



LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADEMARKS

Citation: 2020 TMOB 34

Date of Decision: 2020-04-09

[UNREVISED ENGLISH

CERTIFIED TRANSLATION]

IN THE MATTER OF AN OPPOSITION

Millennium L'Hermitage Hotel Corp.

Opponent

and

Hermitage Europe Limited

Applicant

1,755,256 for HERMITAGE

Application

INTRODUCTION

[1] Millennium L'Hermitage Hotel Corp. (the Opponent) opposes registration of the trademark HERMITAGE, under application No. 1,755,256 in the name of Hermitage Europe Limited (the Applicant), based on the proposed use of the Mark in Canada in association with the following services, classified according to the Nice Classification and as revised by the Applicant:

Classe 35 : Gestion des affaires commerciales, administration commerciale; services de conseils commerciaux et d'informations commerciales dans l'exploitation et la direction d'entreprises commerciales et industrielles, notamment de centres commerciaux;

services de conseils commerciaux et d'informations commerciales, notamment services de conseils commerciaux liés à la conception, l'édification et l'aménagement de centres commerciaux; services d'animation commerciale, de promotion des ventes pour des tiers et de publicité, notamment conception de campagnes promotionnelles pour entreprises de tiers, distributions de circulaires, distribution de matériel publicitaire pour des tiers; systématisation de données dans un fichier central, gestion de fichiers informatiques; gérance administrative et commerciale de projets immobiliers, de centres commerciaux, de galeries marchandes; promotion publicitaire de projets immobiliers, de centres commerciaux, de galeries marchandes, notamment conception de campagnes promotionnelles pour entreprises de tiers, gestion administrative de projets de construction, de lieux d'expositions.

Classe 36 : Assurances; affaires financières, notamment évaluations financières à des fins d'assurance, consultation en investissement financier, analyses financières; affaires immobilières, notamment consultations en matière immobilière, estimations immobilières; opérations de promotion immobilière et d'implantation d'immeubles d'habitation, de bureaux et de centres commerciaux, notamment gestion immobilière, courtage de biens immobiliers; gestion d'immeubles et de centres commerciaux à savoir gérance d'immeubles et de centres commerciaux; location d'immeubles de centres commerciaux; expertise immobilière dans le domaine des centres commerciaux; financements immobiliers, notamment crédit-bail en immobilier, financement de prêts; établissement de baux; cautions (garanties); gestion financière de projets de construction.

Classe 37 : Services de construction, de réhabilitation et de réparation de bâtiments, de centres commerciaux, de galeries marchandes, d'édifices permanents, d'ouvrages d'art, de voies de communication, notamment routes, de ponts; informations en matière d'aménagement (construction) de projets immobiliers, d'immeubles d'habitation, de bureaux, de centres commerciaux, de galeries marchandes; supervision (direction) de travaux de construction.

Classe 43 : Garde d'animaux domestiques, notamment chiens, chats.

Classe 44 : Services de maisons de repos, de maisons de convalescence; maisons médicalisées, services de santé; assistance médicale, notamment aide médicale d'urgence, services de soins infirmiers; services d'un psychologue; services de garde malade; jardinage; services de composition florale; services d'entretien de jardins.

[TRANSLATION]

Class 35: Business management, business administration; commercial information and commercial consulting services for the operation and management of commercial and industrial businesses, namely shopping centres; commercial information and commercial consulting services, namely business consulting services related to design, building, and development of shopping centres; commercial activity, sales promotions for others, and advertising, namely development of promotional campaigns for the businesses of others, distribution of circulars, distribution of advertising materials for others; systematization of data in a central file, computer file management; administrative and commercial management of real estate projects, shopping centres, supercentres; promotional advertising of real estate projects, shopping centres, supercentres, namely development of promotional campaigns for the businesses of others, administrative management for construction projects, exhibition grounds.

Class 36: Insurance; financial affairs, namely financial evaluation for insurance purposes, consulting related to financial investment, financial analyses; real estate affairs, namely consulting related to real estate, real estate appraisals; real estate development and real estate establishment operations for residential buildings, office buildings, and shopping centres, namely real estate management, real estate brokerage; management of buildings and shopping centres, namely management of buildings and shopping centres; rental of buildings and shopping centres; real estate expertise in the field of shopping centres; real estate financing, namely leasing of real estate, financing of loans; lease drafting; surety bonds (securities); financial management of construction projects.

