



LE REGISTRAIRE DES MARQUES DE COMMERCE  
THE REGISTRAR OF TRADEMARKS

**Citation: 2020 TMOB 25**

**Date of Decision: 2020-02-28**

**IN THE MATTER OF AN OPPOSITION**

**Ontario Women's Hockey Association**

**Opponent**

**and**

**NWHL LLC Limited Liability Company**

**Applicant**

**1,721,318 for NWHL**

**Application**

[1] The Ontario Women's Hockey Association (the Opponent), the governing body of women's hockey for the Province of Ontario, opposes the application for the trademark NWHL (the Mark) filed by NWHL LLC Limited Liability Company (the Applicant). The application is based on the Applicant's proposed use in Canada in association with souvenirs, namely, hockey pucks, hockey sticks, hockey bags, game programs, keychains; clothing, namely, sweaters, t-shirts, jackets, sweatshirts, scarves, hats, caps, hockey jerseys (the Goods) and entertainment in the nature of hockey games (the Services).

[2] The opposition is based primarily on the Opponent's allegation that the Mark is confusing with the trademarks and trade names NWHL and CWHL used by the Opponent, its predecessor in title and/or its licensee, in association with the same goods and services.

[3] For the reasons that follow, I reject the opposition.

## THE RECORD

[4] The application was filed on March 27, 2015 and claims a priority filing date of February 2, 2015. The Application was advertised in the *Trademarks Journal* on January 27, 2016.

[5] On March 29, 2016, the Opponent filed a statement of opposition pursuant to section 38 of the *Trademarks Act*, RSC 1985, c T-13. All references in the decision 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). The Opponent alleges that (i) the Mark is not distinctive of the Goods and Services pursuant to section 2 of the Act; (ii) the Applicant is not the person entitled to registration of the Mark pursuant to sections 16(3)(a) and 16(3)(c) of the Act; and (iii) the application does not comply with section 30(i) of the Act because the Applicant could not have been satisfied that it was entitled to use the Mark in Canada. On May 24, 2016, the Applicant filed and served a counter statement.

[6] The Opponent filed as its evidence the affidavit of its President/Executive Director, Fran Rider, sworn September 26, 2016. The Applicant filed as its evidence the affidavit of its founder and Commissioner, Dani Rylan, sworn September 14, 2017. Only Ms. Rider was cross-examined on her affidavit. Both parties also filed written arguments and attended an oral hearing. In her affidavit, Ms. Rylan refers to an affidavit of Brenda Andress with cross-examination transcript filed in the opposition to this application by the Canada Association for the Advancement of Amateur Women's Hockey (the Canadian Association). As neither Ms. Andress' affidavit nor her cross-examination transcript has been made of record in the present proceeding, those documents have not been considered in this case.

## PRELIMINARY ISSUE: POST-HEARING SUBMISSIONS

[7] After the hearing, the Registrar received a two page letter from the Applicant attaching a recent article relating to the bankruptcy of the opponent's licensee, the Canadian Association. I have not had regard to the content of this letter. First, the evidence is not in affidavit form [see

*Trademarks Regulations*, SOR/2018-227, section 49] and the procedure for requesting leave to file evidence set out in the practice notice *Practice Notice in Trademarks Opposition Proceedings* has not been followed. Second, each of the grounds of opposition pleaded have a material date falling before March 29, 2016 meaning that recent events are of limited or no impact on the current opposition. I draw the Applicant's attention to the analogous case *ConAgra Inc v McCain Foods Ltd*, 2001 FCT 963, 14 CPR (4th) 288 at 312-320 (FCTD) where Justice Blais found that the abandonment of an opponent's application or goods in an application in support of a 16(3)(b) of opposition ground is not relevant if it occurs after the material date.

