

IN THE MATTER OF AN OPPOSITION by Compagnie Nationale
Air France to application No. 553,408 for the trade-mark Dessin d'une
voiture 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 Dessin d'une voiture, 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, nommément: 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 has claimed colour as a characteristic of its trade-mark as follows: "le rouge de la première bande à gauche de l'automobile et le bleu des deux autres bandes et de l'automobile".

The opponent, Compagnie Nationale Air France, filed a statement of opposition on September 21, 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 marchandises; entrepôt, location d'avions.
faïence. voyageurs et de	
Regn. No. 225,666	
	Cartes à jouer, cartes géographiques, cartes postales, stylos; bibelots en verrerie, faïence, porcelaine, verres, flûtes à cendriers, flacons à parfum pour le
nommément: coupelles, gobelets, champagne,	

Regn. No. 232,397

voyage.
Transport de voyageurs et de
marchandises; entrepôt, location
d'avions.

Regn No. 232,412

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

nommément: coupelles, gobelets,
champagne,

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 Dessin d'une voiture turn 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 Dessin d'une voiture is suggestive of the applicant's wares and services relating to the operation of driving schools and rental of road vehicles, as well as teaching materials for driving instructors and therefore 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. 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 design trade-mark bears some similarity in appearance to the opponent's registered design trade-mark covered by registration No. 232,397 and to a somewhat lesser extent

the opponent's design trade-mark covered by registration No. 232,412. However, these marks would not be identified aurally and therefore bear no similarity in sounding. On the other hand, the applicant's mark and the opponent's trade-mark AIR FRANCE & Design bear relatively little similarity in appearance and no similarity in sounding when considered in their entireties as a matter of immediate impression. The applicant's design mark suggests some association with automobiles while the opponent's design trade-marks do not suggest any particular idea while 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 overlapping in the applicant's services relating to the rental of motor vehicles and the opponent's services of transporting travellers, as well as the potential in the overlapping in the channels of trade associated with these services, and bearing in mind that there is some resemblance in appearance in the applicant's design mark and the opponent's registered design mark covered by registration No. 232,397, I have concluded that the applicant has failed to discharge the legal burden upon it of establishing that there would be no reasonable likelihood of confusion between these trade-marks. On the other hand, there would in my opinion be no reasonable likelihood of confusion between the applicant's design mark as applied to the applicant's services and wares relating to driver training and any of the opponent's registered trade-marks. In this regard, I would note the decision of the Federal Court, Trial Division in respect of there being authority to render a split decision in Produits Ménagers Coronet Inc. v. Coronet-Werke Heinrich Schlerf GmbH, 10 C.P.R. (3d) 492.

In view of the above, I refuse the applicant's application in respect of the services defined in the applicant's application as "services de location de véhicules routiers" and otherwise 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.