



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2023 TMOB 007

Date of Decision: 2023-01-23

IN THE MATTER OF OPPOSITIONS

Opponent: BITVO INC

Applicant: BITSO S.A.P.I. DE C.V.

Applications: 1873942 for BITSO, and
1873943 for BITSO Design

INTRODUCTION

[1] BITVO INC (the Opponent) opposes registration of the trademarks BITSO (app. No. 1,873,942), and BITSO Design (app. No. 1,873,943), shown below (collectively, the Marks), that were filed by BITSO S.A.P.I. DE C.V. (the Applicant).



[2] Both applications (the Applications) were filed on December 19, 2017, based on proposed use in Canada in association with the statement of services as reproduced below, together with the associated Nice classes (CI):

- CI 36 (1) Insurance; financial operations of trade and currency exchange; monetary exchange operations; stocks and bonds brokerage services; banking; actuarial services; financial management; credit bureaus; financial analysis; remote banking namely home banking; banking (activities); stock exchange quotation services; financial valuations of bonds; currency exchange; money exchange services; equity capital investment; capital investment; financial investment consultancy; financial consultation in the field of cryptocurrency; stock brokerage and bonds; securities brokerage; brokerage in stock; stock exchange quotes; issuance of value bonds; financial risk assessment services; financing of loans; financing of purchases; project financing; venture capital financing; financial management; financial asset management; custodian services for stocks; providing stock market information; fiscal valuations; capital investment; investment of funds; provision of a cryptocurrency blockchain for digital currency exchange and trading services; financial sponsorship of cultural events; financial sponsorship of entertainment activities; financial sponsorship of academic events; financial sponsorship of activities in social networks; financial sponsorship through financing and investment in financial sector companies; financial sponsorship in financial technology services companies; cash and foreign exchange transactions; electronic funds transfer; financial securities brokerage services.
- CI 38 (2) Providing access to a global computer network using telematic connection for e-commerce transactions relating to the purchase and sale of digital currencies; providing electronic transmission of data messages and digital assets namely cryptocurrency and virtual currency exchange services by means of computer software platforms, the Internet, global communication networks, wireless networks and digital blockchains.

[3] Both Applications were advertised in the *Trademarks Journal* of April 7, 2021. On April 28, 2021, the Opponent filed substantially the same statement of opposition against the Applicant, with respect to both Applications, 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. As the Applications in this case were advertised after June 17, 2019, the Act as amended applies (see section 69.1 of the Act).

[4] With respect to the Applications, the Opponent raises grounds of opposition based on bad faith under section 38(2)(a.1), non-registrability under sections 12(1)(b) and 12(1)(d), non-entitlement under sections 16(1)(a) and (c), non-distinctiveness under section 2, and non-compliance with section 38(2)(e). There is an additional pleading which refers to section 30(2)(a) of the Act; however, the allegations as described do not appear to properly fall under non-compliance with this particular section of the Act, and will be elaborated on later in the decision.

[5] For the reasons that follow, I reject the opposition with respect to app. No. 1,873,943 (BITSO Design), but refuse the application with respect to app. No. 1,873,942 (BITSO).

THE RECORD

[6] As previously indicated, the Opponent filed its statements of opposition on April 28, 2021.

[7] The Applicant filed and served its counter statements on June 29, 2021, denying the grounds of opposition.

[8] In support of its oppositions, the Opponent filed substantially the same affidavits of Pamela Draper, sworn on October 28, 2021, together with Exhibits A through EE.

[9] In support of the Applications, the Applicant filed the same affidavit of Eduardo De Los Heros Broissin, sworn on February 25, 2022, together with Exhibits A through J.

[10] Neither affiant was cross-examined on their affidavits.

[11] Both parties filed written representations. While the Opponent's written representations are substantially the same in regards to both Applications, the Applicant's written representations are specific to each of the Applications opposed. No hearing was requested.

EVIDENCE SUMMARY

Opponent's Evidence – Draper Affidavit

[12] Ms. Draper is the President and CEO of the Opponent, as well as hold the title of Director.

[13] Ms. Draper states that the Opponent is a Canadian company that was incorporated on October 20, 2017, under the corporate name VIRTUAL CURRENCY CUBE CORP, but that such name was amended to BITVO INC by way of a Certificate of Amendment, dated January 8, 2018 (Exhibit A). She describes the Opponent as a "state of the art cryptocurrency exchange" which facilitates buying, selling, and trading

of cryptocurrencies through its website and mobile applications, available on both iOS and Android operating systems through Apple's App Store and Google Play respectively (Exhibit W).

[14] With respect to the launch of the Opponent's cryptocurrency exchange, Ms. Draper provides a number of online articles and press/news releases, which date between April 2018 to September 2021, and feature the Opponent's cryptocurrency exchange and associated services and Ms. Draper's appointment as BITVO's President and CEO (Exhibits B, C, D, and F). The publications are either from the Opponent's own website or on GlobeNewswire. On the printouts from GlobeNewswire, they describe themselves as "one of the world's largest newswire distribution networks, specializing in the delivery of corporate press releases, financial disclosures and multimedia content to media, investors, and consumers worldwide." Ms. Draper does not provide viewership statistics of these publications. She further attaches as Exhibit E to her affidavit, additional excerpts from the Opponent's website which she indicates highlight particular service offerings associated with the BITVO cryptocurrency exchange that have contributed to its growth and reputation within the first year and a half since its launch. One such example is the availability of QCAD (Canadian dollar-backed stablecoin) through BITVO. However, once again, Ms. Draper does not provide viewership statistics with respect to these publications.

[15] On February 28, 2018, the Opponent filed an application with the Canadian Intellectual Property Office (CIPO) for the trademark BITVO & Design (app. No. 1,885,415, the BITVO trademark). That application was based upon proposed use in Canada in association with the Opponent's cryptocurrency exchange platform, encompassing both goods and services (Exhibit G – a copy of the application as filed with CIPO). Ms. Draper states that since the filing of that application, the Opponent has been continuously and extensively using, advertising, and providing, in Canada, goods and services associated with its BITVO trademark, in the normal course of trade, to domestic and international users, primarily via its website, computer software, and mobile applications.

