

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

Citation: 2014 TMOB 16
Date of Decision: 2014-01-27

**IN THE MATTER OF AN OPPOSITION
by 7-Eleven, Inc. to application
No. 1,459,038 for the trade-mark BIT
BITE & Design, in the name of BitBite
Foods Inc.**

[1] 7-Eleven, Inc. (the Opponent), opposes registration of the trade-mark BIT BITE & Design shown below (the Mark), that is the subject of application No. 1,459,038 by BitBite Foods Inc. (the Applicant):



[2] Filed on November 13, 2009 by BitBite Foods Inc., the application is based on proposed use in Canada in association with wares which cover a broad range of food products, including among others, baked goods and baking ingredients, grains, fruits and vegetables, snack foods, meats, spices, sauces, and condiments. The statement of wares is reproduced in its entirety in Schedule "A" to this decision (the Wares).

[3] The Opponent alleges that: (i) the application does not conform to section 30(i) of the *Trade-marks Act*, RSC 1985, c T-13 (the Act); (ii) the Applicant is not the person entitled to registration of the Mark under section 16(3)(a) of the Act; (iii) the Mark is not registrable under section 12(1)(d) of the Act; and (iv) the Mark is not distinctive under section 2 of the Act.

[4] The ground of opposition based upon section 30(i) of the Act is summarily dismissed. Where an applicant has provided the statement required by section 30(i) of the Act, 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). In the present case, the Applicant has provided the necessary statement and this is not an exceptional case; accordingly, the section 30(i) ground is dismissed.

[5] Thus, the issues that remain to be decided in this case are:

- (i) Is the application registrable in view of the Opponent's marks?
- (ii) Was the Applicant the person entitled to registration of the Mark?
- (iii) Was the Mark distinctive of the Applicant's wares?

All three issues revolve around the likelihood of confusion between the Mark and the Opponent's trade-marks, BIG BITE (TMA728,674), BIG BITE & Design (TMA405,449), 1/3 LB. BIGGEST BIG BITE (TMA593,755), SMOKIE BIG BITE (TMA393,436), and SUPER BIG BITS (TMA602,497), particulars of which are attached under Schedule "B" to this decision.

The Record

[6] The statement of opposition was filed by the Opponent on May 10, 2011. It was denied by the Applicant by counter statement dated June 6, 2011.

[7] In support of its opposition, the Opponent filed the affidavit of Laurie Smith, the National Communications Manager of the Opponent, sworn October 5, 2011; the affidavit of David Potter, an associate with the agent for the Opponent, sworn September 30, 2011; and certified copies of Canadian trade-mark registration Nos: TMA405,449, TMA728,674, TMA602,497, TMA593,755 and TMA 393,436. In support of its application, the Applicant filed the affidavit

of Alan Booth, a trade-mark searcher, sworn November 24, 2011, and the affidavit of Oliver Hunt, trade-mark agent for the Applicant, sworn January 4, 2012. No cross-examinations were conducted.

[8] Both parties filed written arguments and were represented at an oral hearing.

The Parties' Respective Burden or Onus

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

Confusion – Non-registrability ground under section 12(1)(d) of the Act

[10] The Opponent has pleaded that the Mark is not registrable because it is confusing with the Opponent's marks (listed in Schedule "B" to this decision).

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

[12] The Opponent has met its initial burden of proof under this ground of opposition. In this regard, the Opponent has filed certified copies of each of the registrations relied upon and I have exercised my discretion and checked the Register to confirm that the Opponent's registrations are extant [*Quaker Oats Co of Canada v Menu Foods Ltd*, (1986), 11 CPR (3d) 410 (TMOB)].

[13] I now have to determine, on a balance of probabilities, if the Mark is likely to cause confusion with one or more of the Opponent's registered trade-marks. In this regard, I consider that the Opponent's strongest cases are with respect to its BIG BITE word mark (TMA728,674) and its BIG BITE & Design mark (TMA405,449). If the Opponent is unsuccessful with respect to these marks, it would also be unsuccessful with respect to its remaining registrations.

The test for confusion

[14] The test for confusion is one of first impression and imperfect recollection. Section 6(2) of the Act indicates 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 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.

