

IN THE CANADIAN TRADEMARKS OFFICE

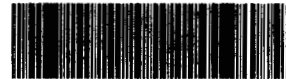
In The Matter of Trademark Application:

Applicant(s) : Canadian Safe Boating Council
Appln No. : 1851536
Filing Date : August 8, 2017
Trademark : CANADIAN SAFE BOATING COUNCIL
Examiner : Christopher Lewis

J. Lewis

ISED-ISED Canada

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2019/10/10

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OPIC-CIPO M000652404

To: The Registrar of Trademarks
CIPO, Trademarks Office
Ottawa-Gatineau, Canada, K1A 0C9.

Dear Sir/Madam:

This is in response to the letter from the Office dated October 11, 2018, wherein the Examiner requested a new master affidavit in support of the Section 12(2), now Section 12(3), claim under the *Trademarks Act*.

In response, the Applicant submits the affidavit of Michael L. Vollmer, the Vice Chair and founding member of the Canadian Safe Boating Council (the Applicant), affirmed October 1, 2019 in support of the Applicant's claim to the benefit of Section 12(3).

The Applicant respectfully submits that CANADIAN SAFE BOATING COUNCIL (the Subject Mark), is registrable, in view of the fact that the trademark has acquired sufficient distinctiveness such that the mark would be recognized as a trademark in Canada.

The Vollmer Affidavit establishes that the Applicant is recognized as a non-profit national organization that works to promote safe and responsible boating practices in an effort to reduce injuries and fatalities. The Subject Mark has been used in Canada since at least as early as 2005 as its trade name and trademark to diligently and persistently convey and lobby the message of safe boating practices in Canada. This is accomplished vis-à-vis the operation of a membership based organization, various advertising initiatives, campaign awareness initiatives, contract initiatives, government support and sponsorship initiatives and research initiatives.

The Vollmer Affidavit shows that CANADIAN SAFE BOATING COUNCIL is considered to be at the forefront of Canadian safe boating initiatives. The Applicant advertises its services extensively, both to its members located across Canada and to the public at large. The activities of the Applicant are well known within the Canadian boating community which results in an association between the Subject Mark and its applied-for services. The Applicant diligently uses this association in its daily activities which

enables the Applicant to distinguish its services from those of others. In view of the Applicant's extensive reputation within the boating community throughout Canada, and the blatant association created by usage of the Subject Mark, we submit that the Subject Mark has become distinctive within the meaning of Section 12(3) of the *Trademarks Act*, and that we request that the objection pursuant to Section 12(1)(b) of the *Trademarks Act* be withdrawn.

Favourable reconsideration and approval of this application for advertisement is respectfully requested.

We submit that this application is in good standing. If, however, any action is required to be taken to maintain or to put this application in good standing, we request that any other necessary action be taken and any related fee be charged to our Deposit Account No. 600000242.

Respectfully Submitted,

Canadian Safe Boating Council

By: *Ridout & Maybee LLP*

RIDOUT & MAYBEE LLP
Trademark Agents for the Applicant

October 10, 2019

Burlington, Ontario, Canada

(For personal contact, please call Steven H. Leach* at telephone no. 905-363-3054)

*Practising through Steven Leach Professional Corporation

IN THE CANADIAN TRADEMARKS OFFICE

IN THE MATTER OF Application No. 1,851,536 (the "Initial Application") for the Standard Character Mark **CANADIAN SAFE BOATING COUNCIL** (the "Trademark") filed on August 8, 2017 by Canadian Safe Boating Council (the "Applicant")

AND OF Application No. 1,987,849 (the "Secondary Application") for the Standard Character Mark **CANADIAN SAFE BOATING COUNCIL** (the "Trademark") filed on October 1, 2019 by Canadian Safe Boating Council (the "Applicant")

AFFIDAVIT OF MICHAEL L. VOLLMER

I, Michael L. Vollmer, of the City of Burlington in the Province of Ontario, make oath and say as follows:

1. I am a Director Emeritus and a founding member of the Canadian Safe Boating Council (the 'Applicant'). As a result of my position with the Canadian Safe Boating Council and my review of our company records in preparation for solemnly affirming this affidavit, I have personal knowledge of the matters to which I solemnly affirm below, unless otherwise indicated.