#### THE OPPONENT

[8] The Opponent is the governing body of women's hockey for Ontario, and has sanctioned two Canadian women's hockey leagues (Rider affidavit, para 7). The first was the Central Ontario Women's Hockey League (the National League), which changed its name to the National Women's Hockey League in "about 1999" (para 3). Ms. Rider states that this league operated "under the auspices and with the consent" of the Opponent, and was also known as "NWHL" (para 3). According to Ms. Rider, 2069566 Ontario Inc. "took ownership" of the NWHL and "National Women's Hockey League" trademarks—she does not specify when—and then assigned them to the Opponent on or about July 5, 2006 (para 3). Ms. Rider attaches a copy of the assignment (with related releases and resolutions) signed by 2069566 Ontario Inc. as Exhibit A to her affidavit and confirms that the assignment was also signed by the Opponent (Rider cross-examination, Q 22).

[9] The second league sanctioned by the Opponent is the Canadian Women's Hockey League (the Canadian League). Ms. Rider states that this league commenced its operations in 2007, "shortly after" the National League "suspended" its operations (para 6). She adds that the Canadian Association currently operates the Canadian League in Canada and the United States of America "under the auspices and with the consent" of the Opponent (para 6). She further states that the Opponent has been "actively negotiating" to license use of the trademarks NWHL and "National Women's Hockey League" to the Canadian League for its use in Canada and the United States (para 9).

## THE APPLICANT

[10] The Applicant is a new professional women's hockey league launched under the name NWHL LLC and trademark NWHL (para 3). Ms. Rylan explains that it is the first professional women's hockey league in the United States to pay its players a salary (para 6) and has attracted "top level" U.S. and international players (para 8).

[11] The Applicant officially began its inaugural season on October 11, 2015, with four teams from the United States (para 9), although it also played games against Canadian teams (para 26) and sold clothing and souvenirs into Canada online (para 30). Ms. Rylan provides a brief history of the Applicant's activities and publicity and, while acknowledging that much of its advertising and media coverage is in the United States, asserts that this publicity "does reach Canadian hockey fans who follow women's hockey" (para 52).

## THE EVIDENTIARY BURDEN

[12] The legal onus is on an applicant to show that its application complies with the provisions of the Act. However, there is an initial evidential burden on an opponent to support the allegations in the statement of opposition. The presence of an evidential burden on an opponent means that, in order for a ground of opposition to be considered at all, there must be sufficient admissible evidence from which it could reasonably be concluded that the facts alleged to support that ground of opposition exist [*John Labatt Limited v The Molson Companies Limited* (1990), 30 CPR (3d) 293 (FCTD) at 298].

[13] Once this initial burden has been met for a particular ground of opposition, an applicant must satisfy the Registrar, on a balance of probabilities, that the ground of opposition pleaded should not prevent the registration of the trademark at issue [*Christian Dior SA v Dion Neckwear Ltd*, 2002 FCA 29].

## GROUND OF OPPOSITION BASED ON DISTINCTIVENESS OF THE MARK UNDER SECTION 2

[14] The Opponent pleads that the Mark is not distinctive within the meaning of section 2 of the Act, because the Mark does not distinguish, and is not adapted to distinguish, the Applicant's Goods and Services from the goods and services provided by the Opponent, its predecessor in

title and/or its licensee in association with the NHWL and CWHL trademarks and trade names. The Opponent pleads that use of the Mark by the Applicant would lead the public to the mistaken belief that the Applicant's Goods and Services are "authorized, emanating or otherwise associated with" the Opponent or its predecessor in title or licensee.

[15] The relevant date for assessing the distinctiveness ground is March 29, 2016, the date of filing the statement of opposition [*Metro-Goldwyn-Mayer Inc v Stargate Connections Inc*, 2004 FC 1185].

[16] An opponent relying on its own trademark or trade name must establish that, as of the relevant date, its mark or name had become sufficiently known to negate the distinctiveness of an applicant's mark [*Motel 6 Inc v No 6 Motel Ltd* (1981), 56 CPR (2d) 44 (FCTD); *Bojangles' International LLC v Bojangles Café Ltd*, 2006 FC 657]. In this respect, an opponent has the initial burden to show that its trademark or trade name (i) was known in Canada to some extent at least, *i.e.* that it had a reputation in association with the relevant goods or services that was "substantial, significant or sufficient", or (ii) was well known in a specific area of Canada [*Bojangles, supra*]. The word "reputation" connotes more than mere knowledge: an opponent's mark or name must be known to consumers, as an indicator of source [*Scott Paper Ltd v Georgia-Pacific Consumer Products LP* (2010), 83 CPR (4th) 273 (FC); *1648074 Ontario Inc v Akbar Brothers (PVT) Ltd*, 2019 FC 1305; *Domaines Pinnacle Inc v Les Vergers de la Colline Inc* 2014 TMOB 110, *aff'd* 2016 FC 188].