Class 37: Construction, rehabilitation, and repair services for buildings, shopping centres, supercentres, permanent buildings, art works, communication channels, namely roads, bridges; information related to development (construction) of real estate projects, residential buildings, offices, shopping centres, supercentres; supervision (management) of construction work.

Class 43: Petsitting services, namely dogs, cats.

Class 44: Rest home, convalescent home services; nursing homes, health services; medical assistance, namely emergency medical assistance, nursing services; psychology services; nursing care services; gardening; flower arranging services; garden maintenance.

[2] The Opponent opposes the application on various grounds, including that the Mark is confusing with the Opponent's trademark L'HERMITAGE HOTEL, registered under No. TMA757,029 associated with the following goods and services:

T-shirts, golf shirts, bath robes, sweat shirts, socks, towels, hats, cutlery, tableware and any other such items used for hotels and its services, namely, brochures, stationary, linen and umbrellas.

Provision of hotel; the provision of banquet and conference room services to hotel and outside guests; health spa and exercise facility services; bar, cocktail lounge and restaurant services; the provision of access to facsimile, Internet and computer services; the provision of catering and laundry services.

[3] As will be apparent from my analysis, I find the opposition ought to be rejected.

THE RECORD

[4] The application for the Mark was filed on November 17, 2015, and advertised in the *Trademarks Journal* for opposition purposes on May 5, 2017.

[5] The statement of opposition was filed on August 4, 2017, and then voluntarily amended by the Opponent, in response to a motion for an interlocutory decision on the sufficiency of the grounds of opposition pleaded, presented by the Applicant concomitantly with the filing of its counter statement. In an official letter dated October 20, 2017, the Registrar of Trademarks granted the Opponent permission to file said amended statement of opposition, while striking the ground of opposition pleaded in paragraph 4(b) thereof, and limiting the ground of opposition pleaded in paragraph 4(e) solely for the Opponent's goods and services pleaded in the amended statement of opposition.

[6] The Applicant then voluntarily and successively filed two revised applications, which were accepted by the Registrar on March 9 and September 13, 2018, respectively.

[7] Numerous amendments to the *Trademarks Act*, RSC 1985, c T-13 (the Act) came into force on June 17, 2019. The date for identifying which version of the Act applies to opposition proceedings is the date on which the application being opposed was advertised. As this application was advertised prior to June 17, 2019, pursuant to section 70 of the Act, the grounds of opposition shall be assessed based on the Act as it read on June 16, 2019, except with respect to the issue of confusion, which shall be assessed based on sections 6(2) to (4) of the Act as it currently reads.

[8] No evidence was filed by either party.

[9] Only the Opponent filed written representations. I note that those representations contain several allegations of fact concerning the alleged reputation of the Opponent's mark L'HERMITAGE HOTEL and its use in Canada, while there is no evidence of any kind in the record. I therefore will not consider these unsubstantiated allegations in my analysis.

[10] No hearing was held.

ANALYSIS

The burden incumbent on the parties

[11] It is initially up to the Opponent to establish that its opposition is well-founded. The Opponent must ensure that each of its grounds for opposition is properly pleaded and that it meets the initial burden of proof by establishing the facts on which each of these grounds is based. Once this initial burden of proof has been met, it is incumbent upon the Applicant to establish, on a balance of probabilities, that none of these grounds for opposition preclude the registration of the Mark [*John Labatt Ltd v Molson Companies Ltd* (1990), 30 CPR (3d) 293 (FCTD); and *Dion Neckwear Ltd v Christian Dior, SA et al* (2002), 20 CPR (4th) 155 (FCA)].

[12] Applying these principles to this case, all the grounds of opposition can be summarily rejected, with the exception of the ground of opposition based on the non-registrability of the Mark within the meaning of section 12(1)(d) of the Act.

Grounds of opposition summarily rejected

Ground of opposition based on the absence of a right to register the Mark within the meaning of section 16(3)(a) of the Act

[13] This ground can be summarily rejected as the Opponent failed to meet its initial burden of proof in this regard.