Background & History:

2. The Applicant was incorporated as a Canadian corporation in December 1990 and was established to educate and improve communication and information regarding safe boating issues in Canada.
3. The Applicant evolved from an earlier organization [the Council of Boating Organizations of Canada], which included 61 members in all provinces and territories. As such, the Applicant started off with a strong national base and was recognized as a national organization from its inception.
4. The Applicant has been recognized in all parts of Canada as being a distinct body working to reduce the incidence of injury and fatalities that occur as the result of recreational boating activities. Over the last 15 years, water-related Canadian fatalities have been reduced by at least 30% thanks to the Applicant. This information is borne out in studies by the Canadian Red Cross and the Lifesaving Society.

5. The Applicant has been using CANADIAN SAFE BOATING COUNCIL as a trademark in Canada since incorporation. Unfortunately, prior to 2016, detailed breakdowns of revenue and expenditures were not reported as the Applicant is a non-profit organization run strictly by volunteers. Breakdowns by province and territory are also not recorded. However, attached hereto and marked as **Exhibit "A"** are the Applicant's financial Statements from 2000-2003, 2006-2012 and for the year ending December 31, 2018. Also included is a copy of the oldest cheque on record that the Applicant has received, dated March 10, 2005 issued from Fisheries and Oceans Canada.
6. The Trademark is frequently used under the Applicant's BOAT Design trademark which was registered in Canada on July 14, 2015 under Registration No. TMA908,405. Attached hereto and marked as **Exhibit "B"** is a copy of the Registration Certificate.

Membership:

7. The Applicant's target market is Canadian boaters within the marine boating community. More specifically, this consists of pleasure power boaters, fishermen, anglers, sailors, casual paddlers (canoe and kayak) and other boating participants.
8. The Applicant offers memberships open to both Canadian organizations and individuals. Membership provides a variety of benefits including access to Internet website links, newsletters, personal networking opportunities with key industry and government representatives and the knowledge that membership dollars help support safety in boating.
9. At the present time, the Applicant has 51 provincial and national organizations as members as well as members from federal and provincial agencies. An additional 92 members are individuals located across Canada. Membership has not changed since 2017.
10. Attached hereto and marked as **Exhibit "C"** is a copy of the Applicant's 2019 national membership report. Importantly, many group members are national associations with representatives in every province and most territories in Canada. Groups include, but are not limited to, Sail Canada (which represents 10 provincial associations/ sport governing bodies), BOATsmart Canada, Canadian Forces Cadets, Canadian Power and Sail Squadrons, Canadian Red Cross, Lifesaving Society, National Boating Safety School, National Marine Manufacturers Association Canada, Transport Canada Marine Safety, Transportation Safety Board and Yamaha Motors.

11. Since at least as early as 2001, the annual cost of a personal membership is \$75.00 and a group membership is \$150.00. Attached hereto and marked as **Exhibit "D"** is a copy of a membership application form depicting the Trademark dated 2001. This form has been used since 2001.
12. Attached hereto and marked as **Exhibit "E"** are a number of statements and affidavits supplied by our members regarding their participation in, and recognition of the trademark CANADIAN SAFE BOATING COUNCIL in association with the applied-for services.
13. Since about 2012, each member has been emailed a regular newsletter. Attached and marked as **Exhibit "F"** is a copy of the December 2016 newsletter which is representative of all newsletters released by the Applicant. All newsletters may be viewed online at <https://csbc.ca/en/about-us/newsletters>.

Initiatives:

14. Since at least as early as August 8, 2017, the Applicant is recognized on a national basis with multiple successful initiatives, studies and programs throughout Canada. Through these initiatives, the Trademark and the Applicant's services have developed, at least as early as August 8, 2017, a strong association amongst its consumers. The Applicant utilizes this association to successfully promote and distinguish its services from others.