[15] In applying the test for confusion, the Registrar must have regard to all surrounding circumstances, including those specifically enumerated in section 6(5) of the Act, namely: a) the inherent distinctiveness of the trade-marks or trade-names and the extent to which they have become known; b) the length of time each has been in use; c) the nature of the wares, services or business; d) the nature of the trade; and e) the degree of resemblance between the trade-marks or trade-names in appearance or sound or in the ideas suggested by them. The above-noted criteria are not exhaustive and it is not necessary to give each one of them equal weight [see, in general, *Mattel, Inc v 3894207 Canada Inc* (2006), 49 CPR (4th) 321 (SCC) and *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée* (2006), 49 CPR (4th) 401 (SCC)].

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

[16] The Mark consists of the words BIT BITE, within a circular design bearing a bite mark. The words BIT and BITE are common dictionary words. The following definitions, as located in the *Canadian Oxford Dictionary, 2nd edition* are applicable:

BIT: a small piece or quantity: *a bit of cheese / | give me another bit / | that bit is too small.*

BITE: a mouthful of food. ■ a snack or light meal.

Not only are these words common dictionary words, but they are suggestive of the nature of the Wares in that they express the idea of a small quantity or serving of food. Furthermore, I do not view the circle design to be overly distinctive, and the bite mark simply highlights and echoes the suggestive intent behind the word BITE, reinforcing the idea that the Wares are edible.

[17] The Opponent's marks are comprised of the words BIG BITE, with the design mark appearing to include an embellishment to the word BITE in the form of a bite mark. Again, as with the Mark, the Opponent's marks are comprised of common dictionary words. The above definition of the word BITE appears equally relevant, and the word BIG suggests that the Opponent's wares comprise a large portion.

[18] While I recognize that the Applicant's BIT BITE mark does not comprise an ordinary linguistic construction (as one would be more apt to say a "small bite" or a "tiny bite" for example), this enhances the inherent distinctiveness of the Mark only marginally. Overall, given that the parties' marks are comprised of ordinary dictionary words that are suggestive of the wares to which they are association, I find neither parties' marks to be inherently strong.

[19] The strength of a trade-mark may be increased by means of it becoming known in Canada through promotion or use. The Applicant submits that the Opponent has only shown use of its BIG BITE word mark (TMA728,674). The Opponent on the other hand submits that its evidence clearly demonstrates extensive and continuous use in Canada of its family of BIG BITE trade-marks since at least as early as 1992.

[20] The Opponent's evidence relating to use and promotion of its marks is contained in both the Smith and Potter affidavits. In her affidavit, Ms. Smith states that since 1992, the Opponent's licensee in Canada (7-Eleven Canada Inc.) has continuously sold hot dogs to the public in association with "*one or more* of the BIG BITE marks" (the affiant's collective reference to those marks listed in Schedule "B" to this decision). She provides substantial sales figures dating back to 2007 with respect to "sales of hot dogs sold in association with *one or more* BIG BITE Marks in Canada". She also provides significant general promotion and advertising expenditures dating back to 2002, to which she states "a material portion of these expenditures are directed to promoting the BIG BITE marks".

[21] Ms. Smith further attaches as Exhibit C to her affidavit, a variety of in-store point of sale materials. I accept that many of these in-store materials were used in close proximity to the hot dogs offered for sale (for example, grill shroud posters displayed on glass hot dog roller grill covers, and tubular signage placed directly on the rolling hot dog grills). Thus, the trade-mark would have been associated with the wares in the minds of consumers at the time of transfer of

possession, qualifying as use under section 4(1) of the Act [see *Loblaws Ltd v Richmond Breweries Ltd* (1982), 73 CPR (2d) 258 (TMOB); *Riches McKenzie & Herbert LLP v Parissa Laboratories Inc* (2006), 59 CPR (4th) 219 (TMOB)].

[22] However, of the BIG BITE marks, only the BIG BITE word mark (TMA728,674) appears in the specimens provided by Ms. Smith (Exhibit C). This is consistent with Mr. Potter's evidence as well, wherein he attended various 7-Eleven locations in downtown Toronto to obtain evidence of use of BIG BITE trade-marks. Attached as Exhibits DP-1 to DP-4, are photographs taken of point of sale materials at the various 7-Eleven locations attended by Mr. Potter. Again, the photographs show specimens of point of sale materials in close proximity to hot dogs (e.g. – rollers on the hot dog grill, and a poster on the glass hot dog roller display case). The point of sale materials clearly display the BIG BITE word mark.

