

# Bereskin & Parr

INTELLECTUAL PROPERTY LAW

January 18, 2010

Stephen Beney B.Sc. (Physics)  
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Your Reference: Unknown  
Our Reference: 20302-1

## **BY EMAIL**

Mr. John MacEachern  
Canadian Congenital Heart Alliance  
C4 – 233 Cross Avenue  
Suite 233  
Oakville, Ontario  
L6J 2W9

Dear John:

**Re: Canadian Trade Mark Application No.: 1,409,896**  
**For: CANADIAN CONGENITAL HEART ALLIANCE & DESIGN**  
**Filed: September 8, 2008**  
**Applicant: Canadian Congenital Heart Alliance**


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We have received correspondence from the counsel representing Canadian Olympic Committee (COC) with respect to the above-referenced matter. A copy of the correspondence is enclosed for your records. The correspondence outlines that the COC has requested an extension of time to file a Statement of Opposition against your application, with the period expiring March 28, 2010.

The counsel for COC has expressed that they will not continue to oppose the application provided that we consent to their requests outlined in page 2 (two) of their letter.

We will review the agreement within the next few weeks and give you a call to provide our recommendations.

Yours truly,  
BERESKIN & PARR LLP/S.E.N.C.R.L., s.r.l.

  
Stephen Beney  
/mn  
Encl.

Bereskin & Parr LLP  
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**TORONTO MISSISSAUGA WATERLOO MONTREAL**

# SIM & McBURNEY

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January 6, 2010

Kenneth D. McKay  
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VIA E-MAIL

Our Ref: 3707-311 KDM  
Your Ref:

**WITHOUT PREJUDICE**

Bereskin & Parr  
Box 401  
Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3Y2

Dear Sir or Madam:

Re: **Canadian Trade-mark Opposition:**  
**Trade-mark: CANADIAN CONGENITAL HEART**  
**ALLIANCE & TORCH DESIGN**  
Appl'n No.: 1,409,896  
Applicant: **Canadian Congenital Heart Alliance**



As you know my client, the Canadian Olympic Committee, ("COC") has opposed the above captioned mark. As you can imagine, our client is quite concerned about the use and registration of a Torch or Flame design, per se, in view of the well known, if not famous, nature of the Olympic Flame and the Olympic Torch. They are somewhat concerned about the use of Torch or Flame designs that are used and applied for in association with a source designation, for instance your client's name Canadian Congenital Heart Alliance ("CCHA"). While my client is prepared to proceed with its opposition set out above through to hearing and appeal, if necessary, we are also prepared to come to a business resolution to deal with COC's concerns.

My client proposes the following resolution to deal with its concerns while, at the same time, allowing your client to use its Torch design or Flame design in association with a source description, i.e. Canadian Congenital Heart Alliance ("the Combined Mark").

The COC would agree not to continue to oppose the combined mark and provide a written consent to its registration and use in Canada under Section 9(2) of the Canadian Trade-marks Act in return for the following undertakings from your client:

Michael I. Stewart, B.Sc. (Hons.) (Chemistry) | Toni P. Ashton, LL.B. | Kenneth D. McKay, LL.B., CLP | Timothy M. Lowman, LL.B., CLP, MCIArb, Certified Specialist – Civil Litigation | Stephen M. Lane, B.A.Sc. (Chemical Engineering) | David A. Ruston, B.Sc. (Electrical Engineering) | Lola A. Bartoszewicz, Ph.D. (Clinical Biochemistry) | Andrew Jones, LL.B. | Kimberly A. McManus, Ph.D. (Chemistry) | Matthew D. Powell, B.Sc. (Electrical Engineering) | Marlye Monfiston, LL.B. | Rohit Parekh, M.Sc. (Molecular Biology)

Technical Consultants · Erica L. Lowthers, Ph.D. (Pharmacology) | Evangellos W. Vekris, Ph.D. (Materials Science & Engineering) | Patrick J. Cotter, LL.B. | Sanjukta Tole, B.Sc. (Hons.) (Human Behavioural Biology) | Kelly J. Stewart, B.Sc. (Electrical Engineering) | Alison Varga, Ph.D. (Molecular Genetics)

Senior Consultants · Peter W. McBurney, B.Sc. (Hons.) (Electrical Engineering) (Electronics) | Brenda L. Boardman, B.A. | John H. Woodley (1947-2008) | Patricia A. Rae, Ph.D. (Biochemistry)

1. CCHA agrees to withdraw or cancel any other Canadian trade-mark applications or registrations for a Torch or Flame design per se.
2. CCHA agrees not to apply for registration, register or use directly or indirectly the Torch design of application No. 1,409,896 or any other Torch or Flame design per se in the future. For greater certainty The CCHA would always accompany its Torch or Flame design with a source designation, the combined mark as depicted in the application No. 1,409,896.
3. CCHA agrees not to apply to register, register or use directly or indirectly its Combined Mark or a similar mark in association with the marketing, promotion or sponsorship of sporting events or sporting goods.
4. CCHA agrees not to claim or represent in any manner, directly or indirectly, in association with the COC, the Olympic Movement or the Olympic Games.
5. CCHA agrees not to challenge, directly or indirectly the public authority status of the COC now or in the future.
6. All of the above will be binding on the COC and CCHA and their respective successors and assigns.

If the above terms are acceptable, please advise and I can prepare a Settlement Agreement acceptance to COC which includes the above terms and the usual consent, confidentiality, indemnity and other clauses standard to COC Settlement Agreements.

I look forward to your response.

Yours very truly,  
**SIM & McBURNEY**

  
Kenneth D. McKay

KDM/jy