[16] With respect to such use and advertising, Ms. Draper indicates that the BITVO trademark is and has been prominently marked, displayed, and used in the sale and advertising of the Opponent's goods and services, by way of: packaging, invoices, signs, brochures, the Opponent's website, newspaper and magazine advertisements, billboards, business cards, and stationery. In support, she provides:

- what she describes are representative examples of such advertising (Exhibits H through M). These exhibits include photographs and advertisements of speaking engagements, an article related to a podcast interview, and online advertisements promoting various conferences and expos attended by the Opponent. These materials date from October 2018 to August 2020.
- excerpts from various publications dated January 2020 (such publications including Hackernoon, Business Wire, and the Financial Post), discussing BITVO's ranking on Hackernoon's list of top leading cryptocurrency trading platforms globally, as well as in Canada (Exhibit N). As Ms. Draper attests, the list ranks the Opponent as 9th globally, which was the highest ranking Canadian-based platform on the list, while the Applicant is ranked 36th.
- excerpts from the Opponent's website which Ms. Draper attests are representative of the BITVO goods and services that have been advertised and offered by the Opponent via its website to consumers in Canada (Exhibit O). The excerpts clearly display the Opponent's BITVO trademark and provide information on the Opponent's cryptocurrency exchange platform and associated goods and services.
- copies of the Opponent's social media pages on Facebook, Instagram, LinkedIn, and Twitter (Exhibits Q, R, S, and T, respectively). The printouts are dated October 1, 2021 and indicate that the Opponent has 611 followers on Facebook, 2,129 followers on Instagram, 509 followers on LinkedIn, and 2,978 followers on Twitter.
- printouts of screenshots taken on March 19, 2021 of various YouTube promotional videos for BITVO's cryptocurrency exchange platform (Exhibit U), dating from August 17, 2018 to October 2, 2020, together with a listing of

the associated online links and their content (para 37). Views of these seven videos are indicated to range between 56 and 1,244.

- further articles and publications discussing the Opponent's business model and cryptocurrency exchange platform and associated goods and services (Exhibits P, V, and EE), in various print and online platforms/publications, including CryptoNewZ (September 2021), CryptoCanada (September 2021), GlobeNewswire (August 2018), Newsfile (August 2018), CoinChoose (September 2018), CoinBureau (December 2018), Regina Leader Post (November 2019), Yahoo! Movies (February 2019), Notablelife (August 2020), Vog Calgary App Developers (undated), AlphPoint (undated), Medium (December 2020), the Financial Post (September 2021), and Business Wire (September 2021).

[17] The Opponent's BITVO trademark clearly appears throughout the aforementioned materials in association with the Opponent's cryptocurrency exchange platform and associated goods and services. I note however, that Ms. Draper does not provide any distribution figures, attendance figures, viewership or listenership statistics with respect to the any of the above-noted articles, webpages, conferences and expos, videos, podcasts, or any other noted publications/advertisements. Although, I am aware that judicial notice has been taken in the past of the fact that the Financial Post has wide circulation in Canada, and that major daily newspapers of major Canadian cities have a substantial circulation [see *Milliken & Co v Keystone Industries (1979) Ltd* (1986), 12 CPR (3d) 166 (TMOB) at 168-169 and *Northern Telecom Ltd v Nortel Communications Inc* (1988), 14 CIPR 104 (TMOB)].

[18] Nevertheless, Ms. Draper states that the Opponent has over 4,000 active users, over 12,000 total users, has conducted over 140,000 trading transactions, traded volume over one billion dollars, disbursed over \$580 million in Canadian and cryptocurrency withdrawals, and holds over \$26 million of customer's assets (para 42 of her affidavit and Exhibit Z - metrics collected from August 22, 2021 to October 24, 2021). Further to this, she provides annual sales revenue figures and advertising expenditures for the BITVO goods and services for the years 2018 to 2020, as well as

forecasted sales and advertising expenditures for the years 2021 and 2022 (para 43 of her affidavit and Exhibit AA). Sales revenues between 2018 and 2020 are indicated to be approximately \$2.5 million, with advertising expenditures during that time being approximately \$650,000. Ms. Draper attests that total sales for the years 2021 and 2022 are forecasted to amount to approximately \$10 million, with advertising figures forecasted to be nearly \$250,000.

[19] As evidence of advertising expenditures, Ms. Draper provides a series of invoices, and sample trade confirmation and marketing receipts (Exhibit BB). These invoices and receipts are in respect of a corporate membership with an industry consortium (March 2021), web content creation and search engine optimization (March 2021), digital billboard advertisements (December 2018 to February 2019 in cities across Canada, such as, Calgary, Edmonton, Toronto, and Vancouver), social media management (March 2021), and digital media and podcast advertising (September to November 2021).

[20] As evidence of sales in Canada by the Opponent, Ms. Draper provides as Exhibit CC to her affidavit, what she describes are randomly chosen receipts pertaining to sales of the BITVO goods and services to its users bearing the BITVO trademark. The receipts date from March 2020 to October 2021 for purchases of “coins”, and range from approximately \$9,000 to \$1.3 million.

[21] Ms. Draper also attaches as Exhibit DD to her affidavit, a copy of a document titled “*Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements*”, which provides guidance on how Canadian securities legislation applies to crypto-asset trading platforms in Canada.

[22] Lastly, Ms. Draper provides printouts of the Opponent’s registrations for its trademark BITVO in Australia and the United States, both filed in 2018 (Exhibit X), as well as printouts of nine registered trademarks on the Canadian Trademarks Database, owned by eight different entities, which are composed of and start with the word “BIT” for use in association with money exchange and cryptocurrency related services. It

appears to be Ms. Draper's opinion that these BIT-formative marks would not be confused with the Opponent's trademark or as emanating from the same source.

Applicant's Evidence – Affidavit of Eduardo De Los Heros Broissin

[23] Mr. De Los Heros Broissin has held the position of Senior Corporate Associate of the Applicant since 2017. He states that as part of his duties, he coordinates with regard to the Applicant's global corporate strategy, all intellectual property matters on multiple jurisdictions. He states that in his role, he has access to the business records of the Applicant and has reviewed them as needed for the preparation of his affidavit. Furthermore, he states that he is satisfied that these records contain reliable information as they are kept in the ordinary course of business, and that unless otherwise indicated, he has personal knowledge of the matters stated in his affidavit except where the information is stated to be based on his information and belief, to which he believes the information to be true.