[23] Consequently, I accept that the Opponent's BIG BITE word mark has become known in Canada to some extent with respect to the Opponent's registered wares, "sandwiches, namely hot dogs and buns". As such, this factor favours the Opponent.

Section 6(5)(b) – the length of time of use

[24] As discussed above, the Opponent has evidenced use of its BIG BITE word mark. While the Opponent's BIG BITE design trade-mark (TMA405,449) registration is based on use, this only entitles me to assume *de minimis* use [*Entre Computer Centers, Inc v Global Upholstery Co* (1992), 40 CPR (3d) 427 (TMOB)]. In the absence of evidence of use of the Mark, I find the Opponent's BIG BITE word mark has been in use for longer than the Mark; this factor therefore favours the Opponent.

Section 6(5)(c) and (d) – the nature of the wares and services and business or trade

[25] It is the Applicant's statement of wares as defined in its application versus the Opponent's registered wares that govern my determination of this factor [see *Esprit International v Alcohol Countermeasure Systems Corp* (1997), 84 CPR (3d) 89 (TMOB)].

[26] The Opponent's wares are "sandwiches, namely, hot dogs and buns". The Applicant's Wares on the other hand cover a broad range of food products, including among others, baked

goods and baking ingredients, grains, fruits and vegetables, snack foods, meats, spices, sauces, and condiments [see the full list of Wares in Schedule “A” to this decision].

[27] The Applicant submits that the Opponent’s BIG BITE hot dogs constitute a “prepared meal” and are not the type of product available in ordinary grocery stores, but rather are available only at the Opponent’s outlets. The Applicant further submits that it is clear that the goods in its own application are sold in ordinary grocery stores, and not sold through fast food type outlets. In any event, the Applicant submits, that even if the same channels of trade pertain, it has been held that the fact that consumer products are sold through the same type of outlet or even in close proximity to each other, is not a basis for a finding of confusion [citing *Edelweiss Food Products v Finest Chocolate Canada* (2000), 5 CPR (4th) 256 (TMOB)].

[28] The Opponent submits that as both parties’ products are food products, including snack food, there is an obvious connection between the respective wares of the parties. I agree that there is overlap, but only insofar as it concerns the Applicant’s Wares that comprise ready-to-eat convenience and snack foods, and perhaps as well, condiments that are ordinarily associated with hot dogs. The remaining wares however, do not appear to be of the convenience or snack food nature.

[29] With respect to the parties’ channels of trade, the Opponent submits that there is potential for overlap as its retail stores that sell BIG BITE hot dogs in Canada also sell a variety of other goods including assorted groceries. The Opponent submits that such stores are akin to “mini-grocery” stores. I note that the Opponent’s evidence indicates that 7-Eleven stores in Canada offer groceries (Smith affidavit, paragraph 6) in the context of “convenience items”. Furthermore, Ms. Smith clearly and consistently refers to 7-Eleven stores in Canada as “convenience stores”, not as “mini-marts” or “mini-grocery” stores.

[30] I would not consider that many of the Applicant’s Wares fall under the category of convenience grocery items (see for example among others, “[...], potatoes, [...], grains namely rolled oats, oatmeal, farina, rolled wheat, cracked wheat, wheat germ, wheaten meal, flax seeds, whole wheat, rye, millet, kamut, bran, spelt and barley, [...], fresh poultry and fresh beef, [...], tofu”. As conveyed in *Coffee Hut, supra*, one must examine the Applicant’s statement of wares with a view to determining the Applicant’s probable type of business. Given that a vast number

of the Applicant's Wares are not of the "convenience type", I find it reasonable to accept the Applicant's submission that the Wares are of the type that would be sold in ordinary grocery stores. Contrary to the Opponent's submission, this is unlike the situation in *Alpina Salami Inc v Alpina Productos Alimenticios SA*, [2011] TMOB No 57. The Opponent has led evidence concerning its channels of trade, and as explained above, I find that the Applicant's channels of trade can be inferred from its statement of wares.

[31] Thus, having regard to the foregoing, while there may be overlap between some of the parties' respective wares, the channels of trade appear to differ. However, despite that the evidence suggests the Opponent does not sell its wares through grocery stores, the statement of wares in its registration does not preclude it from doing so [see *Cartier Men's Shops Ltd v Cartier Inc* (1981), 58 CPR (2d) 68 (FCTD) at 73; *Eminence SA v Registrar of Trade-marks* (1977), 39 CPR (2d) 40 (FCTD) at 43].

