



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

Citation: 2016 TMOB 111
Date of Decision: 2016-07-07

IN THE MATTER OF A SECTION 45 PROCEEDING

McMillan LLP

Requesting Party

and

Orange Brand Services Limited

Registered Owner

TMA773,863 for ORANGE

Registration

[1] This is a decision involving a summary expungement proceeding with respect to registration No. TMA773,863 for the trade-mark ORANGE (the Mark), owned by Orange Brand Services Limited.

[2] The Mark is registered in association with a variety of computer, computer software and telecommunications related goods and services, as well as educational services related to the fields of information technology and telecommunications. A complete list of the registered goods and services is attached under Schedule A to this decision.

[3] For the reasons that follow, I conclude that the registration ought to be maintained with respect to all of the services, but only in part with respect to the goods.

The Proceeding

[4] On October 1, 2013, the Registrar of Trade-marks sent a notice under section 45 of the *Trade-marks Act* RSC 1985, c T-13 (the Act) to Orange Brand Services Limited (the Owner). The notice was sent at the request of McMillan LLP (the Requesting Party).

[5] The notice required the Owner to furnish evidence showing that it had used the Mark in Canada, at any time between October 1, 2010 and October 1, 2013, in association with each of the goods and services specified in the registration. If the Mark had not been so used, the Owner was required to furnish evidence providing the date when the Mark was last in use and the reasons for the absence of use since that date.

[6] The relevant definitions of use are set out in sections 4(1) and 4(2) of the Act as follows:

4(1) A trade-mark is deemed to be used in association with goods if, at the time of the transfer of the property in or possession of the goods, in the normal course of trade, it is marked on the goods themselves or on the packages in which they are distributed or it is in any other manner so associated with the goods that notice of the association is then given to the person to whom the property or possession is transferred.

4(2) A trade-mark is deemed to be used in association with services if it is used or displayed in the performance or advertising of those services.

[7] It is well established that the purpose and scope of section 45 of the Act is to provide a simple, summary, and expeditious procedure for clearing the register of “deadwood”. The criteria for establishing use are not demanding and an overabundance of evidence is not necessary. Nevertheless, sufficient evidence must still be provided to allow the Registrar to conclude that the trade-mark was used in association with each of the registered goods and services [see *Uvex Toko Canada Ltd v Performance Apparel Corp*, 2004 FC 448, 31 CPR (4th) 270]. Furthermore, mere statements of use are insufficient to prove use [see *Plough (Canada) Ltd v Aerosol Fillers Inc* (1980), 53 CPR (2d) 62 (FCA)].

[8] In response to the Registrar’s notice, the Owner furnished the affidavit of Helen Jane Stanwell-Smith, sworn April 25, 2014, together with Exhibits 1 through 91.

[9] Both parties filed written representations; however, only the Owner was represented at an oral hearing held jointly with hearings for summary expungement proceedings with respect to

four other registrations owned by the Owner. Separate decisions were issued for these other proceedings, which pertain to registration Nos. TMA392,593, TMA540,151, TMA545,600 and TMA583,274.

The Evidence

[10] In her affidavit, Ms. Stanwell-Smith attests that she is the Senior Legal Counsel employed by Orange Corporate Services Limited, an affiliated company to the Owner and its predecessors-in-title.

[11] Ms. Stanwell-Smith states that the Owner and/or its licensees have used the Mark in association with the registered goods and services in Canada during the relevant period. She refers to services (1) and (3) as the “Telecommunications and IT Services”, and services (2) as the “Educational Services”.

[12] With respect to the Owner’s background, Ms. Stanwell-Smith explains that the Owner is 100% owned by Orange SA, a French company which changed its name from France Telecom SA in July 2013. She further attests that Orange SA is also parent to a global group of companies whose activities span the telecommunications, media, advertising, healthcare and financial services sectors.

[13] She attests that the Owner licenses its rights in the Mark to over 200 subsidiaries and related companies of Orange SA (the “Orange Group”), who use the Mark in their corporate identity and for their goods and services. She attaches, as Exhibit 2 to her affidavit, an extract from a 2012 document published by Orange SA listing the members of the Orange Group. The list includes, among other subsidiaries and members, Equant BV. She notes that the list does not specify the more than 80 international subsidiaries of the Equant sub-group which provide business-to-business services globally, as only the parent company “Equant” is referred to in this document. I note that later in her affidavit, Ms. Stanwell-Smith attests that one such Equant subsidiary, Equant Canada Inc., changed its name to Orange Business Services Canada, Inc. (OBSC) in December 2012.

[14] In terms of licensed use of the Mark in Canada, Ms. Stanwell-Smith specifically identifies the following licensees of the Owner: OBSC; Orange International Carriers and shared services, *a.k.a.* International Wholesale Solutions, a division of the Orange Group (International Carriers); Silicomp Canada Inc. (Silicomp); Etrali North America Inc. (Etrali); and Orange Partner, a division of Orange SA (Orange Partner). She attests that throughout the relevant period, the Owner exercised direct control over the character and quality of the goods and services provided and promoted by these licensees in Canada in association with the Mark. In addition, she provides examples of how such control was exercised, including through enforcement of extensive global guidelines published on the Internet, an excerpt of which she attaches as Exhibit 7 to her affidavit.

[15] Each of the aforementioned licensees are stated by Ms. Stanwell-Smith to provide “certain, or some” of the registered goods and services in association with the Mark to customers in Canada. With respect to the registered goods and services provided by OBSC, International Carriers, and Silicomp, she states that they are described on the following websites, excerpts of which she attaches as Exhibits 3, 5, and 6 to her affidavit: *www.orange-business.com* (with respect to OBSC), *wholesalesolutions.orange.com* (with respect to International Carriers), and *www.itlabs.en.orange-business.com* (with respect to Silicomp). She confirms that the website printouts are representative of their content and appearance during the relevant period.

