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.

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WARES		(Opponent)	o de	"我"这个跟"看了",她有人的"你"有"我们",有一张的"有",我不断"你"是一个是一个是一个是一个人的"我"。
WARTS		(Opponent)	o de	"我们们还有这个时间,你有一切,你有一个,我们们,我们也没有一个人,我们们也是有一个人的,我们也是
WARTS		(Opponent)	o de	"我"这个"这'魔'中心,她"我们好",还有"我们的",有多数是有"这"的一句,也不是有"我们"的是是一句,是一句,也是这
MAZITIS.		(Opponent)	o de	化新加热 医多种小球 医外性 经债券 经外部的 医外胚性 经分类 化二苯基苯基 医克里克氏氏管 医克里克氏管
WARES		(Opponent)	o de	"我们还没有工作,那么好好,不是一块,你们还是我们有一次,我不可以不是一个是有一个的是不是的人的,我们也是不是一个的人,
WAZITS.		(Opponent)	o de	化热 经银银 有多人 经存货物 不信用 经分配的 经经济的 经现代的 医二种 医二种 医克里克氏病 医克里克氏病 医二氏虫虫 医克里克氏虫虫
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WARTS		(Opponent)	o de	"我"的"我"有这个时间的一样,有一种,可是是是有一种,我们也不得有一种,我们也是是是一种,我们也是有一种,也是是一种,一个是是一种。
WARTS		(Opponent)	Reitmans (Canada) Limited	"我"的"我"看了了一样"我"的"说话"的"我"的"我"的"说"我不懂,你没有一句,我看了一起,看着不看"我"我看着我们我一样,我看到我们的
WARTS		(Opponent)	o de	"我"的"我"这一笑,她"我们"的"我"的"我"的"我"的"我"的"我",我们"我"的"我"的"我"的"我"的"我"的"我"的"我"的"我"的"我"的"我",我们就是一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个
WARTS		(Opponent)	o de	"And Mind Mind And Mind Mind Mind Mind Mind Mind Mind Mi
WARTS		(Opponent)	o de	"我"的"我"看了一种"我一样"的话,她们还有多数有"这"看"一样"的话,这是一是一个是一个我们,也是不是有什么一个,我们就是是一种,
WARTS		(Opponent)	o de	"这一好,我有一个好好,你有一样,你们就没有好好,我们也没有一个好,我们就是有一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个
WARTS		(Opponent)	o de	"我"的"我是有人的我们的"的话,她们们有多数是有"我们的"的话,这是一个是一个是一个人,我们也是一个人的是一种,我们是一个一个人们们们的一个人,我们们们们们们们们们们们们们们们们们们们们们们们们们们们们们们们们们们们们
WARTS		(Opponent)	o de	"我"的"我"有多的人的"我们的"的"我"的"我"的"我",我们也没有一个有一个人的"我"的"我",我们也没有一个人的是一种,我们也没有一种"我"的"我",我们也可以是一个人的"我",我们也不是一个人的"我",我们也没有一个人的"我",我们也没有一个人,我们
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WARTS		(Opponent)	o de	"我"的"我"看了一样的人的"这话,我们也有的玩声"的"我"中"这话,我们还是我们的"我们的"的"我们的"我们"的"我们"的"我们"的"我们"的"我们",我们们
WARTS		(Opponent)	o de	"我"的"我"看了一样的人的"你"有一句,我们也有一句,有一句"你"的"我"的是一句,我们也没有有多多的"你"的"我们的"的"我看"的"我"的"我们的"的"我们
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Services And sale

crème; body powder; body oil; soap, bath conditioner, gels salts and body scrubs; body shampoo; non-medicated bath body lotion; sachets; perfume preparations, namely, liquid Skin soap; hair and body

- Maternity clothing
- ∠ 00 0 4 Footwear
 - Jewellery
- Belts, hats, bags and sunglasses
- Skincare products namely body lotions

and creams

SERVICES:

scenting sprays; and candles eau de toilette; aerosol room

Operation of retail clothing stores; retail clothing store services





pases of Application	Filing and Registration Dates	
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)	Application filed March 30, 2005	The Thymes, LLC (Applicant)
least as early as June 12, 1998	Application filed September 24, 2002 and registered June 2, 2004 Head in CANADA since at	Reitmans (Canada) Limited (Opponent)





	The Thymes, LLC (Applicant)	Reitmans (Canada) Limited (Opponent)
Grounds of Opposition		<u>TMOB</u>
		s. 30(d) – Applicant's U.S. registration indicates date of first use was July 12, 2005, after the Canadian filing date
		s. 12(1)(d) – Applicant's mark is confusing with Opponent's trade-marks
		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
		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
		The Opponent was successful on all four grounds [TMOB did not address Opponent's ss. 30(e) and (i) grounds]





		Grounds of Appeal	
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)	1. There was a likelihood of confusion between the Applicant's mark and the opponent's mark (this ground of appeal failed)	<u>Federal Court</u> Registrar erred in finding that:	The Thymes, LLC (Applicant)
			Reitmans (Canada) Limited (Opponent)

