



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

Citation: 2016 TMOB 86
Date of Decision: 2016-06-02

IN THE MATTER OF AN OPPOSITION

Vancouver Community College

Opponent

and

Vancouver Career College (Burnaby) Inc.

Applicant

1,612,550 for VCCOLLEGE

Application

FILE RECORD

[1] On February 4, 2013, Vancouver Career College (Burnaby) Inc. filed an application to register the trade-mark VCCOLLEGE based on use in Canada since at least as early as April, 2009 in association with:

operation of educational institute at the college level.

[2] The subject application was advertised for opposition purposes in the *Trade-marks Journal* issue dated October 23, 2013 and was opposed by Vancouver Community College on December 23, 2013. The Registrar forwarded a copy of the statement of opposition to the applicant on January 7, 2014, as required by s.38(5) of the *Trade-marks Act*, R.S.C. 1985, c. T-13. The applicant responded by filing and serving a counter statement generally denying the allegations in the statement of opposition.

[3] The opponent's evidence consists of the affidavits of the following individuals: Tess Lawrence; Doreen Chui-Chai; Angela Abbinante; Roberto Alfaro; Wendy LaFrance; Joan Steele; and Tim Atkinson. The applicant elected not to file evidence. Both parties submitted a written argument and both parties were represented at an oral hearing.

[4] About one month prior to the oral hearing, the Board advised the opponent that its evidence had been misplaced and could not be located. At the Board's request the opponent provided copies of the originally executed affidavits mentioned above. I relied on those copies at the oral hearing. The originally executed affidavits were found shortly before my decision issued.

STATEMENT OF OPPOSITION

[5] Below is a summary of the grounds of opposition:

A *Under Section 38(2)(a)*

[6] The subject application does not conform to the requirements of s.30 of the *Trade-marks Act* because:

- (i) Contrary to s.30(b), the applicant has not used its mark VCCOLLEGE in Canada since at least as early as April 2009 in association with the services described in the application.
- (ii) Contrary to s.30(i), the applicant could not have been satisfied that it was entitled to use the applied-for mark because, at the alleged date of first use, the applicant was either aware, or ought reasonably to have been aware, of the opponent's trade-marks and official marks VCC and VANCOUVER COMMUNITY COLLEGE.

B *Under Section 38(2)(b)*

[7] The applied-for mark VCCOLLEGE is not registrable because, contrary to s.12(1)(e) of the *Act*, it is a mark of which adoption is prohibited by s. 9(1)(n)(iii). In this regard, the Registrar of Trade-marks gave public notice of the following marks as official marks of the opponent on the following dates in association with the following services:

- (i) VCC, on January 13, 1999, in association with provision of educational services; and

(ii) VANCOUVER COMMUNITY COLLEGE, on October 5, 2005, in association with the operation of an educational institution at the college level

[8] Registration of the applied-for mark VCCOLLEGE would be contrary to s.12(1)(e) because it consists of, or so nearly resembles as to be likely to be mistaken for, the opponent's official marks.

C *Under Section 38(2)(c)*

[9] The applicant is not the person entitled to registration pursuant to s.16(1)(a) and s.16(1)(c) because at the alleged date of first use it was confusing with the following trade-marks and trade- names owned and used by the opponent:

- (i) VCC; and
- (ii) VANCOUVER COMMUNITY COLLEGE

which marks had previously been used and made known in Canada by the opponent for educational materials and services which are of the same type as the services identified in the subject application.

D *Under Section 38(2)(d)*

[10] In view of the facts set out in paragraphs A, B and C above, the applied-for mark VCCOLLEGE is not distinctive, as defined in s.2 of the *Act*, because it does not actually distinguish nor is it adapted to distinguish the services of the applicant from the services of the opponent.