[17] Once the opponent meets its burden, an applicant has a legal onus to show, on a balance of probabilities, that its mark was adapted to distinguish or actually distinguished its goods and services from those of the opponent [*Muffin Houses Incorporated v The Muffin House Bakery Ltd* (1985), 4 CPR (3d) 272 (TMOB)].

### **The Opponent Fails to Meet its Burden**

[18] The Opponent's evidence discussed below is insufficient to meet its burden of demonstrating that any of its NHWL and CWHL trademarks or trade names were sufficiently known in Canada in connection with the Opponent or its predecessor in title or licensee.

- Ms. Rider provides a single example of the Opponent's use of the NWHL mark on a flyer advertising a women's hockey competition held by the Opponent in Alliston, Ontario, on February 6, 2007 (Exhibit B). Among the logos displayed is one featuring the letters NWHL in a band below a row of five stars, all set against a hockey puck and enclosed in a square frame (the Opponent's Logo). "National Women's Hockey League" is displayed immediately below the Opponent's Logo and also more prominently along the side of the flyer. The flyer also refers to one of the featured players as "Goalie of the Year NWHL 2005/2006" and advertises the availability of tickets online at [www.nwhldolphins.com](http://www.nwhldolphins.com). In the absence of any information on the extent to which this flyer was distributed, and given that the game it promoted took place nearly a decade before the material date, this flyer does not establish that the Opponent's NWHL trademark or trade name had, at the material date, a reputation in Canada or even in the Alliston area.
- Ms. Rider attaches, as Exhibit E to her affidavit, an April 1, 2015 article from the *Globe and Mail* website at [www.theglobeandmail.com](http://www.theglobeandmail.com). The article is about the Applicant, but contains two references to the National League's trade name: (i) a mention that the Applicant "will carry the same name as the league that operated 1999 to 2007 with Canadian teams and one American club, the Minnesota Whitecaps" and (ii) a reference to a member of the Applicant's advisory board having played "in the former NWHL for Montreal". The two references to NWHL in this single article do not lead to the inference that a sufficient number of Canadians have been meaningfully exposed to the brand. Further, the article suggests that, already in April 2015, the league's reputation was not as "the NWHL" but as "the former NWHL". Accordingly, it is not clear whether, at the material date of March 29, 2016, the Opponent's NWHL trade name would have had a reputation as an indicator of source or merely as a historical reference.
- The evidence of the Opponent's July 7, 2014 email to the commissioner for the Canadian Association attaching a draft license agreement for the NWHL trademark (Exhibits C-D) does not establish that the NWHL trademark or tradename had acquired a reputation among consumers at the relevant date.

- While Ms. Rider states that the CWHL mark and name “has been used continuously since about 2007 to the present and is known in Canada as well as in the United States” (para 6), there is no evidence that it was known to a sufficient extent to negate the distinctiveness of the Mark. Although the acronym CWHL is used in the e-mail and draft licence agreement sent by the Opponent to the Canadian Association, this does not establish that the acronym has become known to consumers. Further, while the *Globe & Mail* article also refers to the Canadian League as the “CWHL”, this alone does not result in the inference that this trademark is known to a sufficient extent to meet the Opponent’s burden.

[19] As explained in *Bojangles*, an owner cannot simply assert that its trademark or trade name is known in Canada; there must be clear evidence of the extent to which it is known. In the present case, the Opponent’s evidence falls short of demonstrating that any of its trademarks or trade names were known to some extent at least in Canada on March 29, 2016 or well known in a specific area of Canada at that date. Consequently, the Opponent has not met its initial evidential burden with respect to the distinctiveness ground of opposition which is rejected.