Provision of the Registered Goods and Telecommunications and IT Services by OBSC

[16] Ms. Stanwell-Smith identifies OBSC as the primary licensee of the Mark in Canada, and explains that OBSC has two categories of customers and prospective customers: (i) Canadian companies operating nationally or internationally to whom OBSC offers goods and services directly itself or through other international members of the Orange Group; and (ii) international companies headquartered outside of Canada conducting business operations within Canada. She explains that in providing the Telecommunications and IT Services during the relevant period, OBSC maintained a staff of around 90 employees based in offices that prominently display the Mark in Toronto, Vancouver, and Montreal.

[17] Ms. Stanwell-Smith further attests that during the relevant period, OBSC had over 170 customers (both Canadian and international) to which it provided the registered goods and

Telecommunications and IT Services in association with the Mark in Canada. She identifies several of these customers, which include large entities such as Bell Canada and Akzo Nobel. She provides annual revenue figures generated by OBSC for the provision of goods and Telecommunications and IT Services during the relevant period. Ms. Stanwell-Smith attests, however, that due to the complex nature of OBSC's packages of business solutions, OBSC does not separate out revenues generated between activities in Canada and those generated by OBSC which are conducted outside of Canada for Canadian clients. She further explains that OBSC does not individually account for each of the specific registered goods and Telecommunications and IT Services provided, as customers are invoiced according to the "business package" provided. However, she provides a schedule of revenues for specific business packages (which she attests incorporate both the registered goods and Telecommunications and IT Services) attributable to each Canadian client over 2012 at Exhibit 12 to her affidavit. She states that these revenues are representative of annual revenues during the relevant period. She explains that for confidentiality purposes, the names of the clients have been redacted.

[18] As evidence of display of the Mark and further evidence of sales regarding the provision of the registered goods and Telecommunications and IT Services provided by OBSC to Canadian customers during the relevant period, Ms. Stanwell-Smith provides sample invoices (at Exhibits 21, 23, 26, 29, 32, 35, 39, 42, 47, 53, 55, 58 and 61), brochures and sales presentation documents regarding the various business packages provided (at Exhibits 13, 14, 15, 18, 19, 22, 24, 25, 27, 28, 30, 31, 33, 34, 36, 38, 40, 41, 49, 50, 51, 52, 54, 56, 57, and 59), and associated representative sales revenues. Ms. Stanwell-Smith also provides sample website screenshots of customer login homepages wherein consumers can access information regarding their purchased business packages (Exhibits 16 and 17), and login to access audio and web conferencing services (Exhibit 20).

[19] In addition, Ms. Stanwell-Smith provides website printouts and case studies with respect to services provided by OBSC specific to the healthcare industry (Exhibits 43 and 44), extracts from a customer contract for these services (Exhibit 46), and an image of a sample SIM card bearing the Mark used by OBSC's customers in connection with such services (Exhibit 45). She explains that the SIM cards bearing the Mark are inserted into customers' medical devices to connect them to the Rogers Communications mobile network in Canada. The medical devices

are then enabled to send electronic signals and reports back to the customer's computer so that the customer can monitor the patient, something Ms. Stanwell-Smith states is known as "Machine to Machine" or "M2M" connectivity.

[20] With respect to the invoices, Ms. Stanwell-Smith explains that, as they were regenerated from the finance systems of OBSC, they do not appear on the Orange-branded letterhead on which they were originally printed when sent to customers. However, she does provide, at Exhibit 11, a scanned copy of an invoice from 2007, bearing the Mark, which she attests is representative of invoices sent during the relevant period, demonstrating the prominence of the Mark on the invoices. As with the Exhibit 12 revenue schedule, the invoices refer to general services or the names of business packages provided, such as audio conferencing, video conferencing management, "Integrated Videopresence", "Business Talk" (referred to as "Fixed Voice"), "Business Together", Enterprise Application Management ("EAM"), Internet Protocol Virtual Private Network ("IP VPN") packages, "Network Boost", Managed Local Area Network ("Managed LAN"), Hosted Server Management ("HSM"), "Machine to Machine" or "M2M", professional services, deployment and operational support services, "Contact Centre Access", and "Managed Contact Centre Premium".

[21] The brochures, website printouts, and sales presentation documents, which also clearly bear the Mark, describe the portfolio of services/packages provided by OBSC. Ms. Stanwell-Smith attests that these documents are representative of those that were accessed by and provided/circulated to Canadian consumers and prospective consumers by OBSC during the relevant period (see Exhibit 14, re: website traffic statistics).

[22] In addition, Ms. Stanwell-Smith describes the various business packages provided by OBSC in Canada in association with the Mark, explains how each corresponds with the registered goods and IT and Telecommunications Services, and provides associated representative annual sales revenues representative of those during the relevant period in Canada. I note that while she has attested that many of the business packages cover the registered goods, there are no specimens of the registered goods in the evidence. I also note that while some of the invoices for the "IP-VPN", "Network Boost", and "HSM" services appear to refer to services provided outside of Canada, the remainder of the invoices appear to reflect services provided in

Canada. Lastly, the description of services encompassed by the business packages and correlated to the registered services, as per Ms. Stanwell-Smith's attestations, cover most of the registered services (1) and (3), with exception of the following:

Services (1): Telecommunications services and communications services, namely, [...], radio-paging, call diversion, answerphone, and [...].

