



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2026 TMOB 128

Date of Decision: 2026-06-29

IN THE MATTER OF AN OPPOSITION

Opponent: Moosehead Breweries Limited

Applicant: 14095863 Canada Inc.

Application: 1949256 for Chilly Moose (Brand Name) Adventure
Awaits (Tag Line)

OVERVIEW

[1] 14095863 Canada Inc. (the Applicant) has applied to register the design mark Chilly Moose (Brand Name) Adventure Awaits (Tag Line), shown below (the Mark):



[2] As of the date of this decision, the application for the Mark lists the following goods:

Goods (Nice class & Statement)

- 9 (1) Refrigerated equipment and environmental control apparatus, namely, portable electric refrigerated coolers and portable freezers
- 21 (2) Outdoor equipment, namely water bottles, thermally insulated tumblers, thermally insulated food or beverage containers, reusable straws, portable outdoor coolers for beverages
- 25 (3) Men's and women's apparel, namely shirts, t-shirts, sweatshirts, hats, socks, and mittens.

[3] Moosehead Breweries Limited (the Opponent) opposes the registration of the Mark on grounds alleging confusion between the Mark and various of the Opponent's trademarks consisting of, or containing, the word "MOOSE" or images of a moose, including notably those shown below, registered for use in association with various goods such as beer, beer mugs, and clothing.



[4] For the reasons that follow, the opposition is rejected, with costs against the Applicant *per* the Disposition and Order below.

PROCEEDING

[5] The application was filed on March 4, 2019, and was advertised pursuant to section 37(1) of the *Trademarks Act*, RSC 1985, c T-13 (the Act)

on August 9, 2023. The Opponent filed a statement of opposition on May 9, 2024.

[6] In support of the opposition, the Opponent relies on the affidavit of Patrick Oland, sworn on February 27, 2025, with Exhibits A through EE-1, totalling over 500 pages. The Opponent also relies on the affidavit of Alysha LeBlanc, sworn on July 22, 2025.

[7] In support of the application, the Applicant relies on the affidavit of Paolo Greco, sworn on May 23, 2025, with Exhibits A through S, totalling over 400 pages. The Applicant also relies on the Affidavit of Kristi Greco, sworn on June 20, 2025.

[8] None of the affiants were cross-examined. Both parties filed written representations, and made representations at a hearing.

[9] I note at the outset that the Applicant's written representations as well as its submissions at the hearing refer to certain facts not in evidence. This includes references to documents, for example a trademark license between the Applicant and Chilly Moose Ltd., purportedly filed with the Registrar. It also includes facts embedded within argument, for example, as to the nature of the parties' consumers, businesses and channels of trade. To the extent that any such facts are not included in the Applicant's evidence, I have not considered them [see section 49 of the *Trademarks Regulations*, SOR/2018-227 (the Regulations); and *Mattamy Homes Limited v Matti Homes Inc*, 2025 TMOB 260].

GROUND OF OPPOSITION & ONUS

[10] The statement of opposition alleges that: (i) the Mark is not registrable pursuant to sections 12(1)(d) and 38(2)(b) of the Act; (ii) the Applicant is not the person entitled to registration pursuant to sections 16(1)(a) and

38(2)(c) of the Act; and (iii) the Mark is not distinctive pursuant to sections 2 and 38(2)(d) of the Act, all in light of alleged confusion between the Mark and various of the Opponent's trademarks.

[11] For each ground of opposition, there is an initial evidential burden on the Opponent to adduce evidence from which it could reasonably be concluded that the facts alleged to support that ground of opposition are true. If this initial burden is met, then the Applicant bears the legal onus of satisfying the Registrar that, on a balance of probabilities, the ground of opposition should not prevent registration of the Mark [see *John Labatt Ltd v Molson Companies Ltd* (1990), 30 CPR (3d) 293 (FCTD)].

EVIDENCE

Opponent's Evidence – Overview of the Affidavit of Patrick Oland

[12] Mr. Oland states that he is the Chief Financial Officer and a Director of the Opponent, and has been employed there for approximately 29 years. He states that the Opponent has been owned by his family since it was incorporated in 1928. He explains that it is the oldest privately owned and independent brewery in Canada [paras 1–2].

[13] Mr. Oland states that, since 1928, the Opponent has “brewed, bottled, packaged, sold and advertised brewed alcoholic beverages in Canada and under various moose designs and the trademarks MOOSEHEAD and MOOSE” [para 3]. He states that the Opponent's:

family of MOOSE trademarks, including but not limited to the words MOOSE, MOOSEHEAD, the HEAD OF A MOOSE DESIGN, full-bodied moose design, THE MOOSE IS LOOSE, have become known internationally by virtue of substantial advertisement, editorial comment, as well as by the popularity of our product, novelty items and clothing sold in Canada and throughout the world [para 4].

[14] Mr. Oland identifies 34 of the Opponent's trademark registrations containing the word "moose" and/or a design of a moose [para 5, Exhibit A]. He also provides information regarding: certain products and their packaging [paras 7-14 and 36, Exhibits B-G and Z-Z-1]; consolidated sales information for all of the Opponent's products [para 20]; promotional and advertising expenditures and examples [paras 19-18, 21-25, 27-35, 37-43]; and various internet searches [para 44, Exhibit EE-1].

[15] Mr. Oland also states that, in 2021 and 2022, the Opponent's marketing team "ordered coolers from the Applicant to be sold and used in the promotion of [the Opponent's] MOOSE LIGHT, MOOSEHEAD LAGER and ALPINE LAGER beers" and provides photographs of some co-branded coolers [para 44, Exhibit EE]. He explains that:

The initial thoughts from our marketing team was that there was synergy with the subject CHILLY MOOSE logo and my company's longstanding moose brands and promotional items, especially when used on coolers to hold beer, and keep it cold. Since the coolers displayed CHILLY MOOSE and the fully [sic] bodied moose used by our company for many years, our marketing team saw synergy in the fact that since the coolers were marketed being by our company with both the subject CHILLY MOOSE design and my company's MOOSE trademarks. Given our beer products are commonly referred to by consumers as MOOSE, our marketing team thought that when the consumer saw our trademarks together with CHILLY MOOSE, the consumer would relate "CHILLY MOOSE" to a cold MOOSE beer. At that time, my company's marketing team did not consider the confusion such synergy with our trademarks would create if the Chilly Moose logo were to appear on beer coolers together with a beer brand other than our moose brands and the confusion this could create [para 44].

