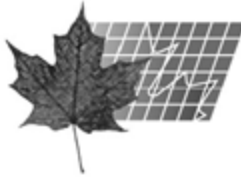


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LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADEMARKS

Citation: 2019 TMOB 142

Date of Decision: 2019-12-23

IN THE MATTER OF AN OPPOSITION

AutoCanada Holdings Inc.

Opponent

And

Autocapital Canada Inc.

Applicant

1,668,881 for AUTOCAPITAL

Applications

1,668,882 for AC AUTO CAPITAL

CANADA INC.

1,668,883 for AC AUTOCAPITAL

CANADA

1,668,889 for AC AUTOCAPITAL

CANADA INC. & Design

BACKGROUND

[1] On March 20, 2014, applications to register the trademarks AUTOCAPITAL, AC AUTOCAPITAL CANADA, AC AUTOCAPITAL CANADA INC. (the Word Marks), and AC AUTOCAPITAL CANADA INC. & Design (the Design Mark shown below) were filed by Autocapital Canada Inc. (the Applicant). The Word Marks and the Design Mark may collectively be referred to in this decision as “the Marks”.



[2] The applications for the Word Marks were based on use since as early as 2012, and the application for the Design Mark was based on use since as early as January, 2012. Each of the marks is applied for in association with the following services:

Financing services namely automobile and vehicle leasing services; financing services namely automobile and vehicle purchase financing services; financial lending services in respect of automobiles and vehicles; administering loans and financing in respect of automobiles and vehicles; management and administration services in respect of portfolios of automobile leases, loans and financing arrangements; credit and loan services (the Services).

[3] The Marks were advertised in the *Trademarks Journal* of May 27, 2015.

[4] On May 4, 2016, a statement of opposition was filed against each application by AutoCanada Holdings Inc. (the Opponent) pursuant to section 38 of the *Trademarks Act*, RSC 1985, c T-13 (the Act). I note that the Act was amended on June 17, 2019. All references in this decision are to the Act as amended, with the exception of references to the grounds of opposition which refer to the Act as it read before it was amended (see section 70 of the Act which provides that section 38(2) of the Act as it read prior to June 17, 2019 applies to applications advertised prior to that date).

[5] The Applicant filed and served its counter statements on July 18, 2016.

[6] In each case the Opponent filed the affidavit of Tom (T.L.) Orysiuk and the Applicant elected not to file any evidence. Neither party submitted written representations. Only the Opponent made submissions at the hearing which was held on November 13, 2019. On November 20, 2019, the Opponent filed written submissions to supplement one part of the oral submissions that were made at the hearing.

GROUNDS OF OPPOSITION

[7] The grounds of opposition are the same in each case and can be summarized as follows:

- Non-compliance with section 30(b) of the Act because the Applicant did not use any of the Marks in Canada with the applied for services since their claimed dates of first use;
- Non-compliance with section 30(i) of the Act because the Applicant could not have been satisfied at the date of filing that it was entitled to use the Marks because the Applicant was aware of the Opponent's use of the AUTOCANADA trademark and trade name.
- Non-entitlement pursuant to sections 16(1)(a), 16(1)(b) and 16(1)(c) of the Act; the Applicant is not the person entitled to the registration of any of the Marks because at the date of first use of each of them, the Marks were confusing with the Opponent's previously used trademark and/or trade name AUTOCANADA in association with the Opponent's services, namely, "Operation of motor vehicle dealerships; financing services for vehicle purchases; leasing of motor vehicles; maintenance and repair of motor vehicles; retail sales of motor vehicles; and online and retail sales of motor vehicle parts and accessories." (Opponent's Services)
- Non-distinctiveness pursuant to section 2 as none of the Marks is adapted to distinguish nor actually distinguishes the Applicant's Services from the services of others, namely the services of the Opponent performed and advertised in association with the AUTOCANADA trademark.

ONUS

[8] The Applicant bears the legal onus of establishing, on a balance of probabilities, that its applications comply 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 in each case [see *John Labatt Ltd v Molson Companies Ltd* (1990), 30 CPR (3d) 293 (FCTD) at 298].

OPPONENT'S EVIDENCE – AFFIDAVIT OF TOM (T.L.) ORYSIUK

[9] Mr. Orysiuk identifies himself as President of the Opponent, a position he has held since May 13, 2011. Prior to that, from November 2005, he was Executive Vice-President and Chief Financial Officer of AutoCanada LP.

