



28 mars/Mar 2024  
Votre référence Your File

Notre référence Our File  
2137493

Zellers Inc.  
40 Rue Principale O  
La Trinité-Des-Monts  
QUEBEC  
G0K1B0

RE: Trademark: ZELLERS RESTAURANT  
Applicant: Zellers Inc.

---

This examiner's report concerns the above identified application. To avoid abandonment proceedings, a proper response must be received by this office by May 28, 2024. All correspondence respecting this application must indicate the file number.

The applicant's correspondence dated February 6, 2024 and March 12, 2024 is acknowledged. In view of the provisions of subsection 25(1) of the Trademarks Regulations, in all business before the Office of the Registrar of Trademarks, an applicant may be represented by another person only if that other person is a trademark agent. Since the response was submitted by an individual who is neither the applicant nor their appointed trademark agent, it cannot be considered as a proper response. Pursuant to section 36 of the Trademarks Act, the applicant is considered to be in default in the prosecution of the application as the applicant failed to file a proper response to our correspondence dated June 27, 2023.

The applicant's correspondence dated March 15, 2024 and March 28, 2024 is acknowledged. The applicant's correspondence dated March 28, 2024 is considered to be a partial response to the outstanding objections.

Pursuant to section 36 of the *Trademarks Act*, the applicant is considered to be in default in the prosecution of the application as the applicant failed to file a proper response to our correspondence dated June 27, 2023. The following objections remain outstanding:

In view of paragraph 12(1)(d) of the Trademarks Act, the trademark does not appear to be registrable since it is considered confusing with registered trademark nos. TMA445,428, TMA445,249, TMA434040, TMA445,430, TMA434,003, TMA434,004, TMA445,429 and, TMA452,495.

In view of paragraph 37(1)(c) of the Trademarks Act, the applicant does not appear to be entitled to registration. Specifically, the entitlement date October 2, 2021 of the application is later than the entitlement date of June 30, 2021 for co-pending and confusing application nos. 2,117,653, 2,117,654 and 2,117,731.

In assessing whether there is a reasonable likelihood of confusion between the trademark and the cited registered trademark(s), 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 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.

The applicant is hereby notified that if the default is not remedied within 2 months after the date of this notice, the application may be treated as abandoned pursuant to section 36 of the *Trademarks Act*.

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,

Michelle Gill  
Examination Section  
819-271-7685  
fax: 819-953-2476