Opponent's Evidence – Overview of the Affidavit of Alysha LeBlanc

[16] Ms. LeBlanc states that she is a Corporate Paralegal employed by the Opponent as well as a Commissioner of Oaths in good standing in the province of New Brunswick [paras 1-3].

[17] Ms. LeBlanc states that she commissioned the affidavit of Patrick Oland sworn on February 27, 2025, which she personally witnessed him sign

remotely through video conference. She states that the appropriate proceedings for commissioning the affidavit were followed and she signed the affidavit and exhibits [para 4]. Ms. LeBlanc states that it was brought to her attention that she did not stamp the affidavit with her Commissioner's stamp, but nevertheless attests "that the proper procedures for commissioning a sworn affidavit were followed" [para 5].

[18] I understand Ms. LeBlanc's affidavit to have been provided by the Opponent out of an abundance of caution, in order to address and rectify any potential technical deficiencies in the swearing of the Oland Affidavit. I accept Ms. LeBlanc's evidence and consider it to cure any such potential technical deficiencies in the commissioning of the Oland Affidavit.

Applicant's Evidence – Overview of the Affidavit of Paolo Greco

[19] Mr. Greco is the Applicant's Director. He states that the Applicant, or he himself as the Applicant's predecessor in title, have been "successfully using" the Mark since at least as early as October 1, 2018 [paras 1-3].

[20] Mr. Greco explains that, since 2019, the Applicant has been operating its website displaying the Mark [paras 4-5, Exhibit A] and selling its goods bearing the Mark "across Canada through various distributors" [paras 6-7, Exhibit B].

[21] Mr. Greco provides sales information [paras 9-14, Exhibits C-E]; advertising and marketing spend and samples [paras 15-18, Exhibits F-G]; and the results of various internet searches, including notably searches of the Canadian Trademarks Database [paras 19-36, Exhibits H-S].

Applicant's Evidence – Overview of the Affidavit of Kristi Greco

[22] Ms. Greco states that she has been the President and Creative Director of Chilly Moose Ltd. since its incorporation on May 30, 2019 [para 1].

[23] Ms. Greco states that the Applicant has been using the Mark since October 1, 2018, and that Chilly Moose Ltd. has also been using the Mark in its capacity as a “valid and lawful” licensee of the Applicant or its predecessor in title, Paolo Greco [paras 3, 6-7].

[24] Ms. Greco states that, from 2019 to 2025, various individuals from the Opponent or on its behalf contacted Chilly Moose Ltd. “to inquire about procurement, order placement, exploration of promotional merchandising, partnerships and branding initiatives” in association with the products listed in the application for the Mark, and attaches various email exchanges to this effect [paras 8-9, Exhibit A].

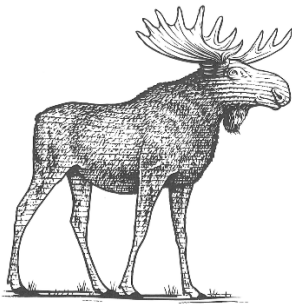
ANALYSIS

Non-Registrability Ground

[25] Pursuant to sections 38(2)(b) and 12(1)(d) of the Act, the Opponent alleges that the Mark is not registrable as it is confusing with eight listed registered trademarks, although the Opponent recognizes that registration TMA1094067 was alleged in error, and confirms not relying thereon.

[26] The material date for assessing this ground of opposition is the date of this decision [*Park Avenue Furniture Corp v Wickers/Simmons Bedding Ltd* (1991), 37 CPR (3d) 413 (FCA)]. An opponent’s initial burden is met with respect to a section 12(1)(d) ground of opposition if the relied-upon registration(s) remain in good standing as of this date.

[27] I have exercised my discretion to check the register [see *Quaker Oats Co of Canada v Menu Foods Ltd* (1986), 11 CPR (3d) 410 (TMOB)]. As of the date of this decision, of the registrations relied on by the Opponent, the five identified in the table below are extant (collectively the MOOSE Registered Trademarks).

Registration	Mark	Goods/Services
TMA514891 (the '891 Registration)	MOOSE	(1) Glass/cup, namely beer mugs, coffee mugs; hats, namely ball caps; key chains; beach towels; clothing, namely golf shirts, t-shirts.
TMA285467 (the '467 Registration)	MOOSE	(1) Brewed alcoholic beverages.
TMA1198350 (the '350 Registration)	MOOSE	(1) Alcoholic fruit beverages
TMA1219551 (the '551 Registration)		(1) Beer
TMA1073502 (the '502 Registration)		(1) Glass/cup ware, namely beer mugs, hi-ball glasses, plastic beer cups (2) Clothing, namely t-shirts, hats (3) Beer

[28] The Opponent has therefore satisfied its initial evidential burden for this ground with respect to the MOOSE Registered Trademarks.

[29] As the Opponent has met its initial burden, the Applicant must therefore establish, on a balance of probabilities, that there is not a reasonable likelihood of confusion between the Mark any of the Opponent's MOOSE Registered Trademarks. In this regard, the Opponent's MOOSE Registered Trademarks must be considered individually. However, for reasons of simplicity and efficiency, and consistent with the parties' representations, I consider it sufficient to address them together, with distinctions made only as necessary.

Test for Confusion

[30] A trademark is confusing with another trademark if the use of both in the same area would be likely to lead to the inference that the goods or services associated with the trademarks are manufactured, sold, leased, hired or performed (as the case may be) by the same person [sections 6(1) and (2) of the Act]. The issue of confusion is to be considered as a matter of first impression in the mind of a casual consumer somewhat in a hurry, who sees the applied-for trademark at a time when they have no more than an imperfect recollection of the opponent's trademark [*Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée*, 2006 SCC 23 at para 20].

[31] Applying the test for confusion is an exercise in finding facts and drawing inferences [*Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27 at para 102 (*Masterpiece*)]. All surrounding circumstances of the case must be considered, including those listed at section 6(5) of the Act. These criteria are not exhaustive, and different weight will be given to each one in a context-specific assessment [*Mattel, Inc v 3894207 Canada Inc*, 2006 SCC 22 at para 54].