[11] Before assessing the issues raised in the statement of opposition, I will first review the opponent's evidence, the evidential burden on the opponent and the legal onus on the applicant. It will also be necessary to review the meaning of confusion within the context of the *Trade-marks Act*, and the factors to be considered when assessing the issue of confusion.

OPPONENT'S EVIDENCE

Tim Atkinson

[12] Mr. Atkinson identifies himself as a Director of the Library and Learning Center with the opponent "VCC." The opponent is a college, designated under provincial legislation, with two campuses in Vancouver and nine satellite learning centres in Vancouver and Burnaby. The opponent VCC offers 78 certificates, 28 diplomas and 3 bachelor's degrees in a variety of career disciplines including health, hospitality and other skilled trades. The opponent has served between 21,300 - 23,850 students annually in the period 2008-2014. The opponent has employed between 1,200 and 1,500 individuals annually in the period 2008-2012. The opponent's annual operating budget was about \$98 million in 2009 rising steadily to about \$109 million in 2014.

[13] As attested to by Mr. Atkinson in paras 15-18 of his affidavit, the opponent identifies its services by the mark VCC as well as by the mark VANCOUVER COMMUNITY COLLEGE:

15. . . . VCC . . . has continuously and extensively used, advertised and promoted its VCC trade-mark and trade name[sic] in association with education materials and services in British Columbia, including but not limited to Greater Vancouver and the surrounding areas, and internationally, since at least as early as 1965.

16. . . . VCC . . . has continuously and extensively used, advertised and promoted its VANCOUVER COMMUNITY COLLEGE trade-mark and trade name[sic] in association with educational materials and services in British Columbia, including but not limited to Greater Vancouver and the surrounding areas, and internationally, since at least as early as 1974.

17. . . . VCC . . . has continuously and extensively used, advertised and promoted its domain names vcc.bc.ca and vcc.ca (the "VCC Domains") in British Columbia, including but not limited to Greater Vancouver and the surrounding areas, and internationally, since at least as early as 2001. Vcc.bc.ca has been registered since October/November of 2000. Vancouvercommunitycollege.ca has been registered since December 6, 2000. Vcc.ca has been registered since February 21, 2001. The VCC and VANCOUVER COMMUNITY COLLEGE trade-marks and trade names[sic], the VCC Domains, together with VCC's official marks for "VCC" and "Vancouver Community College" numbered 0910482 and 0916687 respectively (the "Official Marks"), are collectively referred to hereinafter as the "VCC Marks".

18. Based on my review of VCC's business records maintained in the ordinary course of business, in more than 45 years of business in the Greater Vancouver area, VCC has used and promoted the VCC Marks in association with the following wares and services:

(a) Educational materials, including but not limited to training manuals, program outlines, course and program curriculum, student and instructor guides, student handbooks, course syllabi, assessment guides and tools, diplomas, certificates, communication documents and transcripts (the "Overlapping Wares");

(b) Operation of an educational institution at the college level in the field of career training; educational services in the field of career education; educational services in the form of a career college; conducting courses of instruction at the college level in the field of career training (the "Overlapping Services"); (collectively, the "Overlapping Wares and Services").

[14] The promotional materials referred to in quoted para. 18 of Mr. Atkinson's affidavit, above, consist, *inter alia*, of community newsletters, general information and program-specific materials, program calendars, continuing education flyers, and program content guides. Numerous and voluminous exhibit materials attached to Mr. Atkinson's affidavit demonstrate extensive use of the opponent's marks VCC and VANCOUVER COMMUNITY COLLEGE in association with what Mr. Atkinson refers to as "Overlapping Wares and Services" in quoted paras. 18(a) and (b), above.

[15] In addition, in the time period 1988-2012, the opponent is referred to in newspaper articles as VCC and as VANCOUVER COMMUNITY COLLEGE: see Exhibit P attached to Mr. Atkinson's affidavit.

