltd* (1987), 19 CPR (3d) 3 (FCA); *Miss Universe Inc v Bohna* (1994), 58 CPR (3d) 381 (FCA)].

[48] There is direct overlap in some of the parties’ goods and at least some of the others are arguably closely related. There is not any readily apparent overlap or relationship between the goods of the Applicant and the services of the Opponent, though I note that “giftware” and “fashion accessories” are fairly broad in scope.

[49] In view of the overlap in the nature of some of the parties’ goods and in the absence of any evidence to the contrary, I consider it reasonable to conclude that there would also be some overlap in their respective channels of trade, particularly since there are no restrictions in this regard in the Opponent’s registration or in the application for the Mark.

[50] As an aside, I note that in its written argument (at para 68), the Applicant pointed out that although the Applicant’s application and the Opponent’s HONEY registration cover overlapping goods, the Opponent has not furnished any evidence of use of its mark for goods and in recent section 45 proceedings, it was held that both its HONEY registration and its registration for HONEY & Design should be amended to delete all goods, as no evidence of use was produced in connection with goods in those proceedings [see *Laverna GmbH & Co KG v Heather Ruth McDowell*, 2015 TMOB 125 (CanLII) at paras 49-52]. Subject to this amendment being made, both of the Opponent’s registrations will cover only “retail store services, namely, the operation of a clothing, footwear, headwear, fashion accessory and giftware outlet”, which the Applicant asserts differ significantly from the goods covered by the application for the Mark.

[51] While that may well be the case, I note that the aforementioned decision is currently under appeal and until such time as the appeal has been decided, the goods remain in the Opponent's registrations and must be taken into account in my assessment of these factors.

[52] In view of the foregoing, I find that these factors favour the Opponent.

Surrounding Circumstances

State of the Register

[53] As state of the register evidence, the Applicant has filed the Eugenio affidavit. Mr. Eugenio conducted a search of the Canadian Trade-marks Office database for trade-marks containing the word HONEY or a phonetic equivalent thereof, for use in association with goods and/or services relating to, for example, cosmetics, balm, lotion, shampoo, soap, hair, beauty, etc. [paras 2(a) and (b)]. The results of his search are attached as Exhibits A to J of his affidavit. Mr. Eugenio conducted similar searches for clothing, apparel and footwear related goods and services [paras 3(a) and (b)]. The results of these searches are attached as Exhibits K to O of his affidavit. The particulars for all of the marks located in Mr. Eugenio's searches are attached as Exhibit P to his affidavit.

[54] It has been held that state of the register evidence is relevant only insofar as one can make inferences from it about the state of the marketplace, and that inferences about the state of the marketplace can only be drawn where large numbers of relevant registrations are located [*Ports International Ltd v Dunlop Ltd* (1992), 41 CPR (3d) 432 (TMOB); *Welch Foods Inc v Del Monte Corp* (1992), 44 CPR (3d) 205 (FCTD); and *Maximum Nutrition Ltd v Kellogg Salada Canada Inc* (1992), 43 CPR (3d) 349 (FCA)].

[55] As noted by the Opponent at the hearing, many of the marks relating to cosmetics, beauty and/or personal care products which are identified in Exhibits A to J of the Eugenio affidavit are no longer pertinent or are not particularly relevant. For example, one is the subject of this proceeding, some belong to the Opponent, some have been abandoned or expunged, some are still pending and are based upon proposed use and some do not feature HONEY as a dominant component.

[56] That being said, based upon my review of Mr. Eugenio’s search results, as of the date of my decision, once marks of this nature are discounted, we are still left with a fair number of relevant marks, many of which stand in the name of different entities. Some of these include: HONEY BRONZE & Design (registration No. TMA862,532) for cosmetics, make-up, skin care preparations and body powders; HONEYWATER (registration No. TMA916,622) for cosmetics; SPRING HONEY (registration No. TMA170,342) for cosmetics; A TOUCH OF HONEY (registration No. TMA595,003) for cosmetic products; HONEYFIG (registration No. TMA779,462 for online retail store services featuring personal care products, cosmetics, beauty care products, etc.; BEELINE HONEY (registration No. TMA784,751) for hair colour; NATURAL HONEY (registration No. TMA249,122) for shampoo, etc.; TOASTED HONEY (registration No. TMA547,379) for skin care products; HAPPY HONEY (registration No. TMA143,976) for hair tinting, dyeing and coloring preparations; NATURAL HONEY (registration No. TMA329,528) for body and beauty care preparations, namely, skin and face moisturizer; HONEY MARC JACOBS (registration No. TMA922,815) for perfumes, beauty and skin care preparations, etc.; HONEY I’M STRONG (registration No. TMA841,182) for hair care preparations; and HONEY DO (registration No. TMA766,763) for personal care products.