#### GROUND OF OPPOSITION BASED ON ENTITLEMENT TO REGISTRATION UNDER SECTION 16(3)

[20] The Opponent also pleads that the Applicant is not the person entitled to registration of the Mark because, at the filing date of the Application, the Mark was confusing with (i) the trademark and trade name NWHL, previously used in Canada and, in the case of the trademark, made known in Canada, by the Opponent and/or its predecessor in title; and (ii) the trademark and trade name CWHL, previously used in Canada and, in the case of the trademark, made known in Canada, by the Opponent and/or the Canadian Association, as its licensee.

[21] The material date to assess the entitlement ground is the Applicant’s priority filing date, February 2, 2015 [section 34(1) of the Act].

#### **The Opponent Fails to Meet its Burden**

[22] To meet its initial burden under these grounds of opposition, the Opponent must demonstrate that it, or a predecessor in title, had previously used or made known its trademark in

Canada or had previously used its trade name in Canada [sections 16(3)(a) and 16(3)(c) of the Act]. In addition, the Opponent must demonstrate that the trademark or trade name on which it relies had not been abandoned at the date of advertisement of the Applicant's application, January 27, 2016 [16(5) of the Act]. Use must be in accordance with section 4 of the Act which states:

4 (1) A trademark is deemed to be used in association with goods if, at the time of the transfer of the property in or possession of the goods, in the normal course of trade, it is marked on the goods themselves or on the packages in which they are distributed or it is in any other manner so associated with the goods that notice of the association is then given to the person to whom the property or possession is transferred.

(2) A trademark is deemed to be used in association with services if it is used or displayed in the performance or advertising of those services.

(3) A trademark that is marked in Canada on goods or on the packages in which they are contained is, when the goods are exported from Canada, deemed to be used in Canada in association with those goods.

[23] If the Opponent meets its initial burden, the onus will then be on the Applicant to satisfy the Registrar, on a balance of probabilities, that there was no reasonable likelihood of confusion between the Mark and the Opponent's trademark(s) or trade name(s).

#### The Opponent Demonstrates Prior Use of NWHL

[24] With respect to the NWHL trademark and trade name, Ms. Rider's evidence of use of the trademark NWHL on the flyer advertising the competition held on February 6, 2007 in Alliston, Ontario is sufficient to meet the Opponent's evidential burden of showing that it had used this trademark prior to the material date. With respect to the trademark CWHL, in the absence of evidence showing use of the trademark, I do not accept that the Opponent has met its burden with respect to this trademark by virtue of Ms. Rider's statement that the trademark CWHL has been used "continuously since about 2007 to the present" (para 6) as this statement has not been substantiated by any documentary evidence showing use at the material date. Further, the Opponent's remaining evidence of the trademarks NWHL and CWHL appearing in the Globe



and Mail article and in the negotiations with the Canadian Association are not evidence of use by the Opponent in accordance with section 4 of the Act. Finally, there is no evidence that either the NWHL or CWHL trademarks were made known in Canada since to be considered “well known” under section 5, the trademark must be known in a substantial area of Canada [*Valle’s Steak House v Tessier* (1980), 49 CPR (2d) 218 (FCTD)].

#### The Opponent Fails to Show that it Had Not Abandoned the NWHL Trademark and Trade Name

[25] While I am satisfied that the Opponent has established use of NWHL prior to the relevant date, to meet its evidential burden the Opponent must also demonstrate that it had not abandoned the NWHL trademark and trade name as of January 27, 2016.

[26] Abandonment requires both an absence of use and an intention to abandon use [*Labatt Brewing Co v Formosa Spring Brewery Ltd* (1992), 42 CPR (3d) 481 (FCTD) at 490; *Marineland Inc v Marine Wonderland and Animal Park Ltd* (1974), 16 CPR (2d) 97 (FCTD)]. However, a mere intention to preserve the mark is insufficient to avoid a finding of abandonment [*Labatt, supra* 491].