Services (3): computer programming for others provided on-line.

Services Provided by Silicomp

[23] Ms. Stanwell-Smith attests that during the relevant period, Silicomp offered specialist technology and professional goods and services in association with the Mark for a range of business customers in Canada. She attests that, during the relevant period, this involved specialization in specification, design, integration and optimisation of Critical Software, M2M technology, web applications, trading and payment solutions, embedded systems, industrial applications, business process automation and IT security.

[24] In support, she provides as Exhibits 62 through 64 to her affidavit, a customer presentation, and screenshots of Silicomp's LinkedIn, Facebook, and Google+ pages. Ms. Stanwell-Smith attests that the customer presentation is representative of those delivered to prospective clients in Canada during the relevant period, and that the social media pages were "specifically aimed" at a Canadian audience to provide viewers with information about the registered goods and Telecommunications and IT Services.

[25] With respect to performance of its services, Ms. Stanwell-Smith provides a yearly breakdown of Silicomp's sales revenues during the relevant period as well as sample invoices at Exhibit 65 to her affidavit for services delivered to customers in Canada in association with the Mark.

[26] Ms. Stanwell-Smith further details the specific services provided by Silicomp in association with the Mark and explains how each corresponds to specific Telecommunications and IT Services in the registration. In doing so, she also provides, as Exhibits 66 through 70, a variety of brochures bearing the Mark, which further outline these services. She attests that the

brochures were circulated in Canada by Silicomp during the relevant period. I note that the description of products and services outlined in the brochures are only attested by Ms. Stanwell-Smith as correlating with the following registered goods and services:

Goods: computer software to enable connection to databases, local area networks and the Internet, computer software for accessing databases, telecommunications services, computer networks and electronic bulletin boards.

Services (3): Computer services, namely, [...], customization of computer hardware and software; preparation and provision of information in relation to computers and computer network facilities; technical advice and consultation services in the field of information technology and telecommunications; design and development of computer systems and of telecommunications systems and equipment; on-line computer services, namely, design and development of on-line computer software systems, providing specific information as requested by customers via the Internet.

Telephony Services Provided in Canada by International Carriers

[27] Ms. Stanwell-Smith attests that the activity of International Carriers encompasses the wholesale trading in voice, internet, data capacity, as well as content, audience and healthcare related activities among telecommunications network operators. She provides, as Exhibit 71, a brochure bearing the Mark, which details the services offered by International Carriers to customers in Canada and around the world. She confirms that this brochure was distributed by International Carriers to Canadian consumers during the relevant period.

[28] In addition to the brochure, Ms. Stanwell-Smith attests that the services offered by International Carriers are advertised on the global corporate website of the Orange Group and includes printouts representative of those pages published during the relevant period at Exhibit 5 to her affidavit. She indicates that these webpages include a map of “key network coverage”, which she confirms includes Canada.

[29] Ms. Stanwell-Smith attests that pursuant to “roaming” agreements with International Carriers, Canadian customers of network operators in Canada are able to use their mobile telephones and fixed line telephones for data and voice services when visiting foreign countries

through the Orange Group's networks. She attests that such networks are identified with the Mark on the mobile phones of such Canadian users, and that the Orange Group then invoices the Canadian operators in Canada for those services (sample invoices of which are attached at Exhibit 74). She further attests that the Orange Group has arrangements with Canadian telecommunication network operators to enable the provision of voice telecommunication services in Canada through third party mobile networks as part of the Orange-branded packages of products and services for multinational corporations.

[30] In addition to International Carriers, Ms. Stanwell-Smith attests that OBSC offers network services to telecommunications operator customers in Canada, one such customer during the relevant period being Bell Canada. Such services to telecommunications operators are described in a brochure bearing the Mark, entitled "Solutions for Operators", which she attaches as Exhibit 72 to her affidavit.

[31] With respect to the "roaming" arrangements with Canadian operators described above, Ms. Stanwell-Smith attaches, as Exhibit 73 to her affidavit, printouts from the websites of Rogers Communications and Bell Canada, showing the Orange network as being the roaming network available for its customers in a selection of countries. She states that these relationships between the Orange Group and the Canadian operators are representative of the relationships that existed during the relevant period.

[32] Ms. Stanwell-Smith attests that the services provided by International Carriers and OBSC described above cover the following registered services:

Services (1):

Telecommunications services and communications services, namely, telephone, mobile telephone, message collection and transmission, radio-paging, call diversion, answerphone, and electronic mail services; electronic message delivery services;

On-line information services relating to telecommunications; broadcasting and delivery of multimedia content over electronic communications networks;

Video messaging services;

Video conferencing services;

Video telephone services;

Transmission of web pages via the Internet;

Providing user access to the Internet; and

Providing telecommunications connections or links to the Internet or databases.

Goods and Services Provided in Canada by Etrali Group

[33] Ms. Stanwell-Smith attests that, during the relevant period, the Etrali Group provided services in association with the Mark in Canada. Specifically, she attests that Etrali provided specialized hardware, software, support services and consultancy packages for the financial commodities and equity trading community in Canada based around their main product called “Open Trade”. This product, she explains, is a fixed line telephony device with associated software. She attests that the Etrali Group also provided professional services in association with the Open Trade product, details of which are provided in brochures bearing the Mark, which she attaches under Exhibit 75.