[14] Indeed, the Opponent had to prove that, at the date of filing of the Applicant's application, its trademark L'HERMITAGE HOTEL had already been used or made known in Canada and had not been abandoned at the date of advertisement of the Applicant's application

[section 16(5) of the Act]. The Opponent did not file any evidence of the use of its trademark L'HERMITAGE HOTEL.

Ground of opposition based on non-distinctiveness within the meaning of section 2 of the Act

[15] This ground can be summarily rejected as the Opponent failed to meet its initial burden of proof in this regard.

[16] Indeed, the Opponent had to prove that, at the date of filing of the statement of opposition, its trademark L'HERMITAGE HOTEL had become known sufficiently to negate the distinctiveness of the Mark [*Motel 6, Inc v. 6 Motel Ltd* (1981), 56 CPR (2d) 44 (FCTD); and *Bojangles' International, LLC v Bojangles Café Ltd*, 2006 FC 657, 48 CPR (4th) 427 (FC)]. However, as noted above, the Opponent did not file any evidence to show how well its trademark L'HERMITAGE HOTEL had become known in Canada.

Ground of opposition based on non-compliance of the application within the meaning of section 30(i) of the Act

[17] This ground can be summarily rejected, if only because the Opponent failed to meet its initial burden of proof in this regard.

[18] Indeed, bearing in mind the reservations expressed by the Registrar in the official letter dated October 20, 2017, regarding the validity of this ground of opposition as pleaded by the Opponent, I will simply state that the Opponent failed to establish the necessary proof in support of its claims based on a violation of section 22 of the Act.

Ground of opposition based on the non-registrability of the Mark within the meaning of section 12(1)(d) of the Act

[19] This ground alleges that the Mark is not registrable within the meaning of section 12(1)(d) of the Act because it creates confusion with the Opponent's registered trademark L'HERMITAGE HOTEL, mentioned above in paragraph 2 of my decision.

[20] The relevant date for deciding on a ground of opposition based on the non-registrability of a trademark in regard to the confusion created with a registered trademark is the date of my

decision [*Park Avenue Furniture Corporation v Wickes/Simmons Bedding Ltd* (1991), 37 CPR (3d) 413 (FCA)].

[21] I exercised my discretion and checked that the registration claimed by the Opponent in support of this ground is extant on the register of trademarks. Since this is the case, the Opponent has met the initial burden of proof incumbent on it. The Applicant thereupon must show, according to the balance of probabilities, that there is no likelihood of confusion between the Mark and this registered mark of the Opponent.

The test for confusion

[22] The test for confusion is that of first impression and imperfect recollection. According to section 6(2) of the Act, 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 or appear in the same class of the Nice Classification.

[23] In determining whether trademarks are confusing, the Registrar must have regard to all the surrounding circumstances, including those listed at section 6(5) of the Act, i.e. a) the inherent distinctiveness of the trademarks and the extent to which they have become known; b) the length of time the trademarks have been in use; c) the nature of the goods, services or business; d) the nature of the trade; e) the degree of resemblance between the trademarks in appearance or sound or in the ideas suggested by them. This list is not exhaustive and a different weight could be given to each of these factors, depending on the context [*Mattel, Inc v 3894207 Canada Inc.* (2006), 2006 SCC 22, 49 CPR (4th) 321; *Veuve Clicquot Ponsardin v Boutiques Clicquot Ltée et al* (2006), 2006 SCC 23, 49 CPR (4th) 401 and *Masterpiece Inc v Alavida Lifestyles Inc.* (2011), 2011 SCC 27, 92 CPR (4th) 361 for a more in-depth review of the general principles that govern the test for confusion].

The inherent distinctiveness of the trademarks and the extent to which they have become known

[24] Both parties' marks have a moderate, even weak, inherent distinctiveness due to the highly suggestive nature of the word HERMITAGE in the context of the parties' services associated in any way with real estate, as discussed later in my analysis of the degree of resemblance between the trademarks in appearance or sound, or in the ideas suggested by them.

[25] It is possible to increase the strength of a trademark by making it known through promotion or use in Canada. In the case at bar, however, no evidence was filed in this regard.