Degree of Resemblance

[32] The Supreme Court of Canada stated that the resemblance between the trademarks will often have the greatest effect on the confusion analysis and that, while the first word in the trademark may be the most important in some cases, "a preferable approach is to first consider whether there is an aspect of the trademark that is particularly striking or unique" [*Masterpiece* at para 64].

[33] The Opponent submits that the MOOSE Registered Trademarks and the Mark have a very high degree of resemblance. It argues that the most striking and unique feature of the MOOSE Registered Trademarks is the word

moose, or a moose design, and that the most striking or unique feature of the Mark is, likewise, the word moose and the image of a moose, which it submits reinforce one another. The Opponent argues that the word “chilly” is suggestive if not descriptive and therefore not striking or unique, nor are the other design elements of the Mark given the predominance of the word moose and the moose design.

[34] The Applicant submits that the dominant “text elements” are “CHILLY MOOSE”. The Applicant argues that this dominant feature, when considered with the various other word and design elements of the Mark as a whole:

creates a singular commercial impression wholly distinct from the Opponent's simplistic moose silhouettes. Combining the dominant “CHILLY MOOSE” wordmark with a stylized moose graphic, integrated pine trees, the evocative “ADVENTURE AWAITS” slogan, and “est. 2018” with maple leaf motifs, the mark forms a cohesive Canadian outdoor adventure brand narrative, which is a stark contrast to the Opponent's contextually barren animal outlines. [Applicant’s written representations at para 139].

[35] In my view, the most striking or unique feature of each of the MOOSE Registered Trademarks is the trademark as a whole, as each contains a single word or unitary design. On the other hand, I find that the most striking or unique feature of the Mark is the combination of its two dominant elements, the moose design and the words CHILLY MOOSE, given notably their size, the bold font and the top and bottom lines that link and relate the two components.

[36] Thus, the Mark and the ‘891 Registration, the ‘350 Registration, the ‘467 Registration, as well as the ‘551 Registration, all share the word moose or a full-bodied moose design and, at the very least, the Opponent’s MOOSE word marks, as registered, are entirely subsumed within the Mark. However, none of these registered trademarks contain the striking combination of a full-bodied moose design with “CHILLY MOOSE”, resulting in important differences visually and when sounded. These differences are even more

important with regard to the '502 Registration, given that it is comprised only of the design of a moose head.

[37] In addition, I consider that, although not individually striking or unique, the numerous additional word and design elements of the Mark – also absent from any of the MOOSE Registered Trademarks – add to the differences between the trademarks visually and when sounded, when they are considered as a whole.

[38] In respect of idea suggested, I find that the additional word and design elements, including particularly the word “chilly” in the dominant “CHILLY MOOSE” element, result in the Mark suggesting not only a chilly moose, but also a cold or “chill” outdoor adventure. I consider this to be a substantial departure from the simple idea of a moose, and even more so from the idea of a moose head, as suggested by the MOOSE Registered Trademarks.

[39] In summary, considering the trademarks as a whole, I find the Mark and the MOOSE Registered Trademarks to be more different than alike in appearance, sound and idea suggested in view of the differences in the trademarks’ striking or unique elements, the cumulative effect of the additional design and word components of the Mark, and the absence of any component suggesting cold or “chilly” in the Opponent’s trademarks.

[40] This factor favours the Applicant with respect to each of the Opponent’s trademarks.

Inherent Distinctiveness and Extent Known

Inherent distinctiveness

[41] The Opponent argues that its “MOOSE trademarks” are inherently very distinctive as there is nothing in the word moose or designs thereof that suggest or describe the goods specified in the registrations. I note that the

Applicant's written representations argue both that "the Opponent's valid registered marks (e.g., MOOSEHEAD, MOOSE for beer, and various moose head designs) are inherently distinctive for beer" [para 61], and that "the Opponent's Impugned Marks are highly descriptive of beer and alcoholic beverages and therefore weak" [para 122]. In any event, I agree with the Opponent that the MOOSE Registered Trademarks are neither descriptive or suggestive of the goods in association with which they are registered, and as such are inherently distinctive.

[42] With regard to the Mark, the Opponent argues that the "chilly" component of the Mark is suggestive, if not descriptive, of the goods in classes 9 and 21 listed in the application. The Applicant's position is that the Mark has a high degree of inherent distinctiveness, however certain statements in its own written representations are counter to this position. Notably, in describing the Mark, the Applicant states that:

The word "CHILLY" is the dominant first element, immediately evoking the core function of the goods (keeping items cold) and an outdoor adventure theme. It is not "merely descriptive" but is a coined, suggestive phrase when combined with "MOOSE" it requires thoughtful and skillful allusion to the quality and characteristics of the Applicant's product line and operations [Applicant's written representations, para 64].

[43] I consider, as acknowledged by the Applicant, that a moose is evocative of nature and the outdoors, and is thus at least somewhat suggestive of the "outdoor equipment" products listed in the application. As well, the term "chilly" evokes the core function of the goods, i.e. keeping items cold, adding an element to the Mark that is suggestive.

[44] Moreover, as argued by the Applicant, the Mark's additional word and design elements serve to create a "cohesive Canadian outdoor adventure brand narrative" [Applicant's written representations, para 139]. As such, rather than adding to its distinctiveness, I consider these elements to

contribute to the Mark being at least somewhat suggestive of “outdoor equipment”.

Extent known

[45] The Opponent argues that its evidence shows longstanding and significant use and advertising of its MOOSE Registered Trademarks, such that they have become “very well known in Canada in association with both brewed alcoholic beverages, and with clothing and other promotional items” [Opponent’s written representations, page 14].

[46] The Applicant acknowledges that “the Opponent’s evidence shows significant reputation in Canada for beer”, but argues that the evidence shows no reputation or acquired distinctiveness beyond beer, and particularly not in association with coolers, insulated drinkware or apparel [Applicant’s written representations, para 63].

[47] The Opponent’s evidence is to the effect that:

- retail sales in Canada, for “beer, consumer goods such as clothing and novelty items” have been 100 million dollars or more per year since 1980 [Oland Affidavit, para 20]; and
- yearly promotional and advertising expenditures, again aggregated across all product categories and brands, are typically in the tens of millions of dollars since 1980 [para 19], and many of the documents provided speak to the reputation of the Opponent’s products.