[34] Ms. Stanwell-Smith states that the Mark appear on the Open Trade device, on the software packages used with the device, on marketing and sales materials, and on invoices for the device and supporting services. I note that, consistent with her statement, the Mark clearly appears on the Open Trade devices in the photographs in the brochures. The Open Trade product, she attests, was a high dollar value item, designed as a “personal trading assistant” for financial traders on the trading floor of major financial institutions. She explains that in addition to having multiple handsets to receive, transmit and record voice calls, the device incorporated a multimedia touch screen, a modem providing Internet connectivity and software for traders to complete transactions on a single terminal. This product was supported by a team of professionals wherein, during the period 2011-2012, over 30 devices were installed at client sites in Canada.

[35] Ms. Stanwell-Smith explains that Silicomp Canada acted as the distributor of the Open Trade product and associated services conducted by Etrali under the Mark in Canada during the relevant period. She attaches example invoices issued by Silicomp Canada (Exhibit 77), bearing the Mark, wherein the services being invoiced are described as “maintenance Etrali”. Ms.

Stanwell-Smith attests that Open Trade product and associated services encompass all of the registered goods, as well as the following registered services:

Services (1):

All services, except:

- on-line information services relating to telecommunications;
- provision and operation of [...], discussion groups and chat rooms; and
- advisory, information and consultancy services relating to all the aforementioned.

Services (3):

- maintenance, updating and design of computer hardware, computer firmware, computer software and computer programs;
- technical advice and consultation services in the field of information technology and telecommunications;
- computer management services; and
- operational support services for computer networks, telecommunications networks and data transmission networks;

Use of the Orange Brand in Canada by Orange Partner

[36] Ms. Stanwell-Smith attests that Orange Partner is a division of Orange SA. She explains that this division works with a broad network of industry professionals worldwide (*e.g.* third-party software developer companies, academia, etc.) to develop innovative and potentially profitable software applications for use on its communications hardware. In doing so, she explains that Orange Partner provides members of its network with online support services, educational services, tools, knowledge and expertise to invent, collaborate and monetize new products through the Orange Partner website. In support, she provides printouts from the *orangepartner.com* website from 2010, bearing the Mark, which detail such services (Exhibit 78).

[37] Ms. Stanwell-Smith attests that Orange Partner provides its members with downloadable software tools (such as APIs or application programme interfaces) to assist in creating applications that operate to required standards on devices bearing the Mark. She attests that the

Mark appears prominently on the display screen at the time these tools are downloaded from the Orange Partner website to the consumer's computers, example printouts of which she attaches as Exhibit 81. She further provides website traffic statistics with respect to unique hits to the Orange Partner website originating from Canada for the years 2010-2013.

[38] Ms. Stanwell-Smith attests, that through the activities described above, Orange Partner used the Mark in providing members of its network the following services:

Services (1):

- on-line information services relating to telecommunications;
- transfer of data by telecommunication; and
- broadcasting and delivery of multimedia content over electronic communications networks;

Services (3):

- preparation and provision of information in relation to computers and computer network facilities;
- technical advice and consultation services in the field of information technology and telecommunications; and
- on-line computer services, namely, [...], providing specific information as requested by customers via the Internet;

[39] Ms. Stanwell-Smith further attests that from October 2010 to April 2013, Orange Partner operated a facility for members of the Orange Partner program in Vancouver, British Columbia, called an Orange Developer Centre. She explains that this facility was run through offices operated by Wavefront, a centre for wireless commercialization run by the Government of Canada. She further explains that the centre provided its Canadian members of the program with a space to meet other members, including developers, companies, entrepreneurs and Orange Group personnel, to distribute and sell their applications, content and games through Orange Group and/or to discuss, expand and explore a variety of topics that would assist with the same. Ms. Stanwell-Smith attests that the Mark was prominently displayed at the centre, photographs of which she attaches as Exhibit 83 to her affidavit. As attested by Ms. Stanwell-Smith, also included in this exhibit are screenshots from the Orange Partner website, press articles and a brochure regarding the launch of the centre in Canada, all featuring the Mark. She further attests

that the centre was promoted during this time period on Wavefront's website, as shown through a brochure featuring the Mark available from the website during the relevant period (attached at Exhibit 84 to her affidavit).

Educational Services

[40] As noted above, Ms. Stanwell-Smith attests that the Owner used the Mark in Canada during the relevant period in association with each of the educational services listed under services (2) in the registration.

[41] In particular, she explains that certain members of the Orange Group, under the Orange Labs division, operate a global network of research laboratories, technocentres and product development centres in association with the Mark (under license from the Owner). She attests that through these licensees, the Owner promoted its educational services in association with the Mark during the relevant period in Canada. As support, she provides copies of marketing brochures, corporate social responsibility reports, sponsorships reports and press releases, bearing the Mark (Exhibit 85).

[42] Ms. Stanwell-Smith also attests that, the Owner has worked with two research institutes in Canada during the relevant period. In support, she attaches as Exhibit 86 to her affidavit, printouts from the Owner's website regarding relationships with CRIM and Concordia University.

[43] She further explains that the Owner's licensees conduct research and other educational activities, including sponsorship and organization of competitions for students, provision of work placements and internships internationally. She attests that the Owner also used the Mark during the relevant period through its licensees to provide space, support services, educational services, tools, knowledge and expertise to developers, partners and start ups in Canada through its Wavefront facility in Vancouver (per Exhibit 83 and 88). She attests that more than 1000 entities and/or individuals in Canada received software development support through the Owner's licensees during the relevant period. She further attests that educational seminars, workshops and tutorials were available through the Orange Partner website (per Exhibit 87).

