

IN THE MATTER OF AN OPPOSITION by Compagnie Nationale Air France to application No. 553,409 for the trade-mark ÉCOLE DE CONDUITE TECNIC & Dessin filed by École de Conduite Groupe Tecnic Inc.

On November 28, 1985, the applicant, École de Conduite Groupe Tecnic Inc., filed an application to register the trade-mark ÉCOLE DE CONDUITE TECNIC & Dessin, a representation of which appears below, based upon use of the trade-mark in Canada since March 1985 in association with "Exploitation d'écoles de conduite automobile" and in association with the following wares:

"Matériel pédagogique concernant l'enseignement de la conduite automobile, notamment: livres, revues, brochures, pamphlets et cassettes video pré-enregistrées"

The application is also based upon proposed use of the trade-mark in Canada in association with "Service de location de véhicules routiers". The applicant disclaimed the right to the exclusive use of the words ÉCOLE and CONDUITE apart from its trade-mark and has claimed colour as a characteristic of its trade-mark as follows: "le rouge du mot TECNIC, de la première bande horizontale et de la première bande à gauche de l'automobile, et le bleu des deux autres bandes horizontales, des deux autres bandes verticales, des mots ÉCOLE DE CONDUITE et de la voiture".

The opponent, Compagnie Nationale Air France, filed a statement of opposition on October 26, 1987 in which it alleged that the applicant's trade-mark is not registrable and not distinctive in that the applicant's trade-mark is confusing with the opponent's registered trade-mark AIR FRANCE & Design, registration No. 225,666, and two design trade-marks covered by registration Nos. 232,397 and 232,412. Representations of each of the trade-marks and the respective wares and services covered by the opponent's registrations are set out below.

<u>Trade-mark</u>	<u>Wares/Services</u>
	Cartes à jouer, cartes géographiques, cartes postales, stylos, petits objets, décoratifs en porcelaine, verre ou Transport de faïence. voyageurs et de marchandises; entrepôt, location d'avions.

Regn. No. 225,666

Cartes à jouer, cartes géographiques,
 cartes postales, stylos; bibelots en
 verrerie, faïence, porcelaine,
 nommément: coupelles, gobelets, verres, flûtes à
 champagne, cendriers, flacons à parfum pour le
 voyage.
 Transport de voyageurs et de
 marchandises; entrepôt, location
 d'avions.

Regn. No. 232,397

Cartes à jouer, cartes géographiques,
 cartes postales, stylos; bibelots en
 verrerie, faïence, porcelaine,
 nommément: coupelles, gobelets, verres, flûtes à
 champagne, cendriers, flacons à parfum pour le
 voyage.
 Transport de voyageurs et de
 marchandises; entrepôt.
 Transport de voyageurs.

Regn No. 232,412

The applicant served and filed a counterstatement in which it asserted that its trade-mark is registrable and distinctive in that the applicant's trade-mark is not confusing with the opponent's trade-marks.

The opponent filed as its evidence the affidavits of Michel Malis and Michael Godwin while the applicant submitted the affidavit of Christian Provost.

Both parties filed written arguments and neither party requested attendance at an oral hearing.

The opponent's grounds of opposition relating to the registrability and distinctiveness of the applicant's trade-mark ÉCOLE DE CONDUITE TECNIC & Dessin turns on the issue of confusion between the applicant's trade-mark and one, or more, of the opponent's registered trade-marks identified above. In determining whether there would be a reasonable likelihood of confusion between the trade-marks at issue, the Registrar must have regard to all the surrounding circumstances, including those specifically enumerated in Section 6(5) of the Trade-marks Act. Further, the Registrar must bear in mind that the legal burden is on the applicant to establish that there would be no reasonable likelihood of confusion between the trade-marks at issue.

With respect to the ground of opposition based on Section 12(1)(d) of the Trade-marks Act, the material date would appear to be as of the date of my decision in view of the recent decision of the Federal Court of Appeal in Park Avenue Furniture Corporation v. Wickes/Simmons Bedding Ltd. and The Registrar of Trade Marks, (1991), 37 C.P.R. (3d) 413. Further, the material date in respect

of the non-distinctiveness ground of opposition is as of the date of opposition.

