



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

**Citation: 2011 TMOB 191**  
**Date of Decision: 2011-10-12**

**IN THE MATTER OF AN OPPOSITION  
by Asset Inc. to application No. 1,337,885  
for the trade-mark REPOLINK in the  
name of DRN Commerce Inc.**

[1] On March 5, 2007, DRN Commerce Inc. (the Applicant) filed an application to register the trade-mark REPOLINK (the Mark) for the following services based upon use of the Mark in Canada since at least as early as March 20, 2003:

An online service providing communication, collaboration and process management between creditors and their service providers engaged for collection, credit recovery, debt recovery, property management, and repossession services. Electronic processing of bill and debt collection data, and bill payment and presentment services. An online service to allow users to perform electronic business transactions. Credit recovery and collection services. Debt recovery services. Repossession services. Litigation management services.

[2] The application was advertised for opposition purposes in the *Trade-marks Journal* of December 5, 2007.

[3] On January 29, 2008, Asset Inc. (the Opponent) filed a statement of opposition. The Applicant filed and served a counter statement in which it denied the Opponent's allegations.

[4] In support of its opposition, the Opponent filed affidavits from the following individuals:

- Marta Tandori Cheng, a trade-mark agent employed by the Opponent's agent
- John Regan, the Opponent's Chief Executive Officer
- Kim Parrott, a secretary employed by the Opponent's agent.

[5] In support of its application, the Applicant filed affidavits from the following individuals:

- Wayne R. McLeish, the Opponent's President and Chief Executive Officer
- Mikelis Vasarais, an articling student employed by the Applicant's agent
- Marc Daoust, an owner of a collections firm.

[6] The Opponent obtained an order to cross-examine each of the Applicant's affiants but no cross-examinations were conducted.

[7] Both parties filed a written argument. An oral hearing was not held.

[8] 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 C.P.R. (3d) 293 (F.C.T.D.) at 298].

[9] One of the pleaded grounds of opposition is that the application is contrary to s. 30(b) of the *Trade-marks Act*, R.S.C. 1985, c. T-13 (the Act) because the Applicant has not used the Mark with the Applicant's services since the alleged first date of March 20, 2003.

[10] An opponent's evidential burden under s. 30(b) can be met by reference not only to the opponent's evidence but also to the applicant's evidence [see *Labatt Brewing Company Limited v. Molson Breweries, a Partnership* (1996), 68 C.P.R. (3d) (F.C.T.D.) 216 at 230]. However, while the opponent may rely upon the applicant's evidence to meet its evidential burden, the opponent must show that the applicant's evidence is 'clearly' inconsistent with the applicant's claims as set forth in its application.

[11] The Applicant's evidence satisfies the Opponent's evidential burden. In particular, Mr. McLeish has attested that the date of first use of March 20, 2003 "reflects an internal decision to

adopt [the Mark] and obtain the domain name”. An “internal decision” does not amount to “use” of a mark. Section 4(2) of the Act sets out what constitutes use of a trade-mark in association with services: “A trade-mark is deemed to be used in association with services if it is used or displayed in the performance or advertising of such services.” Clearly there was no such use of the Mark as of March 20, 2003. In fact, it appears that use of the Mark did not commence for at least another 24 months as Mr. McLeish provides a press release dated January 28, 2005 entitled “DRN Commerce Inc. launches Repolink™”.

[12] The s. 30(b) ground therefore succeeds. Accordingly, pursuant to the authority delegated to me under s. 63(3) of the Act, I refuse the application, pursuant to s. 38(8) of the Act.

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Jill W. Bradbury  
Member  
Trade-marks Opposition Board  
Canadian Intellectual Property Office