[27] An intention to abandon can, in the absence of other evidence, be inferred from a lengthy absence of use [*Marineland, ibid.*; *Hortilux Schreder BV v Iwasaki Electric Co Ltd*, 2012 FCA 321, aff’g 2011 FC 967 (*Hortilux*)]. The adoption of a new trademark, although not conclusive in itself, is another factor that may show an intention to abandon the use of an older, unused mark [*Labatt, supra* 491]. More recently, in *Jingdong v Zhang*, 2019 FC 1293, the Federal Court noted that an intention to abandon may be determined based on an inference that people intend the natural and probable consequences of their actions.

[28] The Opponent’s last use of NWHL was in 2007. Ms. Rider explains that CWHL was adopted for use in association with the same service since she was “concerned that there were disgruntled parties talking about suing the predecessor in title of the NWHL and National Women’s Hockey League trademarks” and that she “did not want to attract liability by continuing to use the marks until these issues had fallen away” (Rider affidavit, para 8).

[29] While it is clear that a party can rebut the presumption of abandonment arising from a period of non-use by demonstrating the smallest use of the trademark [*Omega Engineering Inc v*

*Omega SA*, 2006 FC 1472 at para 42], no such evidence has been filed in this case. Ms. Rider's evidence with respect to non-abandonment of the NWHL trademark includes her statements that the Opponent "always" intended to resume use (para 8) and has discussed "when and how" to bring back public use of the name (Q 33). While Ms. Rider references "actively" negotiating with the Canadian League to license use of NWHL and National Women's Hockey League in Canada and the United States including the exchange of documents "for the entire duration from 2007 to 2017" (Q52), the only evidence of the extent of negotiations is a single statement in an email to the CWHL dated July 7, 2014 that states that the Opponent "supports the renaming of the Canadian Women's Hockey League (CWHL) to the National Women's Hockey League (NWHL) under the current operational structure along with a draft license agreement" (Exhibits C-D). The attached license agreement references the CWHL operating a women's hockey league in Canada and the United States. Given that Ms. Rider only attaches a single email dated in 2014 with a potential licensee, the lack of evidence on the intention of the licensee, the fact that the Applicant had applied-for registration of the NWHL trademark in the United States and yet negotiations were for use of NWHL by the Canadian League in Canada and the United States, I do not find Ms. Rider's statements and the 2014 email as sufficient to rebut the presumption of abandonment of the NWHL trademark as of January 27, 2016.

[30] This is not a case where the trademark owner is unable to sell branded goods in Canada because of market, supply or regulatory issues, which the trademark owner is taking active steps overcome, while continuing to advertise the mark in Canada and/or use it in other jurisdictions [see, for example, *Taste of BC Fine Foods Ltd v Au-Yeung* 2015 TMOB 161, aff'd 2017 FC 299; *Bristol-Myers Squibb Co v Mentholatum Co of Canada* (1991), 40 CPR (3d) 282 (TMOB)]. Rather, the Opponent's intention in stopping use appears to have been *to disassociate itself from the NWHL brand*, and the evidence of steps being taken towards bringing the brand back is vague particularly in view of the statements that Canadian League wished to use this mark in Canada and the United States and the evidence is that the Applicant applied-for and in fact obtained a registration for this trademark in the United States. I note that I may have found differently if more information and documentary evidence had been given regarding the state of the negotiations after the 2014 email was sent.

[31] Finally, I am aware that in some cases the fact that a party has demonstrated commitment to a brand is a signal that it has not abandoned it [see, for example, *Omega, supra* at para 43 where the Federal Court references maintaining a trademark on the Register]. I am reluctant to give the Opponent's opposition of this trademark significant weight with respect to determining whether the Opponent has abandoned the NWHL trademark and trade name since the facts in this case seem to touch on issues not directly related to the Applicant's entitlement to the NWHL trademark. For example, Ms. Rider states in her affidavit that "[a]llowing the Applicant to use the trademark NWHL in Canada will endanger the current national women's hockey league" (para 12). Ms. Rylan, in her affidavit, states that "[m]any former CWHL players" now play for the Applicant (para 73). Indeed, the *Globe & Mail* article attached to Ms. Rider's affidavit suggests that "[a] new league paying its players could cost the CWHL it's [sic] top performers" (Exhibit E). However, such considerations are outside the scope of an opposition proceeding.