[10] The Opponent obtained the rights to the AUTOCANADA trademark by way of assignment dated December 31, 2010. Prior to that date, from January 1, 2010 to December 31, 2010, the AUTOCANADA trademark was owned by 7268769 Canada Inc. From May 11, 2006 to January 1, 2010, the trademark was owned by AutoCanada LP.

[11] Mr. Orysiuk explains that the AUTOCANADA mark has been used by the Opponent and its predecessors-in-title, and their respective authorized licensees and sub-licensees (collectively referred to as “AutoCanada Group”) in association with the Opponent’s Services since at least as early as 2006. The AutoCanada Group is Canada’s largest multi-location and first publicly traded automobile dealership group, and the dealership group includes over thirty franchised dealerships across Canada. Mr. Orysiuk attaches as Exhibit A to his affidavit an organization chart showing the relationship between various organizations and dealerships in the AutoCanada Group as of December 31, 2012.

Sales Revenue

[12] Mr. Orysiuk states that in 2012, the AutoCanada Group automobile dealerships sold approximately 30,000 vehicles and processed approximately 319,000 service and collision repair orders in 333 service bays generating revenue in excess of \$1 billion. From 2006 – 2012, revenues of AutoCanada Group exceeded \$6 billion. An annual breakdown of the revenue from the retail sales of motor vehicles, financing and leasing services and the online and retail sale of motor vehicle parts and accessories between 2006 and 2012 were provided in paragraphs 10 and 12 of his affidavit.

Licensed Use

[13] Mr. Orysiuk explains at paragraph 13 of his affidavit that the Opponent is a fully owned subsidiary of AutoCanada Inc. and has licensed the use of the AUTOCANADA trademark to

AutoCanada Inc. under a trademark license agreement. He states that the Opponent permits AutoCanada Inc. to sub-license the AUTOCANADA trademark for use by the automobile dealerships within the AutoCanada Group. Mr. Orysiuk submits that through the license agreement, the Opponent has authorized the use of the AUTOCANADA trademark while maintaining control of the character and quality of the services with which it is used. Mr. Orysiuk does not attach a copy of the license agreement to his affidavit.

Promotion and Advertising of the Opponent's Mark

[14] Some examples of the promotion and advertising of the Opponent's mark as submitted by Mr. Orysiuk are as follows:

- representative samples of stationery used by licensees and sub-licensees displaying the AUTOCANADA trademark;
- sample invoices for the maintenance and repair of motor vehicles issued by dealerships displaying the AUTOCANADA trademark;
- representative printouts of archived web pages from AutoCanada Group's website www.autocan.ca advertising and promoting AutoCanada Group's operation of vehicle dealerships, the retail sale of motor vehicles and the retail sale of motor vehicle parts and accessories, as well as a printout from Google Analytics showing that from August 2006 to November 2015, approximately 402,933 new users in Canada have visited the website;
- printouts from the Wayback machine showing the websites of eight dealers displaying the AUTOCANADA trademark on the main page of each dealer website; for example, on the Capital Chrysler Jeep Dodge website, in the top right corner of the home page are the words "An AutoCanada Dealer"; the numbers of worldwide views for each dealership's website since it came into existence are also provided;
- flyers displaying the AUTOCANADA trademark distributed by dealerships operated by the AutoCanada Group since at least as early as April 2012 to recruit dealership employees; and

- a printout from the current AutoCanada Facebook page displaying the AUTOCANADA trademark which has been viewable across Canada since it was launched in November 2009.

GROUNDS OF OPPOSITION

Section 30(i) Ground of Opposition

[15] The Opponent has pleaded that each of the Applicant's applications does not comply with section 30(i) of the Act because at the filing date the Applicant could not have been satisfied that it was entitled to use the Marks in association with the Services because the Applicant was aware of the Opponent's use of the AUTOCANADA trademark and trade name.

[16] Section 30(i) of the Act merely requires that an Applicant declare in its application that it is satisfied that it is entitled to registration of its trade-mark. Where an applicant has provided the requisite statement, a section 30(i) ground should only succeed in exceptional cases, such as where there is evidence of bad faith on the part of the applicant [see *Sapodilla Co Ltd v Bristol-Myers Co* (1974), 15 CPR (2d) 152 (TMOB) at 155]. Mere knowledge of the existence of the Opponent's trade-marks does not in and of itself support an allegation that the Applicant could not have been satisfied of its entitlement to use the Mark [see *Woot, Inc v WootRestaruants Inc Les Restaurants Woot Inc* 2012 TMOB 197 (CanLII)].

