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THE REGISTRAR OF TRADEMARKS

Citation: 2020 TMOB 30

Date of Decision: 2020-04-09

IN THE MATTER OF AN OPPOSITION

Jamieson Laboratories Ltd.

Opponent

And

Omega Alpha Pharmaceuticals Inc.

Applicant

1,648,806 for GLUCOWISE

Application

FILE RECORD

[1] On October 22, 2013, Omega Alpha Pharmaceuticals Inc. (the Applicant) filed an application to register the trademark GLUCOWISE (the Mark). The application is based on use since at least as early as October 21, 2013, in association with the following goods:

- (1) Nutritional and dietary supplements containing DL-alpha-Lipoic acid, Gymnema sylvestre (Gymnema Leaf Extract), Momordica charantia (Bitter Melon Fruit), Lagerstroemia speciosa (Banaba Leaf Extract), Chromium, Vanadium
- (2) Nutritional and dietary supplements for promoting healthy glucose metabolism
- (3) Nutritional and dietary supplements for regulating blood glucose levels

(4) Nutritional and dietary supplements for use as an antioxidant

[2] The application was advertised for opposition in the *Trademarks Journal* dated September 3, 2014, and was opposed by Jamieson Laboratories Ltd. (the Opponent) on November 3, 2014 pursuant to section 38 of the *Trademarks Act*, RSC 1985, c. T-13 (the Act). Numerous amendments to the Act came into force on June 17, 2019. All references are to the Act as amended on June 17, 2019, 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 before this date).

[3] The Applicant responded by filing and serving a counter statement. The Opponent's evidence consists of the affidavit of Lorna Vanderhaeghe. The Applicant filed the affidavits of Gordon Chang, Jill Roberts and Sylvie Nadaud, as well as certified copies of the registration No. TMA816,866 for the trademark GLUCOSMART and the file history for the Mark. Ms. Vanderhaeghe and Dr. Chang were cross-examined on their affidavits and the cross-examination transcripts and replies to undertakings form part of the record. As evidence in reply the Opponent filed the affidavit of Kelly Theodosiou.

[4] Both parties filed a written argument and both parties were ably represented at an oral hearing.

STATEMENT OF OPPOSITION

[5] The statement of opposition raises the following grounds of opposition under section 38 of the Act.

- (a) The application does not conform to the requirements of section 30(b) of the Act in that neither the Applicant, its named predecessor-in-title, by itself, or through a licensee, has used the trademark in Canada in association with any of the applied for goods since the claimed date of first use of October 21, 2013;
- (b) The application does not comply with section 30(i) of the Act in that the Applicant could not have been and cannot be satisfied of its entitlement to use

the trademark in Canada in association with the goods because, at the time of filing the application, it knew or ought to have known of the Opponent's family of trademarks;

- (c) Pursuant to section 12(1)(d) of the Act, the Mark is not registrable because it is confusing with a family of trademarks owned by the Opponent containing the term SMART (set out in the table attached as Schedule A) including the Opponent's registered trademark GLUCOSMART, registration No. TMA816,866;
- (d) Pursuant to section 16(1) of the Act, the Applicant was not entitled to register the Mark because at the date of first use it was confusing with the Opponent's registered marks, including GLUCOSMART, which had been previously used or made known in Canada and/or in respect of which an application for registration had been previously filed in Canada; and
- (e) Pursuant to section 38(2)(d) of the Act, the trademark is not distinctive within the meaning of section 2 of the Act in that it does not distinguish nor is it adapted to distinguish and is not capable of distinguishing the Applicant's goods from those of others and more particularly from those of the Opponent as shown in Schedule A.

[6] The Opponent withdrew the section 30(b) and 30(i) grounds of opposition at the oral hearing.

OPPONENT'S EVIDENCE IN CHIEF

Affidavit of Lorna Vanderhaeghe

[7] Ms. Vanderhaeghe identifies herself as President of Lorna Vanderhaeghe Health Solutions, a division of the Opponent since 2014. Prior to that she was the President and Founder of Lorna Vanderhaeghe Health Solutions, Inc. (LVHSI) [Vanderhaeghe affidavit, para. 1].

[8] LVHSI registered a family of marks in Canada and the U.S. containing the term SMART, including the mark GLUCOSMART (as set out in the attached Schedule A). From 2010 – 2014, LVHSI sold dietary and nutritional products through retailers in-store and online, including pharmacies, fine food retailers, and health food stores across Canada in association with the SMART family of marks, including the mark GLUCOSMART [Vanderhaeghe affidavit, paras 7-8]. Attached to her affidavit are printouts the Canadian trademark registrations and applications for these marks, examples of the ways the Opponent's SMART family of marks have been used in association with its goods and printouts from various publications and websites showing use of the SMART marks on products. On cross-examination Ms. Vanderhaeghe confirmed that products under the following marks are no longer being sold: BONESMART, CHOLESTEROL SMART, OSTEOSMART, MOODSMART, URISMART, BEAUTYSMART and OMEGA-SMART (Vanderhaeghe cross-ex. Qq 87-119).

[9] In 2014, the assets of LVHSI, including the SMART marks, the trade name Lorna Vanderhaghe Health Solutions (hereinafter LVHS) and the right to use the affiant's name and image were acquired by the Opponent [Vanderhaeghe, para. 8, Exhibit B]. Following this acquisition, the Opponent continued to operate the business of LVHSI under the trade name LVHS, and has sold and continues to sell dietary and nutritional products in association with the SMART marks through retailers in-store and online, including pharmacies, fine food retailers, and health food stores across Canada [Vanderhaeghe, para. 8, 16 and 17].

[10] Attached as Exhibit C to Ms. Vanderhaeghe's affidavit are photographs of in-store shelves showing dietary and nutritional products offered for sale by the Opponent or its predecessor-in-title LVHSI in association with the SMART marks, including the trademark GLUCOSMART. She attests that the entire line of products offered for sale and sold in Canada in association with the SMART marks have employed and continue to employ distinctive coloured labelling as well as her photograph [Vanderhaeghe, para. 9]. Attached as Exhibit E to her affidavit is a sample of webpages offering the GLUCOSMART products for sale.

