



7 août/Aug 2023
Votre référence Your File
28753-
TM136569CA00
Notre référence Our File
2117653

BERESKIN & PARR LLP/S.E.N.C.R.L., S.R.L.
SCOTIA PLAZA
40 KING STREET WEST
40th FLOOR
TORONTO
ONTARIO M5H 3Y2
Attention: Brigitte Chan

RE: Trademark: ZELLERS & Design
Applicant: The Bay Limited Partnership

This examiner's report concerns the above identified application. To avoid abandonment proceedings, a proper response must be received by this office by February 7, 2024. All correspondence respecting this application must indicate the file number.

Registrability:

Paragraph 37(1)(c) – Confusion with a co-pending application

The applicant is not the person entitled to registration of the trademark because it is confusing with another trademark for the registration of which an application is pending pursuant to paragraph 37(1)(c) of the *Trademarks Act*.

Specifically, the entitlement date June 30, 2021 of the application is later than the entitlement date(s) April 26, 2021 of co-pending and confusing application no(s). 2,102,432, the particulars of which are attached.

Please be advised that the objection pertains to all the services presently designated in the subject application.

In assessing whether there is a reasonable likelihood of confusion, the Registrar must have regard to the provisions of subsection 6(2) of the *Trademarks Act*, which provides that:

The use of a trademark causes confusion with another trademark if the use of both trademarks in the same area would be likely to lead to the inference that the goods or services associated with those trademarks are manufactured, sold, leased, hired or performed **by the same person**, whether or not the goods or services are of the same general class.

The Registrar must consider all the surrounding circumstances including those stated in subsection 6(5) of the *Trademarks Act*:

- (a) the inherent distinctiveness of the trademarks or tradenames and the extent to which they have become known;
- (b) the length of time the trademarks or tradenames have been in use;
- (c) the nature of the goods, services or business;

(d) the nature of the trade;

(e) the degree of resemblance between the trademarks or tradenames in appearance or sound or in the ideas suggested by them.

Confusion is tested in terms of the average consumer's first impression of the one trademark and imperfect recollection of the other mark(s), and not by a side-by-side scrutiny. The "average consumer" is a likely buyer of the associated goods or services who has an average education in English and/or French.

For more information on trademarks that are confusing, please see sections 3.2, 3.3 and 3.5 of the *Trademarks Examination Manual* at www.cipo.gc.ca.

Any comments the applicant may wish to submit in writing will receive consideration.

If the applicant has any specific questions in respect of this Office action, please contact the assigned examiner. Please note that for general inquiries, including assistance with filing of the revised application, queries about the status of an application or receipt of correspondence, you may contact our Client Service Centre toll free at 1-866-997-1936.

Yours truly,



Natasha Gareau
Examination Section
819-635-5401
fax: 819-953-2476