



LE REGISTRAIRE DES MARQUES DE COMMERCE  
THE REGISTRAR OF TRADE-MARKS

**Citation: 2014 TMOB 94**  
**Date of Decision: 2014-05-01**

**IN THE MATTER OF AN OPPOSITION  
by Source Energy Tool Services Inc. to  
application No. 1,422,068 for the trade-  
mark SOURCE ENERGY SALES AND  
RENTALS INC. and Design in the name  
of Source Energy Sales and Rentals Inc.**

[1] On December 16, 2008, Source Energy Sales and Rentals Inc. (the Applicant) filed an application to register the trade-mark SOURCE ENERGY SALES AND RENTALS INC. and Design (the Mark), shown below, in association with the following wares and services based on use in Canada since September 11, 2006:



**WARES:**

Service well site equipment namely equipment for flow control and separation of solids and hydrocarbons at surface namely: adaptors, ball catchers, digital deadweight gauges, flanges, adaptors, companions, spools, flange bolts, flare stacks, flow provers, flow lines, frac manifolds, generators, hammer wrenches, heaters, light towers, line heaters, matting, office trailers & shacks, pumps, sample catchers, storage tanks, valves, junk catchers, and chokes.

**SERVICES:**

Sale and rental of service well site equipment namely equipment for flow control and separation of solids and hydrocarbons at surface namely: adaptors, ball catchers, digital deadweight gauges, flanges, adaptors, companions, spools, flange bolts, flare stacks, flow provers, flow lines, frac manifolds, generators, hammer wrenches, heaters, light towers,

line heaters, matting; office trailers & shacks, pumps, sample catchers, storage tanks, valves, junk catchers, and chokes.

[2] The application was advertised for opposition purposes in the *Trade-marks Journal* of February 9, 2011.

[3] On April 8, 2011, Source Energy Tool Services Inc. (the Opponent) filed a statement of opposition. The grounds of opposition can be summarized as follows:

- Pursuant to sections 38(2)(a) and 30 of the *Trade-marks Act*, RSC 1985, c T-13 (the Act), the application for the Mark does not comply with section 30 of the Act because at the date of filing the application, the Applicant could not have been satisfied that it was entitled to use the Mark in Canada in association with the applied for services as it was confusing with the Opponent's trade-marks SOURCE ENERGY TOOL SERVICES INC. and the design mark shown below (the Opponent's Marks), both in use since at least as early as 1991 in association with the sale and rental of well drilling and well servicing equipment.



- Pursuant to sections 38(2)(c) and 16(1)(a) and 6 of the Act, the Mark is confusing with the Opponent's Marks that had been previously used and made known in Canada by the Opponent in association with the sale and rental of well drilling and well servicing equipment.
- Pursuant to sections 38(2)(c) and 16(1)(c), the Mark is confusing with the Opponent's trade-name SOURCE ENERGY TOOL SERVICES INC. that had previously been used and made known in Canada by the Opponent in association with the sale and rental of well drilling and well servicing equipment.
- Pursuant to sections 38(2)(d) and 2 of the Act, the Mark is not distinctive because the Mark does not distinguish the Wares and Services from those of the Opponent, namely the sale and rental of well drilling and well servicing equipment, nor is the Mark adapted so as to distinguish the Wares and Services

[4] The Applicant served and filed a counter statement in which it denied the Opponent's allegations.

[5] Neither party filed any evidence in support of its position. Only the Applicant filed a written argument. An oral hearing was not held.

### Onus and Material Dates

[6] The Applicant bears the legal onus of establishing, on a balance of probabilities, that its application complies with the requirements of the Act. However, there is an initial evidential burden on the Opponent to adduce sufficient admissible evidence from which it could reasonably be concluded that the facts alleged to support each ground of opposition exist [see *John Labatt Limited v The Molson Companies Limited* (1990), 30 CPR (3d) 293 (FCTD) at 298].

[7] The material dates that apply to the grounds of opposition are as follows:

- sections 38(2)(a)/30 - the date of filing the application [see *Georgia-Pacific Corp v Scott Paper Ltd* (1984), 3 CPR (3d) 469 at 475 (TMOB) and *Tower Conference Management Co v Canadian Exhibition Management Inc* (1990), 28 CPR (3d) 428 at 432 (TMOB)];
- sections 38(2)(c)/16(1) - the claimed date of first use [see section 16(1) of the Act]; and
- sections 38(2)(d)/2 - the date of filing of the opposition [see *Metro-Goldwyn-Mayer Inc v Stargate Connections Inc* (2004), 34 CPR (4th) 317 (FC)].

### Non-compliance with section 30 ground of opposition

[8] Notwithstanding the fact that, as pleaded, this ground of opposition does not specify which subsection of section 30 it is based on, when it is read as a whole it is clear that the Opponent is alleging non-compliance with section 30(i) of the Act.

[9] Where an applicant has provided the statement required by section 30(i), a section 30(i) ground should only succeed in exceptional cases such as where there is evidence of bad faith on the part of the applicant [see *Sapodilla Co Ltd v Bristol-Myers Co* (1974), 15 CPR (2d) 152 (TMOB) at 155]. The Applicant has provided the necessary statement and this is not an exceptional case; the section 30(i) ground is accordingly dismissed.

Non-entitlement grounds of opposition – sections 16(1)(a) and (c) of the Act

[10] In order to satisfy its onus, the Opponent must show that one or more of the Opponent's Marks and/or the Opponent's trade-name were used or made known prior to the claimed date of first use (September 11, 2006) and were not abandoned at the date of advertisement.

[11] The Opponent has failed to provide any evidence of use or making known of the pleaded trade-marks and trade-name. Accordingly, the Opponent has failed to meet its evidential burden with respect to both non-entitlement grounds of opposition and they are dismissed accordingly.

Non-distinctiveness ground of opposition – sections 38(2)(d) and 2 of the Act

[12] In order to meet its initial burden under this ground, the Opponent must establish that as of the filing date of the statement of opposition, namely, April 8, 2011, one or more of the Opponent's Marks and/or the Opponent's trade-name had become known sufficiently to negate the distinctiveness of the Mark [*Metro-Goldwyn-Mayer Inc v Stargate Connections Inc, supra; Motel 6, Inc v No 6 Motel Ltd* (1981), 56 CPR (2d) 44 at 58 (FCTD)].

[13] The Opponent has failed to provide any evidence of use or reputation of the pleaded trade-marks and trade-name. Accordingly, the Opponent has failed to meet its evidential burden with respect to the non-distinctiveness ground of opposition and it is dismissed accordingly.

Disposition

[14] Pursuant to the authority delegated to me under section 63(3) of the Act, I reject the opposition pursuant to section 38(8) of the Act.

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Andrea Flewelling  
Member  
Trade-marks Opposition Board  
Canadian Intellectual Property Office