Considering the inherent distinctiveness of the trade-marks at issue, the applicant's trade-mark ÉCOLE DE CONDUITE TECNIC & Dessin identifies the applicant and its driver training services, as well as being suggestive of the applicant's wares relating to the operation of driving schools. On the other hand, the applicant's trade-mark is misdescriptive of its services relating to the rental of road vehicles. As such, the applicant's trade-mark possesses a limited degree of inherent distinctiveness. On the other hand, the opponent's design trade-marks are inherently distinctive as applied to the wares and services covered in the opponent's registrations while the trade-mark AIR FRANCE & Design suggests that the opponent's wares and services relate to air travel and transportation, thus minimizing the degree of inherent distinctiveness of this mark.

The extent to which the trade-marks at issue have become known indicates that both the applicant and the opponent have become known in Canada in their respective areas of business. In his affidavit, Michel Malis, General Manager of the Canadian operations of the opponent, provides annual gross sales revenues for services supplied in Canada by the opponent to fare-paying passengers for the years 1982 to 1987 inclusive, the total during this time being in excess of \$386,000,000. Further, according to Mr. Malis, 368,020 passengers have flown to or from Canada on Air France from 1983 to 1987. On the other hand, Mr. Provost, President of the applicant, states in his affidavit that the applicant operates 120 driving schools situated in Ontario and Quebec in association with its trade-marks and, in 1987 and 1988 alone, offered driver training courses to approximately 69,000 students in Canada. In exhibit CP-19 to the Provost affidavit, it is noted that the applicant is the largest driving school in the province of Quebec.

The length of time that the trade-marks at issue have been in use in Canada does favour the opponent although I do not consider this criterion to be particularly relevant in the present opposition proceeding.

The applicant's wares and services relating to the operation of driving schools bear no similarity whatsoever to the wares and services covered in the opponent's registrations. Further, there is no evidence to support the conclusion that there would be any overlapping in the channels of trade associated with these wares and services. However, the applicant's services relating to the rental of motor vehicles arguably come within the scope of the opponent's services which are broadly defined as "transport de voyageurs". Further, the applicant's rental of motor vehicles and services relating to air travel such as those offered by the opponent might well both be offered in the same locations such as airports to the same potential consumers.

The applicant's trade-mark ÉCOLE DE CONDUITE TECNIC & Dessin bears little, if any, similarity in appearance and no similarity in sounding to any of the opponent's registered trade-marks when the marks are considered in their entirety as a matter of immediate impression and imperfect recollection. While the applicant's trade-mark does include the vertical parallel bars as an element thereof, the vertical bars constitute but one element of the applicant's trade-mark and I seriously doubt that they would even be perceived by the average consumer as being an independent element of the trade-mark ÉCOLE DE CONDUITE TECNIC & Dessin.

The applicant's mark suggests the idea of a driving school while the opponent's design trade-marks do not suggest any particular idea. The opponent's trade-mark AIR FRANCE & Design suggests air transportation services provided by a corporation authorized to do so by the government of France. As such, there is no similarity in ideas suggested by the trade-marks at issue.

As a further surrounding circumstance, both parties have submitted evidence of relatively extensive use of their trade-marks in their respective areas of business in Canada. Despite the concurrent use of the trade-marks at issue, the opponent adduced no evidence of any instances of actual confusion between the trade-marks at issue in this country.

As yet a further surrounding circumstance, I would note that the opponent uses its registered design trade-marks with one red bar and a series of blue bars, this being the same colours as the colour claim set forth in the applicant's application.

Having regard to the above and, in particular, to the absence of any degree of similarity between the trade-marks at issue, I have concluded that the applicant has discharged the legal burden upon it of establishing that there would be no reasonable likelihood of confusion between the trade-marks at issue. Accordingly, the applicant's trade-mark is registrable and distinctive.

I reject the opponent's opposition pursuant to Section 38(8) of the Trade-marks Act.

DATED AT HULL, QUEBEC THIS 27th DAY OF AUGUST 1992.

G.W. Partington,
Chairman,
Trade Marks Opposition Board.