[11] Between 2010 and 2015, the Opponent or its predecessor-in-title LVHSI has enjoyed annual sales ranging between \$199,471 and \$1,055,747 [Vanderhaeghe, para. 18] of the GLUCOSMART products. Representative samples of invoices for what she attests to be

Canadian sales are attached to her affidavit as Exhibit F [Vanderhaeghe, para. 20]. Ms. Vanderhaeghe further deposes that the Opponent and LVHSI have spent over \$250,000 marketing and promoting its GLUCOSMART products in Canada since 2010, and has attached representative samples of such advertising and other promotional material as Exhibits G- U to her affidavit [Vanderhaeghe paras 21-22]. She also attaches to her affidavit articles featuring the GLUCOSMART product from *The Woman's World* magazine as well as a magazine article about the GLUCOSMART product from the magazine *Healthy Directions* [Vanderhaeghe, para. 23; Exhibits V – X].

[12] Although Ms. Vanderhaeghe also provides her opinion about the likelihood of confusion between the parties' marks, this part of her evidence [paras 25-27] has been disregarded as ultimately it is up to the trier of fact to make this determination.

APPLICANT'S EVIDENCE

Affidavit of Dr. Gordon Chang

[13] Dr. Chang identifies himself as President and Chief Executive Officer and Head of Research and Product Development, as well as founder of the Applicant. He deposes that the GLUCOWISE product has been continuously sold across Canada by the Applicant since 2013 [Chang, para. 18, 46, 49]. The product label has clearly displayed the trademark GLUCOWISE as well as the name of the Applicant since the date of first use [Chang, Exhibits 17 and 18]. The product label has also always identified the ingredients the product contains, as well as the intended result of the product which is to promote healthy glucose metabolism [Chang, Exhibit 9].

[14] The GLUCOWISE product has been sold across Canada in health food stores, independent pharmacies, and supermarkets such as Loblaws and has been available for purchase through online retailers such as Healthy Planet [Chang, paras 22-25, 50]. The GLUCOWISE product has also been promoted across Canada including through *Alive* magazine, *Healthy Directions* magazine, *Vitality* magazine, and *Vitalite Quebec* magazine, and at consumer and industry trade shows and exhibitions [Chang, paras 26-43].

[15] Dr. Chang also provides his opinion about the likelihood of confusion between the parties' marks. This part of his evidence [Chang, para. 51, 61 and 62] has been disregarded as, again, it is up to the trier of fact to make this determination.

[16] On cross-examination, Dr. Chang noted that he would expect that the Opponent's GLUCOSMART product would be made available for purchase through health food stores, independent pharmacies, supermarkets and/or on line retailers, although he maintains that he was not aware of the Opponent's mark prior to filing the GLUCOWISE application [Chang, Qq 222-227].

Affidavit of Sylvie Nadaud

[17] Ms. Nadaud is a trademark research analyst with Thomson Compumark. Attached as exhibits to her affidavit are the results of searches she conducted for active and non-active occurrences of the term SMART in trademarks in combination with the supplements in class 5 of the Nice Classification, including dietary supplements, nutritional supplements, herbal supplements and herbal preparations. Ms. Nadaud's affidavit shows 91 active trademarks on the Canadian Trademark Register in class 5 containing the term SMART, belonging to 48 third parties.

Affidavit of Jill Roberts

[18] Ms. Roberts is a law clerk in the city of Ottawa. She deposes that on August 3, 2016, she accessed a number of online Canadian supplement websites, (including *www.vitamart.ca*, *www.supplementsource.ca*, *www.svncanada.com*, *www.vitasave.ca*, *www.well.ca*, *www.canadianvitmainship.com*, *www.sisu.com* and *www.belmarrahealth.com*) and conducted a series of searches for products with either the term SMART or the term GLUCO in the name. Attached to her affidavit as exhibits are screen capture copies of the results of her search which show various products offered for sale online in association with the word SMART or the word GLUCO.

OPPONENT'S REPLY EVIDENCE

Affidavit of Kelly Theodosiou

[19] Ms. Theodosiou is a trademark support specialist with the Opponent's agent. Attached as Exhibit C to her affidavit are screenshots from the Healthy Planet website that confirm that the Opponent's GLUCOSMART product is sold by Healthy Planet and is available for purchase online through Healthy Planet's website.

[20] Also attached to Ms. Theodosiou's affidavit are the results of searches conducted on *Thesaurus.com* for the words SMART and WISE.

LEGAL ONUS AND EVIDENTIAL BURDEN

[21] The Applicant bears the legal onus of establishing that, on a balance of probabilities, 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)].

MATERIAL DATES

[22] The material dates that apply to the grounds of opposition are:

- sections 38(2)(b)/12(1)(d) - 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)];
- sections 38(2)(c)/16(1) - the Applicant's date of first use; and
- sections 38(2)(d)/2 - the date of filing of the opposition [*Metro-Goldwyn-Mayer Inc v Stargate Connections Inc* (2004), 34 CPR (4th) 317 at 324 (FC)].

PRELIMINARY ISSUES

Chang Opinion Evidence

[23] In his affidavit, Dr. Chang asserts the following: “The suffixes WISE and SMART are not synonyms and have distinctly different meanings.”

[24] Relying on the decision in *Rogers Broadcasting Ltd v CHUM Ltd* (1993), 48 CPR (3d) 108 (TMOB), the Opponent submits that the Applicant has put forward Chang as being an expert without any basis upon which his qualifications, knowledge or skill can be considered to qualify him as an expert. As Chang has not been qualified as an expert on the determination regarding whether words can be considered synonyms, the Opponent submits that any such portion of the Chang affidavit should be disregarded [see *London Drugs Ltd v Base SMART Ltd*, 2011 TMOB 98].

[25] As noted above, Dr. Chang identifies himself as the President and Chief Executive Officer and Head of Research and Product Development, as well as the founder, of the Applicant. When questioned during cross-examination about his basis for making the statement that the suffixes WISE and SMART are not synonyms and have distinctly different meanings, he replied that his opinion was based on common parlance of usage, his command of the English language and the definitions of SMART and WISE taken from the *Canadian Oxford Dictionary* that were submitted with the Vanderhaeghe Affidavit:

412. Q. You state that the suffixes “wise” and “smart” are not synonymous and have distinct meanings?

A. That’s right.

413. Q. On what basis do you make this statement?

A. Common parlance of usage but, more importantly, I would state that I have a very good command of the English language and based on that, but last but not least, I did look at what you guys submitted in the opposition. In there there’s a definition of smart and a definition of wise taken from the Canadian Oxford English dictionary. Based on these definitions it is clear that there is a huge difference between wise and smart.

