



# FIELD LAW

## Intellectual Property and Technology

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### Mommas, Don't Let Your Babies Grow Up To Be CDAs – The Problem With Trade Marking Professional Designations and Their Acronyms



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We all regularly rely on knowing another person's qualifications by the letters after their name: C.A., P. Eng., R.N., M.D., etc. But these well-known acronyms belong to *regulated* professions – where government legislation controls the approved professional designations and associated acronyms, and provides sanctions against those who might use the designations without the required qualifications.

But there are hundreds more professional designations used in unregulated, but skilled professions created by industry associations or educational institutions, who want to provide their members with accreditation for their qualifications, but who don't have the benefit of government regulation to protect the designations. A recent example that became the subject of litigation was the attempt by the Ontario Dental Assistants Association ("ODAA") to protect the designation "CDA" for "Certified Dental Assistant", by applying for a specialized type of federal trademark called a "certification mark". The Canadian Dental Association opposed the certification mark application, the rubber gloves were off, and the fight recently wound its way on successive appeals to the Federal Court and then to the Federal Court of Appeal.

An ordinary trademark is what a business uses to protect the brand names of its own products and services. A "certification mark" allows a centralized body, like an industry association, to create a "seal of approval" to be used by its members to identify their compliance with a certain standard for specific products or services, set by the association. Examples would be the "Better Business Bureau" name and logo, and the "VQA" of the B.C. Vintners Quality Alliance.

The Supreme Court of Canada confirmed, way back in 1992, that "C.L.U" for "Chartered Life Underwriter" was not a valid certification mark, because it was a professional designation. However, the Canadian Intellectual Property Office ("CIPO") continued to accept and register certification marks for professional designations until 2010, when CIPO finally decided they should follow the Supreme Court decision. But now, in 2013, the Federal Court of Appeal has confirmed, in the *ODAA v. Canadian Dental Association* case, that certification marks can, at least in theory, be validly registered to protect professional designations.

(Alas, theory did not turn into practice for the ODAA, because their application for "CDA" still failed for not meeting other requirements for a valid certification mark.)

Now what? Despite the fact that the Federal Court of Appeal has said an organization could protect a professional designation with a certification mark, it appears most such applications with still fail at CIPO on the basis of "descriptiveness" – which means you can't register a trademark that generically describes your goods or services. That is, you can't register the trademark "Apple" if you are selling apples, and you can't register "Certified Dental Assistant" if you are certifying dental assistants.

There is still a legitimate desire by many groups, vocations and professions to be able to use a certification mark to protect a designation to denote accreditation – but it looks like they are going to need a "RGTA" (Really Good Trademark Agent) to find a path through this legal maze.

To discuss trademarks and certification marks, contact **Thomas O'Reilly** in our **Intellectual Property and Technology Group**.



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