Promotion of the Mark

[44] Ms. Stanwell-Smith attests that the Owner, through OBSC and other licensees, uses the Mark to engage in substantial business promotion and marketing activities to existing Canadian customers and prospective large Canadian national and multinational enterprise customers. She provides annual budget figures for 2010-2012 for marketing, seminars, conferences and events for the United States and Canada under the Mark. She states that due to the largely joint nature of promotional and marketing activities between Canada and the United States, it is difficult to apportion an amount of the North American budget for such events spent on events in Canada. Nevertheless, Ms. Stanwell-Smith estimates that the global marketing and promotional investment “touching” Canada is over \$100,000US annually.

[45] Ms. Stanwell-Smith also provides a specific example of one such promotional activity. In this regard, she explains that OBSC has a partnership with Cirque du Soleil to sponsor its performances in Canada and the United States. She provides a printout from a Cirque du Soleil website relating to a February 2013 performance (Exhibit 89), and states that the Mark was also advertised in event programmes distributed to spectators.

[46] Ms. Stanwell-Smith states that the Owner, through its licensees, also conducts marketing campaigns in Canada via email, publication of blogs and other publications on its website. As an example, she provides corporate documents regarding a series of marketing emails entitled “People of Orange” (Exhibit 90). She attests that this information was sent to more than 1000 customers and prospective customers in Canada as an introduction to Orange employees who service multinational clients in the Americas.

[47] Lastly, Ms. Stanwell-Smith indicates that, during the relevant period, OBSC circulated in Canada, a magazine displaying the Mark. She indicates that the publication was circulated on a quarterly basis via download from its website and through e-mail to subscribers. A hard copy of the magazine was also sent to a mailing list of customers, sales prospects, industry contacts and partners and the international media. She attaches as Exhibit 91 copies of various editions of the magazine, dated 2010, 2011 and 2012. By way of example, she states that the June 2011 edition was mailed out to over 60 subscribers in Canada.

Analysis and Reasons for Decision

[48] The Requesting Party's submissions can be summarized as follows:

- The evidence shows that the Mark was not used by the Owner and fails to demonstrate that the Owner actually exercised any control over the way the Mark was used during the relevant period;
- The Mark was not associated with the registered goods and services in Canada during the relevant period.

I will deal with each of these submissions in turn.

Licensed Use

[49] With respect to the first submission outlined above, the Requesting Party submits that the Owner has failed to demonstrate any evidence of *actual* control over the nature and quality of the goods and services offered in relation to the Mark during the relevant period [citing *Lafco Enterprises Inc v Canadian Home Publishers*, 2013 TMOB 44; *DeGrandpré Chait c Mead Products LLC*, 2013 TMOB 73]. The Requesting Party submits that the only evidence in support of the alleged control exercised by the Owner consists of a document entitled "Orange core guidelines" attached at Exhibit 7, and statements made by Ms. Stanwell-Smith that reviews are held and that brand use support is offered to licensees (per paragraph 18 of the affidavit). The Requesting Party submits that such allegations are not substantiated by any further evidence and do not include particulars nor any further evidence demonstrating the enforcement of the Orange core guidelines.

[50] Further to this, the Requesting Party submits that the corporate relationship between the Owner and the alleged licensees is not enough to establish a license [citing *Cheung Kong Holdings Ltd v Living Realty Inc* (1999), 4 CPR (4th) 71 (FC); and *MCI Communications Corp v MCI Multinet Communications Inc*, 61 CPR (3d) 245 (TMOB)].

[51] In reply, the Owner submits that it is well established that filing a copy of a license agreement is not mandatory in a section 45 proceeding, provided that the evidence establishes

that the registered owner has control over the character and quality of the goods bearing the trade-mark [citing *Canadian Home Publishers (Re)*, 2013 TMOB 44 at para 11]. Furthermore, the Owner submits, the requirement to establish the control required under section 50(1) of the Act can be established, as it has in the present case, by clearly swearing to the fact that the trade-mark owner exerts the requisite control [citing *Gowling, Strathy and Henderson v Samsonite Corp* (1996), 66 CPR (3d) 560 (TMOB); and *Mantha & Associés/Associates v Central Transport Inc* (1995), 64 CPR (3d) 354 (FCA)]. In fact, the Owner submits, the cases cited by the Requesting Party support this proposition (see for example, *De Grandpré Chait*, *supra*, at para 16 and *Lafco*, *supra*, at para 11). The Owner also distinguishes *Cheung Kong*, *supra*, in that there was no evidence in that case, beyond a corporate relationship, that the registrant did anything to exercise control over the character and quality of the goods and services associated with the trade-mark.

[52] In any event, the Owner submits, Ms. Stanwell-Smith provides further facts and evidence supporting the Owner's control over the character and quality of the goods provided under the Mark, including statements which provide specific examples of how such control is exercised. These statements, the Owner submits, qualify as assertions of fact rather than assertions of law and are clearly acceptable in section 45 proceedings.

[53] As stated by the Federal Court, there are three main methods by which a trade-mark owner can demonstrate the requisite control pursuant to section 50(1) of the Act: first, by clearly attesting to the fact that it exerts the requisite control; second, by providing evidence demonstrating that it exerts the requisite control; or third, by providing a copy of the license agreement that provides for the requisite control [see *Empresa Cubana Del Tabaco Trading v Shapiro Cohen*, 2011 FC 102, 91 CPR (4th) 248 at para 84]. In the present case, two such methods have been satisfied. That is, not only has Ms. Stanwell-Smith provided a clear statement attesting to such control, but she has provided sworn statements describing specific examples of how such control is exercised. Consequently, I am satisfied that any use of the Mark by the licensees identified by Ms. Stanwell-Smith, is licensed use, enuring to the benefit of the Owner pursuant to section 50 of the Act.