414. Q. There’s a huge difference between wise and smart?

A. That's right.

415. Q. On what basis do you make this statement?

A. I have a very good command of the English language.

416. Q. So based on the definition provided in our affidavit you say there's a huge difference between wise and smart?

A. That's correct..

417. Q. It's on this basis you say they're not synonyms?

A. Not at all.

418. Q. Would you agree that you have no linguistic or etymological training or certification?

A. I have a PhD which is very well-earned. I have a very good command of the English language.

419. Q. You have no formal training or expertise in English?

A. I have done English language courses in university at the university level. I've done English literature courses at the university level. So I think because of these courses it has given me the right to say what I have to say.

420. Q. You've never received any English or language or linguistic or etymological degree?

A. Not at all.

[26] In my view, it is clear from the above testimony that Dr. Chang has not qualified himself as an expert in the English language. I therefore agree with the Opponent that those portions of his affidavit that provide opinions on the differences between the words WISE and SMART shall be disregarded for being inadmissible opinion evidence.

Evidence Filed by an Employee with the Opponent's Agent

[27] The Opponent filed a reply affidavit of Kelly Theodosiou, a trademark support specialist with the Opponent's firm. As noted above, some of the most pertinent evidence of Ms. Theodosiou is as follows:

- She attached screen shots from the Healthy Planet website that confirm that the Opponent's GLUCOSMART product is sold by Healthy Planet and is available for purchase on-line through Healthy Planet's website;
- She comments that Dr. Chang did not provide any evidence in support of his assertion that the suffixes WISE and SMART are not synonyms and have distinctly different meanings; and
- She provides evidence from her searches conducted on *Thesaurus.com* that the suffixes WISE and SMART are synonyms in that they have the same or nearly the same meaning.

[28] Relying on the decision in *Cross-Canada Auto Body Supply (Windsor) Ltd v Hyundai Auto Canada* (2006), 2006 FCA 133 (CanLII) (*Cross-Canada*), the objection made by the Applicant is that Ms. Theodosiou's evidence should be disregarded as she is an employee of the Opponent's agent's firm and her evidence is contentious. The general argument is that employees are not independent witnesses giving unbiased evidence when they give opinion evidence on contested issues. The Applicant submits that, as a result, little if any weight should be accorded to this affidavit.

[29] While Ms. Theodosiou is employed by the Opponent's agent, I do not find that the concerns raised by the Federal Court of Appeal in *Cross-Canada*, apply to all of her evidence. While part of Ms. Theodosiou's evidence shows the Opponent's product appearing online on the Healthy Planet website, Ms. Theodosiou's affidavit does not contain conclusions or opinions on the parties' channels of trade. She simply took screen shots of the Opponent's product being available on line for purchase on the Healthy Planet website. I do not see how the fact that an employee of the Opponent's agent introduced this evidence makes it less proper than if the Opponent or its agent had hired any outside investigator to do the same thing and swear an affidavit. Overall, this part of her evidence does not appear to me to be controversial. I therefore consider this part of her evidence to be admissible.

[30] With respect to the opinions Ms. Theodosiou expressed about the Chang evidence, however, I do agree with the Applicant that her evidence is inadmissible to the extent that she

opines on the testimony that was provided by Dr. Chang on the contested issue of the meaning of the words SMART and WISE. I will therefore not have regard to this part of her evidence.

[31] Finally, I agree that the excerpts from *Thesaurus.com* attached to Ms. Theodosiou's affidavit relate to the contested issue in this proceeding (i.e. the meaning of the words WISE and SMART). However, in view that the Registrar can take judicial notice of dictionary definitions [*Tradall SA v. Devil's Martini Inc.*, 2011 TMOB 65 at para 29], I find that I can also take judicial notice of the synonyms for the words WISE and SMART as they appear in *Thesaurus.com*.

Proper Reply Evidence?

[32] The Applicant also submits that the reply evidence of Ms. Theodosiou is inadmissible for being improper reply evidence.

[33] Reply evidence must be confined to matters in reply [see section 54 of the *Trademarks Regulations* SOR/2018-227 and section 43 of the now repealed Trade-Marks Regulations, SOR/96-195]. The Applicant submits that the reply affidavit of Ms. Theodosiou is not proper evidence in reply because it includes evidence that could have been included in the Opponent's evidence in chief. For example, the Applicant submits that the entries of *Thesaurus.com* is evidence that could have been included in the Opponent's evidence in chief. In this regard, the Applicant notes that the Opponent already entered dictionary definitions for the words WISE and SMART in the Vanderhaeghe affidavit. The Applicant also submits that, under the heading "Channels of Trade", Ms. Theodosiou restates what is already in evidence as part of the cross-examination and that this results in the Opponent splitting its case.

[34] I will begin by noting that as I have already found Ms. Theodosiou's opinion evidence regarding the evidence of Dr. Chang to be inadmissible, I will not comment further on that evidence.

[35] With respect to the admissibility of the entries from *Thesaurus.com* attached to Ms. Theodosiou's affidavit, even if I did not find this evidence to be proper reply evidence, I would be prepared to take judicial notice of it as I find that entries from *Thesaurus.com* to be similar to dictionary definitions [see *Tradall SA v Devil's Martini Inc, supra*].

[36] I agree with the Applicant, however, that Ms. Theodosiou's evidence of screen shots from the Healthy Planet website is not proper evidence in reply. In this regard, I note that Ms. Vanderhaeghe already presented evidence of the Opponent's product being available for sale online on the Healthy Planet website (see Vanderhaeghe, para. 17 and Exhibit E). Ms. Theodosiou's evidence on the parties' channels of trade is therefore inadmissible.

Chain of Title

[37] For ease of reference, I reproduce below the definitions for the acronyms used in this decision:

LVI Lorna Vanderhaeghe Inc.

LVHS Lorna Vanderhaeghe Health Solutions

LVHSI Lorna Vanderhaeghe Health Solutions Inc.

Jamieson Jamieson Laboratories Ltd.

