



# Canadian Intellectual Property Office

## **THE REGISTRAR OF TRADEMARKS**

**Citation:** 2024 TMOB 84

**Date of Decision:** 2024-04-17

## **INTERLOCUTORY RULING**

**Opponent:** 11695975 Canada Corp.

**Applicant:** Taystees IP Holding LLC

**Application:** 2168257 for TAYSTEE'S

## **INTRODUCTION**

[1] 11695975 Canada Corp. (the Opponent) opposes registration of the trademark TAYSTEE'S, which is the subject of application No. 2168257 by Taystee's IP Holding LLC (the Applicant).

[2] By way of correspondence dated March 18, 2024, the Applicant requests an interlocutory ruling to strike the entirety of the statement of opposition in this proceeding, and further requests a one-month extension of time in which to file and serve its counter statement.

[3] By way of correspondence dated April 10, 2024, the Opponent responded to the Applicant's request to strike.

## **INTERLOCUTORY RULING ON THE REQUEST TO STRIKE**

[4] The Applicant seeks to strike the entirety of the statement of opposition on the basis that the Opponent is a dissolved corporation and is thus not a "person" able to file a statement of opposition under section 38.

[5] In this respect, the Applicant included with its correspondence an affidavit of Nathan Simpson, purporting to demonstrate that the Opponent corporation was dissolved on November 7, 2023. In particular, Mr. Simpson's affidavit includes a copy of the "Certificate of Dissolution" issued to the Opponent under section 212 of the *Canada Business Corporations Act*, RSC 1985, c C-44, effective November 7, 2023.

[6] The Applicant notes that section 212(4) of the *Canada Business Corporations Act* states as follows:

(4) The corporation ceases to exist on the date shown in the certificate of dissolution.

[7] The Applicant submits that an entity that does not "exist" is not a person and that, as a matter of basic corporate law, "dissolved corporations do not exist" [citing *Petromines Acquisitions Ltd (Re)*, 2001 ABQB 568 at para 54 and, by analogy, *Asian Concepts Franchising Corporation (Re)*, 2018 BCSC 1022 at paras 148 to 150]. The Applicant asserts that, in this case, "As the purported opponent was dissolved on November 7, 2023, it was not a 'person' when it filed its statement of opposition on January 16, 2024".

[8] Accordingly, the Applicant submits that "the Registrar must treat the subject application as if no statement of opposition had been filed."

[9] In its April 10, 2024 response, the Opponent acknowledges that it "was previously dissolved as an administrative matter", but that it "has now been revived". Included with the Opponent's correspondence is

documentation from Corporations Canada, including a "Certificate of Revival" and "Articles of Revival". Referencing these documents, the Opponent submits that "the revival is retroactive to the initial date of dissolution". As such, the Opponent submits that it "has had, and continues to have, capacity and standing throughout this proceeding, and is a "person" able to file a statement of opposition under Section 38 of the Act". Accordingly, it submits that such revival and supporting documentation is sufficient to resolve this matter.

***Scope of the power to strike***

[10] The sufficiency of a statement of opposition is governed by section 38 of the Act. Section 38(2) of the Act details the grounds upon which an opposition may be based, and section 38(3) of the Act requires the grounds in a statement of opposition be set out in sufficient detail to enable the applicant to reply.

[11] The Registrar's power to strike all or part of a statement of opposition is set out in section 38(6) of the Act, as follows:

(6) At the applicant's request, the Registrar may ... strike all or part of the statement of opposition if the statement or part of it

(a) is not based on any of the grounds set out in subsection (2); or

(b) does not set out a ground of opposition in sufficient detail to enable the applicant to reply to it.

[12] As such, whether or not an opponent is a "person" (within the meaning of sections 2 and 38(1) of the Act) is outside the scope of the Registrar's power to strike under section 38(6) of the Act.

[13] In this case, the Applicant has not alleged that any of the particular pleaded grounds are not based on a ground set out in section 38(2), nor

does it allege that it is unable to reply to any of the grounds due to insufficient detail.

[14] To the extent the legal status of the Opponent may have an impact on any of the pleaded grounds, this is properly dealt with at the decision stage of the proceeding, once the parties have had the opportunity to submit evidence and representations in the prescribed manner. Indeed, the fact that both parties considered it necessary to submit evidence or like documentation at this stage of the proceeding is indicative that this matter is not properly the subject of an interlocutory ruling.

[15] As the Applicant's request to strike the statement of opposition in its entirety is beyond the scope of section 38(6) of the Act, it is refused.

[16] Furthermore, I note the guidance of the Supreme Court of Canada when considering novel pleadings, as summarized in *Manufacturers Life Insurance Company v British American Tobacco (Brands) Limited*, 2017 FC 436 at para 60:

In [*R v Imperial Tobacco*, 2011 SCC 42], the Supreme Court of Canada reiterated that striking a pleading should be done with caution, recognizing that the law continues to evolve, noting ... that the Court's approach should be "generous and err on the side of permitting a novel but arguable claim to proceed to trial." However, the Court added ... that in determining whether the claim has a reasonable chance of success, the court should consider the context, noting, "[t]he question is whether, considered in the context of the law and the litigation process, the claim has no reasonable chance of succeeding".

[17] In this case, the Applicant cites no precedent or authority for its position that "the Registrar must treat the subject application as if no statement of opposition had been filed". By analogy to the guidance above in cases of novel pleadings, in this case I would err on the side of caution and decline to strike the entirety of the statement of opposition for the reason asserted and as requested by the Applicant. Having forwarded the statement

of opposition to the Applicant pursuant to section 38(5) of the Act, I see no basis for the Registrar to now consider it to have not been filed.

[18] In any event, in view of the Opponent's response and supporting documentation, it would appear that the issue of its legal status as of the filing date of the statement of opposition is, at most, an open question. If the Applicant wishes to pursue this issue and argument, it may do so in the ordinary course of the proceeding (and the Opponent may respond in due course accordingly).

[19] For all of the foregoing reasons, I confirm that the Applicant's request to strike the statement of opposition in its entirety is refused and that the proceeding will continue.

**COUNTER STATEMENT DEADLINE**

[20] Per its request, the Applicant will have one month from the date of this ruling to file and serve its counter statement.

Andrew Bene  
Member  
Trademarks Opposition Board  
Canadian Intellectual Property Office

## Agents of Record

**For the Opponent:** Kate Henderson

**For the Applicant:** Smart & Biggar LP