



# FOLLOWING THE SIGNS

## NEW DIRECTIONS IN TRADEMARK LAW

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OPENING KEYNOTE ADDRESS

# Towards a Distinctive Trademark Law for the 21<sup>st</sup> Century

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## CURRENT

**17(1)** No application for registration of a trade-mark that has been advertised in accordance with section 37 shall be refused and no registration of a trade-mark shall be expunged or amended or held invalid on the ground of any previous use or making known of a confusing trade-mark or trade-name by a person other than the applicant for that registration or his predecessor in title, except at the instance of that other person or his successor in title, and the burden lies on that other person or his successor to establish that he had not abandoned the confusing trade-mark or trade-name at the date of advertisement of the applicant's application.

109 words

#TM17CA

## SUGGESTED REDRAFT

**17(1)** A trademark for which an application for registration is advertised under section 37 shall:

- (a) not be registered, or
  - (b) if registered, shall have its registration cancelled or amended,
- if another person:
- (c) had earlier used or made known a confusing trademark or trade name without abandoning it, and
  - (d) opposes or applies, by himself or his successor in title, to cancel or amend the registration.

67 words



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## CURRENT

**17.(2)** In proceedings commenced after the expiration of five years from the date of registration of a trade-mark or from July 1, 1954, whichever is the later, no registration shall be expunged or amended or held invalid on the ground of the previous use or making known referred to in subsection (1), unless it is established that the person who adopted the registered trade-mark in Canada did so with knowledge of that previous use or making known.

76 words

Total: 185 words

## SUGGESTED REDRAFT

**17(2)** Proceedings commenced after the later of 1 July 1954 or 5 years from registration may succeed only where the challenged trademark was adopted with knowledge of the earlier use or making known.

32 words

Total: 99 words