[48] I consider the Opponent’s evidence to show its longstanding and extensive sales and promotion of its beer and beer-type products since at least 1980. However, I do not consider the evidence to be particularly clear as to which trademarks were used when or in association with which products.

[49] The product images as well as the voluminous advertising and promotional materials overwhelmingly show use of the MOOSEHEAD brand name and the design of a moose head. As such, I accept that use of the trademarks MOOSEHEAD and the design of a moose head, including as depicted in the '502 Registration, alone or in combination, is longstanding and extensive, such that these trademarks are, at minimum, very well known in association with beer.

[50] Given that the sales and advertising expenditures are provided only in aggregate across all products and product categories, I do not consider that the Opponent's evidence is sufficient for me to differentiate or determine whether the trademark MOOSE (subject of the '891 Registration, the '350 Registration or the '467 Registration), or the full-bodied moose design (subject of the '551 Registration), are known to any particular extent.

[51] With regard to the MOOSE word mark, Mr. Oland states that it has become synonymous with the Opponent through its longstanding use and that customers typically referred to certain of its products as "a MOOSE" or "MOOSE LIGHT". However, I do not find that Mr. Oland's evidence particularly supports this assertion.

[52] Indeed, he states that the Opponent began using "MOOSE LIGHT" on the labelling and packaging of its MOOSEHEAD LIGHT beer around 1987 [Oland Affidavit, para 6], but no packaging is shown or described in this paragraph. The evidence does include some bottles of "MOOSE LIGHT" products [Exhibit Z], including those shown below, which display MOOSE LIGHT in design form, alone and in combination with a moose head design.



[53] Mr. Oland also explains that, in June 2009, the Opponent launched its MOOSE LIGHT LIME product, which was followed by subsequent MOOSE LIGHT RADLER products, representative images of which are reproduced below [paras 7-12, Exhibits B-F].



[54] The word “moose” appears alone on the top of the middle panel of the Radler product label. Otherwise, the word “moose” appears only as an integral element of the “MOOSE LIGHT” design, used with or without the design of a moose head.

[55] No specific sales or advertising expenditures are attributed to the moose light, moose light lime or Radler products.

[56] With regard to the design of a full-bodied moose, the evidence is:

- a full-bodied moose design on bottle caps “on the very popular MOOSE LIGHT beer since at least 2017”, as well as on a “sampling of cans”, both of which are shown in a single image, reproduced below [para 14, Exhibit G-1]:



- a full-bodied moose appearing on its Moosehead Lager and Moosehead Dry beer from April 2018 to March 2024, representative images of which are reproduced below [para 14, Exhibit G-2]:



- a full body moose design on its CRACKED CANOE beer launched in May 2023, a representative image of which is shown below [para 14, Exhibit G-3]:



[57] I consider the evidence of a disembodied bottle cap and images of “a sampling of cans” that appear, rather, to be images of four different views of the same can – which I note indicates “limited edition” – to have little, if any, probative value. Likewise, I consider the Cracked Canoe product to be of little assistance to the Opponent, as the moose design thereon differs, in my opinion, significantly from that in the ‘551 Registration.

[58] As such, this evidence establishes, at best, use of the full-bodied moose design subject of the ‘551 Registration on the Moosehead Lager and Moosehead Dry beer from April 2018 to March 2024. However, again, no details as to specific sales or advertising expenditures relating to these products are provided.

[59] At the hearing, the Opponent was asked to point to specific evidence of use, reputation or the extent to which the trademarks MOOSE or the full-bodied moose design was known. Tellingly, it was unable to do so. Moreover, the Opponent did not argue that use of any different or composite designs were acceptable deviations of the MOOSE or the full-bodied moose design trademarks.

[60] As such, I do not consider the Opponent’s evidence sufficient to meaningfully determine the extent to which the trademark MOOSE (subject of the ‘891 Registration, the ‘350 Registration or the ‘467 Registration), or

the full-bodied moose design trademark (subject of the '551 Registration) are known in association with any goods.

[61] With regard to the Mark, the Applicant submits that, since October 1, 2018, it has had millions of dollars in sales in Canada, primarily in association with its outdoor equipment/insulated tumbler-type products in Nice class 21 [Greco Affidavit, paras 8-14, Exhibits C-E]. It also submits that it has spent almost 1.7 million dollars advertising and promoting the Mark and provides printouts of its website, promotional material and social media accounts dated from 2025, although no breakdown or historical data is provided [Greco Affidavit, paras 15-18, Exhibits F-G]. That being said, the Applicant's social media accounts show thousands of likes, followers and/or views from Canada as of that date.

[62] I am satisfied that this evidence shows that the Mark has become known, at least to some extent, particularly in association with the Applicant's outdoor equipment/insulated tumbler-type products since at least late 2025.

[63] In considering the inherent distinctiveness and extent known factor overall, I find this factor clearly favours the Opponent only with regard to the '502 Registration (for the moose head design). Otherwise, this factor does not substantially favour either party in respect of the other MOOSE Registered Trademarks.

Length of Time in Use

[64] The Opponent has provided yearly sales figures for products associated with its "Moose family of trademarks" since 1980. For the reasons discussed above, I find the evidence shows use of moose head designs, including as depicted in the '502 Registration, since at least as early as 1980.

[65] I also find the evidence sufficient to show at least some use of the word mark MOOSE in association with brewed alcoholic beverages since 2014, given its display on the packaging of some Radler products, as well as some use of the full-bodied moose design (corresponding to the '551 Registration), from April 2018 to March 2024, given its display on the Opponent's Moosehead Lager and Moosehead Dry beer products.

[66] Accordingly, even if I were to accept at face value the Applicant's claimed date of first use of October 1, 2018, this factor favours the Opponent in each case.

Nature of the Goods and Services and Nature of the Trade

[67] The Opponent argues that there is direct overlap with regard to clothing-related goods as well as drinkware in view of the '891 Registration and the '502 Registration. It also submits that there is an "obvious" connection between the Opponent's beer and beer-type products and the goods in classes 9 and 21 listed in the application. It argues that "at the risk of stating the obvious, most beer drinkers prefer to consume their beer while it is cold" [Opponent's written representations, p. 17], such that beer is likely to be used together with goods designed to keep things cold. It submits that these products are therefore "related" and "complimentary", thus making confusion more likely. In this regard, the Opponent points notably to various examples in its evidence of its having commercialized coolers and cooler bags, as well as to statements in the Affidavit of Kristi Greco, which it submits reinforce the "complimentary nature" of the goods.