[38] The Applicant submits that because of various inconsistencies, the evidence of record does not show that there was a proper and complete chain of title between the original applicant for the mark GLUCOSMART and the current owner of the mark, the Opponent in this proceeding. I highlight below some of the most pertinent submissions of the Applicant in this regard:

- the file wrapper for the GLUCOSMART application clearly shows that the original applicant, and party for whom use was claimed by, was LVI;
- the file wrapper also shows that on January 11, 2011, Ms. Vanderhaeghe, in her capacity as Owner, President and CEO of LVI, transferred all rights in the GLUCOSMART mark to LVHSI, both located at 400-353 Water Street, Vancouver B.C;
- there is no evidence of the transfer or assignment from LVI to LVHSI;
- Ms. Vanderhaeghe does not mention LVI as being the Opponent's predecessor-in-title;

- Ms. Vanderhaeghe states that LVHSI was founded in 2010, and that from 2010 until 2014 it sold dietary and nutritional products through retailers in-store and online, including pharmacies, fine food retailers, and health food stores, across Canada in association with the GLUCOSMART mark;
- Ms. Vanderhaeghe further states that in 2014, the assets of LVHSI, including the SMART marks and the trade name LVHS and the right to use Ms. Vanderhaeghe's name and image, were assigned to Jamieson;
- Ms. Vanderhaeghe further testifies that prior to becoming the president of LVHS, a division of Jamieson in 2014, she was the President and Founder of LVHSI;
- Ms. Vanderhaeghe states "Since 2014 the Opponent has sold and continues to sell...products...across Canada in association with the SMART marks including the registered trademark GLUCOSMART, under the trade name LVHS;
- Out of the four invoices attached as Exhibit F to Ms. Vanderhaeghe's affidavit, one is dated in 2010 and the other three are dated in 2015 and each display LVHS at the top of the letterhead with the address 106A-3430 Brighton Ave., Burnaby, B.C. ; there are no invoices provided for the years between 2011 and 2014; and
- On cross-examination Ms. Vanderhaeghe states that the LVHSI was founded in 2010 [Vanderhaeghe cross-ex., q. 21], and that in 2014 the assets of LVHSI were acquired by Jamieson [Vanderhaeghe, cross-ex. q. 24]. She also states that she understood this to be the complete chain of title of the Opponent's GLUCOSMART mark [Vanderhaeghe cross-ex., Qq 37-38].

[39] I agree with the Applicant's agent that there are some inconsistencies in the evidence of Ms. Vanderhaeghe and in the file wrapper concerning the chain of title of the GLUCOSMART trademark. I also agree with the Opponent's agent that the validity of the Opponent's registration (including all transfers and assignments registered by CIPO on the file) is not in issue [see *Foodcorp Ltd v Hardee's Food Systems, Inc* (1981), 66 CPR (2d) 217 (TMOB)]. I still find, however, that the inconsistencies in the Opponent's evidence are relevant to the extent

that they support the allegation that not all of the use shown of the Opponent's mark accrues to the benefit of the Opponent.

[40] It is reasonable to infer from the evidence as a whole that LVHS was a trading style used by the Opponent after the acquisition of the GLUCOSMART mark by Jamieson in 2014, as well as by its predecessor-in-title LVHSI. The address on the invoice dated June 17, 2010, however, is inconsistent with the file wrapper and Ms. Vanderhaeghe's testimony. In this regard the file wrapper shows that the addresses of both LVI and LVHSI were on Water Street, but the transfer of the GLUCOSMART mark was not made until 2011. Further, on cross-examination, Ms. Vanderhaeghe states that it was only after acquisition by Jamieson that cheques were made payable to LVHS [Vanderhaeghe, cross-examination Qq. 283-289]. It is therefore unclear why the only invoice dated prior to 2015 (i.e. June 17, 2010), displays the letterhead of Jamieson's new address when back in 2010 neither Jamieson nor LVHSI owned the GLUCOSMART mark.

[41] While Ms. Vanderhaeghe has provided sales figures for the years 2010 through 2015 for the GLUCOSMART mark in Canada, the remaining representative invoices are all dated 2015. Further, there is no evidence of how the Opponent's mark was displayed in association with the goods prior to 2015. In this regard, the photographs of in store shelves showing the products offered for sale by the Opponent or its predecessor-in-title and representative samples of product labeling are not dated [Vanderhaeghe, Exh. C]. Further, the sample of web pages showing the sale of GLUCOSMART products attached as Exhibit E to Ms. Vanderhaeghe's affidavit are dated May 4, 2015.

[42] While the Opponent's agent was able to point to some examples of advertising or promotion of the mark as early as March 2011, such evidence does not support a finding of use of the GLUCOSMART mark in association with goods pursuant to section 4(1) of the Act.

[43] In view of the above, I am not satisfied that the evidence is sufficient to show use of the GLUCOSMART mark by the Opponent or its predecessor-in-title prior to 2015.

GROUNDS OF OPPOSITION

Section 12(1)(d) Ground – The mark is not registrable

[44] The Opponent pleads that the Mark is not registrable because it is confusing with the Opponent's family of registered trademarks including the term SMART (set out in Schedule A), including GLUCOSMART (Registration No TMA816,866).

[45] In *Masterpiece Inc. v Alavida Lifestyles Inc.*, 2011 SCC 27, [2011] 2 SCR 387 [*Masterpiece*], the Court compared the one trademark closest to the disputed trademark because, out of a family of trademarks, the Court noted that if the one closest is not likely to cause confusion with the new proposed trademark, it will not be necessary to compare with other trademarks in the family (para 78). I will therefore focus my comments on the Opponent's registration for the GLUCOSMART mark as that is the mark that is the one closest to the applied for mark and also represents the Opponent's strongest case. If no reasonable likelihood of confusion between this mark and the Applicant's Mark, then clearly no confusion will be found between any of the Opponent's other SMART registrations and the Mark.