[24] Mr. De Los Heros Broissin attests that the Applicant is a cryptocurrency exchange that was founded in Mexico on January 23, 2014.

[25] Mr. De Los Heros Broissin states that the Applicant has grown significantly since its debut in 2014 and attests that as one of many of the highlights of such growth, Thomson Reuters began using the Applicant in 2016 to source its quotes for various cryptocurrencies. He further states that during 2020 and 2021, the Applicant closed multiple investment rounds, and that during its last investment round, the Applicant raised more than US \$250 billion, giving the Applicant a total valuation of US \$2.2 billion. He attests that the Applicant went from 20,000 users in 2016, to over 9 million users worldwide as of the date of his affidavit.

[26] As for the Applicant's services, Mr. De Los Heros Broissin states that since the Applicant began its operations in 2014, the Applicant has been advertising and delivering its services primarily via its website and via computer software applications (available via the AppStore or the Google Play store). In support, he provides the following, which he indicates are representative of the services that have been

advertised and offered by the Applicant to consumers, including those in Canada, since 2014:

- excerpts from the Applicant's website (Exhibit A), including what he describes is a page that must be accessed by users to create their BITSO account, as well as a printout of the online cryptocurrency wallet once the user logs in (Exhibit B). The Applicant's Marks clearly appear on these pages, which describe and offer information about the Applicant's services.
- printouts which show the Bitso app available on Google Play (Exhibit C). The Applicant's Marks clearly appear in association with the Applicant's app on Google Play, with the following text "In our app, you can buy and sell bitcoin or any other cryptocurrencies available, store them all in one place or send them to friends and family."

[27] Mr. De Los Heros Broissin attests that as of November 2020, there were over 1.7 million monthly visits to the Applicant's website, including over 3,500 monthly visits originating from a Canadian IP address. He further attests that as of November 2020, the Applicant had over 1.2 million users worldwide, and that during the period of 2014 to November 2020, the Applicant recorded over 26 million transactions and generated revenues of over 35 million dollars USD. He states that while the Applicant has done the bulk of its trades in Mexico and Latin America, since 2014, the Applicant has had over 1,900 Canadian users.

[28] Mr. De Los Heros Broissin states that based on a review of the Applicant's records, the first trade by a Canadian user took place on April 9, 2014. He then provides a chart detailing the number of trades from Canadian users and the trading volume for Canadian trades for the years 2014 to 2020 (up until November). The number of trades range from in excess of 60 (2014) to in excess of 3700 trades (2020), with trade volume ranging from in excess of 2600.00 (2014) to in excess of 1,500,000.00 (2020).

[29] Mr. De Los Heros Broissin states that the Applicant advertises through digital ads, digital content, paid sponsorships in fintech related events, social media, and Google advertising. In addition, he states that the Applicant organizes events with

relevant actors of the fintech sector and runs ads in crypto and fintech related web pages.

[30] With respect to Google ads, Mr. De Los Heros Broissin states that the Applicant spent over \$450,000 USD in the year 2020, which generated over 2.3 million Google ad viewers according to the data provided to the Applicant by Google. He attests that for Canada alone, the Applicant spent over \$10,000 USD in Google ads expenses and generated over 52,000 of new website visits during that period, based on data provided to the Applicant by Google.

[31] As further evidence of advertising of the Applicant's services, Mr. De Los Heros Broissin provides:

- Exhibit D – sample online ads promoting the Bitso services as part of its Google Ads marketing initiative. The Marks clearly appear on the advertisements with information concerning cryptocurrency trading and services.
- Exhibit E – sample ads on social media used to promote the Bitso services in 2019 and 2020. Once again, the Marks clearly appear on the advertisements in association with information concerning cryptocurrency trading and services.
- Exhibit F-1 – what he describes is a chart identifying web articles that were published together with a copy of each article referenced in the chart. He states that based on information that he received from some of these web publishers, that *investing.com* had over 435,000 views; *latinpost.com* had over 300,000 views; and *finance.yahoo.com* had over 12.2 million views.
- Exhibit F-2 – articles published by Cointelegraph, which he describes is leading independent, London-based, digital media resource covering news on blockchain technology, crypto assets, and emerging fintech trends. He states that this publication is regularly cited by mainstream media and journals, and consulted by people in the trade including people in Canada.

- Exhibit F-3 – a printout from the CoinMarketCap website showing the world cryptocurrency exchanges ranged by volume. He states that CoinMarketCap is one of the world’s most referenced price-tracking websites for cryptoassets in the cryptocurrency space, tracking 310 spot exchanges based on traffic, liquidity, trading volumes and confidence in the legitimacy of trading volumes reported. He attests that it ranks the Applicant as #62 on this list, while the Opponent does not even appear on such ranking.
- Exhibit F-4 – a printout of Hackernoon’s 2021 top 50 best crypto exchanges. He attests that BITSO was in the top 50, but that the Opponent did not appear in such ranking.

[32] With respect to online social media presence, Mr. De Los Heros Broissin indicates that as of February 24, 2022, the Opponent had 615 followers on Facebook, while the Applicant had 183,479 (Exhibit G-1 – excerpts from the parties’ Facebook pages). He further attests that as of that date, the Opponent had 608 followers on LinkedIn, while the Applicant had 49,672 (Exhibit G-2 – excerpts from the parties’ LinkedIn pages).

[33] Lastly, Mr. De Los Heros Broissin provides copies of decisions and communications regarding applications or proceedings in other jurisdictions involving the same parties and the same trademarks as follows:

- decisions rendered by examiners at the Mexican Institute of Industrial Property in November 2020, together with certified translations of those decisions. It was held in these decisions that the Opponent’s mark was confusing with the Applicant’s Mark (with regards to services under Nice Classes 35, 36, and 42), and therefore, that the Opponent’s application for registration ought to be refused. (Exhibits H and I)
- a communication issued by the European Union Intellectual Property Office, confirming the withdrawal of an application by the Opponent for its trademark BITVO (withdrawal dated May 16, 2019), following the opposition to that trademark by the Applicant (Exhibit J).

ANALYSIS

Section 38(2)(a)/30(2)(a) Ground of Opposition

[34] The Opponent pleads that the Applications are not registrable because they do not comply with section 30(2)(a) of the Act. In this regard, the Opponent pleads that at the date of filing of the Applications, the Applicant did not use or has never intended to use the Marks, in Canada, as a trademark on a continuous basis in the normal course of trade, as defined in sections 2 and 4 of the Act, in association with the services described in the Applications.

