



PERLEY-ROBERTSON, HILL & McDOUGALL LLP/s.r.l.

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Reply to/Communiquez avec:  
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August 15, 2018

Ontario Association of Home Inspectors  
3901 Highway 7 West, Suite #100  
Woodbridge, ON L4L 8L5  
**Attention: Mr. Murray Parish**

Dear Murray:

**Re:**

**Our Reference: OAH-0011**

This is further to your email message to us advising that CAHPI continues to advise home inspectors that they must be registered with CAHPI in order to use the designations RHI and Registered Home Inspector. CAHPI is claiming that its registered trademarks entitle it to the exclusive use of those terms across Canada.

As you know, the terms RHI and Registered Home Inspector are currently governed by the Ontario Association of Home Inspectors Act, 1994, which provides the Ontario Association of Home Inspectors ("OAH") with the exclusive right to grant home inspectors the right to use the designations RHI and Registered Home Inspector in Ontario. The relevant provision of the legislation is reproduced below for ease of reference:

12(2) Any person in Ontario who, not being a registered member of the Association, takes or uses the designation "Registered Home Inspector" or "R.H.I.", alone or in combination with any other word, name, title, initial or description, or implies, suggests or holds out that that person is a registered home inspector is guilty of an offence.

While the Home Inspection Act 2017 repeals the Ontario Association of Home Inspectors Act, 1994, as of now, that legislation is not in force, and it is clear that federal trademark registrations do not supersede or override other federal or provincial legislation such as the Ontario Association of Home Inspectors Act, 1994. In other words, a trademark registration does not entitle CAHPI, or anyone else for that matter, to ignore the express provisions of the Ontario Association of Home Inspectors Act, 1994, or any other federal or provincial legislation.

Further, and in any event, RHI and Registered Home Inspector are professional designations that clearly describe an individual who is registered to provide home inspection services. As a result, RHI and Registered Home Inspector are incapable, on their own, of serving as valid and enforceable trademarks.



The Canadian Trademarks Office published a Practice Notice on October 26, 2010 entitled “Professional Designations and their Initials – Paragraph 12(1)(b) of the Trademarks Act”, which clearly states that professional designations which are clearly descriptive of the associated services are not registrable as trademarks. The relevant excerpt from the Practice Notice is reproduced below:

If it is considered that the prospective consumer, when faced with the applied for trademark would immediately, as a matter of first impression, conclude that the goods or services are produced by a professional from that designation, the mark will be found to be clearly descriptive or deceptively misdescriptive of the persons employed in the production of the goods and services and unregistrable pursuant to the provisions of paragraph 12(1)(b) of the Act [see *Life Underwriters Assn of Canada v. Provincial Assn of Quebec Life Underwriters* (1988) 22 C.P.R.(3rd) 1 and *Lubrication Engineers, Inc. v. Canadian Council of Professional Engineers* (1992), 41 C.P.R. (3d) 243].

Moreover the Office considers that the mere addition of an abbreviation, acronym or initials of the professional designation contained in the trademark will not render the trademark registrable (see *Life Underwriters Assn.*, supra; *College of Traditional Chinese Medicine Practitioners and Acupuncturists of British Columbia v. Council of Natural Medicine College of Canada* (2009) 80 C.P.R. 265].

The Registrar of Trademarks and the Federal Court have consistently held that professional designations which clearly describe the associated services are unregistrable and unenforceable trademarks [see, for example: *College of Traditional Chinese Medicine Practitioners and Acupuncturists of British Columbia v. Council of Natural Medicine College of Canada* (2009), 80 C.P.R.(4th) 265; *College of Dietitians of Alberta v. 3393291 Canada Inc.* (2015), 131C.P.R.(4th) 197; *Canadian Institute of Bookkeeping Inc. v. Institute of Professional Bookkeepers of Canada* (2012), 105 C.P.R.(4th) 352].

In light of the foregoing, it is our position that OAH I is well within its rights to continue to confer the RHI and Registered Home Inspector professional designations.

Please let us know if you have any questions.

Yours very truly,

Jennifer E. McKay  
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