

Molson Coors

In the course of preparing our comments, we reviewed the draft comments from several stakeholders. We have only commented on issues where our view is different, or where we think we have some additional perspective that the Office would find helpful.

Third Party Correspondence – TM Examination

This amendment is unclear as to what types of things would be acceptable, and what the results would be. It would be helpful to clarify that the Examiners will only consider information related to matters considered by s.12 of the Act. For example, public domain information which may show that marks are commonly used terms in the industry or prior Board or Court decisions – things the Examiners should be looking at anyway. Evidence related to entitlement is probably not appropriate at this stage and should not be submitted, nor accepted.

Transfers

We are concerned that allowing partial transfers of trademark rights will cause additional confusion for the consumer, and will cause confusion when assessing rights. We are concerned that unsophisticated rights holders may not fully appreciate the potential for diluting their rights by partially assigning them. While sophisticated rights holders may be mindful to this, they are also more likely to have counsel to advise them, whereas small business owners may not have the wherewithal to seek outside counsel and will inadvertently dilute the rights they have worked hard to gain. The Office should consider allowing partial transfers only when the resulting coexisting registrations are not for goods or services that are similar.

Case Management – Opposition and Summary Cancellation Proceedings

How will the Board determine which matters qualify? Can parties apply for case management? How will the different deadlines be communicated? We are concerned that there will be confusion on the deadlines, and given that most firms and some companies manage their portfolios using docketing software, it will be difficult to internally manage different deadlines.

Written Representations

Moving from filing contemporaneously to filing in serial. We believe it would make sense to allow for a rebuttal for the first party provided it is very specific to the issues raised. Without that, it may raise the number of oral hearings requested.

s.45 Proceedings

We have seen recommendations for an automatic s.45 proceeding at a certain point of time, post-registration. If it is the objective of CIPO to adopt an international standard, doing so would certainly make Canada unique. While it may clear the register of a certain amount of dead wood, for Global brand owners who still have an intention to use their marks in Canada, it would require them to

refile applications and start the process over. We expect that this is what would happen in a large number of cases. We are not convinced that it will ultimately help to remove a large number of unused marks. It is important to understand that in the world of businesses, 5 years –as an example - is not that long, and while multinational companies may have every intention to use a mark in Canada, the realities of getting to a launch can take significantly longer than anyone would like. Unless the Registrar is committed to taking a proactive stance in maintaining the purity of the Register (which seems to not be the case given other changes to the Act) s. 45 proceedings are probably best left to interested commercial parties, and not automatically initiated by the Registrar. Fees related to s.45 proceedings should be kept low in order that this process is not cost-prohibitive for interested parties.