Was the Mark used in association with the Goods in Canada during the relevant period?

[54] The Requesting Party submits that Ms. Stanwell-Smith has furnished a large amount of evidence which she claims demonstrates use of the Mark in relation to both the registered goods and services, on the basis of their inherent inter-relation, being sold as packages under the Mark. However, the Requesting Party submits, notice of association of the Mark with the registered goods in particular is nonetheless required be for any use of the Mark to satisfy the requirements of section 4(1) of the Act.

[55] The Requesting Party submits that when notice of association cannot be given through a physical medium, as is the case with downloadable software or built-in software, the jurisprudence typically requires that the mark be displayed on the computer screen when the computer program is executed [citing *BMB Compliance Canada Ltd v Bramalea Ltd* (1999), 1 FC 362].

[56] With respect to OBSC, the Requesting Party submits that the only evidence furnished in relation to the display of the Mark on a good is the SIM card at Exhibit 45, which is not a good listed in the subject registration. Further to this, the Requesting Party submits that none of the exhibited invoices sent to Canadian clients by OBSC make any mention of the Mark, with the only reference to the word “ORANGE” being in the legal name of “Orange Brand Service Canada”. In any event, the Requesting Party submits, the invoices only identify *services* and not goods. The Requesting Party submits that the brochures purported to be evidence of use of the Mark by OBSC in association with the goods also do not demonstrate use of the Mark. In this respect, it argues that the brochures are “accessory” to the provision of services and are not in themselves the object of a commercial transaction; as such, the display of the Mark on such brochures cannot constitute use in relation to goods [citing *Seamiles LLC v Air Miles International Trading BV*, 2009 CarswellNat 4406 (TMOB)].

[57] With respect to Etrali, and the “Open Trade” product, the Requesting Party submits that although the associated invoices were issued during the relevant period and include the Mark in design form, they do not refer to a sale or another type of transfer of possession of the goods, but rather to the maintenance of an existing system named “Etrali”. Furthermore, the Requesting Party submits that in the absence of any demonstration of an actual transfer of property or

possession of the goods in Canada during the relevant period, the brochures and website printouts regarding the Open Trade fixed line telephony device (Exhibits 75 and 76) cannot support a valid claim of use in relation to goods pursuant to section 4(1) of the Act.

[58] Lastly, with respect to Orange Partners, the Requesting Party submits that the only goods in relation to which Ms. Stanwell-Smith claims use consists of application programme interfaces (“API”). To support this claim, the Requesting Party submits that Ms. Stanwell-Smith refers to a presentation entitled “Orange API” supplied at Exhibit 81. The Requesting Party submits, however, that this document appears to be solely an *internal* presentation and is dated outside of the relevant period.

[59] In response, the Owner first notes that the *BMB* decision relied upon by the Requesting Party was decided over 25 years ago, a fact it submits is particularly relevant given the ever-evolving nature of computers, computer software and related technologies. In any event, the Owner submits that the *BMB* decision does not stand for the proposition put forth by the Requesting Party, nor have subsequent cases interpreted it to stand for that proposition [citing in support, *Gowling Lafleur Henderson v IBM Canada Limited* (2004), 38 CPR (4th) 475 (TMOB); and *Gowling, Strathy & Henderson v Degrémont-Infilco Ltée - Degrémont Infilco Ltd* (2000), 5 CPR (4th) 550 (TMOB)].

[60] The Owner further submits that many of its goods are not the types of goods that one expects to be sold with a label or tag bearing the Mark, particularly the computer software and related parts and equipment. Further to this, the Owner submits, its goods are generally sold as part of a package of business solutions, which it then implements and installs for its customers. As an example, it draws particular attention to the brochure regarding the Owner’s audio and web conferencing solutions service at Exhibit 18, wherein it submits that references to software tools show that software is being provided as part of the business package. With respect to notice of association of the Mark with goods sold within these packaged “business solutions”, the Owner submits that the Mark was shown to existing and prospective customers both before and after the sale and transfer of the goods through the following means: during sales presentations, on product brochures, on sales and product documents, on invoices, and on webpages and internet portals. The Owner attaches a chart to its written representations to indicate paragraph

and exhibit number references in the affidavit, indicating where evidence of use for each specific good can be located, including identifying the licensee using the Mark with such goods.

[61] It is true that notice of association of a trade-mark with goods may be given through means other than a tag or label, or marking the trade-mark on the packaging for the goods. Particularly with respect to goods such as computer software, wherein there are inherent difficulties involved in associating a trade-mark with a product that does not constitute a physical object, there are cases involving circumstances in which notice of association of the trade-mark with such goods has been accepted. Such circumstances, for example, have involved the trade-mark appearing on a license agreement which purchasers must read prior to loading the software, as well as appearing on the computer screen at the time of loading [see *Stikeman Elliot LLP v 9105-8503 Québec Inc*, 2014 TMOB 95; *Clark Wilson LLP v Genesisystems, Inc*, 2014 TMOB 64; and *Fasken Martineau DuMoulin LLP v Open Solutions DTS, Inc*, 2013 TMOB 68]. As pointed out by the Owner, another example involved the appearance of a trade-mark in training manuals that consumers were made aware of and shown prior to and after the transfer of the software [IBM, *supra*]. Nevertheless, the evidence must demonstrate that the trade-mark was associated with the goods at the time of transfer [see *Hennan Blaikie LLP v AlphaGlobal-IT Inc*, 2012 TMOB 166].