[68] The Applicant argues that the Opponent sells beer, which is an entirely different product from the Applicant's coolers, drinkware and refrigeration equipment, in addition to being sold through different channels. It also argues that any non-beer products in the Opponent's registrations are

promotional giveaways, and not *bona fide* retail products, whereas the Applicant's goods are expensive and sold to sophisticated consumers.

[69] I note that certain facts relied upon by the Applicant in support of its position are not in evidence. In any event, under a registrability ground of opposition, it is the statement of goods as defined in the registration(s) and the application that govern [*Henkel Kommanditgesellschaft auf Aktien v Super Dragon Import Export Inc* (1986), 12 CPR (3d) 110 (FCA); *Mr Submarine Ltd v Amandista Investments Ltd* (1987), 19 CPR (3d) 3 (FCA)].

[70] In the present case, I agree with the Opponent that there is clear overlap between the parties' clothing goods, and that beer mugs and plastic beer cups are somewhat similar in nature to thermally-insulated tumblers.

[71] Also, both parties' evidence shows that beer and beer-type products can be used with products such as the Applicant's thermal tumblers and portable outdoor coolers for beverages. In view of this evidence, in the particular circumstances of this case, I accept that despite the different inherent nature of these products, there is potential for a connection or "relatedness" between them in the mind of the average consumer.

[72] However, to the extent that the Opponent also argues "relatedness" between its beer and the Applicant's "Refrigerated equipment and environmental control apparatus, namely, portable electric refrigerated coolers and portable freezers", I disagree. There is no specific evidence in this regard. Moreover, the Opponent's argument that "most beer drinkers prefer to consume their beer while it is cold" arguably holds true for many products of very different natures needing refrigeration or preferred cold. Absent specific evidence, this argument simply casts too wide a net.

[73] With regard to the nature of the trade, it should be assessed with a focus on the parties' entitlement to sell through a given channel of trade

rather than whether they in fact do so [*United Artists Pictures Inc v Pink Panther Beauty Corp*, 1998 CanLII 9052 (FCA); *Liverton Hotels International Inc v Diva Delights Inc*, 2015 TMOB 53 at para 48]. In the present case, neither the application nor the registrations contain limitations as to the channels of trade available to the parties, particularly with regard to products other than beer.

[74] As such, overall, I find these factors favour the Opponent for all of the MOOSE Registered Trademarks.

Surrounding Circumstance - Family of Marks

[75] The Opponent argues that an important surrounding circumstance in the present case is its family of trademarks “all containing the word MOOSE and/or the image of a moose”, which it argues entitles the MOOSE Registered Trademarks to a broader scope of protection.

[76] The Applicant states that there are numerous ongoing section 45 proceedings pertaining to various of the Opponent’s registrations, which it argues decreases the weight of such registrations as well as of the Opponent’s family of marks argument. I note that, although the Applicant’s written representations seem to contain a quote attributed to the “Opposition Board” to this effect, no citation is provided.

[77] I disagree with the Applicant. As argued by the Opponent, registrations are presumed valid [*Fort Garry Brewing Company LP v True North Wine and Spirits Ltd*, 2021 TMOB 287]. As such, I do not consider ongoing section 45 proceedings to impact the weight of extant registrations in these proceedings. Indeed, this would, in my view, be akin to challenging their validity, and it has long been held that opposition proceedings are not the appropriate forum to do so [*Jack Victor Limited and The Savile Row Holding Company Limited*, 2022 TMOB 253].

[78] That being said, I also disagree with the Opponent that its evidence is sufficient to establish a family of trademarks entitling all of the MOOSE Registered Trademarks to a broader ambit of protection. As has been stated by the Federal Court:

to rely on the broader protection afforded to a family of marks, the party alleging the family must demonstrate *actual use* [i.e. sales figures, advertising campaigns, and/or evidence of expanding lines] of several products bearing the common feature[s] that define the family [*Arterra Wines Canada, Inc v Diageo North America, Inc*, 2020 FC 508 at para 41].

[79] As discussed above, the vast majority of the Opponent's evidence pertains to the word MOOSEHEAD or a moose head design, often in combination with one another. I accept, from the evidence as a whole, that the Opponent has a family of trademarks having these common features, thus entitling the '502 Registration to a broader scope of protection.

[80] However, I do not consider the evidence sufficient with regard to the other MOOSE Registered Trademarks. They do not share the common features of the "family" described above, and, in any event, as established above, I do not consider the Opponent to have evidenced their actual use as would be required.

[81] Accordingly, I consider this surrounding circumstance to favour the Opponent, but only with respect to the '502 Registration.

Surrounding Circumstance – State of the Register/Marketplace

[82] The Applicant evidences the entries resulting from various searches of the Canadian Trademarks Database as well several online searches and photographs from various stores, in support of its position that the word "moose" and moose designs are common in the Canadian marketplace.

[83] State of the register evidence is only relevant insofar as inferences about the state of the marketplace can be made from it, which should only

be drawn “if there is a large number of relevant registrations and evidence of actual use” [*Tweak-D Inc v Canada (Attorney General)*, 2023 FCA 238 at para 14]. Moreover, the state of the marketplace is only as relevant as “the quality of evidence showing actual use” [*Eclectic Edge Inc v Gildan Apparel (Canada) LP*, 2015 FC 1332 at para 92].

[84] In this case, although the Applicant has described and provided the results of many searches [Greco Affidavit, paras 19-36, Exhibits H-S], it has not provided particulars of any resulting entries on the Canadian Trademarks Database, nor any evidence of actual use of the trademarks or products identified in its marketplace searches. I therefore give this evidence little weight, if any.

[85] I note that, although not expressed in so many words, at the hearing, the Applicant invited me to take judicial notice of the moose being a Canadian symbol and, thus, as common in and to Canada. Willing as I may be to take judicial notice that the moose is an iconic Canadian symbol, this is altogether different from taking judicial notice of the word “moose” or designs thereof having any particular level of use or commonality in the marketplace with respect to the goods at issue, which I decline to do.