Advertising Initiatives:

15. The Trademark is used on all publications, advertisements and communications of the Applicant including, but not limited to, print, television and electronic media.
16. Attached hereto and marked as **Exhibit "G"** is an advertisement that the Applicant ran in the November 2010 issue of the Canadian magazine, Boating Business. This Canadian publication is published six times a year and distributed throughout ON, QC, NS, NB, MB, BC, PE, SK, AB AND NL with circulation figures ranging between 5000-6000 copies per edition. Electronic editions are also available online at <http://www.boatingbusiness.ca/digital-editions>. More specifically, a total of 6215 copies of the November 2010 issue were distributed in the aforementioned provinces.
17. Each Spring and Summer, the Applicant advertises four (4) media campaigns via the Applicant's five main venues; community, radio, newspapers, television and online. The four campaigns include Safe Boating Awareness Week (SBAW), Hooked on Lifejackets (HOL), Operation Dry Water (ODW) and Stretching the Season (STS). The total circulation numbers of each campaign is as follows:

SBAW - 169,261,014

HOL - 14,470,209

ODW - 184,038,843

STS - 20,431,509

Attached hereto and marked as **Exhibit "H"** are the readership information for each campaign organized by province. Also enclosed is a sample of screen shots of said media clippings.

18. Attached hereto and marked as **Exhibit "I"** is a collection of print advertisements and corresponding distribution information from the year 2018.
19. The Applicant regularly advertises outdoors in the form of billboards, bus shelters and the like. Attached hereto and marked as **Exhibit "J"** are photographs of bus shelters and poster boards from Toronto, Montreal, Moncton and Edmonton. Each photograph was taken by Pattison Outdoor Advertising in 2018. Each photograph is time and date stamped.

The following chart outlines outdoor billboards numbers which is split by province for the past three seasons.

	Pattison Outdoor - Help Us Catch Impaired Boaters: Call 911 Poster Campaign		Pattison Outdoor - Tired of Waiting/Help is Closer	
	2016 / 2017	2017 / 2018	2017 / 2018	2018 / 2019
	~ Circulation	~ Circulation	~ Circulation	~ Circulation
British Columbia	36,134,0452	24,752,406		6,813,573
Alberta	3,929,086	7,771,233		14,934,122
Saskatchewan	5,936,588	2,443,898		7,232,522
Manitoba	3,167,424	389,279		3,937,934
Ontario	38,038,612	29,884,045		25,121,885
Quebec	36,055,280	44,670,718		61,307,112
New Brunswick	20,836,060	3,808,947		14,898,379

PEI	3,951,192		
Nova Scotia	3,364,214		
TOTALS	118,891,498	113,720,517	134,245,527

Total impressions gathered from the 2018-2019 season is as follows:

SBAW – 227,459,366 (TV- 33,901,142: Radio-39,356,452: Newspaper-8,388,214: Community Clippings-4,033,784: Online & Misc-141,779,774)

Stretching the Season – 25,640,967

Operation Dry Water – 198,336,450

Hooked on Lifejackets – 31,011,070

Cold Water – 320,755

The provided charted numbers are the circulation or impressions delivered over the course of the campaign. All of the outdoor ad placements are measured through COMMB (Canadian Out of Home Marketing and Measurement Bureau), with daily circulations applied to each location.

20. The Applicant has an active online presence vis-à-vis its Internet homepage, www.csbc.ca, including information on its key safety messages, major programs including Safe Boating Awareness Week, Cold Water, Boat Notes, Smart Boater, Weather to Boat and the Canadian Safe Boating Awards, known as the CASBAs.

On an annual basis, the number of page views of the Applicant's homepage are as follows:

May 23, 2018 -19 — 11,723 users - 32,449 pageviews
 May 23, 2017 -18 — 11,722 users - 39,415 pageviews
 May 23, 2016 -17 — 9,011 users - 28,807 pageviews
 May 23, 2015 -16 — 8,254 users - 26,867 pageviews
 May 23, 2014 -15 — 9,347 users - 28,888 pageviews
 May 23, 2013 -14 — 9,613 users - 37,093 pageviews
 May 23, 2012 -13 — 5,949 users - 25,990 pageviews

The Trademark always appears on the homepage.