[62] As per the chart attached to its written representations, the Owner relies upon the evidence concerning licensed use of the Mark by OBSC, Silicomp, and Etrali with respect to all of the registered goods specified as “computer software”. With respect to the registered goods “modems” and “parts and fittings for the aforesaid goods”, the Owner further relies upon the evidence concerning Etrali’s “Open Trade” product. I will begin by discussing OBSC’s and Silicomp’s use of the Mark.

[63] With respect to OBSC and Silicomp, the Owner relies on evidence of use of the Mark in association with the various business packages provided by these entities. As previously indicated, with respect to notice of association of the Mark with goods sold within these packaged “business solutions”, the Owner submits that the Mark was shown to existing and prospective customers both before and after the sale and transfer of the goods through the

following means: during sales presentations, on product brochures, on sales and product documents, on invoices, and on webpages and internet portals.

[64] I accept that sales were made of the various business packages provided by OBSC and Silicomp during the relevant period in Canada, and, further, that as part of the various business packages provided, that computer software was employed in the delivery of and used by consumers when accessing services associated with these packages. However, I do not accept that the sales presentations, product brochures, sales and product documents, and invoices provided the requisite notice of association of the Mark with computer software at the time of transfer of these business packages. Distinguishable from the cases relied upon by the Owner, there is no evidence that consumers consulted with the information provided in the sales documents or brochures, prior to and after the transfer of any software employed in the provision of these business packages. Rather, at best, I consider that this evidence constitutes advertising of the Mark in relation to goods, which is not sufficient to show use of a trade-mark pursuant to section 4(1) of the Act [see *AlphaGlobal-IT, supra*; and *BMW Canada Inc v Nissan Canada Inc*, 2007 FCA 255, 60 CPR (4th) 181]. Furthermore, I do not consider that the invoices provided the requisite notice of association either, as the invoices do not refer to any specific goods, but rather only generally to the business package provided (*e.g.* – “Integrated Videopresence”). Lastly, while the internet portal/login page shown in Exhibit 20 displays the Mark, it is a customer account login page and not the audio or web conferencing software itself, which would appear from the brochures to consist of third-party software (*e.g.* Cisco’s WebEx).

[65] With respect to the “Open Trade” product provided by Etrali, the Owner submits, as does Ms. Stanwell-Smith attest, that this product supports use of the Mark in association with all of the registered goods. As previously summarized, the evidence concerning the “Open Trade” product includes brochures, website printouts, sales data, and invoices, as well as Ms. Stanwell-Smith’s statements concerning the nature of the “Open Trade” product.

[66] In examining the product brochures, I note that consistent with Ms. Stanwell-Smith’s attestations, the “Open Trade” product includes specialized hardware (a fixed line telephony device) and software to support the platform of functionality of the device; such product being described as a “personal trading assistant” and a “trading communications platform”. The

brochures include depictions of the “Open Trade” device and associated hardware, which resembles a small computer console or terminal. This specialized device featured in the brochures clearly bears the Mark. In addition, I note that the display screen depicts software running on the device which also features the Mark. Consistent with Ms. Stanwell-Smith’s attestations, the brochures describe the software as enabling financial traders to access tools to complete transactions as well as to have access to a trading network that permits various forms of communications including voice, video, and instant messaging.

[67] Having regard to the exhibited invoices and Ms. Stanwell-Smith’s sworn statement that over 30 such devices were installed at client sites in Canada in the period 2011-2012, I accept that sales were made of the Open Trade product during the relevant period. Furthermore, I accept that the invoices reflect sales of both goods and services bundled together (the “Open Trade” product), as per Ms. Stanwell-Smith’s attestations in this regard, and her description of the nature of the Owner’s business and inter-related goods and services; all of which are consistent with the evidence as a whole concerning the “Open Trade” product [see *Sophia Financial Group v Tigrent Learning Inc*, 2014 TMOB 124 regarding goods and services packaged and sold together].

[68] However, I do not accept that the brochures, website printouts, or the invoices provided the requisite notice of association of the Mark at the time of transfer of the Open Trade-related goods. Again, there is no evidence that consumers consulted with the information provided in the brochures or on the website, prior to or after any transfer of the Open Trade-related goods. Furthermore, similar to the other invoices pertaining to the sale of business packages, the invoices concerning the Open Trade product do not refer to any specific goods.

[69] Nevertheless, I am prepared to accept that the Mark was affixed to the Open Trade-related goods, as depicted in the images of these goods in the brochures. This conclusion is consistent with Ms. Stanwell-Smith’s sworn statements that the Mark appears on the [Open Trade] device, and on the software packages used with the device [see *Borden Ladner Gervais LLP v Woods Industries (Canada) Inc*, 2007 CanLII 80923 for a similar conclusion on similar facts].

[70] The question then becomes whether the Open Trade-related goods associated with the Mark encompass each of the registered goods. In addition to encompassing each of the computer software related goods, the Owner submits that the Open Trade product also encompasses the registered goods “modems” and “parts and fittings for all the aforesaid goods”, as the Open Trade device also functions as a modem in that it is able to communicate with and send data to third parties.

[71] Having regard to the evidence concerning the Open Trade product as a whole, I accept that the software associated with the Open Trade product encompasses each of the various types of software described in the registration.