[32] In any event, even if the Applicant and Opponent were selling their wares in the same types of stores, I find that any overlap would be limited to the Applicant's Wares that comprise ready-to-eat convenience and snack foods, and condiments that are associated with hot dogs. The mere fact that the Applicant's remaining Wares belong to the general class of "food products" is not sufficient to find these wares are similar to the Opponent's wares, as I find the Applicant's remaining Wares are intrinsically different from the Opponent's wares and would likely be sold in different areas [see *Edelweiss*, supra; *Clorox Co v Sears Canada Inc* (1992), 41 CPR (3d) 483 (FCTD); and *Tradition Fine Foods Ltd v Groupe Tradition'l Inc* (2006), 51 CPR (4th) 342 (FC)].

[33] Having regard to the foregoing, section 6(5)(d) favours the Opponent, while section 6(5)(c) favours the Opponent only with respect to the Applicant's Wares that comprise ready-to-eat convenience and snack foods, and condiments that are associated with hot dogs.

Section 6(5)(e) – degree of resemblance in appearance, when sounded, or in idea suggested

[34] I find that there is a degree of resemblance between the parties' marks in appearance, particularly when the words are stacked. In this regard, both parties' marks include the word

BITE and the parties' design marks further share a "bite mark" design element. Phonetically, the parties' marks also share similarities.

[35] The ideas suggested by the parties' marks as a whole however, are vastly different. The Applicant's BIT BITE Mark expresses the idea of a bite of food that is rather small; whereas the idea behind the Opponent's marks is entirely the opposite. That is, the Opponent's marks express of the idea of a large volume of food, or a grand portion or serving. The word BIG is a core feature of the Opponent's marks, expressing a fundamental message to consumers concerning an aspect or characteristic of the Opponent's "hot dogs" that may be desirable and relevant to the purchaser of such products. Clearly, the ideas conveyed by the parties' marks are divergent. Consequently, I find that this factor does not significantly favour either party.

Additional Surrounding Circumstances

The State of the Register and the State of the Marketplace

[36] The evidence concerning the state of the register is only relevant insofar as one can make inferences from it about the state of the marketplace, and 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; *Del Monte Corporation v Welch Foods Inc* (1992), 44 CPR (3d) 205 (FCTD); *Kellogg Salada Canada Inc v Maximum Nutrition Ltd* (1992), 43 CPR (3d) 349 (FCA)].

[37] The Opponent submits that the state of the Register searches are fatally flawed as the results provide references to irrelevant marks including: marks completely unrelated to food products, marks which do not consider "BIG" and "BITE" in isolation, and marks owned by the Opponent. As the search was purportedly designed to locate active trade-marks associated with food products (and especially snack foods), the Opponent submits that the results of the search should be carefully critiqued for accuracy and reliability. Further to this, the Opponent submits that the state of the Register evidence consists of partial print-outs, and that a vast number of marks located on the state of the Register search are either formalized or in examination.

[38] Contrary to the Opponent's submissions however, there is enough information in the Applicant's state of the Register evidence to make a determination of relevant trade-marks. Attached as Exhibits A and B respectively to the Booth affidavit are the results of state of the Register searches for the words "BIG" and "BITE". Despite the broad parameters of Mr. Booth's state of the Register searches, the Applicant has made submissions detailing which of those marks it deems relevant. Particularly, with respect to the word "BIG", the marks identified by the Applicant, with the exception of three marks, are registered marks owned by a variety of entities, which include the word BIG in isolation, in association with related food products. In total, there are 33 such relevant marks. Similarly, with respect to the word "BITE", the Applicant has identified a list of registered marks which include the word BITE (or phonetic equivalent of, singular or plural), in isolation, in association with "meats and meat products". The list includes 13 such relevant registrations.

[39] If one were to broaden the list of relevant BITE registrations to also include "snack foods", (which the Opponent deems relevant as per their submissions), the number of relevant registrations from the state of the register expands considerably. Consider for example: BAGEL BITES (TMA352,616 – for "pizza bagels, namely, bagels with pizza toppings"), HEALTHY BITES (TMA514,970 – for a variety of snack foods), and HOT BITES (TMA549,502 – for "prepared snack products, namely, pastry shells with pizza, savoury and fruit fillings"). Furthermore, there are registered marks which include the word BITE (or phonetic equivalent of, singular or plural), which are qualified by a word suggestive of the product size or quantity, such as MEGA BITES (TMA582,817 – for "prepared and/or processed meats"), LOTSA BITES (TMA786,775 – for a variety of baked goods), and GREAT BITE & Design (TMA747,522 – for a variety of food products). I note that this latter mark also includes a "bite element" design.