[35] However, section 30(2)(a) of the Act pertains to the requirement for an application to contain “a statement in ordinary commercial terms of the goods or services in association with which the trademark is use or proposed to be used.” An allegation that an applicant did not use or does not intend to use a trademark pertains to a ground of opposition based on section 38(2)(e) of the Act. Consequently, I find that this ground of opposition has been improperly plead and as such, is summarily rejected with respect to both of the Applicant’s Applications.

Section 38(2)(a.1) Ground of Opposition

[36] The Opponent pleads that the Applications were filed in bad faith, pursuant to section 18(1)(e) of the Act, with the intent to create confusion and to disrupt the Opponent’s business in Canada under the Opponent’s trademark and trade name BITVO, used in association with the Opponent’s goods/services that overlap with the services as listed in the Applications.

[37] In its written representations, the Opponent further alleges that its evidence substantiates that the Applicant acted in bad faith in violation of the Canadian security commissions regulations. In this regard, the Opponent submits that the Applicant ought to know that operating in Canada as a cryptocurrency exchange requires specific permits which have not been allotted to the Applicant.

[38] While the date the Applications were filed is the relevant date for the analysis under section 38(2)(a.1) of the Act, later evidence may also be relevant where it helps

to clarify the reason for filing the applications [*Beijing Judian Restaurant Co Ltd v Meng*, 2022 FC 743 at para 38; *Pentastar Transport Ltd v FCA US LLC*, 2020 FC 367 at para 98].

[39] Under section 30(i) of the Old Act, jurisprudence developed such that “bad faith” could form the basis of a valid pleading under that provision [see *Sapodilla Co Ltd v Bristol-Myers Co*, 1974 CarswellNat 476 (TMOB)]. However, it was well established that an allegation that an applicant was aware of an opponent’s trademark did not *by itself* support a ground of opposition under section 30(i) [see *Woot Inc v WootRestaurants Inc Les Restaurants Woot Inc*, 2012 TMOB 197]. If an opponent *only* pleaded awareness of prior use or prior application of an allegedly confusing trademark, a ground of opposition alleging bad faith would be struck on the basis that such pleading did not result in an arguable case. See, for example, *Navsun Holdings Ltd v Sadhu Singh Hamdard Trust*, 2015 TMOB 214; *Chicago Climate Exchange, Inc v Bourse de Montréal Inc*, 2014 TMOB 78; and *Sobeys West Inc v Schwan's IP, LLC*, 2015 TMOB 197, where it was found that a section 30(i) ground of opposition based on an allegation of awareness of a confusingly-similar trademark cannot form the basis of a section 30(i) ground of opposition in the absence of other bad faith or exceptional circumstances being alleged.

[40] In the recent case of *Blossman Gas, Inc v Alliance Autopropane*, 2022 FC 1794, the Federal Court does cite awareness of prior conflicting rights as relevant to the assessment of bad faith at para 121:

In the trademarks context, issues such as awareness of prior rights and an intention to harm a prior user’s business are relevant to the assessment of bad faith, although mere willful blindness or a failure to inquire into a competitor’s rights is insufficient to constitute bad faith: *Advanced Purification Engineering Corporation (APEC Water Systems) v iSpring Water Systems, LLC*, 2022 FC 388 at paras 54–56; *Norsteel* at para 75; *Yiwu* at paras 53–54. [emphasis mine]

[41] However, *Blossman* appears to be consistent with previous case law regarding bad faith allegations; that is, “awareness of prior rights and an intention to harm a prior user’s business” inform the determination of bad faith. As such, while awareness of an opponent’s trademark may be relevant; absent further bad faith elements, mere awareness alone is insufficient.

[42] In the present case, the Opponent has not filed any evidence of bad faith on behalf of the Applicant. In fact, the Opponent does not even contend to have commenced use of its BITVO trademark in Canada until February 28, 2018, the filing date of its BITVO trademark application (per Draper affidavit, paragraph 22). Such date post-dates the filing date of the present Applications, and as will be discussed below, has resulted in the finding that the Opponent has not established prior rights under entitlement grounds. Indeed, in a recent case involving the same trademarks and the same parties, the Opponent (as applicant in that case) failed to secure registration of its trademark as the evidence in that case also did not establish its entitlement [*Bitso S.A.P.I. De C.V. v BITVO INC*, 2022 TMOB 186].

[43] Thus, the Opponent has not established prior rights, let alone awareness on behalf of the Applicant of any alleged conflicting prior rights.

[44] Furthermore, contrary to the Opponent's submission that "the Applicant has each and every intention to create confusion and to disrupt the potential business of the Opponent and other Canadian traders by not being compliant with the Canadian Security Commission Regulations", the Opponent has not led any evidence in support of this allegation. In fact, the only evidence with respect to Canadian securities legislation filed by the Opponent, is a copy of a guidance document regarding regulations for crypto-asset trading platforms (Exhibit DD) and statements concerning the Opponent's own endeavours regarding compliance.

[45] Accordingly, as the Opponent has failed to meet its initial evidential burden, this ground of opposition is rejected with respect to both of the Applicant's Applications.

Sections 16(1)(a) and (c) Grounds of Opposition

[46] The Opponent pleads that the Applicant is not the person entitled to registration of the trademark pursuant to sections 16(1)(a) and (c), since at the filing date of the Applications in Canada, the Marks were confusing with the Opponent's BITVO trademark and trade name, which had been previously used or made known in Canada by the Opponent in association with the Opponent's goods and services, and more

specifically, with “computer software and the provision of software and on-line currency exchange services for facilitating cryptocurrency, digital currency and virtual currency.”

[47] The Opponent has an initial burden of establishing that its trademark and/or its trade name alleged in support of these grounds of opposition was/were used or made known prior to the earlier of the filing date of the Applications, namely, December 19, 2017, or the date of first use of the Marks in Canada, and was not abandoned at the date of advertisement of the Applications for the Marks (in this case, April 7, 2021)[section 16(3) of the Act]. In this case, while the Applicant’s evidence suggests that the Applicant began using its Marks prior to the filing date of the Applications, the Opponent’s evidence is clear that it did not start using its trademark or trade name until February 2018 at the earliest. As a result, regardless of which material date is used, the Opponent has not met its burden under these grounds.