[16] The opponent's marks VCC and VANCOUVER COMMUNITY COLLEGE are displayed at trade shows and career fairs, at the opponent's website www.vcc.ca, at the opponent's campus bookstores, on the opponent's diplomas, certificates and transcripts, in advertisements in SkyTrains (one station has been named VCC owing to its proximity to one of the opponent's campuses), and on campus signage. The opponent's website, referred to above, had about 1.78 million visits in 2007 rising steadily to 2.23 million visits in 2013. Again, numerous and voluminous exhibit materials attached to Mr. Atkinson's affidavit substantiate Mr. Atkinson's testimony. The applicant has also been promoting its services under the mark **VCCollege** since 2009.

[17] In view of Mr. Atkinson's testimony, and having reviewed the exhibit materials attached to his affidavit, I find that the opponent's marks VCC and VANCOUVER COMMUNITY

COLLEGE had, at all material times, acquired a substantial reputation for the services of operating an educational institute at the college level. Further, as the marks often appear together, I find that the mark VCC would be recognized as an acronym for VANCOUVER COMMUNITY COLLEGE, at least for the target market investigating college programs.

Joan Steele

[18] Ms. Steele identifies herself as the Vice President/General Manager, Canada, of the Alliance for Audited Media (formerly known as Audit Bureau of Circulations). Her affidavit serves to introduce into evidence circulation figures for various publications referred to by Mr. Atkinson in his affidavit. Her evidence supports my finding that the opponent's marks had, at all material times, acquired a substantial reputation for the services of operating an educational institute at the college level.

Angela Abbinante

[19] Ms. Abbinante identifies herself as a long term employee of the opponent. As a Senior Advisor she interacts directly with prospective students interested in enrolling in VCC programs. She made notes of some of these encounters and was able to describe in detail meeting with three prospective students who were interested in enrolling at VCC but when searching for contact information were led to the applicant instead. Her experiences are summarized at para. 10 of her affidavit:

I have had numerous experiences similar to these two[sic] examples. Experiences similar to these occur quite frequently and have become quite common. The prospective students who have mistakenly made an appointment with the [applicant] Career College have expressed frustration to me about their difficulties in making appointments. I am not able to make notes of all of these encounters, as I am very busy, and do not have time to stop to do so.

Roberto Alfaro

[20] Mr. Alfaro identifies himself as an Advising Receptionist with the opponent. His evidence is similar to that of Ms. Abbinante:

3. In my position as receptionist for Advising Services, I greet students and prospective students who visit the advising offices . . .

4. . . . students and prospective students who visited the advising office normally had an appointment to discuss enrollment . . . or would visit the office without an appointment to request general information students who visited the office with an appointment normally would provide me with the name of the advisor who they were scheduled to meet in order for me to notify that advisor.

5. Often, the name provided by the prospective student was not the name of any of our student advisors. Upon inspection of the information provided to me by such prospective students . . . I was able to ascertain that they had made an appointment with someone at the Vancouver Career College, and not with VCC . . . In such cases, students would normally ask to make an appointment at our office, stating their actual intention was to meet with a VCC advisor.

6. When this occurred, I would tell the prospective student that they made an appointment with another organization which was not affiliated with VCC. Upon being informed that they have not actually made an appointment with VCC, many of these students expressed frustration or anger. Many also informed me that they had obtained the contact information provided to me by searching for "VCC" on the Internet. On most of these occasions we did not have an advisor available to assist them immediately, and the student would ask me to make an appointment with one of our advisors at an alternative time.

7. Incidents like I have described here happened very frequently in and around 2012 and for a few years before that, although it has been less frequent in the last 12-15 months or so. In the last 12-15 months, these incidents have still occurred, but less frequently, perhaps once or twice a month.

Wendy LaFrance

[21] Ms. LaFrance identifies herself as an Advisor with the opponent dealing directly with students and prospective students. Her evidence is similar to that of Ms. Abbinante and Mr. Alfaro. She describes one meeting with a prospective student in detail, and other meetings in summary form:

6. The meeting took place on October 3, 2011. The prospective student informed me that she was interested in our Licensed Practical Nurse Program. She told me she had searched for contact information for "VCC" on the internet. That led her to contact the Career College [the applicant herein] . . .