[40] Having regard to the above, I accept that the Applicant has evidenced ample relevant registrations to show that the use of the words BIG and BITE are common to the trade [see *Old Spaghetti Factory Canada Ltd v Spaghetti House Restaurants Ltd* (1999), 2 CPR (4th) 398 at 407 (TMOB)]. That is, given the number of relevant registrations, the presumption is that consumers are accustomed to commonly seeing these elements used in the trade for these types of wares.

Family of Marks

[41] A party seeking to establish a family of marks must establish that it is using more than one or two trade-marks within the alleged family (a certified copy of the registration does not establish use) [see *Techniquip Ltd v Canadian Olympic Assn* (1998), 80 CPR (3d) 225 (FCTD) aff'd (1998) 3 CPR (4th) 298 (FCA); *Now Communications Inc v CHUM Ltd* (2003), 32 CPR (4th) 168 (TMOB)]. The Applicant submits that there is no evidence of use of the “family”, but rather, only evidence of use of the BIG BITE word mark. As previously indicated, I agree. Consequently, the Opponent has not established a family of marks.

Examiner's Research Sheet and Report

[42] Exhibit C to Mr. Booth's affidavit consists of copies of the Examiner's research sheet and the Examiner's Report for the Mark. The Applicant submits that these documents show that the Examiner did not consider raising an objection to the application for the Mark based on the Opponent's BIG BITE marks. I cannot ascertain from these documents however, what information the Examiner took into consideration when issuing the Examiner's Report. In any event, I note that a decision by an examiner is not binding on the Board: *Thomas J Lipton Inc v Boyd Coffee Co* (1991), 40 CPR (3d) 272 at 277 (TMOB) and *Procter & Gamble Inc v Morlee Corp* (1993), 48 CPR (3d) 377 at 386 (TMOB).

Conclusion

[43] In applying the test for confusion, I have considered it as a matter of first impression and imperfect recollection. In *Masterpiece Inc v Alavida Lifestyles* (2011), 92 CPR (4th) 361, the Supreme Court of Canada highlighted the importance of the section 6(5)(e) factor in the analysis of the likelihood of confusion. In the present case, notwithstanding that I have found the parties' marks to share similarities in appearance and when sounded, I have found a significant difference between the parties' marks as a whole, in ideas suggested; a difference, given the simplistic nature of the word components of the parties' marks, that is readily apparent to the average consumer.

[44] Furthermore, given that the Opponent's BIG BITE marks are not inherently strong and that the evidence clearly demonstrates that the words BIG and BITE are commonly used in the trade, I find the differences between the parties' marks sufficient to distinguish them. In *Man and His Home Ltd v Mansoor Electronic Ltd*, (1999), 87 CPR (3d) 218 (FCTD), Mr. Justice Deneault issued the following caution regarding rights conferred in respect of a registered trade-mark containing a word that is suggestive of the character or qualities of the wares covered by the certificate of registration:

It is well established that trade-marks containing words which are suggestive of the wares or services offered by the owner are considered to be weak marks and consequently, are afforded a minimal level of protection. In such cases, even a small difference between the marks will be sufficient to diminish the likelihood of confusion. Furthermore, where a person adopts a word in common use and seeks to prevent competitors from doing the same, the trade-marks will have less inherent distinctiveness and the range of protection granted by the Court will be limited. Finally, where a party chooses to use a suggestive non-distinctive name, regardless of any acquired distinctiveness, it must accept a certain amount of confusion without sanction.

[45] Thus, having regard to the foregoing, I am satisfied that the Applicant has discharged its burden of showing, on a balance of probabilities, that there is no reasonable likelihood of confusion between the Mark and the Opponent's marks. Accordingly, the ground of opposition based on section 12(1)(d) of the Act is dismissed.

Non-entitlement ground of opposition under section 16(3)(a) of the Act

[46] The Opponent pleads that the Applicant is not entitled to the registration of the Mark because it is confusing with the Opponent's marks (listed in Schedule "B" to this decision), which had been previously used in Canada.