[48] Having regard to the aforementioned, the grounds of opposition based on sections 16(1)(a) and (c) are rejected with respect to both of the Applicant’s Applications.

Section 12(1)(b) Ground of Opposition

[49] The material date for assessing this ground of opposition is the filing date of the Applications, namely, December 19, 2017.

[50] The Opponent pleads that the Marks are not registrable because they are prohibited pursuant to section 12(1)(b) of the Act, as they include the descriptive prefix BIT, which has had widespread use and continues to be used in the marketplace in association with cryptocurrency (*i.e.* Bitcoin) blockchain for digital currency exchange and trading services.

[51] An opponent’s initial burden with respect to a section 12(1)(b) ground of opposition may be met simply by reference to the ordinary dictionary meaning of the words in the applicant’s mark [see, for example, *Flowers Canada/Fleurs Canada Inc v Maple Ridge Florist Ltd* (1998), 86 CPR (3d) 110 (TMOB)]. An opponent need not necessarily adduce evidence where its legal argument may be based entirely on the

ordinary meaning of words [*McIntosh v La-Co Industries Inc*, 1998 CanLII 18596 (TMOB)].

[52] In its written representations, the Opponent submits that the Marks are clearly descriptive, as a whole, and as a matter of immediate impression, since as follows:

[...] it consists of a combination of words clearly decodable by category of average consumers, being the prefix “BIT” and the suffix “SO,” which inherently described the character or quality of the BITSO Services which have been widespread used and continue to be used in the marketplace in association with cryptocurrency (i.e. Bitcoin) blockchain for digital currency exchange and trading services.

[53] However, as the Applicant correctly submits, the Applicant’s BITSO Design mark does not include the term “BIT”, but consists solely of a stylized letter B. Accordingly, this ground of opposition is summarily rejected with respect to the Applicant’s BITSO Design application No. 1,873,943, for the Opponent’s failure to meet its burden.

[54] With respect to the Applicant’s trademark BITSO, a word mark in standard characters, it is true that the word “bitcoin” is defined as “a type of digital currency in which encryption techniques are used to regulate the generation of units of currency and verify the transfer of funds, operating independently of a central bank” (Oxford Dictionary of English, 3rd Ed.). However, the Mark is not the word “bitcoin”, but rather a coined term, and there is no evidence to support the Opponent’s submission that the Mark as a whole is clearly descriptive. That is, even if the term “bit” is suggestive of a cryptocurrency, there is no evidence that “bit” when used together with the component “so” has any meaning with respect to the applied-for goods and services. At best, the Mark as a whole is merely *suggestive* of a cryptocurrency.

[55] Having regard to the aforementioned, the Opponent has failed to meet its initial burden under this ground. Accordingly, this ground of opposition is also rejected with respect to the Applicant’s BITSO trademark application No. 1,873,942.

Section 12(1)(d) Ground of Opposition

[56] The material date for the section 12(1)(d) ground of opposition is the date of my decision [see *Park Avenue Furniture Corporation v Wickes/Simmons Bedding Ltd and The Registrar of Trade Marks* (1991), 37 CPR (3d) 413 (FCA)].

[57] The Opponent pleads that the Marks are not registrable because they are confusing with the following third-party registered trademarks, registered for use in association with cryptocurrency-related goods and services:

- BitAccess, registration No. TMA954,252;
- BITFURY, registration No. TMA1,017,428;
- BITFINEX, registration No. TMA1,076,859;
- BITFINEX Logo, registration No. TMA1,076,863; and
- BITTRES, registration No. TMA1,091,248.

[58] An opponent's initial onus is met with respect to a section 12(1)(d) ground of opposition if one or more of the registrations relied upon are in good standing. Furthermore, the Registrar has the discretion to check the register in order to confirm the existence of any registrations relied upon by an opponent [see *Quaker Oats of Canada Ltd/La Compagnie Quaker Oats du Canada Ltée v Menu foods Ltd* (1986), 11 CPR (3d) 410 (TMOB)]. Having exercised the Registrar's discretion, I confirm that the registrations relied upon by the Opponent under this ground of opposition are in good standing as of the date of this decision. Lastly, under a section 12(1)(d) ground of opposition, an Opponent is not limited to relying on only its own registered trademarks, it may rely on the registered trademarks of third parties [*USV Pharmaceuticals of Canada Ltd v Sherman and Ulster Ltd* (1974), 15 CPR (2d) 79 (TMOB)].

[59] Since the Opponent has satisfied its initial evidential burden for this ground of opposition, the issue becomes whether the Applicant has met its legal burden to establish, on a balance of probabilities, that there is no reasonable likelihood of confusion between the Marks and any of the Opponent's relied upon trademarks.

[60] The assessment of confusion will entirely focus on the Applicant's trademark BITSO, app. No. 1,873,942 (the BITSO Mark). In this regard, I find the complete lack of resemblance between the Applicant's BITSO Design mark (app. No. 1,873,943) and the relied upon trademarks of the Opponent are enough to dispose of this ground in favour of the Applicant with respect to its BITSO Design mark.

The test for confusion

[61] The test for confusion is assessed as a matter of first impression in the mind of a casual consumer somewhat in a hurry who sees the applicant's mark, at a time when he or she has no more than an imperfect recollection of the another parties' trademark, and does not pause to give the matter any detailed consideration or scrutiny, nor to examine closely the similarities and differences between the marks [*Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée*, 2006 SCC 23 at para 20].

[62] In applying the test for confusion, the Registrar must have regard to all the surrounding circumstances, including those listed at section 6(5) of the Act, namely: 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; and e) the degree of resemblance between the trademarks including in appearance or sound or in the ideas suggested by them. This list is not exhaustive; all relevant factors are to be considered, and are not necessarily attributed equal weight [see *Mattel, Inc v 3894207 Canada Inc* 2006 SCC 22; *Veuve Clicquot, supra*; and *Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27].

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

[63] The BITSO Mark and the relied upon trademarks share a similar degree of inherent distinctiveness. In this regard, all trademarks are comprised in part of the word BIT, which may be viewed as an abbreviation of the term “bitcoin”, when used in association with cryptocurrency-related goods and services [see *Bitso S.A.P.I. De C.V.*

v BITVO INC, 2022 TMOB 186 for a similar finding]. As such, all of the trademarks are somewhat suggestive in relation to their respective goods and services.