[46] An opponent's initial evidential burden is met with respect to a section 12(1)(d) ground of opposition if the registration relied upon in the statement of opposition is in good standing as of the date of the decision. The Registrar has discretion to check the register in order to confirm the existence of a registration relied upon by an opponent [*Quaker Oats of Canada Ltd/La Compagnie Quaker Oats du Canada Ltée v Menu Foods Ltd* (1986), 11 CPR (3d) 410 (TMOB)]. The Vanderhaeghe affidavit includes a copy of the particulars of the Opponent's GLUCOSMART registration. I have exercised the Registrar's discretion and have confirmed that the Opponent's registration remains in good standing. The Opponent has therefore met its initial evidential burden in respect of this ground with respect to this mark. Accordingly, I must go on to determine whether the Applicant has met the legal onus upon it to establish that there is no likelihood of confusion between this mark and the applied for Mark.

Meaning of Confusion between Trademarks

[47] Trademarks are confusing when there is a reasonable likelihood of confusion within the meaning of section 6(2) of the Act:

The 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 . . . or performed by the same person, whether or not the goods or services . . . are of the same general class or appear in the same class of the Nice Classification.

[48] Thus, section 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 section 6(2) is whether purchasers of the goods, sold under the trademark GLUCOWISE, would believe that those goods were produced or authorized or licensed by the Opponent who sells its goods under the GLUCOSMART trademark.

Test for Confusion

[49] 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 sections 6(5)(a) to 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 goods, 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 Trademarks* (1996), 66 CPR(3d) 308 (FCTD). However, as noted by Mr. Justice Rothstein in *Masterpiece, supra*, although the degree of resemblance is the last factor cited in section 6(5), it is the statutory factor that is often likely to have the greatest effect in deciding the issue of confusion.

Section 6(5)(a) – the inherent distinctiveness of the marks at issue and the extent to which they have been known

[50] Both parties’ marks contain the prefix GLUCO that the evidence shows is a common prefix that denotes a relationship to glucose [Chang, Exh. 24]. The words SMART and WISE are defined in *The Canadian Oxford Dictionary* respectively as follows:

Smart – intelligent, keen, bright

Wise – having experience and knowledge and the ability to apply them judiciously

[51] The prefix GLUCO in association with the word SMART renders the Opponent's GLUCOSMART mark quite suggestive of the intended results of the Opponent's goods. The evidence shows that the Opponent's product is formulated as a diabetic support for healthy blood sugar control [Vanderhaeghe, Exhibit E]. The same is true for the prefix GLUCO in association with the word WISE for the Applicant's goods. The evidence shows that the recommended use for the Applicant's product is to help promote healthy glucose metabolism [Chang, Exh. 16]. As a result, I assess the inherent distinctiveness of the parties' marks as being the same and as being quite low.

[52] The strength of a trademark may be increased by means of it becoming known in Canada through promotion or use. As noted previously, I am not satisfied that the Opponent has shown use of its mark in Canada in association with its goods pursuant to section 4(1) of the Act prior to 2015 by itself or its predecessor-in-title. However, the Opponent's evidence does still show that Jamieson, or its pit LVHSI, has enjoyed sales of GLUCOSMART products totaling at least \$422,021 in 2015 [Vanderhaeghe, para. 18, Exh. F]. The Opponent's evidence also shows that Jamieson, or its pit LVHSI, have spent over \$250,000 marketing and promoting its GLUCOSMART product in Canada since 2010 and have continued to promote its GLUCOSMART product through newspaper and magazine advertisements [Vanderhaeghe, paras 21 -23; Exhibits G-X]. I am able to conclude from this evidence that the Opponent's mark has become known to some extent in Canada.

[53] The Applicant, on the other hand, has provided sales figures of its GLUCOWISE product ranging between \$15,000 and \$53,000 between 2013 and April 2016 [Chang, para. 25]. Advertising expenses per year in 2013 and 2014 were approximately \$14,000, and lesser amounts in 2015 and 2016 [Chang, para 26 – 38; Exhibits 9-13]. In addition to retail and wholesale print and web advertisements, the Applicant has also continuously promoted its GLUCOWISE product at numerous consumer and industry trade shows and exhibitions at various locations in Canada, on its own website, through its Facebook page, and through promotional information sheets distributed to retail partners to share with and give to their

customers. I find from the evidence submitted that the Applicant's mark is known to some extent in Canada, although to a lesser extent than the Opponent's mark.

[54] While both marks are inherently weak, in view that the Opponent's mark has acquired more distinctiveness than the Applicant's mark, I find that overall this factor favours the Opponent.

Section 6(5)(b) – the length of time the trademarks have been in use

[55] As noted above, I am not satisfied that the Opponent's evidence shows use of its mark prior to 2015. I therefore find that this factor favours the Applicant as it has shown use of its Mark since 2013.

Section 6(5)(c) – the nature of the goods, services or business

[56] It is the statement of the goods in the application and the statement of goods in the registration that must be taken into consideration when assessing the factors set forth at section 6(5)(c) and (d) of the Act [*Dr. Submarine Ltd v Amandista Investments Ltd* (1987), 19 CPR (3d) 3 (FCA) and *Miss Universe Inc v Bohna* (1994), 58 CPR (3d) 381 (FCA)].

[57] The applied for goods are comprised of nutritional and dietary supplements with specific ingredients (including Chromium and Vanadium) for promoting healthy glucose metabolism; for regulating blood glucose levels; and for use as an antioxidant.

[58] The goods registered in association with the Opponent's mark are "dietary and nutritional supplements for healthy blood sugar balance and for polycystic ovarian syndrome". Ms. Vanderhaeghe adds that the GLUCOSMART products are formulated to contain Chromium, which consumers look for "in a blood sugar balancing dietary and nutritional product" [Vanderhaeghe, para. 10].

[59] The Applicant maintains that the intended benefits of the parties' goods are different. In this regard, some of the evidence the Applicant relies on is as follows:

- the Applicant's product includes an ingredient which helps to "normalize blood sugar levels", namely Vanadium [Chang, Exh. 16-17];

- the Applicant’s advertising and labels emphasize that the primary purpose of the Applicant’s product is to promote healthy glucose metabolism [Chang, Exh. 9-18]; and
- the Applicant’s advertisements have included information sheets which display an advertisement promoting GLUCOWISE on one page and information regarding diabetes on the other page [Chang, Exh. 16].

[60] The evidence of the Opponent, on the other hand, is that in advertising, the GLUCOSMART product is often promoted as being part of “a smart woman’s guide to weight loss”, which also happens to be the title of the free book given when the supplement is purchased [Vanderhaeghe, Exh. E, I, J-U]. Other benefits of the Opponent’s products include, *inter alia*, blood sugar control, stopping male facial hair growth, and halting skin tags.