[47] In order to meet its initial burden under section 16(3)(a) of the Act, the Opponent must show that one or more of the trade-marks alleged in support of its ground of opposition based on section 16(3)(a) of the Act were used in Canada prior to the date of filing of the application for the Mark (November 13, 2009) and had not been abandoned at the date of advertisement of the application for the Mark (December 22, 2010) [section 16(5) of the Act].

[48] As previously discussed above, in the analysis of the ground of opposition based on section 12(1)(d) of the Act, I accept that the Opponent has shown use of its BIG BITE word mark (TMA728,674). Furthermore, the evidence supports that the Opponent's BIG BITE word mark was still in use as of the date of advertisement of the application for the Mark. Consequently, I accept that the Opponent has met its initial burden.

[49] I must now assess whether the Applicant has met its legal burden. Specifically, the onus is on the Applicant to establish on a balance of probabilities that there is no likelihood of confusion between the Mark and the Opponent's BIG BITE word mark (TMA728,674). In this regard, the difference in material dates is not significant and as a result my findings under the ground of opposition based on section 12(1)(d) are equally applicable here. Accordingly, the ground of opposition based on non-entitlement is dismissed.

Non-distinctiveness ground of Opposition

[50] In order to meet its initial burden under this ground, the Opponent must establish that as of the filing date of the statement of opposition, namely, May 10, 2011, one or more of the Opponent's marks had become known sufficiently to negate the distinctiveness of the Mark [*Metro-Goldwyn-Mayer Inc v Stargate Connections Inc, supra; Motel 6, Inc v No 6 Motel Ltd* (1981), 56 CPR (2d) 44 at 58 (FCTD)]. I am satisfied that the evidence shows sufficient use of the BIG BITE word mark (TMA728,674). Thus, the Opponent has met its evidential burden with respect to one of its marks.

[51] I must now assess whether the Applicant has met its legal burden. Specifically, the onus is on the Applicant to establish on a balance of probabilities that there is no likelihood of confusion between the Mark and the Opponent's BIT BITE word mark.


[52] As above, the difference in material dates is not significant and as a result my findings under the ground of opposition based on section 12(1)(d) are also equally applicable here. Accordingly, the ground of opposition based on non-distinctiveness is dismissed.

Disposition


[53] 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.

Darlene H. Carreau
Chairperson
Trade-marks Opposition Board
Canadian Intellectual Property Office

Schedule “A”

<u>Application Number</u>	<u>Trade-mark</u>	<u>Wares</u>
1,459,038		Food products namely cookies, cakes, dairy products, nuts, deli products and natural products namely pies, muffins, bread, tarts, pastries, banana loaf, peanut butter, chocolate bars, vegetables, legumes, fresh fruits, frozen fruits, dried fruit, potatoes, tortilla chips and popcorn, cereals (dry and cooked), flours, grains namely rolled oats, oatmeal, farina, rolled wheat, cracked wheat, wheat germ, wheaten meal, flax seeds, whole wheat, rye, millet, kamut, bran, spelt and barley, rice, rice cakes, pastas, beans, seeds namely edible seeds, baking soda, cream tartar, flavoured extracts, cocoa, icing sugar, confectionery sugar, chocolate ships, baking powder and starch, eggs, coffee, vitamins, bottled water, fish, fresh poultry and fresh beef, bacon, couscous, croutons, noodles, curry powder, sauce namely apple sauce, cheese sauce, chocolate sauce, gravy sauce, hot sauce, soy sauce, spaghetti sauce, tartar sauce, vinegar, salt, mustard, relish, ketchup, honey, marinades, tofu.

Schedule “B”

<u>Registration Number</u>	<u>Trade-mark</u>	<u>Wares</u>
TMA728,674	BIG BITE	Sandwiches, namely hot dogs and buns.
TMA405,449		<ul style="list-style-type: none"> (1) Sandwiches, namely hot dogs (wieners) and buns. (2) Sandwiches, namely hot dogs and buns.

TMA593,755	1/3 LB. BIGGEST BIG BITE	Sandwiches, namely, hot dogs and buns.
TMA393,436	SMOKIE BIG BITE	Sandwiches, namely sausages and buns.
TMA602,497	SUPER BIG BITS	Doughnuts and doughnut pieces.