[57] The following comments of Mr. Justice de Montigny in *Hawke & Company Outfitters LLC v Retail Royalty Company and American Eagle Outfitters, Inc* 2012 FC 1539 (CanLII) at para 44 offer some guidance with respect to assessing state of the register evidence:

The exact number of similar marks needed to establish that an element of a mark was commonly adopted as a component of trade-marks used in association with the relevant wares or services at the material date is not clear and likely depends on the facts of a given case. In *Groupe Procycle Inc v Chrysler Group LLC*, 2010 FC 918 (CanLII), 87 CPR (4th) 123 (FC) [*Procycle*], the Court found that the Registrar’s conclusion that ten relevant registrations were sufficient to draw inferences as to the state of the marketplace was based on the case law and “not at all unreasonable” (at para 46). The Court also accepted the relevance of *Park Avenue Furniture Corp v Wickes/Simmons Bedding Ltd*, [1991] FCJ no 546, 37 CPR (3d) 413 (FCA), according to which “seven relevant registered trade-marks are a sufficient basis from which to draw conclusions about the state of the market in a state-of-the-register analysis” (*Procycle* at para 46), but did not comment on the Registrar’s conclusion that five registrations were insufficient to draw any inferences about the state of the marketplace with respect to a separate mark (*Procycle* at para 19).

[58] In this case, I am satisfied that it can reasonably be inferred from the number of registered marks located by Mr. Eugenio, that at least some of these marks are in use. It can therefore also fairly be concluded that consumers would be accustomed to some extent to seeing marks incorporating the word HONEY within the context of cosmetics, personal care and beauty related goods and services. Accordingly, it is reasonable to infer that such consumers would be likely to distinguish such marks by focusing on their other components.

[59] At a minimum, I am of the view that the existence of these registrations supports my earlier finding that the word HONEY would likely be perceived as having some significance within the cosmetic/beauty/personal care industry and that the parties' marks therefore do not possess a particularly high degree of inherent distinctiveness.

Conclusion on the Likelihood of Confusion

[60] I conclude that the Applicant has discharged its burden to prove, on a balance of probabilities that the Mark is not likely to cause confusion with the Opponent's trade-marks. Any degree of resemblance between the parties' trade-marks is due solely to the fact that they both include the word HONEY. In fact, the Opponent's entire trade-mark consists of the word HONEY. However, for reasons previously discussed, I do not consider HONEY to be particularly inherently distinctive, as it may be perceived as somewhat laudatory/suggestive in nature. Moreover, the Opponent has not filed any evidence to establish that its trade-marks have been used or that it has acquired any distinctiveness and the evidence filed by the Applicant is insufficient to establish that this is the case. In view of this, despite the overlap in the nature of the parties' goods and the potential overlap in their channels of trade, I find that the additional element in the Mark (i.e. the word MANIA) results in sufficient differences in appearance, sound and suggested idea to conclude that, on a balance of probabilities, there is not a reasonable likelihood of confusion between the parties' trade-marks.

[61] Accordingly, the section 12(1)(d) ground of opposition is also rejected.

Disposition

[62] 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.

Lisa Reynolds
Member
Trade-marks Opposition Board
Canadian Intellectual Property Office

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

HEARING DATE: 2016-05-31

APPEARANCES

Nathan Fan

FOR THE OPPONENT

Meghan Dillon

FOR THE APPLICANT

AGENTS OF RECORD

Sim & McBurney

FOR THE OPPONENT

Bereskin & Parr

FOR THE APPLICANT

Schedule "A"

Registration No. TMA767,075 for HONEY

Registration No. TMA767,134 for HONEY & DESIGN

Application No. 1,556,448 for PINK & HONEY

Goods

(1) Clothing, namely, trousers, jeans, sweat pants, yoga pants, active wear, pants, sweaters, sweatshirts, polo shirts, shirts, skirts, blouses, dresses, hosiery, jackets, blazers, coats, ski jackets, down filled jackets, fur jackets, wool coats, shorts, bathing suits, loungewear; lingerie; footwear, namely, shoes, sandals, boots, slippers; men's, women's and children's shoes made of leather, suede or silk, namely pumps, high heels, dress shoes of any kind, sneakers, running shoes, basketball shoes, golf shoes, training shoes, court shoes, track shoes, beach shoes, namely sandals, flip flops and thongs; headwear, namely, hats, caps, bandannas, headbands, visors; jewellery; fashion accessories, namely, scarves, shawls, purses, gloves, watches; hair accessories, namely, combs, brushes, hair bands made of cloth or plastic, barrettes, scrunchies, ponytail holders, hair clips, hair pins, and hair ornaments; belts, sunglasses; cosmetics, namely foundation made of liquid or powder, face creams, blush, eye shadow, eye liner, mascara, lipstick, lip gloss, lip liner, make-up bags sold empty; giftware, namely, lamps, trays, vases; ornaments and figurines made from ceramic, chinaware, glass, porcelain; candy dishes.

Services

(1) Retail store services, namely, the operation of a clothing, footwear, headwear, fashion accessory and giftware outlet.