[86] This surrounding circumstance therefore favours neither party.

Surrounding Circumstance – Acquiescence

[87] The Applicant argues strenuously that the prior business dealings and relationship between the parties clearly indicate that the Opponent did not consider the Mark confusing and that its “conduct amounts to acquiescence and estoppel as it knowingly used and benefitted from the [Mark]” [Applicant’s written representations, at para 56].

[88] The Opponent argues that such emphasis on the relationship between the parties is misplaced as the confusion analysis is to be done from the point of view of the average Canadian consumer, not the Opponent.

[89] I note that the doctrines of acquiescence and estoppel are generally considered equitable remedies beyond the jurisdiction of the Registrar which, as a creature of statute, does not possess equitable jurisdiction [see *Molson Canada 2005 v Anheuser-Busch, Incorporated*, 2010 FC 283]. To the extent that the Registrar may consider the facts and context alleged in support of such doctrines as surrounding circumstances, I find the situation akin to parties taking inconsistent positions with respect to confusion, which has been held to be irrelevant as such a determination is not for the parties, but for the Registrar or the courts in accordance with the law and relevant jurisprudence [see *Molson Breweries v Labatt Brewing Co* (1996), 68 CPR (3d) 202 (FCTD)].

[90] As such, I do not consider this to be a relevant surrounding circumstance.

Surrounding Circumstance – Lack of Actual Confusion

[91] The Applicant argues that the lack of evidence of actual confusion in this case is a very strong indication that the Mark is not confusing with any of the Opponent's trademarks, citing notably *Loblaws v Columbia Insurance Company*, 2019 FC 961, aff'd 2021 FCA 29 (*Loblaws*).

[92] To the contrary, the Opponent argues that the Affidavit of Kristi Greco includes evidence of actual confusion, which it submits is a surrounding circumstance strongly in its favour.

[93] Turning first to the Opponent's contention, it refers to an email exchange dated May 2019 between Kristi Greco and Tim Mattioli, one of the Opponent's Territory Sales Managers, where Ms. Greco states:

Good morning Tim!

I know you were looking to get some coolers for giveaways. We set up a code for you – MOOSE30 – this will take 30% off the online price and free shipping for coolers. [...]

[94] Mr. Mattioli's response is as follows:

Good Morning Kristi

This is awesome. Thanks so much for this. I will def put an order in. Am I able to share this code with co workers?

I am assuming you don't want this shared with the public? And if I'm correct on assumption, are you open to possibly offering me a promo code I can share on my social page to help get the name out there? I've had probably 40 other pple dm me asking for info on the brand in Canada. Let me know what your thoughts are. I am going to put the chilly moose website in my Instagram bio on both pages for you guys :)

[95] The Opponent argues that this exchange evidences at least forty people having sent Mr. Mattioli a message "to inquire about the CHILLY MOOSE brand" and that "those 40 people assumed some sort of connection between Moosehead and CHILLY MOOSE (which is why they reached out to a Moosehead employee to inquire about CHILLY MOOSE)", thus constituting evidence of actual confusion [Supplemental Written Arguments of the Opponent, page 13]. I disagree.

[96] While it would have been helpful to have more fulsome evidence regarding the context and details of the exchange in question, from the evidence of record: Mr. Mattioli states that the messages were "asking for info on the brand", which I note was fairly new at the time of the exchange; he asks for a promotion code to share on his social page "to help get the name out there"; and he states that he will put the Applicant's website in his Instagram bio "on both pages for you guys :)".

[97] This is not the behaviour or reaction one would expect from consumers believing that the Opponent was the source of the products or brand, or from the Opponent if it were under the impression that there was confusion

among its consumers, whom a territorial sales manager would presumably know and understand better than most. In my view, on fair reading, this exchange does not show that consumers thought the products or brand came from the Opponent. Indeed, I consider the exchange speaks more to successful collaboration than to confusion.

[98] I also consider the evidence of Ms. Greco to show a longstanding business relationship between the parties, a relationship which appears downplayed by the Opponent, both in its evidence and written representations. Indeed, Mr. Oland states that the Opponent ordered coolers from the Applicant to be sold and used in the promotion of MOOSE LIGHT, MOOSEHEAD LAGER and APLINE LAGER beers in 2021 and 2022. However, the evidence shows continued orders for coolers co-branded with various of the Opponent's trademarks, albeit not only or necessarily with "MOOSEHEAD", fairly regularly as of early 2019 and, significantly, until as late as May 2025, over a full year after the Opponent filed its statement of opposition.

[99] Evidence of instances of actual confusion is not required in order to demonstrate a likelihood of confusion. However, concurrent use of two trademarks without such instances of actual confusion is a surrounding circumstance which can suggest an absence of a likelihood of confusion, depending on the specific nature and duration of that concurrent use [see *Mattel, Inc v 3894207 Canada Inc*, 2006 SCC 22, at para 55; *Christian Dior SA v Dion Neckwear Ltd*, 2002 FCA 29; *Loblaws*, above].

[100] I find the evidence shows that both parties had significant advertising expenditure and sales revenues (in the millions, if not tens of millions of dollars), that they co-existed in the market for at least seven years (since at least 2019), and that the Opponent's own marketing efforts resulted in

customers being exposed to merchandising products displaying the Mark, occasionally along side its own trademarks [Oland Affidavit, Exhibit EE].

[101] Given this particular factual context, if the trademarks at issue were as similar and the products as “related” or “complimentary” as argued by the Opponent, I consider that such exposure over an extended period of time would most likely have given rise to some instances of actual confusion. I also consider it reasonable to expect any such instances would have been known to the Opponent since: it is the earlier user with a more extensive reputation; it is the one who commercialized the products co-branded with the Mark and MOOSEHEAD and/or moose head design; and its co-branding or commercializing of the Applicant’s coolers continued for some time and until well after the beginning of the opposition, by which time it would have been well aware of any issue.

[102] In view of the foregoing, in the present case, I find the absence of evidence of instances of actual confusion to be probative, and I draw an inference accordingly. This factor therefore strongly favours the Applicant in each case.