[26] I would add here that, contrary to the position expressed by the Opponent in its written representations, the fact that the registration of the trademark L'HERMITAGE HOTEL indicates that a statement of use was filed on January 13, 2010, is irrelevant in the case at bar. Without concrete proof of use, and without a certified copy of the registration, I cannot assume *de minimis* use of this mark in Canada [*Tokai of Canada v Kingsford Products Company, LLC*, 2018 FC 951, at para 37]. Moreover, *de minimis* use does not support a conclusion that the Opponent's trademark has become known to any significant extent, nor that it has necessarily been used continuously since the date stated [*Krauss-Maffei Wegmann GmbH & Co KG v Rheinmetall Defence Electronics GmbH*, 2017 TMOB 50, at para 20].

The period during which the trademarks have been in use

[27] In light of my previous comments, this factor does not favour any of the parties.

The type of goods, services or enterprises and the nature of the trade

[28] In considering the type of goods and services and the nature of the trade, I must compare the statement of services covered by this application with the statement of goods and services covered by the Opponent's registration [*Henkel Kommanditgesellschaft auf Aktien v Super Dragon Import Export Inc* (1986), 12 CPR (3d) 110 (FCA); and *Mr Submarine Ltd v Amandista Investments Ltd* (1987), 19 CPR (3d) 3 (FCA)]. These statements, however, must be read with a view to determining the probable type of trade intended by the parties rather than all possible trade that they might encompass. In this regard, evidence of the actual trades of the parties is

useful [*McDonald's Corp v. Coffee Hut Stores Ltd.* (1996), 68 C.P.R. (3d) 168(FCA); *Procter & Gamble Inc v Hunter Packaging Ltd* (1999), 2 CPR (4th) 266 (TMOB); and *American Optional Corp v Alcon Pharmaceuticals Ltd* (2000), 5 CPR (4th) 110 (TMOB)].

[29] In the case at bar, the Opponent submits in its written representations that the Applicant proposes to use the Mark in association with numerous services “that are directed to or applicable in the residential accommodation industry and real estate in general”, and that “the residential accommodation industry and real estate at least partially, if not entirely, overlaps with the Opponent’s [registered services] and the hotel and temporary accommodation industry.”

[30] More specifically, the Opponent submits at paragraphs 40 to 42 of its written representations that:

40. The residential accommodation industry, which is broad enough to contemplate at least long-term residential accommodation, short-term residential accommodation, long-term rental accommodation, short-term rental accommodation, service apartments, temporary accommodation, short-term hotel accommodation, and long-term living in hotel accommodation, substantially overlaps or has the potential of substantially overlapping with the Opponent’s [registered services]. That is, there is a strong likelihood that the Applicant and Opponent are directing at least a portion of their services to the same or similar group of ultimate consumers (e.g. tourists or locals looking for accommodation, be it short-term or long-term accommodation).

41. In addition, a plurality of ancillary services are typically offered with residential living, including many, if not all, general amenities offered in the hotel and temporary accommodation [sic] industry. For example, in addition to the “provision of hotel” services by the Opponent with which the Opponent’s [cited trademark] is associated, the Opponent also offers the services of “the provision of banquet and conference room services to hotel and outside guests; health spa and exercise facility services; bar, cocktail lounge and restaurant services; the provision of access to facsimile, Internet and computer services; the provision of catering and laundry services.” Many, if not all of these ancillary services, are or could be provided within residential buildings or shopping centres to which residential buildings are attached, associated with, or a part of (see Applicant’s [applied-for services]).

42. As the Applicant is proposing to provide services to consumers in the accommodation industry under the Applicant’s Mark, and the Opponent is already providing services to consumers in at least the hotel sector of the accommodation industry under the Opponent’s [cited trademark], and the nature of trade is such that consumers of the accommodation industry would contemplate different forms of accommodation to meet their accommodation needs for a given purpose (be it vacation, work, long-term living in the comforts of a hotel environment, or other), there is a strong likelihood that consumers

would come across both the Applicant's and the Opponent's services when performing their research on accommodation.