[64] The strength of a trademark may be increased by means of it becoming known through promotion or use.

[65] The Opponent did not file any evidence of use or of making known of the relied upon trademarks in Canada. Furthermore, the mere existence of these registrations cannot give rise to an inference of significant and continuous use [see *Entre Computer, supra*].

[66] The Applicant, on the other hand, has filed evidence, which I accept, shows use of its Marks dating back to 2014. In this regard, Mr. De Los Heros Broissin attests that based on a review of the Applicant's records, the first trade by a Canadian user took place on April 9, 2014. He further provides annual trade figures (number of trades and trading volume) for Canadian users for the years 2014 to 2020 (up until November). The number of trades range from in excess of 60 (2014) to in excess of 3700 trades (2020), with trade volume ranging from in excess of 2600.00 (2014) to in excess of 1,500,000.00 (2020). Additionally, in his affidavit, Mr. De Los Heros Broissin provides excerpts from the Applicant's website and from Google Play (Exhibits B and C), which he states are representative of the manner in which the Applicant has advertised and offered its services since 2014, including in Canada. He states that these pages are accessed to create user accounts for the Applicant's services. The Marks clearly appear on these excerpts in association with the Applicant's services.

[67] The Opponent submits that the Applicant's evidence does not support such aforementioned use as it alleges that all of the evidence raised by the Applicant is merely hearsay and of no value. More specifically, the Opponent submits, that:

the Applicant has failed to submit any tangible evidence showing: (i) advertisement in Canada and related invoices; (ii) statistics related to Canadian users; (iii) the alleged number of Canada traders; (iv) financials related to Canadian marketing strategies such as Google Ads expenses for example or any Google analytics and statistics; (v) transactions completed by a Canadian trader and related statements of accounts, etc.

[68] However, I agree with the Applicant that Mr. De Los Heros Broissin attested to matters that included those contained in the business records of the Applicant, kept in the normal course of the Applicant's business [see *Philip Morris Inc c Imperial Tobacco Ltd*, [1987] FCJ No. 26, 13 CPR (3d) 289; and *Cascades Canada Inc v Wausau Paper Towel & Tissue, LLC* (2010), 89 CPR (4th) 79 (TMOB)]. Furthermore, as such, I accept Mr. De Los Heros Broissin's evidence is admissible, and in the absence of cross-examination or evidence to the contrary, I am prepared to give the evidence some weight.

[69] Accordingly, this factor favours the Applicant.

Section 6(5)(b) – the length of time of use

[70] As previously indicated, the Opponent did not file any evidence of use of the relied upon trademarks in Canada, while the Applicant has filed evidence which I accept shows use of its Marks dating back to 2014.

[71] Therefore, this factor favours the Applicant.

Sections 6(5)(c) and (d) – the nature of the goods and/or services and the nature of the trade

[72] All of the applied-for goods and services overlap with the goods and services of each of the registered trademarks relied upon by the Opponent. That is, all trademarks are associated with cryptocurrency related goods and services.

[73] Further, in the absence of evidence to the contrary, the channels of trade of all parties' goods and services would be reasonably presumed to be the same or closely related.

[74] Accordingly, this factor favours the Opponent.

Section 6(5)(e) – the degree of resemblance

[75] In considering the degree of resemblance, the Supreme Court of Canada in *Masterpiece, supra*, sets out that resemblance is defined as the quality of being either like or similar (para 62) and that the approach to assessing resemblance should involve

a consideration of whether there is an aspect of a trademark that is particularly striking or unique (para 64). Further, while it is generally accepted that the first component of a mark is often 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 [*Conde Nast Publications Inc v Union des Editions Modernes* (1979), 46 CPR (2d) 183 (FCTD); *Sky Solar Holdings Co., Ltd. v Skypower Global*, 2104 TMOB 262 (CanLII) at paras 48-50; *Health4All Products Limited v The Nutraceutical Medicine Company Inc*, 2012 TMOB 194 at paras 61-62; *International Business Machines Corporation v Loris Technologies Inc*, 2013 TMBO 136 (CanLII) at para 70; *Reno-Dépôt v Homer TLC Inc* (2009), 2010 TMBO 11 (CanLII) at para 58]. The law is also clear that when assessing confusion it is not proper to dissect trademarks into their component parts, rather, marks must be considered in their entirety [*United States Polo Assn v Polo Ralph Lauren Corp* 2000 CanLII 16099, 9 CPR (4th) 51 (FCA) at para 18].

[76] When viewing the BITSO Mark and the relied upon third party trademarks in their entirety, I agree with the Applicant, that “while these marks all share the prefix BIT, they are in their totality very different.” Indeed, as previously indicated, the “bit” portion may be viewed as an abbreviation of the term “bitcoin”, a type of cryptocurrency [per *Bitso SAPI De CV, supra*]; and as such, diminishes its importance in distinguishing such trademarks when viewed in their entirety. Furthermore, in comparison to the Opponent’s trademark BITVO, the cited third party marks as a whole are visually and phonetically much further removed from the Applicant’s BITSO Mark. In addition, the ideas suggested by the third party marks are also quite distinct from that of the Applicant’s Mark. For example, the third party trademark BitAccess may convey the idea of being able to acquire or obtain bitcoin, while the Applicant’s Mark, does not appear to have any clear idea other than a suggestion that it relates to cryptocurrency.

[77] Having regard to the foregoing, this factor favours the Applicant.

Conclusion

[78] In most instances, the degree of resemblance between the marks in appearance or sound or in the ideas suggested is the dominant factor and other factors play a

subservient role in the overall surrounding circumstances when assessing whether or not there is a likelihood of confusion [see *Masterpiece, supra* and *Beverly Bedding & Upholstery Co v Regal Bedding & Upholstery Ltd* (1980), 47 CPR (2d) 145, conf 60 CPR (2d) 70 (FCTD)]. In the present case, notwithstanding the overlap in the nature of the goods and services associated with the BITSO Mark and the trademarks relied upon by the Opponent, as well as the overlap in channels of trade, I find the degree of resemblance between the BITSO Mark and each of the trademarks relied upon by the Opponent to be sufficient to tip the balance of probabilities in the Applicant's favour.