7 She told me she had paid the Career College an assessment fee of \$150.00 as part of her meeting with them . . . She told me she had intended to meet with VCC all along, and expressed frustration at having paid the fee and for her difficulty in attempting to meet with VCC.

8. I have had other experiences similar to this example. Experiences similar to these occur to me ranging from every other month to approximately twice a month,

for the last several years. The prospective students who have mistakenly made an appointment with the Career College have expressed frustration at their trouble arranging for advising at VCC.

Doreen Chui-Chai

[22] Ms. Chui-Chai identifies herself as an Advisor with the opponent dealing directly with students and prospective students. Her testimony is to the same effect as Ms. LaFrance's testimony, that is, prospective students contact or arrive at VCC offices having made previous contact or a previous appointment with the applicant.

Tess Lawrence

[23] Ms. Lawrence identifies herself as a legal administrative assistant with the firm representing the opponent. Her affidavit serves to introduce into evidence copies of (1) a Trade-mark Certificate for the opponent's official mark VCC, (2) a printout from the Canadian Intellectual Property Office (under whose aegis this Board operates) showing details for the opponent's official mark Vancouver Community College, (3) a cease and desist letter dated August 18, 2009 sent on behalf of the opponent to the applicant concerning the applicant's alleged use of the trade-mark VCC and the trade-name Vancouver Community College, (4) a Further Amended Notice of Civil Claim naming the opponent herein as plaintiff and the applicant herein as defendant concerning alleged use by the defendant of the opponent's marks VCC and Vancouver Community College. Items 3 and 4 above are not relevant to the issues before me and I have not taken them into consideration.

Legal Onus and Evidential Burden

[24] As mentioned earlier, before considering the grounds of opposition, it is necessary to review (i) the evidential burden on the opponent to support the allegations in the statement of opposition and (ii) the legal onus on the applicant to prove its case.

[25] With respect to (i) above, there is in accordance with the usual rules of evidence, an evidential burden on the opponent to prove the facts inherent in its allegations pleaded in the statement of opposition: see *John Labatt Limited v. The Molson Companies Limited*, 30 CPR (3d) 293 at 298 (FCTD). The presence of an evidential burden on the opponent with respect to a

particular issue means that in order for the issue to be considered at all, there must be sufficient evidence from which it could reasonably be concluded that the facts alleged to support that issue exist. With respect to (ii) above, the legal onus is on the applicant to show that the application does not contravene the provisions of the *Trade-marks Act* as alleged by the opponent in the statement of opposition (for those allegations for which the opponent has met its evidential burden). The presence of a legal onus on the applicant means that if a determinate conclusion cannot be reached once all the evidence is in, then the issue must be decided against the applicant.

DETERMINATIVE ISSUES

[26] One of the determinative issues for decision is whether the applied-for mark VCCOLLEGE is confusing with opponent's mark VCC, raised under the ground of opposition alleging that the applicant is not entitled to register the mark VCCOLLEGE. The material time to consider the issue of confusion, with respect to entitlement, is the date of first use of the applied-for mark, in this case April 30, 2009: see s.16(1)(a) of the *Trade-marks Act*.

MEANING OF CONFUSION BETWEEN TRADE-MARKS

[27] Trade-marks are confusing when there is a reasonable likelihood of confusion within the meaning of s.6(2) of the *Trade-marks Act*, shown below:

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 . . . or performed by the same person, whether or not the goods or services . . . are of the same general class.