[17] As the Opponent has not evidenced any bad faith on behalf of the Applicant, this ground is dismissed in each case.

Section 30(b) Ground of Opposition

[18] The Opponent has pleaded that the application does not comply with the requirements of section 30(b) of the Act in that the Applicant has not used any of the applied for Marks in Canada in association with the Services since the claimed dates of first use. It is established that when the application for registration refers to a month and a year or just a year without mentioning a precise date, the date of first use corresponds to the last day of the month indicated in the application or the last day of that year [see *Khan v Turban Brand Products Ltd* (1984), 1 CPR (3d) 388 (TMOB)]. Therefore, I will treat the claims of previous use of the Word Marks as

if they read “at least as early as December 31, 2012”. Since the Applicant’s Design Mark application claims “as early as January, 2012”, I will treat the claim of previous use of this application as if it read “at least as early as January 31, 2012”.

[19] The initial evidential burden on an opponent respecting the issue of the applicant’s non-compliance with section 30(b) of the Act is light because the facts regarding an applicant’s first use are particularly within the knowledge of the applicant. This burden may be met by reference not only to the opponent’s evidence but also to the applicant’s [see *Labatt Brewing Co v Molson Breweries, A Partnership* (1986), 10 CPR (3d) 84 (TMOB) at 89]. An opponent may only successfully rely upon the applicant’s evidence to meet its initial burden, however, if the opponent shows that the applicant’s evidence puts into issue the claims set forth in the applicant’s application [see *Corporativo de Marcas GJB, SA de CV v Bacardi & Company Ltd*, 2014 FC 323 at paras 30-38]. Finally, the relevant date for considering the circumstances with respect to this ground of opposition is the filing date of the applications [see *Georgia-Pacific Corp v Scott Paper Ltd* (1984), 3 CPR (3d) 469 (TMOB)].

[20] In this case, no evidence has been filed by the Opponent to support its allegation that the Applicant has not used any of the Marks in association with the Services since the claimed dates of first use. Relying on the decision in *Canadian Jewellers Association v American Gem Society*, 2010 TMOB 106 (CanLII) (*Canadian Jewellers*), the Opponent’s argument as I understand it is that when the validity of an applicant’s date of first use is contested in an opposition proceeding, the applicant should not be able to successfully defend this ground simply by not filing any evidence at all.

[21] I respectfully disagree with the Opponent’s submission. In the *Canadian Jewellers* decision the opponent had succeeded in putting the applicant’s date of first use into issue through the cross-examination of the applicant’s affiant. The applicant’s inability to provide records to support its date of first use on cross-examination is what was held against it.

[22] In the present cases, the Applicant did not file any evidence nor did the Opponent file any evidence to put any of the Applicant’s claimed dates of first use into issue. It has been well established while an opponent is entitled to rely on the applicant’s evidence to meet its

evidentiary burden, the applicant is under no obligation to evidence its claimed date of first use if this date is not first put into issue by an opponent meeting its evidentiary burden.

[23] Accordingly, the section 30(b) ground of opposition is dismissed in each case as the Opponent has not met its evidential burden.

Section 16(1)(a) Ground of Opposition

[24] The Opponent has pleaded that the Applicant is not the person entitled to registration of the Marks under section 16(1)(a) of the Act in view of the Opponent and its predecessors-in-title's prior use of their trademark AUTOCANADA in Canada, since at least as early as 2006, in association with the Opponent's Services.

[25] Despite the burden of proof on the Applicant to establish, on a balance of probabilities, that there is no reasonable likelihood of confusion between any of the Marks and the Opponent's trademark, under section 16(1)(a) the Opponent has an initial onus to prove that its trademark was in use prior to the Applicant's date of first use [December 31, 2012 for the Word Marks and January 31, 2012 for the Design Mark] and had not been abandoned as of the May 27, 2015 date of advertisement for the Mark [section 16(5) of the Act].

[26] From the evidence furnished I am satisfied that the Opponent has met its initial burden in each case. In particular, the evidence shows revenues for the Opponent's Services offered in association with its mark between 2006 and 2012, as well as numerous examples of how the Opponent's mark was used in the promotion and advertising of the Opponent's Services.