[79] Thus, the ground of opposition based on section 12(1)(d) of the Act is also rejected with respect to the Applicant's BITSO Mark, app. No. 1,873,942.

Section 2 Ground of Opposition

[80] The Opponent pleads that at the date of filing of the statement of opposition, the Marks "(are) not, (were) not, and cannot be distinctive of the Applicant Services as described in the Applicant Trademark application(s)", since the Marks are not adapted to, do not actually distinguish, nor are they capable of distinguishing the services in association with which it is used or proposed to be used by the Applicant from those of others, and particularly those of the Opponent's trademark and trade name BITVO, and the confusing trademarks (a reference to the Opponent's relied upon third party trademarks in the ground of opposition based on section 12(1)(d) of the Act).

[81] In order to meet its initial burden under this ground, the Opponent must establish that as of the filing date of the statement of opposition, namely, April 28, 2021, one or more of the Opponent's trademarks, trade name, or relied upon trademarks had become known to such an extent that it could negate the distinctiveness of the Marks [*Bojangles' International, LLC v Bojangles Café Ltd* (2006), 2006 FC 657, 48 CPR (4th) 427].

[82] With respect to the trademarks relied upon by the Opponent, other than the Opponent's own trademark, I will state once again, that the mere existence of these third party registrations cannot give rise to an inference of significant and continuous use [see *Entre Computer, supra*]. Furthermore, any reference to use in the relied upon

registrations is not sufficient to satisfy the Opponent's evidential burden under this ground [see *Rooxs, supra*].

[83] However, with the later material date under this ground as compared to the non-entitlement ground, there is some evidence of use and making known that the Opponent can now rely upon under this ground of opposition with respect to its own trademark and trade name.

[84] I acknowledge that the Opponent's evidence of use and making known of its trademark and trade name does suffer certain deficiencies. In this regard, Ms. Draper does not provide any distribution figures, attendance figures, viewership or listenership statistics *in Canada*, with respect to any of the evidenced articles, webpages, conferences and expos, videos, podcasts, or any other noted publication/advertisement. However, as I have indicated, I am aware that judicial notice has been taken in the past of the fact that the *Financial Post* has wide circulation in Canada, and that major daily newspapers of major Canadian cities have a substantial circulation. There are articles in such publications in evidence (the *Regina Leader Post* online, and the *Financial Post*).

[85] Additionally, the Opponent's affiant does not provide nor indicate that the user or sales and advertising statistics are specific to consumers in Canada or the Canadian marketplace. Instead, Ms. Draper provides total figures, which may include sales and advertising to consumers outside of Canada (paras 42 and 43 of her affidavit, and Exhibits Z and AA). Indeed, Ms. Draper even states that the Opponent has used its BITVO trademark in association with the BITVO goods and services not only in dealing with domestic users, but with international users as well (Draper affidavit, para 22).

[86] Nevertheless, based on a review of the Opponent's evidence *as a whole*, I am satisfied that the Opponent's BITVO trademark and trade name have become known sufficiently in Canada to satisfy the threshold per *Bojangles, supra*. In this regard, the Opponent appears to have invested enormously between 2018 and 2021 to establish a reputation for its goods and services provided in association with its BITVO trademark and trade name. For example, while not an exhaustive list, there is ample evidence of the Opponent's participation in a variety of cryptocurrency conferences and expos in

Canada, articles in industry specific publications (including Canadian sources), and advertising expenditures including for digital billboards in major Canadian cities. Moreover, I accept that a material portion of the user statistics, sales revenues, and advertising expenditures attested to by Ms. Draper at paras 42 and 43 of her affidavit, pertain to the Canadian marketplace. Indeed, the Opponent's evidence supports that Canadian consumers and the Canadian marketplace are important focuses of the Opponent's business (e.g. – ties to Canadian banks, and endeavours to comply with Canadian securities legislation).

[87] The Opponent having met its evidential burden, the Applicant must now meet its legal onus to demonstrate that its Marks are distinctive in Canada. In considering whether a trademark is distinctive, one may consider whether it is likely to cause confusion with another party's trademark [*Bensusan Restaurant Corp v Blue Note Restaurant Inc* (2000), 10 CPR (4th) 550 (TMOB) at para 30].

[88] With respect to the Applicant's trademark BITSO & Design (app. No. 1,873,943), my reasoning and conclusion regarding confusion with the Opponent's BITVO trademark and trade name are substantially the same as those in the section 12(1)(d) ground concerning confusion between the Applicant's BITSO & Design trademark and the relied upon third party trademark registrations. That is, there is a complete lack of resemblance between the Applicant's BITSO & Design trademark and the Opponent's BITVO trademark and trade name. Consequently, I reject this ground of opposition with respect to app. No. 1,873,943.

[89] I will now consider the Applicant's other trademark, app. No. 1,873,943 (the BITSO Mark).

Section 6(5)(a) – the inherent distinctiveness of the trademarks/trade name and the extent to which they have become known

[90] I find the Applicant's BITSO Mark and the Opponent's BITVO trademark and trade name share a similar degree of inherent distinctiveness. Both parties' marks (and the Opponent's trade name) are comprised of coined words, which include the suggestive component "BIT".

[91] With respect to acquired distinctiveness, the evidence shows that the Applicant has used its BITSO Mark in Canada since 2014 in association with cryptocurrency-related services, while the Opponent began using its BITVO trademark and trade name in Canada in 2018. However, while the Applicant's evidence shows a strong *global* presence, its evidence concerning use of its BITSO Mark *in Canada* in the years 2014 through 2018 is quite modest, particularly in the earlier years. In this regard, the number of trades from Canadian users ranged from around 60 to 340 from 2014 to 2016, with a peak in 2018 of around 3700 trades. Furthermore, the Applicant has not provided any detailed Canadian *user* figures except to state that "Bitso has had over 1,900 Canadian users since 2014" (De Los Heros Broissin affidavit, para 12). Lastly, the Applicant's only evidence of advertising expenditures specific to the Canadian marketplace is that the Applicant spent over \$10,000 USD in Google ads.