[28] Thus, s.6(2) does not concern mistaking one mark for the other, but confusion of goods or services from one source as being from another source. In the instant case, the question posed by s.6(2) is whether consumers of the applicant's educational services, provided under the mark VCCOLLEGE, would believe that those services were provided or authorized or licensed by the opponent who offers essentially identical educational services under the mark VCC. The legal onus is on the applicant to show, on the usual civil balance of probabilities standard, that there would be no reasonable likelihood of confusion.

TEST FOR CONFUSION

[29] The test for confusion is one of first impression and imperfect recollection. Factors to be considered, in making an assessment as to whether two marks are confusing, are “all the surrounding circumstances including” those specifically mentioned in s.6(5)(a) to s.6(5)(e) of the *Act*: the inherent distinctiveness of the marks and the extent to which they have become known; the length of time each has been in use; the nature of the wares, services or business; the nature of the trade; the degree of resemblance in appearance or sound of the marks or in the ideas suggested by them. This list is not exhaustive and all relevant factors are to be considered. Further, all factors do not necessarily have equal weight as the weight to be given to each depends on the circumstances: see *Gainers Inc. v. Tammy L. Marchildon and The Registrar of Trade-marks* (1996), 66 C.P.R.(3d) 308 (F.C.T.D.). However, as noted by Mr. Justice Rothstein in *Masterpiece Inc. v. Alavida Lifestyles Inc.* (2011), 92 C.P.R.(4th) 361 (S.C.C.), although the degree of resemblance is the last factor cited in s.6(5), it is the statutory factor that is often likely to have the greatest effect in deciding the issue of confusion. (emphasis added)

CONSIDERATION OF S.6(5) FACTORS

Inherent and Acquired Distinctiveness

[30] The applied-for mark VCCOLLEGE possesses at least some inherent distinctiveness because it is a coined term. However, the term would likely be understood to refer to the name of an educational institution, owing to the suffix COLLEGE. The recognition of the term as a name of an institution – likely VC COLLEGE - lessens the inherent distinctiveness of the mark to the extent that it is a relatively weak mark. The opponent’s mark VCC is also inherently weak as it is comprised of letters of the alphabet.

[31] The applied-for mark would not have acquired any distinctiveness at the earliest material date April 30, 2009. Further, in the absence of evidence from the applicant, I am not prepared to find that the mark VCCOLLEGE had acquired anything more than minimal distinctiveness at the later material dates. As noted in para. 17, above, the opponent’s mark VCC had acquired a significant reputation at all material times. The first factor, which is a combination of inherent and acquired distinctiveness, therefore strongly favours the opponent.

Length of Time in Use

[32] The opponent's mark VCC has been used since 1965. It predates the applicant's use of the mark VCCOLLEGE by over four decades. The second factor therefore also strongly favours the opponent.

Nature of the Services and the Trade

[33] The opponent's submissions on these factors are found at pp. 17-18 of its written argument, reproduced below:

100. In determining registrability of a trade-mark the registrar must look at the terms of the application, as those terms define the rights sought to be protected by an applicant: *Masterpiece* at paras. 53, 56.

101. In considering the similarity between the nature of the parties' trade, it is inappropriate to parse categories too narrowly: *Masterpiece* at paras. 106-07.

102. The Applicant's Application defines the services that it seeks to provide in association with the Applicant's Trade-mark as: operation of an educational institution at the college level.

103. These services are identical to those offered by the Opponent: Atkinson Affidavit at paras. 4-13.

104. The Opponent has advertised its services in print and online over an extended period, and through a wide range of media, in association with the marks VCC and VANCOUVER COMMUNITY COLLEGE, as is described above in relation to the Atkinson Affidavit.

105. The Opponent and the Applicant both seek to attract the same consumers: prospective students interested in receiving education at a College level.

106. The Applicant uses and has used the Applicant's Trade-mark in similar media, and contexts. The evidence indicates that the Opponent's Trade-marks have appeared online in relation to the same search parameters and on the same pages as the Applicant's Trade-mark: Atkinson Affidavit at paras. 82-90 and supporting exhibits contained therein.