[61] Further, as pointed out by the Applicant, the Opponent’s evidence shows that its packaging and advertising is directed toward women. In this regard, the GLUCOSMART packaging is pink (a traditional feminine colour) and the packing displays the name and image of Ms. Vanderhaeghe [Vanderhaeghe, Exh. C; cross-ex Qq 181-185]. Further, the photograph of at least one in store shelf displaying the products offered for sale by the Opponent or its predecessor-in-title appear under the category “Women’s Health and Beauty” [Vanderhaeghe, Exh. C.]. Indeed, the Opponent’s goods themselves are registered in association with dietary and nutritional supplements for ...polycystic ovarian syndrome, a syndrome only suffered by women.

[62] I find from the evidence filed that the parties’ goods are indeed marketed differently and promote different benefits. However, even though this may be the case, I find that the goods are more alike than they are different in that they are both supplements that promote, *inter alia*, either healthy glucose metabolism or healthy blood sugar balance.

Section 6(5)(d) – the nature of the trade

[63] Dr. Chang attests that the Applicant’s product is sold in health food stores, independent pharmacies and supermarkets, through online retailers such as Healthy Planet as well as the Applicant’s own internet store, *www.OmegaAlphaStore.ca*. [Chang, paras 22-24]. With respect

to the Opponent's product, Ms. Vanderhaeghe states that since 2010 LVHSI and Jamieson have sold dietary and nutritional products through retailers in-store and online, including pharmacies, fine food retailers, and health food stores across Canada in association with the SMART marks registered to LVHSI including the registered trademark GLUCOSMART. There is also evidence that the Opponent's GLUCOSMART and the Applicant's GLUCOWISE products are sold in the same online retailers, including *VITAMART.CA* [Roberts, Exhibit 5].

[64] In view of the evidence furnished, I find that the parties channels of trade would likely overlap.

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

[65] When considering the degree of resemblance, the law is clear that the trademarks must be considered in their totality. The appropriate test is not a side-by-side comparison but a matter of first impression of a consumer with an imperfect recollection of an opponent's trademark [*Veuve Cliquot Ponsardin v Boutiques Cliquot Ltée* (2006), 2006 SCC 23 (CanLII), 49 CPR (4th) 401 at para. 20].

[66] While the Supreme Court observed that for the purpose of distinctiveness, the first word of a trademark may be the most important [see *Conde Nast Publications Inc v Union des éditions modernes* (1979), 46 CPR (2d) 183 (FCTD)], it opined 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. It has also been held that while it is generally accepted that the first component of a mark is the most important for the purposes of distinguishing between the marks, the importance of this factor diminishes if the first component is suggestive or descriptive [*Reno-Dépôt v Homer TLC Inc* (2009), 84 CPR (4th) 58 (TMOB) at para. 58].

[67] In view that both marks begin with the descriptive component GLUCO, I find that the unique or striking element of both marks in this case is that both marks are coined words which combine identical prefixes (GLUCO) with regular dictionary words (WISE or SMART). As a result, when determining the degree of resemblance between the marks I must consider both

elements of the marks together as a whole, which is in line with the jurisprudence that the trademarks must be considered in their totality.

[68] The Opponent submits that while the second element of the parties' marks may look and sound different, these differences are outweighed by the degree of similarity between the marks in terms of the order of the words (GLUCO + dictionary word), and most importantly by the similarity in the idea suggested by the marks as a whole.

[69] As set out above under the section 6(5)(a) factor, the Opponent has provided evidence of the definitions for the words "smart" and "wise" as follows:

Smart – intelligent, keen, bright

Wise – having experience and knowledge and the ability to apply them judiciously

[70] The Opponent has also provided evidence from the website *Thesaurus.com* that the words SMART and WISE are synonyms for one another. Based on its evidence the Opponent maintains that the ideas suggested by the marks are identical, namely intelligence with respect to the management of glucose.

[71] The Applicant, on the other hand, submits that the differences between the marks outweigh the similarities. In this regard, the Applicant submits that the marks are both coined terms that do not have any defined meaning, the suffixes SMART and WISE have different lengths, and that the words SMART and WISE have different definitions. The Applicant's submissions in this regard are as follows:

"In addition to intelligent, keen and clever the dictionary also correctly points out that the word "smart" may mean imprudent, quick to take advantage, well groomed, in good repair, showing bright colours, painfully severe as in a blow, and a very common current meaning of smart is found in Exhibit Y in the SMART dictionary definition 7a with respect to a "device" namely "capable of independent and seemingly intelligent action". The definition provided by the affiant in Exhibit Y has 8 separate definitions for SMART as an adjective and another 3 definitions for SMART as an intransitive verb and 2 definitions as a noun.

Turning to the definition of WISE provided by the Opponent in its evidence there are 4 definitions of WISE as an adjective and two as a noun "informal". There is no definition

of WISE in the context of an inanimate object. WISE is defined in Exhibit Y as including the meanings such as “having experience and knowledge and the ability to apply them judiciously” in terms of an action nor behavior, “proceedings from consistent with or demonstrating knowledge, judgment or discernment”. It also defines WISE as sagacious, prudent, sensible or discreet.

From these definitions, the statement...which states that the marks are nearly identical in meaning cannot be correct. If you compare only WISE and SMART, the definitions are clearly different.... The fact is that SMART has multiple disparate meanings whereas WISE has definitions which are closely similar to one another according to the Canadian Oxford Dictionary definitions provided in the Opponent’s evidence.”

At the oral hearing, the Applicant added that the definitions in *Thesaurus.com* show that there are numerous synonyms for both the words SMART and the word WISE, and that neither entry shows either word as one of the top synonyms for the other.

[72] The Applicant’s approach, however, appears to involve a side-by-side comparison of the type warned against by the courts [*Veuve Cliquot, supra; International Stars SA v Simon Chang Design Inc*, 2013, FC 1041 at para. 9]. In my view, although the marks differ in appearance and sound in their component parts, the general idea and first impression left by the GLUCO prefix combined with the suffix SMART or WISE in association with the parties’ goods may not be identical but is at least similar. In this regard I find that the parties’ marks, in association with their goods, suggest having either experience or intelligence with respect to the management of glucose.