Conclusion on Confusion

[103] As stated above, the Applicant bears the burden of demonstrating that, as a matter of first impression in the mind of a casual consumer, on a balance of probabilities, the Mark is not confusing with any of the MOOSE Registered Trademarks.

[104] I am satisfied that the Applicant has met its legal onus in each case. I arrive at this conclusion despite the overlap or “complimentary” nature of the goods, as the degree of resemblance between the trademarks is relatively low. This conclusion is reinforced and supported by the lack of

evidence of instances of actual confusion, despite the parties' longstanding co-existence (and even collaboration) in the marketplace.

[105] This ground of opposition is therefore rejected with respect to each of the MOOSE Registered Trademarks.

Non-Distinctiveness Ground of Opposition

[106] The Opponent pleads that the Mark was not distinctive, as of the filing date of the statement of opposition, pursuant to sections 2 and 38(2)(d) of the Act. The Opponent alleges that the Mark does not distinguish, nor is it adapted to distinguish the goods "associated with one or more of the Opponent's registered trademarks, that have been, and are used, in Canada by the Opponent extensively for many years".

[107] At the hearing, the Opponent confirmed that the "registered trademarks" in question were the same ones as those pleaded under the 12(1)(d) non-registrability ground discussed above such that, as pleaded, this ground turns on the same issue of confusion.

[108] Even assuming that the Opponent has met its initial evidential burden regarding this ground, for the reasons above, I would come to the same conclusion as for the 12(1)(d) non-registrability ground, notwithstanding the difference in material date. This ground of opposition is therefore rejected.

Non-Entitlement Ground of Opposition

[109] The remaining ground of opposition is that the Applicant is not entitled to registration of the Mark pursuant to sections 16(1)(a) and 38(2)(c) of the Act, as the Mark was confusing, as of the filing date of the application, with one or more of the Opponent's "famous MOOSE family of trademarks, the details of which are attached as Schedule A". I note that Schedule A lists

various of the Opponent's trademark registrations, including notably the MOOSE Registered Trademarks.

[110] The Opponent has an initial evidential burden to demonstrate use of each of the trademarks alleged prior to the date of first use demonstrated by the Applicant. For the reasons set out above, I do not consider the Opponent's evidence sufficient to meet this initial burden with respect to a number of the trademarks in Schedule A.

[111] In any event, I consider the MOOSE Registered Trademarks to represent the Opponent's best case. Indeed, the other trademarks identified in Schedule A contain words and/or design elements absent from the Mark, such that they are more different from the Mark than the MOOSE Registered Trademarks in appearance, sound or idea suggested.

[112] As such, even assuming that the Opponent has met its initial evidential burden with respect to each of the trademarks in Schedule A, I come to the same conclusion regarding confusion as above with respect to the 12(1)(d) non-registrability ground, notwithstanding the difference in material date. As such, this ground of opposition is also rejected with respect to all of the Opponent's trademarks identified in Schedule A.

COSTS

Opponent's request for costs

[113] After the hearing, both parties filed requests for costs. The Opponent's request alleges that the Applicant engaged in unreasonable conduct that has caused undue delay or expense, on the basis of various procedural issues including a request to file late/additional evidence, a request for a stay and alleged misrepresentations and mischaracterizations of the Opponent's evidence in the Applicant's written representations, as well as on the basis of the Applicant's undeclared use of artificial intelligence (AI).

[114] The Applicant responded arguing that its conduct does not warrant an award of costs, largely on the basis that it is a self-represented party and that any procedural oversights were innocent and not made in bad faith. However, section 58.1(1)(d) of the Regulations does not require bad faith. It grants the Registrar the discretion to award costs, if requested, when a party had engaged in unreasonable conduct that causes undue delay or expense in the proceeding. For the following reasons, I find that the Applicant has done so.

[115] In a letter dated September 8, 2025, the Registrar noted that the Applicant appeared to have used AI to prepare certain submissions, which contained a nonexistent section of the Regulations as well as two so-called “hallucinated” cases, and that it was not the first time that the Applicant appeared to have done so. The Registrar clearly stated that such “repeated false submissions to the Registrar are unacceptable”, brought the practice notice on the use of AI to the Applicant’s attention, strongly cautioned it to verify the accuracy of its submissions, and warned the Applicant that such conduct may warrant an award of costs.

[116] Despite this, the Applicant’s written representations contain quotations without citations, inaccurately identify or characterize legal principles, often fail to identify sources, and cite as support certain decisions which, on their face, are not applicable. These issues suggest that the Applicant again failed to disclose the use of AI in the preparation of its written representations, or verify the correctness of such materials, notwithstanding the lack of any nonexistent or “hallucinated” cases.

[117] When asked about these issues at the hearing, the Applicant’s representative indicated that they had not been involved in the preparation of the written representations. As such, the Registrar directed the Applicant to submit: (i) a Declaration of use of AI, as the case may be, pursuant to the

Trademark Opposition Board's practice notice to this effect; and (ii) a complete copy of each of the decisions relied upon, with the relevant portions highlighted or otherwise clearly identified and correlated to the corresponding paragraph in the Applicant's written representations.

[118] The Applicant provided the following declaration in response:

To the best of the Applicant's knowledge and recollection, NO artificial intelligence tools were used to directly generate or create any content in relation to this proceeding as of the effective Publication Date (June 4, 2025) of the Practice Notice entitled "Use of AI in proceedings before the Trademarks Opposition Board". For sake of clarity, NO artificial intelligence tools were used in preparation for, or during, the Applicant's submissions at the Oral Hearing held on March 5, 2026.

While the Applicant confirms that AI tools were not used in the direct manner described above, the Applicant acknowledges that AI and other technological tools are integrated into the day-to-day operational functions of its business. It is possible that individuals within the organization who assisted with background research or related tasks may have utilized such tools as part of their regular duties.

[119] Not only does this declaration demonstrate a lack of accountability with regard to the deficiencies in the written representations noted at the hearing, but it also appears to be objectively false in at least some respects. Indeed, the Applicant's submissions to the Registrar on August 8, 2025, after the June 4, 2025 effective publication date of the practice notice *Use of AI in proceedings before the Trademarks Opposition Board*, falsely quoted the Regulations and contained two apparently "hallucinated" cases, which the Registrar considered were the result of undeclared use of AI.