[27] While I am satisfied that there is evidence of use of the Opponent's mark prior to the Applicant's claimed dates of first use in each case, in order for the Opponent to have met its burden under this ground it must also show that such use enures to its benefit for the purposes of section 50(1) of the Act. Section 50(1) of the Act provides:

For the purposes of this Act, if an entity is licensed by or with the authority of the owner of a trademark to use the trademark in a country and the owner has, under the license, direct or indirect control of the character or quality of the goods or services, then the use, advertisement or display of the trademark in that country as or in a trademark, tradename

or otherwise by that entity has, and is deemed always to have had, the same effect as such a use, advertisement or display of the trademark in that country by the owner.

[28] As noted above, the only evidence provided by Mr. Orysiuk that the Opponent exercises the requisite control over the character or quality of the services in association with which its trademark is used is his statement at paragraph 13 of his affidavit that the Opponent has licensed the use of the mark to AutoCanada Inc. under a trademark license agreement and that AutoCanada Inc. is permitted to sub-license the AUTOCANADA mark for use by automobile dealerships within the AutoCanada Group. He further states that through the license agreement the Opponent has authorized the use of the AUTOCANADA trademark while maintaining control of the character and quality of the services with which it is used.

[29] While the Opponent does not need to establish the existence of a written license agreement in order to satisfy the requirements of section 50(1) of the Act [see *Well's Dairy Inc v UL Canada Inc* (2000), 7 CPR (4th) 77 (FCTD)], it must still prove that some form of control over the quality of the services exists. Relying in part on the decision in *Cook Inc v Applied Medical Resources Corp*, 2011 TMOB 151, the Opponent submits that Mr. Orysiuk's clear sworn statement of control, which was not challenged by cross-examination, should be sufficient to satisfy the requirements of section 50(1) of the Act.

[30] I agree with the Opponent's submissions. Although Mr. Orysiuk did not specifically set out the steps taken by the Opponent to exert control over the character and quality of the Opponent's services, there is no reason why I cannot take Mr. Orysiuk's statement that the Opponent maintains control over the character and quality of the services with which the AUTOCANADA mark is used by its licensees at face value. I am therefore satisfied that any use by the Opponent or its related companies would accrue to the Opponent in accordance with section 50 of the Act.

[31] As the Opponent has met its initial burden of proof, I must now determine, on a balance of probabilities, if any of the Applicant's Marks is likely to cause confusion with the Opponent's AUTOCANADA trademark.

[32] The test for confusion is one of first impression and imperfect recollection. Section 6(2) of the Act indicates that use of a trademark causes confusion with another trademark if the use of both trademarks in the same area would be likely to lead to the inference that the goods or services associated with those trademarks are manufactured, sold, leased, hired or performed by the same person, whether or not the goods or services are of the same general class.

[33] In deciding this issue, section 6(2) of the Act requires consideration of all the relevant surrounding circumstances, including those enumerated in section 6(5): the inherent distinctiveness of the trademarks and the extent to which they have become known; the length of time the trademarks have been in use; the nature of the goods, services, or business; the nature of the trade; and the degree of resemblance between the trademarks in appearance or sound or in the ideas suggested by them. These enumerated factors need not be attributed equal weight [*Mattel U.S.A. Inc v 3894207 Canada Inc* 2006 SCC 22, 49 CPR (4th) 321 (SCC); and *Masterpiece Inc v Alavida Lifestyles Inc* 2011 SCC 27, 92 CPR (4th) 361 (SCC) (*Masterpiece*)].

Section 6(5)(a)--the inherent distinctiveness of the trademarks and the extent to which they have become known

[34] Each of the marks is comprised of ordinary dictionary terms that are suggestive of the parties' respective services. With the exception of the AUTOCAPITAL mark, each of the marks are also descriptive of the country where they originate from. In this regard, the Opponent's mark is formed of a combination of the words AUTO and CANADA while the Applicant's Word Marks are formed of the words AUTO and CAPITAL as well as other non-distinctive words or letters including the words CANADA, INC. and the letters AC (which is an abbreviation for the words AUTO and CAPITAL). Accordingly, I do not find that any of the parties' word marks possess a high degree of inherent distinctiveness.

[35] I do, however, find the Applicant's Design Mark to be inherently stronger than the Opponent's mark because I consider the design elements of the Applicant's Design mark (i.e. the appearance of the letters AC in a stylized and larger font to the left of the all of the other elements in the mark) to render it slightly more distinctive than the Opponent's mark.