[73] Based on the foregoing, I find that the parties’ marks share a fair degree of similarity in terms of appearance, sound and idea suggested.

Surrounding Circumstance: State of the Register and State of the Marketplace evidence

[74] The Applicant provided state of the register and state of the marketplace evidence to demonstrate that the terms GLUCO and SMART are generic terms that lack distinctiveness. In this regard, as shown in both the Roberts and Nadaud affidavits, there are a number of marks and many business names which contain either the component SMART or GLUCO in association with vitamins and supplements.

[75] In view that the Opponent's agent conceded in his oral argument that the state of the Canadian Trademarks Register and other commercial databases provide that in general it is not uncommon to adopt the components GLUCO or SMART as part of a trademark in association with vitamins or supplements, I do not consider it necessary to provide an in depth analysis of Ms. Roberts and Ms. Nadaud's evidence. Suffice is to say that I find the Applicant's evidence sufficient to support the finding that the Opponent's mark has low inherent distinctiveness.

Surrounding Circumstance: Family of Trademarks

[76] In its statement of opposition, the Opponent alleges that it has a family of SMART trademarks. Where there is a family of trademarks, there may be a greater likelihood that the public would consider a trademark that is similar to be another trademark in the family and consequently, assume that the product or service that is associated with that trademark is manufactured or performed by the same person. There is, however, no presumption of the existence of a family of marks in opposition proceedings. A party seeking to establish a family of marks must show that it is using more than one or two trademarks within the alleged family [*Techniquip Ltd v Canadian Olympic Assn* (1998), 145 FTR 59, (Fed TD., aff'd (1999), 250 NR 302, 250 NR 302, (Fed CA)].

[77] In this case, Ms. Vanderhaeghe sets out a list of the SMART marks registered in Canada by the Opponent or its predecessor-in-title as Exhibit A to her affidavit. This is followed by Exhibit B which is comprised of print outs from the Canadian Trademarks Database website for the SMART marks. On cross-examination, Ms. Vanderhaeghe identified the following marks as no longer being sold: BONESMART, CHOLESTEROL SMART, OSTEOSMART, MOODSMART, URISMART, BEAUTYSMART AND OMEGA-SMART.

[78] As noted previously, Ms. Vanderhaeghe attaches as Exhibit C to her affidavit photographs of in store shelves showing dietary and nutritional products offered for sale by the Opponent or LVHSI in association with the SMART marks [Vanderhaeghe, para.9 and Exhibit C]. Further, representative samples of invoices for Canadian sales of various SMART products of the Opponent or LVHSI including ADRENASMART, ESTROSMART, IRONSMART, MAGSMART, VEINSMART, MULTISMART, THYROSMART, BRAINSMART,

SLEEPSMART and SHAPESMART were submitted as Exhibit F to Ms. Vanderhaeghe's affidavit.

[79] I am satisfied that the Opponent has shown that it is using more than one or two trademarks within the alleged family. However, although the Opponent has evidenced that it has a family of SMART marks, I do not find that this factor increases the likelihood of confusion in this case because the Applicant's Mark does not include the component SMART. Therefore, I do not find that because of the Opponent's family of SMART marks there may be a greater likelihood that the public would consider the Applicant's Mark to be similar to be another trademark in the family and consequently, assume that the product that is associated with that trademark is manufactured or performed by the same person.

[80] I therefore do not find this to be a relevant surrounding circumstance.

Surrounding Circumstance – Use in the Marketplace

[81] As a further surrounding circumstance, the Applicant submits that the likelihood of confusion is lessened by the fact that the use of the parties' marks in combination with their respective house marks and get-up supports a finding of no likelihood of confusion. The evidence shows the Applicant's consistent use of its Mark with the house mark ALPHA OMEGA [Chang, Exhibit 17] and the Opponent's consistent use of its GLUCOSMART mark with Ms. Vanderhaeghe's name and image as well as with pink and white packaging. In fact, Ms. Vanderhaeghe states the following at paragraph 9 of her affidavit:

“The entire line of products offered for sale and sold in Canada in association with the SMART marks by the Opponent or its predecessor-in-title, LVHSI, employed and continue to employ distinctive coloured labelling as well as my photograph, prominently displayed (“the LVHSI Packaging”). As can be seen in Exhibit C, the SMART marks, including the registered mark GLUCOSMART, are prominently and clearly displayed as part of the LVHSI packaging.”

[82] In *United Artists v Pink Panther Beauty Corp*, 1998 CanLII 9052 (FCA), the Federal Court of Appeal states that “get-up” may form a surrounding circumstance. In that decision, the Court stated “the ‘get-up’, or the way that a product is packaged, and as a consequence the way the mark is presented to the public, is an important factor in determining whether confusion is

likely.” Further, in *Joseph E Seagram & Sons Ltd v Canada (Registrar of Trademarks)* (1990), 33 CPR (3d) 454 (FCTD), at para. 38, the Federal Court directs that trademarks are to be compared as they are used in business.

[83] I am aware that “get-up” has historically not been considered relevant to section 12(1)(d) [*Canadian Tire Corp v Automobility Distribution Inc* (2006), 51 CPR (4th) 452 at para. 28] and can be changed at any time [*Wolverine Outdoors Inc v Marker Volkl (International) GmbH*, 2012 TMOB 75 at paras 78-79; *Avon Products Inc v Farleyco Marketing Inc*, 2010 TMOB 186 at paras 53-54]. In this case, however, the Opponent has not shown the Opponent’s mark ever being used by itself. Further, the evidence shows that the Opponent’s entire line of SMART marks employ the distinctive pink and white coloured labelling as well as the photograph of Ms. Vanderhaeghe. I therefore find that this factor favours the Applicant to at least a slight degree [see *Caplan Industries Inc v Stanley Black & Decker, Inc*, 2019 TMOB 79].

Conclusion on the Likelihood of Confusion

[84] Having considered all of the surrounding circumstances, 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.