[92] On the other hand, the Opponent's evidence demonstrates tremendous growth during the period from 2018 to the date of filing of the statement of opposition in 2021, as demonstrated through the user statistics, sales and advertising figures attested to by Ms. Draper. Furthermore, as previously indicated, I have accepted, based on the evidence as a whole, that a material portion of these user statistics, sales and advertising figures pertain to Canadian consumers. Indeed, even the expenses associated with the Opponent's digital billboard advertisements in major Canadian cities alone (Exhibit BB), far outstrip the Applicant's Canadian Google ads expenses. Consequently, I find that the Opponent's BITVO trademark and trade name have become known to a greater extent in Canada.

[93] Accordingly, I find this factor favours the Opponent.

Section 6(5)(b) – the length of time of use

[94] As previously indicated, I have accepted that the Applicant has shown use of its BITSO Mark in Canada since 2014, while the Opponent has shown use of its BITVO trademark and trade name in Canada since 2018. Thus, this factor favours the Applicant.

Sections 6(5)(c) and (d) – the nature of the goods and/or services and the nature of the trade

[95] As in the section 12(1)(d) ground of opposition, all of the applied-for services and overlap with the goods and services associated with the Opponent’s BITVO trademark and trade name. That is, they are all associated with cryptocurrency-related goods and/or services.

[96] Furthermore, both parties’ have attested that their associated cryptocurrency-related goods and/or services are offered primarily via their respective websites and through mobile applications (available through Apple’s App Store and Google Play). Thus, I accept that the parties’ channels of trade overlap as well.

[97] Accordingly, I find these factors favour the Opponent.

Section 6(5)(e) – the degree of resemblance

[98] As was held in the previous decision involving the same parties and trademarks (*Bitso, supra*), I find there is a high degree of resemblance between the Applicant’s BITSO Mark and the Opponent’s BITVO trademark (and in following the Opponent’s BITVO trade name as well) in appearance and sound.

[99] In this regard, the striking component of each parties’ trademark and the Opponent’s trade name is the trademark and trade name as a whole, as in each case they are coined words. BITSO and BITVO differ phonetically by only one letter, and as such, are highly similar in appearance and sound.

[100] With respect to the ideas suggested by the words BITSO and BITVO, both are suggestive of some relationship with cryptocurrency by virtue of the component “BIT”. However, as there is no clear meaning associated with these marks (and trade name) as a whole, there is no similarity in the ideas suggested between them.

Conclusion

[101] In applying the test for confusion, I have considered it as a matter of first impression and imperfect recollection.

[102] In the present case, due to the high degree of similarity between the parties' trademarks (and the Opponent's trade name) and that the services of the Applicant overlap with the Opponent's goods and services as well as the parties' channels of trade, I conclude on a balance of probabilities that confusion is balanced in favour of the Opponent. Therefore, unlike the Applicant's BITVO Design mark (app No. 1,873,943), the Applicant has failed to establish, on a balance of probabilities, that its BITSO Mark is not confusing with the Opponent's BITVO trademark and trade name.

[103] This is a situation in which a non-entitled party has successfully challenged a previously used trademark under a non-distinctiveness ground of opposition. In this regard, I find the sentiments expressed in *Navsun Holdings Ltd. v Sadhu Singh Hamdard Trust*, 2020 TMOB 64, at para 48, instructive:

It is worth noting that with a ground of opposition under section 2, the issue is not simply which party was first to use the trademark AJIT in Canada, nor whether the Opponent is entitled to continue using its trademark. The issue under section 2 in this proceeding is whether the Applicant is entitled to register exclusive rights in Canada in the word trademark AJIT, despite the fact that the Opponent has continuously used that same trademark in Canada since 1993. In those factual circumstances, is the trademark AJIT distinctive of the Applicant in Canada for the purposes of section 2? For the reasons set out above, I must answer that question in the negative and therefore the Opponent's section 2 ground of opposition succeeds.

[104] Having regard to the aforementioned, the ground of opposition based on non-distinctiveness is successful with respect to the Applicant's BITSO Mark, app. No. 1,873,942.

Section 38(2)(e) Ground of Opposition

[105] The Opponent's pleading is reproduced as follows:

The Application(s) does [do] not comply with the requirements of section 38(2)(e) of the Act, since at the date of filing of the Application(s) in Canada, namely, December 19, 2017, the Applicant was not using and did not propose to use the Mark(s) in association with the services listed in the Application(s), since the Applicant did not have any real intention to use the Mark(s) in Canada in association with the services listed in the application(s).

[106] The Opponent submits that the Applicant has not filed any evidence of use of the Marks in Canada in accordance with sections 2 and 4 of the Act. By contrast, the

Opponent submits that there is a comprehensive amount of evidence showing use in Canada by the Opponent of its BITVO trademark. It appears that the Opponent's position is that the Opponent's alleged prior use of its BITVO trademark should imply that the statement made by the Applicant that "by itself or through a licensee, or by itself and through a licensee, intended to use the BITSO Application(s) in Canada should be interpreted as against the Applicant."

[107] As for the Opponent's pleadings, there is no evidence to support that the Applicant did not intend to use the Marks in Canada. In fact, while an applicant is not required to provide evidence of use of its trademark(s), I have already accepted that the Applicant has shown use of its Marks as of 2014. Furthermore, the Opponent's submissions appear more aptly to fall under entitlement grounds re: section 16 of the Act, which are not a consideration under this ground. In any event, even mere knowledge of the Opponent's BITVO trademark and its use would not be sufficient for the Opponent to meet its burden [see *Bellwoods Brewery Inc. v The Roman Candle Company*, 2018 TMOB 82 and *Torres v SA Establecimientos Vitivinícolas Escorihuela*, 2013 TMOB 184 with respect to similar submissions under section 30(e) of the Old Act].

[108] Having regard to the aforementioned, as the Opponent has failed to meet its initial evidential burden under the section 38(2)(e) ground, this ground of opposition is rejected with respect to both of the Applicant's Applications.

DISPOSITION

[109] Having regard to the aforementioned, pursuant to the authority delegated to me under section 63(3) of the Act, I reject the opposition with respect to app. No. 1,973,943 (BITSO Design), but refuse the application with respect to app. No. 1,973,942 (BITSO), pursuant to section 38(12) of the Act.

Kathryn Barnett
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

Appearances and Agents of Record

HEARING DATE: No hearing held

AGENTS OF RECORD

For the Opponent: FLANSBERRY, MENARD & ASSOCIATES/ASSOCIÉS

For the Applicant: AVENTUM IP LAW LLP