[36] With respect to the extent to which the marks have become known, the Applicant has not filed any evidence of use whereas the Opponent, as discussed previously, has shown extensive use of its mark in association with the Opponent's services since at least as early as 2006.

[37] Therefore, overall, I find that this factor favours the Opponent in each case.

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

[38] Again, although the Applicant's Word Marks are based on use since at least as early as December 31, 2012, and the Applicant's Design Mark is based on used since January 31, 2012, the Applicant has not filed any evidence of use of any of its marks. The Opponent, on the other hand, has filed extensive evidence of use of its mark throughout Canada since at least as early as 2006. This factor therefore favours the Opponent.

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

[39] The Opponent's mark and each of the Applicant's applied for marks cover financing services for vehicle purchases as well as vehicle leasing services. Thus, there is direct overlap in the parties' services. In view of this overlap and in the absence of evidence to the contrary, it is fair to assume that there would also be overlap in the parties' channels of trade.

Section 6(5)(e)--the degree of resemblance between the trademarks in appearance or sound or in the ideas suggested by them

[40] In *Masterpiece*, the Supreme Court advised that the preferable approach when comparing marks is to begin by determining whether there is an aspect of the trademark that is particularly striking or unique. But if there is no component that is particularly striking or unique, it is also a well-accepted principle that the first portion of a trademark can be the most relevant for the purposes of distinction [see *Conde Nast Publications Inc v Union des Editions Modernes* (1979), 46 CPR (2d) 183 at 188 (FCTD)].

[41] Beginning with the Applicant's AUTOCAPITAL mark, as noted in my analysis under section 6(5)(a), both this mark and the Opponent's mark are comprised of ordinary dictionary terms which are suggestive in the context of their associated services. I therefore do not find any

one aspect of the Opponent's mark or the Applicant's mark to be particularly striking or unique. I would therefore find that the dominant feature of each mark is its first word. As the first word AUTO is the same in each mark and as both are comprised of five syllable words that begin with the same six letters, I find there to be a considerable degree of resemblance between this mark and the Opponent's AUTOCANADA mark in appearance and sound.

[42] I shall next consider the degree of resemblance between the Applicant's AC AUTOCAPITAL CANADA and AC AUTOCAPITAL CANADA INC. marks and the Opponent's mark. Again, I do not find any one aspect of these marks to be particularly striking or unique and both of these marks are also comprised of ordinary dictionary words which are suggestive of their associated services. Further, in my view the degree of resemblance in appearance and sound between these marks and the Opponent's mark is not as high as it is between the Opponent's mark and the Applicant's AUTOCAPITAL mark because the first components of these marks differ and these marks also contain more than one component. Having said that, I still consider there to be a fair degree of resemblance between these marks and the Opponent's mark in that neither the letters AC nor the descriptive words CANADA or INC. are features that further distinguish these marks from the Opponent's mark to any great extent.

[43] With respect to the Applicant's Design Mark, I find that unlike the Applicant's Word Marks it does possess an aspect that is particularly striking – the AC design is clearly the dominant feature of this mark. I therefore do not find there to be as high of a degree of resemblance in appearance between this mark and the Opponent's mark. When sounded, however, the degree of resemblance in sound is the same as between the Opponent's mark and the Applicant's AC AUTOCAPITAL CANADA INC. Design mark.

[44] As for the ideas suggested by the marks, I find that the Opponent's mark as a whole suggests something to do with automobiles in Canada while each of the Applicant's marks are suggestive of financing services offered in association with automobiles in Canada.

Conclusion Regarding Likelihood of Confusion

[45] Having considered all of the surrounding circumstances, I find that the probability of confusion between the Opponent's mark and each of the Marks to be evenly balanced between a finding of confusion and a finding of no confusion. Although none of the parties' marks are particularly inherently distinctive, the Opponent has shown that it has used and promoted its mark to a substantial degree in Canada for many years. Further, each of the Marks resembles the Opponent's mark to some degree. Finally, the Applicant has not established any reputation in association with any of its Marks but has applied for each of them on the basis of previous use in association with services which either directly overlap or are closely related to those of the Opponent and would likely travel through the same channels of trade. Also bearing in mind that the Applicant adduced no evidence and filed no written argument in support of its applications, I cannot conclude that the Applicant has met its burden in respect of this ground.