[31] I find that some of the Opponent's submissions are echoed in *Hilton Worldwide Holding LLP v Solterra (Hastings) Limited Partnership*, 2019 TMOB 131 (*Hilton*), currently in appeal before the Federal Court (T-182-20), in which the Registrar was of the opinion, at paragraph 23, that the description of services of the applicant, Solterra (Hastings) Limited Partnership, of "planning, designing, development, construction, sales, management, leasing and operation of residential and commercial real estate projects, and residential and commercial real estate properties" was "broad enough to include hotels [of the opponent, Hilton Worldwide Holding LLP] as these fall under 'commercial real estate projects' and 'commercial real estate properties'".

[32] In that same decision, the Registrar added the following at paragraphs 23 and 24:

In the absence of evidence from the Applicant, I decline to find that it is unlikely that the operation of a hotel is not contemplated by these services. First, there is nothing about the trademark THE WALDORF which suggests a limitation to the associated services to exclude hotels. Second, should the Applicant have wished to confirm that its planned trade did not include hotel services it could have stated its services in a manner consistent with this.

Even though I have found that the Opponent has met its burden with respect to the Opponent's trademark WALDORF-ASTORIA in association with hotel reservation, booking and payment services, I am of the view that the potential planning, designing, development, management, and operation of a hotel and other residential and commercial projects are related to the Opponent's services which furthers the overlap in the nature of the trade and business of the parties. The Opponent's uncontroverted evidence is that the Opponent and its licensees operate WALDORF-ASTORIA hotels around the world (para 14), that hotels may include various residential and commercial aspects including condominiums, restaurants, bars, spas and golf courses (para 31, Exhibit G and Penney affidavit, Exhibit E) and that the Opponent's licensee has previously entered negotiations for the development and operation of a WALDORF-ASTORIA hotel in Canada (para 28). Finally, Mr. Eriksen's evidence is that Hilton Worldwide, Inc. provides real estate property development services, property management services, architecture and construction services to hotels that will be managed by the Hilton group of companies (para 39, Exhibit J).

[33] In the case at bar, given the absence of evidence from the Applicant, I agree with the Opponent that some of the Applicant's services related to real estate in the broad sense (i.e. not

otherwise specified) can be considered broad enough to include hotels. As in *Hilton, supra*, I note that the Applicant's statement of services does not include any limitation to exclude hotels.

[34] However, given the absence of evidence from the Opponent, I am not prepared to conclude from this fact that the Opponent's hotel services and other "ancillary" goods and services covered by the registration of the mark L'HERMITAGE HOTEL, can reasonably be understood, in the minds of consumers, to include or overlap with the services covered by this application for the following reasons.

[35] I find the Opponent's position that "[m]any, if not all of [the Opponent's] ancillary services, are or could be provided within residential buildings or shopping centres to which residential buildings are attached, associated with, or a part of" to be exaggerated, to support such a conclusion in the particular circumstances of this case. Suffice it to mention that there is no evidence on record that the Opponent's "ancillary" services, described as such by the Opponent itself, would be offered outside the scope of the Opponent's hotels. Similarly, also given the absence of evidence from the Opponent, I find that the Opponent's position that the parties both work in the accommodation sector is exaggerated to support the conclusion that consumers would see an overlap between the Opponent's hotel services and other "ancillary" goods and services and the Applicant's type of specialized accommodation services described in its application under Class 44 or the Applicant's services related to "residential properties" described in Classes 36 and 37. Suffice it to note that, unlike *Hilton*, there is no evidence on record that the Opponent's hotels would include a condominium-style residential component.

[36] Moreover, although it cannot be excluded that some of the Applicant's services, such as those described as: "administrative and commercial management of real estate projects"; "promotional advertising of real estate projects"; "real estate affairs, namely consulting related to real estate, real estate appraisals"; etc., may be understood as broad enough to include hotels, I do not find that it necessarily leads to the conclusion that both parties are in the same field and that the nature of their respective trades is similar or overlapping. Unlike *Hilton*, there is no evidence on record that the Opponent would provide real estate development services, property management services, etc. The mere fact that a hotel is a building cannot, in my opinion, be sufficient to conclude that the Opponent's hotel services and other "ancillary" products and

services and the Applicant's real estate services are necessarily related and are intended for the same clientele. Moreover, the mere fact that a real estate developer plans or supervises the construction of a real estate project that may include a hotel cannot lead to the conclusion that said developer offers hotel services, or create a connection between such real estate and hotel services in the minds of consumers. In the absence of evidence to the contrary, I find these to be different industries.