[34] I agree with the opponent's above submissions that the parties' services and trades are essentially the same. The third and fourth factors therefore also strongly favour the opponent.

Resemblance

[35] The first portion of a mark is usually the more important for the purposes of distinction: *Conde Nast Publications Inc. v. Union Des Editions Modernes* (1979) 26 CPR(2d) 183 at 188 (FCTD). In the instant case, as a matter of first impression, the first portion of the applied-for mark VCCOLLEGE is the letter combination VCC. The second portion of the mark is OLLEGE, however, on second impression, the second C becomes associated with the word COLLEGE. As a matter of first impression, the applicant has incorporated the whole of the opponent's mark VCC as the first portion of the applied-for mark.

[36] The applied-for mark would be sounded as VC College while the opponent's mark would be sounded as the individual letters V; C; C.

[37] The opponent's mark VCC would be understood as an acronym for the opponent's mark VANCOUVER COMMUNITY COLLEGE as the opponent's two marks are often used together. This surrounding circumstance (see the emphasized portion of para. 29, above) results in the marks in issue suggesting the same idea, that is, the idea of VANCOUVER COMMUNITY COLLEGE, as VCCOLLEGE would also likely suggest the idea of VANCOUVER COMMUNITY COLLEGE.

[38] In the instant case there are certainly obvious differences between the marks in issue, however, when the marks are considered from all three aspects of resemblance - visual, aural and in ideas suggested, and taking into account that the term VCC would be recognized as an acronym for VANCOUVER COMMUNITY COLLEGE, then the marks VCC and VCCOLLEGE are more alike than different. The last factor therefore favours the opponent.

Further Considerations

[39] The evidence of the affiants Lawrence, Chui-Chai, Abbinante, Alfaro, and LaFrance further support the opponent's position that there is a likelihood of confusion between the marks VCC and VCCOLLEGE.

[40] The opponent has brought to my attention a prior opposition case between the parties where the applicant herein sought to register the mark VCCOLLEGE.CA for the same services as in the instant case: see *Vancouver Community College v. Vancouver Career College (Burnaby) Inc*, 2015 TMOB 15 (CanLII). The opponent's evidence in that case appears to be similar to its evidence in the instant case, while the applicant elected not to file any evidence. The Board concluded that:

[29] . . . Because the otherwise weak VCC trade-mark [the opponent's mark] has gained distinctiveness due to use and reputation, the small differences between the Mark [the applied-for mark VCCOLLEGE.CA] and the VCC trade-mark are not sufficient to avert confusion. Having examined all of the circumstances of the case, I conclude that the Applicant has failed to meet its legal onus of showing, on a balance of probabilities, that on June 11, 2012, the Mark was distinctive of the Services. This ground of opposition is successful.

[41] I am also mindful of the following observation, which originated in United States jurisprudence, referred to approvingly in *Source Perrier (Societe Anonyme) v. Canada Dry Ltd.* (1982), 64 CPR(2d) 116 at 121(Ont. H.C.):

. . . few would be stupid enough to make exact copies of another's mark or symbol. It has been well said that the most successful form of copying is to employ enough points of similarity to confuse the public with enough points of differences to confuse the courts.

Conclusions

[42] Having regard to the above, and in particular to the factors discussed under s.6(5) above, I find that the applicant has not met the legal onus on it to show that the marks VCCOLLEGE and VCC are not confusing.

[43] The above reasoning also leads me to conclude that the applicant has not met the legal onus on it to show that the marks VCCOLLEGE and VANCOUVER COMMUNITY COLLEGE are not confusing. The opponent therefore succeeds under the grounds of opposition pursuant to s.16(1)(a) and s.16(1)(c).

