

THYMES

This case affects trade-mark filing practice in Canada and arises from an Opposition grounded primarily on the allegation of confusion; however, a technical issue also arose, namely, the necessary timing for the foreign use and where the foreign use must have occurred in order for a non-Canadian applicant to rely upon its home registration and use.

At the Opposition Board, the Opponent won on the issue of confusion, as well as on the technical point. The applicant's reliance upon its U.S. registration and use was not allowed since the U.S. use post-dated the Canadian filing date.

On Appeal to the Federal Court Trial Division, the finding of confusion was maintained and the Judge held that:

reliance upon a home registration and use requires use abroad at the date of the Canadian application, and such use must be in the applicant's country of origin.

This decision has been appealed to the Federal Court of Appeal on both the issue of confusion and on the issue of the necessary timing for the foreign use and where the foreign use must have occurred.

Whatever the Federal Court of Appeal's decision ultimately is, hopefully the decision will not adversely impact registrations that already exist by whether the use started before or after the Canadian filing date.

The Thymes, LLC v. Reitmans (Canada) Limited

$$\frac{y_0}{x_0} = \frac{g(x+h) - g(x)}{(x+h) - x} = \frac{g(x+h) - g(x)}{h}$$


sim. polify

$$\lim_{h \rightarrow 0} \frac{g(x+h) - g(x)}{h} = \lim_{h \rightarrow 0} \frac{2x(x+h) + h^2}{h} = \lim_{h \rightarrow 0} 2x + h + h^2 = 2x$$

The Thymes, LLC v. Reitmans (Canada) Limited

Y1-Yp
X1-X

	<p>The Thymes, LLC (Applicant)</p>	<p>Reitmans (Canada) Limited (Opponent)</p>
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<p>Trade-Mark</p>		<p>THYME MATERNITY</p>
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<p>Wares and Services</p>	<p>WARES:</p> <p>Skin soap; hair and body shampoo; non-medicated bath preparations, namely, liquid soap, bath conditioner, gels salts and body scrubs; body crème; body powder; body oil; body lotion; sachets; perfume; eau de toilette; aerosol room scenting sprays; and candles</p>	<p>WARES:</p> <ol style="list-style-type: none"> 1. Maternity clothing 2. Footwear 3. Jewellery 4. Belts, hats, bags and sunglasses. 5. <u>Skincare products namely body lotions and creams</u> <p>SERVICES:</p> <ol style="list-style-type: none"> 1. Operation of retail clothing stores; retail clothing store services.
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The Thymes, LLC v. Reitmans (Canada) Limited

$$\frac{y_1 - y_0}{x_1 - x_0}$$

The Thymes, LLC (Applicant)	Reitmans (Canada) Limited (Opponent)
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Filing and Registration Dates	Application filed March 30, 2005	Application filed September 24, 2002 and registered June 2, 2004
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Bases of Application	Proposed Use in CANADA Registration and use of the Mark in the U.S. in association with the same kind of wares (claiming priority filing date of March 07, 2005)	Used in CANADA since at least as early as June 12, 1998
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The Thymes, LLC v. Reitmans (Canada) Limited

$$\frac{y_1 - y_0}{x_1 - x_0}$$

	The Thymes, LLC (Applicant)	Reitmans (Canada) Limited (Opponent)
Grounds of Opposition		<p><u>TMOB</u></p> <p>s. 30(d) – Applicant’s U.S. registration indicates date of first use was July 12, 2005, after the Canadian filing date</p> <p>s. 12(1)(d) – Applicant’s mark is confusing with Opponent’s trade-marks</p> <p>ss. 16(2) and (3) - Mark is confusing with the various THYME marks and trade-names previously used and made known in Canada by the Opponent</p> <p>Distinctiveness - Mark is not distinctive and is not capable of distinguishing the Applicant’s wares from the wares and services associated with the Opponent’s trade-marks and trade-names</p> <p><u>The Opponent was successful on all four grounds [TMOB did not address Opponent’s ss. 30(e) and (i) grounds]</u></p>

The Thymes, LLC v. Reitmans (Canada) Limited

71-70
X, -X

**The Thymes, LLC
(Applicant)**

**Reitmans (Canada)
Limited (Opponent)**

**Grounds of
Appeal**

Federal Court

Registrar erred in finding that:

1. There was a likelihood of confusion between the Applicant's mark and the opponent's mark (this ground of appeal failed)
2. Use of the Applicant's mark in the U.S. was required as of the filing date of the application in Canada to a make a valid s. 16(2) claim (detailed below)