Between February 25, 2018 and February 25, 2019, there were 12,632 website visits. From those 9,591 were from Canada, 1,406 from USA, 493 from France, remainder from various countries. A further breakdown within Canada is as follows:

4,544 – Ontario
1,855 – Quebec
1,763 – BC
525 – Alberta
235 – Nova Scotia
229 – Manitoba
196 – Sask
118 – NB
101 – NFLD and Labrador

I verily believe that the provincial breakdown in 2019 is representative of the provincial breakdown in 2012-2018. Attached hereto and marked as **Exhibit "K"** are various historical screen shots and various graphs depicting the total number of page views from 2013-2019.

Campaign Awareness Initiatives:

21. In order to be seen and heard as a national organization, the Applicant has held annual symposiums alternating between each coast and central Canada since 1991. Past attendees have been from Canada, the United States, Great Britain, Korea, Australia and New Zealand. The following is a listing of host cities from 1991- 2016:

1991 – Ottawa, ON	2004 – Whistler, BC
1992 – Ottawa, ON	2005 – Honey Harbour, ON
1993 – Quebec City, QC	2006 – Quebec City, QC
1994 – Toronto, ON	2007 – Oak Island, NS
1995 – Ottawa, ON	2008 – Stoney Lake, ON
1996 – Sherbrooke, QC	2009 – Whistler, BC
1997 – San Diego, CA	2010 – Montreal, QC
1998 – Kingston, ON	2011 – St. John, NL
1999 – Hamilton, ON	2012 – Gravenhurst, ON
2000 – Richmond, BC	2013 – Whistler, BC
2001 – Orillia, ON	2014 – Ottawa, ON
2002 – Dartmouth, NS	2015 – Halifax, NS
2003 – Montreal, QC	2016 – Yellowknife, NWT

The Applicant's 2019 symposium was held in Port Credit, Ontario on September 18-20, 2019. A total of 86 people attended. Attached as **Exhibit "L"** is the events brochure in English and French.

22. The Applicant conducted an extensive three year public awareness campaign funded by Transport Canada in 2013 through to 2016. The main goal of this campaign was to evaluate and ultimately improve boating safety practices in Canada. Attached as **Exhibit "M"** is a 2014 interim report and a final 2016 report of this campaign conducted by Ipsos Reid, a leader in Canadian market research. Launch events were held in Halifax, Montreal, Toronto, Winnipeg and Vancouver.

The 2016 Final Project Report breaks down the number of Canadians exposed to the media campaigns over the three year period. Notably, Page 2 of the report states that the Applicant's Safe Boating Awareness generated 85.7 million impressions in 2012 across each province and rose 45% to 124.9 million impressions in 2015, or about 3 impressions for every Canadian. Yearly tracking research demonstrated the effectiveness of the message, showing 69% of Canadian boaters understood the Safe Boating Awareness Week messaging in 2015, an increase of 285 points versus 2012. In each impression, the Trademark appeared.

The budget for this research campaign was \$39,000.00. Attached hereto and marked as **Exhibit "N"** is an Ipsos Reid invoice dated October 24, 2014 issued to the Applicant which discloses the total budget.

23. A major Canadian campaign, which has run since 1995, is Safe Boating Awareness Week, an annual national campaign delivered by the Applicant, its members and its partners.

During the Applicant's three year Safe Boating Awareness Week awareness campaign, between March 24th and June 30th, 2014, the Applicant organized and executed a Canadian campaign during the North American Safe Boating Awareness Week in each province. This campaign encompassed multiple national and local campaigns and events with kick-off events held in Toronto, Vancouver, Halifax, Winnipeg and Quebec City. In particular, nine 'Ready, Set, Wear It' events were held in Canada during this time which promoted the use of lifejackets while boating. There were a total of 384 participants in Canada. Attached hereto and marked as **Exhibit "O"** is a Transport Canada Boating Safety Contribution Program Summary Report outlining this initiative.

The Applicant also ran its Hooked on Lifejackets initiative during the three year campaign in 2014. Attached as **Exhibit "P"** is a print PSA that ran in the 2014

Nova Scotia Anglers' Handbook which cites fishing regulations for this province. 90,000 copies were distributed throughout NS. This PSA also appeared in the 2014 New Brunswick Anglers' Guide which distributed 77,500 copies throughout NB.