[32] As the Opponent has not met its burden of demonstrating that its trademark and trade name NWHL had not been abandoned as of the advertisement date of the application, it fails to meet its evidential burden. As such, this ground of opposition is rejected.

#### GROUND OF OPPOSITION BASED ON COMPLIANCE WITH SECTION 30(I) OF THE ACT

[33] The Opponent pleads that the Application does not comply with section 30(i) of the Act, because the Applicant could not have been satisfied that it was entitled to use the Mark in Canada in association with the Goods and Services. Specifically, the Opponent pleads that, when the Application was filed, the Mark was confusing with the Opponent's trademarks and trade names NWHL and CWHL, of which the Applicant was aware, "particularly given that players from the CWHL are playing for the Applicant in the United States".

[34] The material date for considering the section 30 ground of opposition is the date of filing the application [*Georgia-Pacific Corp v Scott Paper Ltd* (1984), 3 CPR (3d) 469 (TMOB)].

[35] Section 30(i) requires an applicant to indicate as part of its application that it is satisfied that it is entitled to use the trademark in Canada in association with the applied-for goods and services. The statement provided by section 30(i) purports to be evidence of the applicant's good faith in submitting its application [*Cerverceria Modelo S.A. de C.V. v Marcon* (2008), 70 CPR

(4th) 355 (TMOB) at 366]. The Registrar explains in *FremantleMedia North America Inc v Wright Alternative Advertising Inc* (2009), 77 CPR (4th) 311 at 317:

Section 30(i) of the Act requires the applicant to indicate as part of its application that the applicant is satisfied that it is entitled to use the trade-mark in Canada in association with the listed wares and/or services. In *Canadian Trade-marks Act – Annotated Robic Leger*, rev. ed. (Scarborough, Ont.: Carswell) (looseleaf), H.G. Richard discusses s. 30(i) (formerly s. 29(i)) as follows at 30-47, 30-48:

The final consideration before proceeding to the actual search of the indexes and examination of the mark itself, is whether or not the applicant is satisfied "that he is entitled to use the mark in Canada in association with the wares or services described in the application". This can be looked at as a type of contract between the applicant and the public, establishing that all information and supporting evidence, including revisions or additions of same, have been submitted in good faith, and that the application as it stands, is approved by the applicant... (emphasis added)

[36] Where an applicant has formally complied with the provisions of section 30(i) of the Act by including the required statement in its application, the issue then becomes whether or not the applicant has substantively complied with that section - i.e. - was the statement true when the application was filed? The Registrar has previously found that an applicant has failed to substantively comply with section 30(i) where:

- (a) there is evidence of bad faith on the part of the applicant [*Sapodilla Co Ltd v Bristol Myers Co* (1974), 15 CPR (2d) 152 (TMOB) at 155] which has been found (i) where a licensee or distributor has attempted to register their principal's trademark or a confusingly similar variant [*Suzhou Parsun Power Machine Co. Limited v Western Import Manufacturing Distribution Group Limited* 2016 TMOB 26; *Flame Guard Water Heaters, Inc v Usines Giant Inc*, 2008 CanLII 88292; see also *McCabe v Yamamoto & Co (America) Inc* (1989), 23 CPR (3d) 498 at 503 (FCTD)]; (ii) the applicant shared a director, officer and/or shareholder with the owner or licensee of a confusing trademark [*Dixie Lee (Maritimes) Ltd v Dixie's Pizza-Fried Chicken-Fish Inc* 2019 TMOB 48]; or (iii) the applicant has attempted to benefit from the established reputation of

well-known marks [*Cerverceria Modelo, supra*; and *Julia Wine Inc v Marques Metro, SENC*, 2016 FC 738].