[85] On one hand, the Opponent’s mark is an inherently weak mark that should not be entitled to a broad ambit of protection. Further, there is evidence of third party adoption of SMART marks in the dietary and nutritional supplement field such that the resemblance between the marks attributable to the similarity between the word SMART and WISE takes on even less significance. I am also aware of jurisprudence where it has been held that an opponent is not entitled to broad protection in respect of an idea suggested by its mark [*Mister Mechanic Inc v Pater International Automotive Franchising Incorporated*, 1996 CanLII 11386]. Finally, the evidence that the Opponent’s entire line of products all use the same colored labelling as well as the photograph of Ms. Vanderhaeghe is a factor in my view that would reduce the likelihood of confusion between the marks.

[86] On the other hand, I find that the degree of distinctiveness attributed to the Opponent’s mark has been enhanced through the evidence of the extent known of the Opponent’s mark.

There is also direct overlap in the goods which are associated with the parties' trademarks as well as their channels of trade. Finally, as mentioned earlier, the degree of resemblance between the parties' marks is the statutory factor that is often likely to have the greatest effect in deciding the issue of confusion. In this case the marks are similar in appearance and sound to the extent that both marks are coined words which combine identical prefixes (GLUCO) with regular dictionary words (WISE or SMART). While the parties went to extensive lengths to argue either the similarities or the differences between the ideas suggested by the words WISE and SMART, what I have concluded is that the ideas suggested by these words are more similar than different. I therefore do not find the differences between the parties' marks when considered in their entireties to be sufficient to make confusion unlikely, especially in this case where the goods and channels of trade are so similar [*Reynolds Consumer Products Inc v PRS Mediterranean Ltd*, (2013) 2013 FCA 119 (CanLII)].

[87] In applying the test for confusion, I have considered it as a matter of first impression and imperfect recollection. Having regard to all of the circumstances set out above, I am not satisfied that the Applicant has discharged its burden to prove, on a balance of probabilities, that there is no likelihood of confusion between the Mark and the Opponent's GLUCOSMART mark. It is therefore reasonable to conclude that a consumer, upon seeing the Mark in association with the Applicant's goods, would be likely to infer that those goods were produced or authorized or licensed by the Opponent who sells its goods under the GLUCOSMART trademark.

[88] The section 12(1)(d) ground of opposition is therefore successful.

Section 16(1) Ground of Opposition – The Applicant is not the person entitled to the Mark

[89] The Opponent pleads that the Applicant is not the person entitled to registration of the Mark pursuant to section 16(1) of the Act because at the date on which the Applicant first used or made known the Mark, namely October 21, 2013, the Mark was or was likely to be confusing with the Opponent's registered marks, including GLUCOSMART, which had been previously used and/or made known in Canada.

[90] The burden on an opponent in respect of a section 16 ground is to establish its prior use or prior making known of the trademarks it relies upon in support of this ground. An opponent

must also demonstrate that it had not abandoned its trademarks as of the application's date of advertisement [section 16(5) of the Act]. Further, section 17(1) of the Act states that no application for the registration of a trademark shall be refused due to any previous use or making known of a confusing trademark by a person other than the applicant or his predecessor-in-title, except at the instance of that person or his successor-in-title. Put another way, section 17(1) dictates that an opponent can only rely upon prior use or making known of its own trademark, either by itself or through a predecessor-in-title or licensee.

[91] As noted above, although the Opponent has claimed use of its GLUCOSMART mark since 2010, I am not satisfied that the evidence is sufficient to show use or making known of the Opponent's mark GLUCOSMART, by the Opponent or its predecessor-in-title, prior to October 21, 2013, and non-abandonment by September 3, 2014. I also note that the Opponent has not shown previous use or making known of any of its other registered marks by itself or its predecessor-in-title prior to the material date for this ground.

[92] As the Opponent has not met its initial burden with respect to its section 16(1) ground of opposition, this ground is dismissed.

Section 2 Ground of Opposition – The Mark is Not Distinctive

[93] The Opponent has pleaded that the Mark does not distinguish nor is it adapted to distinguish the Applicant's goods from those of others, and more particularly from the goods of the Opponent used in association with the registered marks set out in Schedule A.

[94] In order to meet its initial burden with respect to the non-distinctiveness ground of opposition, the Opponent is required to show that one or more of its trademarks had become known sufficiently in Canada, as of the filing date of the statement of opposition, to negate the distinctiveness of the Applicant's Mark [see *Motel 6, Inc v No 6 Motel Ltd* (1981), 56 CPR (2d) 44 (FCTD); and *Bojangles' International LLC v Bojangles Café Ltd* (2006), 48 CPR (4th) 427 (FC)].

[95] I am satisfied from the evidence furnished that the Opponent has met its burden under this ground with its GLUCOSMART mark, which as mentioned previously, represents the Opponent's strongest case.

[96] This ground of opposition also turns on a determination of the issue of the likelihood of confusion between the Mark and the Opponent's GLUCOSMART mark. As noted above, the material date for assessing the likelihood of confusion in respect of the non-distinctiveness ground is the date of opposition. In my view, the differences in material dates between this ground and the section 12(1)(d) ground do not have any significant impact on the determination of the issue of confusion between the Opponent's GLUCOSMART mark and the Applicant's Mark. As I am not satisfied that the Applicant has discharged its burden to prove, on a balance of probabilities, that there is no likelihood of confusion between the Mark and the Opponent's GLUCOSMART mark, this ground of opposition is also successful.

DISPOSITION

[97] In view of the foregoing and pursuant to the authority delegated to me under section 63(3) of the Act, I refuse the application pursuant to section 38(12) of the Act.

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

SCHEDULE A

Trademark	Registration No.
IMMUNOSMART	TMA864934
BONESMART	TMA810241
BRAINSMART	TMA822511
SKINSMART	TMA805206
SHAPESMART	TMA803022
THYROSMART	TMA803520
CHOLESTEROL SMART	TMA822512
SLEEPSMART	TMA802234
OSTEOSMART	TMA822510
MOODSMART	TMA822572
URISMART	TMA824049
BEAUTYSMART	TMA836043
MENOSMART	TMA803519
MAGSMART	TMA803517
ADRENASMART	TMA802372
VEINSMART	TMA811403

IRONSMART	TMA803521
SEXSMART	TMA802437
ESTROSMART	TMA803537
SMART VITAMINS	TMA442262
SMART DIET	TMA717595
OMEGA-SMART	TMA677028

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

HEARING DATE 2020-01-29

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