[120] Moreover, the Applicant failed to comply with the Registrar's directive for full copies and pinpoints of all its authorities. Although the Applicant provided a "table of the key authorities cited in its Written Representations, along with copies of the cases not already included in the Board's Common List of Authorities and CIPO's Examination Manual", this was not the

directive. Not all cases were provided, and no effort was made to identify the portions of any of the cases relied upon, much less to correlate them with the Applicant's written representations.

[121] I consider the noted deficiencies in the Applicant's written representations, coupled with the apparent inaccuracy of the Applicant's AI declaration and its failure to comply with the Registrar's directive, to support a finding that AI was indeed used to generate at least some portions of the written representations, notwithstanding the Applicant's declaration to the contrary.

[122] The *Practice notice on costs awards* specifies that failing to follow a direction is conduct that the Registrar may consider to be unreasonable causing undue delay or expense. Likewise, the practice notice entitled *Use of AI in proceedings before the Trademarks Opposition Board* states that failure to provide a declaration of use of AI when required, or providing a false declaration, may constitute unreasonable conduct leading to an award of costs. I am satisfied that the Applicant has done both in the present case.

[123] Indeed, given the totality of the circumstances in the present case, I find that the Applicant misused AI, made an objectively false declaration in at least some respects regarding such use, and failed to comply with a directive of the Registrar, possibly in the hopes of eschewing ensuing responsibility or repercussions. Such conduct is a serious matter. Not only does it significantly reduce the cogency of the Applicant's representations, but it also erodes the Applicant's credibility and reliability throughout the proceeding. As such, extra time and resources were required to understand and address unsupported legal arguments and factual claims. In my view, such behaviour cannot be characterized as anything other than unreasonable conduct that has caused undue delay or expense in the proceeding, warranting costs *per* section 58.1(1)(d) of the Regulations.

[124] I recognize that the Applicant is self-represented. However, as noted by the Federal Court, “being self-represented carries with it obligations of self-education” [*Arora v Canadian National Railway*, 2026 FC 82 at para 31]. Moreover, the Applicant remains responsible for ensuring the accuracy of its submissions [see *Llyod’s Register Canada Ltd v Munchang Choi*, 2025 FC 1233 citing *Choi v Lloyd’s Register Canada Limited*, 2024 CIRB 1146 at paras 73-79], even more so after having been cautioned to this effect.

[125] As such, the Opponent is awarded costs in the amount of \$5,575.40, corresponding to five times the fee set out in item 9 of the schedule to the Regulations, which is of \$1115.08 as of the date of this decision.

Applicant’s request for costs

[126] In the Applicant’s correspondence of April 2, 2026 providing its comments in response to the Opponent’s request for costs, it also submitted its own request for costs against the Opponent, also claiming unreasonable conduct that has caused undue delay or expense. The Opponent filed no comments in response.

[127] First, I note that, on April 10, 2026, the Applicant filed a six page letter characterized as “supplementary representations” further to its original submissions of April 2, 2026. No “supplementary representations” are contemplated by the Act, the Regulations or the *Practice notice on costs awards*. Indeed, the Applicant had already submitted its representations in response to the Opponent’s request for costs, and it neither requested, nor obtained, permission to file any further submissions. In any event, I consider that, in the present case, it would be inappropriate and counter-productive to condone or encourage such a multiplicity of submissions regarding costs. The costs regime of the Act and Regulations are meant to deter undue expense or delay, not contribute to it [see *Josef Kleindienst v London*

Operations, LLC, 2026 TMOB 107 at paras 33-34]. I therefore decline to consider the Applicant's "supplementary representations".

[128] With regard to the Applicant's original request for costs, I understand it to be premised essentially on the fact that the opposition was, in the Applicant's opinion, "without reasonable basis" given its position that there was "no reasonable likelihood of confusion" and more significantly according to the Applicant, that the previous relationship between the parties indicates that the Opponent did not have a genuine belief that the trademarks were confusing. As such, it submits that the opposition, which caused the Applicant to expend significant time, effort and resources, was not filed in good faith and unreasonable.

[129] I disagree with the Applicant. With regard to the submission that the Opponent did not genuinely believe there was confusion such that the opposition was in bad faith, as stated above, confusion is to be assessed in the mind of an average consumer, not subjectively in the mind of the Opponent. Moreover, I consider there to be no indication of bad faith on the part of the Opponent, as asserted by the Applicant.

[130] To the extent that the Applicant argues that there was "no reasonable likelihood of confusion" as it considers "the respective goods, channels of trade, and target consumers of the two business are plainly different", as stated above there is evidence to the contrary. In any event, I consider that the opposition clearly raised more than one substantial issue. Indeed, in the present case, accepting the Applicant's request for costs would be akin to awarding costs based on outcome on the merits, which is not contemplated by section 58.1(1) of the Regulations.

[131] The Applicant also submitted that it should be awarded costs as some materials filed by the Opponent in support of its request for costs were,

according to the Applicant, “wholly irrelevant”. I disagree. In my view, there was a sufficiently clear, cogent and logical reason for the Opponent to have cited the materials in question. Even if not ultimately relied on in the present case, they speak to a pattern of behaviour which could potentially be relevant to the issue of costs. In any event, it is difficult to see how attaching copies of three published decisions of the Registrar can be said to be unreasonable behaviour causing undue delay and expense.

[132] Indeed, notwithstanding the ultimate outcome of the opposition, in view of the record as a whole, I do not consider any of the Opponent’s behavior to have been unreasonable, much less having caused *undue* delay or expense. I therefore reject the Applicant’s request for costs.

DISPOSITION & ORDER

[133] Pursuant to the authority delegated to me under section 63(3) of the Act, I reject the opposition pursuant to section 38(12) of the Act.

[134] Furthermore, pursuant to sections 38.1 of the Act and 58.1(1)(d) of the *Regulations*, I order the Applicant to pay costs in the amount of \$5,575.40 to the Opponent forthwith.

Emilie Dubreuil
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

Appearances and Agents of Record

HEARING DATE: 2026-03-05

APPEARANCES

For the Opponent: Paul Braunovan

For the Applicant: Manu Patel

AGENTS OF RECORD

For the Opponent: Pratt McDermid

For the Applicant: No agent appointed