[46] The section 16(1)(a) ground of opposition is therefore successful against each of the Applicant's Marks.

Section 16(1)(b) Ground of Opposition

[47] The Opponent has also pleaded that the Applicant is not the person entitled to registration of the subject trademark under section 16(1)(b) of the Act because at all material times they were confusing with the Opponent's AUTOCANADA trademark application No. 1,603,853. Under this ground, the Opponent's onus is to show that the trademark application being relied upon had been previously filed in Canada prior to the Applicant's dates of first use and that the application was pending at the date of advertisement of the Applicant's applications (i.e. May 27, 2015).

[48] I have exercised my discretion to check the Trademarks Office records to confirm the existence of the Opponent's application [see *Royal Appliance Manufacturing Co v Iona Appliances Inc/ Appareils Iona Inc* (1990), 32 CPR (3d) 525, (TMOB), at 529]. As noted above, the date of first use for the Applicant's three Word Marks is considered to be December 31, 2012, while the date of first use for the Applicant's Design Mark is considered to be January 31, 2012.

[49] As the Opponent's application was filed November 26, 2012, and was still pending as of the date of advertisement of the Applicant's Word Marks, I confirm that the Opponent has met its burden under this ground with respect to each of the Applicant's Word Marks. The Opponent has not, however, met its burden with respect to the Applicant's Design Mark since the Opponent's application was not filed until after the Applicant's claimed date of first use for that mark.

[50] Accordingly, this ground is dismissed insofar as it regards application No. 1,668,889 for the trademark AC AUTOCAPITAL CANADA INC. Design. For the other three applied for marks, however, the onus shifts to the Applicant to demonstrate that there is no likelihood of confusion between these marks and the Opponent's mark.

[51] The reasons as identified above in my analysis of the section 16(1)(a) ground of opposition are, for the most part, also applicable to this ground. In the absence of any evidence or argument from the Applicant, I find that the probability of confusion between the parties' trademarks is evenly balanced between a finding of confusion and a finding of no confusion. Having made this finding, I cannot conclude that the Applicant has met its burden in respect of this ground.

[52] The section 16(1)(b) ground of opposition is therefore successful with respect to the Applicant's Word Marks but does not succeed with respect to the Applicant's Design Mark.

Non-Distinctiveness Ground of Opposition

[53] While there is a legal onus on the Applicant to show that its Marks are adapted to distinguish or actually distinguish its services from those of others throughout Canada, there is an initial evidential burden on the Opponent to establish the facts relied upon in support of the ground of non-distinctiveness [see *Muffin Houses Inc v Muffin House Bakery Ltd* (1985), 4 CPR (3d) 272, (TMOB)]. Pursuant to its evidential burden, the Opponent is under an obligation to show that, as of the date of filing of the statement of opposition, its trademark had become known sufficiently to negate the distinctiveness of each of the Applicant's Marks [see *Bojangles' International LLC v Bojangles Café Ltd* (2004), 40 CPR (4th) 553, (TMOB), affirmed (2006), 48 CPR (4th) 427, (FC)].

[54] As discussed more fully in the analysis of the section 16(1)(a) ground of opposition, the Opponent was successful in establishing that its AUTOCANADA trademark had become well known in Canada as of the date of filing the statement of opposition (i.e. May 4, 2016). I am therefore satisfied that the Opponent has met its evidential burden under this ground in each case. I also consider the difference in material dates between this ground and the section 16(1)(a) to be insignificant. Therefore, for the reasons as identified above in my analysis of the section 16(1)(a) ground of opposition, I am not 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 Opponent's mark and each of the Applicant's Marks. Accordingly, the non-distinctiveness ground of opposition is also successful in each case.

Section 16(1)(c) Ground of Opposition

[55] Since the opposition has already succeeded under at least two grounds of opposition against each of the Applicant's Marks, I will not address this remaining ground of opposition.

DISPOSITION

[56] In view of the foregoing, pursuant to the authority delegated to me under section 63(3) of the Act, I refuse each of the applications pursuant to section 38(8) of the Act.

Cindy R. Folz
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

**TRADEMARKS OPPOSITION BOARD
CANADIAN INTELLECTUAL PROPERTY OFFICE
APPEARANCES AND AGENTS OF RECORD**

HEARING DATE 2019-11-13

APPEARANCES

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