- (b) there is evidence of a prima facie case of non-compliance with a federal statute such as the *Copyright Act* RSC 1985, c C-42 or *Food and Drugs Act*, RSC 1985, c F-27 [*Interactiv Design Pty Ltd v Grafton-Fraser Inc* (1998), 87 CPR (3d) 537 (TMOB) at 542-543]; and
- (c) there is evidence that a contractual relationship such as licensor-licensee existed and that the registration of a trademark would constitute a breach of the relationship [*AFD China Intellectual Property Law Office v AFD China Intellectual Property Law (USA) Office, Inc* 2017 TMOB 30].

[37] Once the opponent's evidential burden has been met, the onus is on the applicant to show, on a balance of probabilities, that the statement it made under section 30(i) of the Act is justified.

### **The Opponent Meets its Burden**

[38] Ms. Rider states in her affidavit for the Opponent that "NWHL" is a recognized acronym for "National Women's Hockey League" (para 12) and that the Canadian League is known both as "the CWHL" and "the national women's hockey league in Canada" (para 6). Considering (i) the relationship between the parties in that a member of the Applicant's advisory board had "played in the former NWHL for Montreal" and Ms. Rylan acknowledges in her affidavit that she previously attempted to create a team to join the Canadian League (para 64); and (ii) that the Applicant has adopted a logo similar to the design used by the Opponent (Rider affidavit, Exhibit B showing use of NWHL below five stars, Rylan affidavit Exhibit H showing use of NWHL under four stars), I am satisfied that the Opponent has met its evidential burden for the section 30(i) ground of opposition.

### **The Applicant Meets its Legal Onus**

[39] The Opponent submits that the Applicant is not entitled to the acronym "NWHL" because there is already a "national women's hockey league" in Canada and, although its name is

“Canadian Women’s Hockey League”, the term “National” is synonymous with “Canadian” in Canada. Ms. Rider states in her affidavit that “[t]hose who are seriously involved with Canadian women’s hockey know that the source for national women’s hockey under the NWHL brand is the Opponent” (para 10).

[40] The Applicant’s position is that the Mark is not confusing with the trademarks and trade names claimed by the Opponent, particularly given (i) the Opponent’s apparent abandonment of NWHL and (ii) the differences between NWHL and CWHL. In this respect, Ms. Rylan’s affidavit contains the following:

- that, when she started the new league, “the NWHL had not been in use in Canada for over a decade”(para 61) and she “had never heard of it” (para 67);
- that the Applicant’s players are too young to remember the past National Women’s Hockey League or to associate the Mark with anyone other than the Applicant (para 71);
- that “National” does not identify Canada (para 76); and
- that an application to register the Opponent’s Logo (filed by a third party) was abandoned in 2004 (para 58, Exhibit O).

[41] In this case, the Applicant’s evidence is sufficient to meet its burden that it was satisfied of its entitlement to use the Mark in Canada. As there is no evidence of the Opponent having publicized its NWHL mark or name since 2007, the Applicant’s position that this mark and name had long been abandoned is not unreasonable. In this respect, I disagree with the Opponent that its negotiations with the Canadian Association made its intention to resume use of NWHL public knowledge in the hockey community; there is no evidence that this was public. Additionally, I find that the Applicant’s opinion that the Mark would not be confusing with CWHL is justified. In reaching this conclusion, I am mindful of the inherent weakness of descriptive acronym marks. Further, the reason the CWHL brand was adopted was a desire to distance the Opponent and the Canadian League from the National League (Rider affidavit, para 8); thus the notion that consumers will distinguish the source of CWHL branded hockey services from that of NWHL branded hockey services is not unprecedented.

[42] On balance, I am satisfied that the Applicant has met its legal burden in respect of the section 30(i) ground of opposition. Accordingly, this ground of opposition is rejected.

DISPOSITION

[43] In view of all the foregoing and pursuant to the authority delegated to me under section 63(3) of the Act, I reject the opposition pursuant to section 38(12) of the Act.

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Natalie de Paulsen  
Member  
Trademarks Opposition Board  
Canadian Intellectual Property Office

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

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**HEARING DATE** 2019-10-09

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