[44] The above considerations are equally applicable to the ground of opposition alleging that the applied-for mark VCCOLLEGE is not distinctive of the applicant – but at the later material date December 23, 2013, that is, the date of opposition. The opponent’s marks and trade-names had acquired greater distinctiveness at that time, due to continued use and advertising, than at the earlier material date April 30, 2009. It follows that the opponent also succeeds on the ground of opposition pursuant to s. 2.

[45] As the opponent has succeeded on two grounds of opposition, it is not necessary to consider the remaining grounds.

DISPOSITION

[46] In view of the foregoing, the subject application is refused. This decision has been made pursuant to a delegation of authority by the Registrar of Trade-marks under s.63(3) of the *Trade-marks Act*.

Myer Herzig, Member,
Trade-marks Opposition Board
Canadian Intellectual Property Office

APPEARANCES AND AGENTS OF RECORD

HEARING DATE: 2016-02-18

APPEARANCES

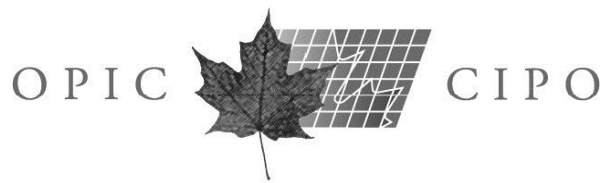
Mat Brechtel FOR THE OPPONENT

Norman Cameron and Tessa Seager FOR THE APPLICANT

AGENTS OF RECORD

Bull, Housser & Tupper FOR THE OPPONENT

Cameron IP FOR THE APPLICANT



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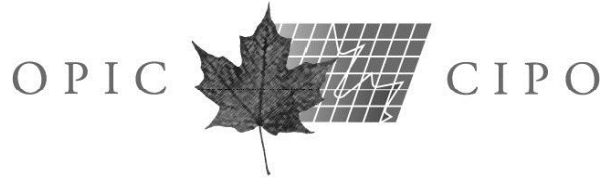
Application

[1] It has come to my attention that my recent decision issued in the above-noted opposition contains an error in the last sentence of paragraph 16 where “opponent” should read “applicant.”

[2] Accordingly, the last sentence of para.16 is amended as shown in underlining below:

The applicant has also been promoting its services under the mark **VCCollege** since 2009.

Myer Herzig, Member,
Trade-marks Opposition Board
Canadian Intellectual Property Office



THE REGISTRAR OF TRADE-MARKS

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Inc.

1,612,550 for VCCOLLEGE **Application**

[1] It has come to my attention that my recent decision issued in the above-noted opposition contains errors in paragraphs 37, 38, and 43 where the word VICTORIA inadvertently appears for the word VANCOUVER.

[2] Accordingly, paras. 37, 38, and 43 of my decision dated June 2, 2016 are amended to replace VICTORIA with VANCOUVER, as shown in underlining below:

[37] The opponent's mark VCC would be understood as an acronym for the opponent's mark VANCOUVER COMMUNITY COLLEGE as the opponent's two marks are often used together. This surrounding circumstance (see the emphasized portion of para. 29, above) results in the marks in issue suggesting the same idea, that is, the idea of VANCOUVER COMMUNITY COLLEGE, as VCCOLLEGE would also likely suggest the idea of VANCOUVER COMMUNITY COLLEGE.

[38] In the instant case there are certainly obvious differences between the marks in issue, however, when the marks are considered from all three aspects of resemblance - visual, aural and in ideas suggested, and taking into

account that the term VCC would be recognized as an acronym for VANCOUVER COMMUNITY COLLEGE, then the marks VCC and VCCOLLEGE are more alike than different. The last factor therefore favours the opponent.

[43] The above reasoning also leads me to conclude that the applicant has not met the legal onus on it to show that the marks VCCOLLEGE and VANCOUVER COMMUNITY COLLEGE are not confusing. The opponent therefore succeeds under the grounds of opposition pursuant to s.16(1)(a) and s.16(1)(c).

Myer Herzig, Member,
Trade-marks Opposition Board
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