24. On May 24, 2019, the Applicant announced its participation in the LCBO's Ontario Provincial Donation Box Program which ran May 26, 2019 to June 22, 2019. Attached hereto and marked as **Exhibit "Q"** is a copy of the Applicant's Press Release announcing the program along with a copy of the counter card that appeared alongside the donation box.

Contract Initiatives, Government Support & Sponsorship:

25. Contracts with the Canadian Federal Government have played an important role in allowing the Applicant to develop a strong association between the Trademark and the Applicant's applied-for services throughout Canada. Attached as **Exhibit "R"** is an example of a contract with the Canadian Federal Government, Department of National Defence for the project 'Prevention in the First Degree' dated April 16, 2009. Also attached is an overview of the program which notes that quantitative online surveys were conducted in the spring of 2010, 2011 and 2012 focusing on the period following National Safe Boating Awareness Week. The overview further states that the respondent "will be a nationally representative sample of Canadian boating participants [...] it will include both English and French speaking Canadians". I do not have a copy of the survey but can confirm that the survey clearly incorporated the Trademark.
26. On May 21, 2019, Marc Garneau, Canadian Minister of Transport accompanied by Sherry Romanado, Parliamentary Secretary to the Minister of Seniors and Member of Parliament for Longueuil—Charles-LeMoyne announced funding to organizations that promote safe boating practices. The Minister's press release promoted the Applicant's North American Safe Boating Awareness Week. Attached as **Exhibit "S"** is a copy of the Minister's press release wherein the Applicant's website is directly listed as an associated link. This press release can also be found online at <https://www.newswire.ca/news-releases/minister-garneau-announces-funding-to-organizations-that-promote-safe-boating-practices-881302219.html>.
27. Sponsorship plays a vital role in the Applicant's activities. The charity registration number of the applicant is 875659864RR0001. Monies donated to the Applicant go to support activities geared to educate and inform the general public about safe and responsible boating. They include North American Safe Boating Awareness Week, the Canadian Safe Boating Awards (CASBAs), Beyond Cold Water Boot Camp, SmartBoater.ca, Ready Set Inflate and the annual Symposium, to mention a few. Attached hereto as **Exhibit "T"** is the Applicant's current

sponsorship brochure which is available to download directly from the Applicant's internet homepage.

Research Initiatives:

28. The Applicant has also funded its own independent research projects, the most extensive of which was "Will it Float?" initiated in 2002 and conducted by Smart Risk Foundation on the Applicant's behalf. Attached as **Exhibit "U"** is a copy of the final report. The project revolved on proper lifejacket wear and included a telephone poll which referenced the trademark in each interview. In order to attain a representative sample of Canadians in each province and territory, households were randomly selected using Random Digit Dialing (RDD) sampling (see Page 187). In total, the telephone survey was administered to a total of 1,009 Canadians aged 18 and over between February 28th and March 10th, 2003 (see Appendix G).

The total costs for this research project was \$48,407.00.

29. In 2018, the Applicant ordered a tracking study from McCullough Associates. The Research objective was to measure and track awareness of safe boating messages communicated by the Applicant. This study included a national online survey via Ipsos eNation Canada omnibus survey.


Attached as **Exhibit "V"** is a copy of the final report. Key finding include:

- 42% of Canadian adults participate in recreational boating activities (page 7);
- 31% of boaters say that they have seen one or more of the Applicant's Safety Cards which prominently display the Trademark (see page 10 & 50 to 51 & 89 to 92);
- Two new draft 'BOAT SOBER' poster ad concepts were shown to boaters to elicit their reactions. The Trademark appears at the bottom of each ad (see page 78-81);

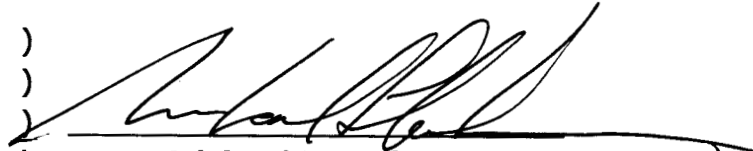
The total costs for this study was \$44,635.00.

I make this solemn Declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

SWORN BEFORE ME in the City of
Burlington, in the Province of Ontario,
Canada, this 1st day of October, 2019.



Steven H. Leach
A Commissioner for Taking Affidavits

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Michael L. Vollmer