The degree of resemblance between the marks in appearance or sound or in the idea suggested by them

[37] As noted above, it is well established in jurisprudence that the likelihood of confusion is a matter of first impression and imperfect recollection. In this regard, “[w]hile the marks must be assessed in their entirety (and not dissected for minute examination), it is still possible to focus on particular features of the mark that may have a determinative influence on the public’s perception of it” [*Pink Panther Beauty Corp v United Artists Corp* (1998), 80 CPR (3d) 247 (FCA), at para 34]. While it is true that the first word may, for purposes of distinctiveness, be the most important in some cases, the preferred approach is to first consider whether there is an aspect of the trademark that is particularly striking or unique [*Masterpiece, supra*, at para 64].

[38] Applying these principles to the case at bar, I agree with the Opponent that there is a relatively high degree of resemblance between the parties’ marks because the Mark in its entirety is found in the Opponent’s mark.

[39] The elements consisting of the “L” (resulting from the contraction of the French singular article *le* in front of a silent *h*—see in particular the *Dictionnaire Larousse*) and the word “HOTEL” are not found in the Mark and, as such, create certain differences between the marks in presence in terms of appearance, sound and the ideas suggested, specifying and describing the context of the element “HERMITAGE” as being related to a hotel. However, the dominant element of the Opponent’s mark remains the word “HERMITAGE”, the French version of which consists of an outdated form of the common dictionary work ERMITAGE, translated in English as HERMITAGE [see in particular the *Dictionnaire Larousse*, which defines “ermitage” as: [TRANSLATION] “A dwelling of one or more hermits. Literary: Solitary or remote location,

remote country house.”]. Thus, in the context of the parties’ services, and more particularly those in any way related to real estate, the word HERMITAGE is highly suggestive in nature.

Conclusion – likelihood of confusion

[40] As indicated in *Dion Neckwear, supra*, at page 163, the Registrar need not be convinced beyond doubt that confusion is unlikely. Indeed, “Should the ‘beyond doubt’ standard be applied, applicants would, in most cases, face an unsurmountable burden because certainty in matters of likelihood of confusion is a rare commodity.” [See also *John Labatt Ltd v Molson Companies Ltd, supra*].

[41] As also noted above, section 6(2) of the Act does not concern the confusion of the trademarks themselves, but confusion that would suggest the goods or services from one source are from another.

[42] Having considered all the circumstances of the case, I am of the view that a consumer with an imperfect recollection of the Opponent’s mark L’HERMITAGE HOTEL would not be likely to conclude, on a balance of probabilities, that the Applicant’s services offered in association with the Mark are from the same source or are otherwise related or associated with the Opponent’s goods and services.

[43] While there is a relatively high degree of similarity between the parties’ marks, the fact remains that they are not identical. However, it is a well-established principle that, in the presence of weak marks, small differences between them and/or related goods and services can be sufficient to conclude that there is no likelihood of confusion [*Man and His Home Ltd v Mansoor Electronic Ltd* (1999), 87 CPR (3d) 218 (FCTD)]. In the case at bar, given the absence of any evidence of use of the Opponent’s trademark that could have increased the distinctiveness of it and/or shown the reasonable existence of overlap in the nature of the parties’ trade and their respective clienteles, I find, on a balance of probabilities, that a consumer would not likely believe that the services offered by the Applicant, including its real estate services, are from the same source, or are otherwise related to the Opponent’s hotel services and other “ancillary” goods and services. As such, I find that the circumstances of this case differ materially from those in *Hilton*, in which the Registrar concluded that there was a likelihood of confusion, given

the considerable inherent distinctiveness of the marks in question, the period in which the opponent's mark had been used and the degree to which it became known, and the opponent's uncontroverted evidence establishing overlap between the nature of the parties' services and their respective trades.

[44] I therefore reject the ground of opposition based on section 12(1)(d) of the Act.

DECISION

[45] Pursuant to the authority delegated to me under section 63(3) of the Act, I reject the opposition in accordance with the provisions of section 38(12) of the Act.

Annie Robitaille
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

Certified translation

Gerald Woodard

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

NO HEARING

AGENT(S) OF RECORD

McMillan LLP

FOR THE OPPONENT

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FOR THE APPLICANT