[72] However, while Ms. Stanwell-Smith attests that the [Open Trade] device incorporates a modem, the device itself is not referred to in the evidence as a modem. Rather, at best, the modem is a component part of the device itself, or alternatively, the device includes the functionality of a modem, but is not referred to as a modem. In any event, the Mark is associated with the Open Trade device itself and not modems [see *ZIAJA Ltd Zaklad Produkcji Lekow Spolka zoo v Jamieson Laboratories Ltd* (2005), 50 CPR (4th) 237 (TMOB) re: components or ingredients]. Consequently, having regard to the aforementioned, I am not prepared accept that the evidence of use of the Mark in association with the Open Trade product supports use of the Mark in association with “modems”.

[73] Furthermore, notwithstanding Ms. Stanwell-Smith’s assertion of use, there is no evidence with respect to “parts and fittings for all the aforesaid goods”. As no special circumstances that would excuse the absence of use of the Mark in association with these goods is before me, both “modems” and “parts and fittings for all the aforesaid goods” will be deleted from the registration.

Was the Mark used in association with the Services in Canada during the relevant period?

[74] The Requesting Party submits that although Ms. Stanwell-Smith claims that the various licensees have used the Mark in relation to the registered services during the relevant period, the evidence does not supports such claims.

IT and Telecommunications Services - Services (1) and (3)

[75] In particular, with respect to OBSC, the Requesting Party submits that there is no evidence of actual circulation or distribution to Canadian clients of the brochures and sales documents associated with OBSC's business packages. The only evidence pertaining to distribution and circulation of such documents, the Requesting Party submits, is an undated website traffic report prepared by the Owner showing hits to the *www.orange-business.com* global website from Canadian users (Exhibit 14). Such evidence, the Requesting Party submits, has "questionable" evidentiary value. Further to this, the Requesting Party submits that the website does not include any indicia of being directed at Canadian consumers; thus the evidence falls short of showing that such services were available to Canadian consumers.

[76] However, I note that the brochures and sales documents were not available only via the website. In this regard, Ms. Stanwell-Smith makes numerous sworn statements throughout her affidavit that such documents were used by OBSC's sales teams and circulated to consumers and prospective consumers in Canada during the relevant period. Indeed, she provides specific methods/examples of how such documents were distributed by OBSC during the relevant period, such as at "hundreds of sales pitch meetings each year to existing and prospective clients in Canada".

[77] The Requesting Party also questions whether the brochures were dated within the relevant period and submits that certain brochures appear to merely constitute internal presentation documents used by OBSC or France Telecom's marketing teams. However, Ms. Stanwell-Smith clearly attests throughout her affidavit that such documents are *representative* of the types of documents that were circulated during the relevant period to consumers and prospective consumers in Canada by OBSC.

[78] In addition to the above, the Requesting Party further submits that the brochures appear to be aimed at the "global public of the [Owner's] group". For example, the Requesting Party submits, the brochure at Exhibit 13 targets the Asia-Pacific, Russian, African and Middle-East regions and mentions an office presence in the United States with no reference to Canada. Further to this, the Requesting Party submits that Exhibit 43 defines Orange Healthcare's presence in the Americas as encompassing Columbia and the United States only.

[79] In response, the Owner submits, there is no requirement that the brochures or other advertising specifically reference Canada or only target the Canadian public as opposed to a global public. The Owner submits, and I agree, that where a trade-mark is displayed during the performance or advertising of services and the services are actually performed in Canada or the trade-mark owner is offering and prepared to perform those services in Canada, the requirements for use in association with services will be met [per *Wenward (Canada) Ltd v Dynaturf Co* (1976), 28 CPR (2d) 20 (TMOB)].

[80] In this respect, the Owner notes that sample informational brochures and sales documents are provided in the affidavit, together with corresponding statements evidencing the availability and distribution of each of these brochures and documents in Canada.

[81] Furthermore, I would add, the evidence clearly supports that the various business packages described in the brochures and sales documents were offered and provided both abroad *and* in Canada. Indeed, Ms. Stanwell-Smith attests that due to the complex nature of the packages of business solutions provided to its customers, revenue figures generated by OBSC are not available in a manner that separates out revenues generated between its activities in Canada and those outside Canada for Canadian clients. Rather, customers are invoiced by OBSC according to the business package provided. However, she further provides a clear sworn statement that such services were provided to customers *within* Canada, attests that a substantial portion of OBSC's total annual revenues are generated by OBSC from Services *in* Canada, and provides representative invoices issued to customers in Canada for such services. Moreover, with respect to each business package identified in her affidavit, she consistently attests throughout her affidavit that such services were provided by OBSC *in* Canada.

[82] As but another example of corroborative evidence, Ms. Stanwell-Smith provides factual particulars with respect to OBSC's provision of M2M services to Canadian customers in the healthcare industry. Specifically, she explains that SIM cards (shown in Exhibit 45) are inserted into customer medical devices to connect them to the Rogers Communications mobile network in Canada, and that the SIM cards send signals back to OBSC to enable OBSC to provide reporting and professional services to the customer. She also provides multiple sample invoices

(Exhibit 47), which clearly show the sale of M2M services to entities with Canadian addresses during the relevant period. Clearly these services were offered to customers in Canada.

[83] With respect to the services offered by Silicomp and Etrali, the Requesting Party has made similar submissions as above regarding the advertising and availability of the services in Canada and distribution and circulation of associated brochures and sales documents in Canada during the relevant period. Once again, however, I find that the Requesting Party has taken the incorrect approach of isolating certain pieces of evidence; such an approach can lead to incorrect conclusions as it does not consider other relevant or related evidence [see *Kvas Miller Everitt v Compute (Bridgend) Limited* (2005), 47 CPR (4th) 209 (TMOB)].

[84] Similar to the evidence of use of the Mark through OBSC, Ms. Stanwell-Smith has provided numerous clear sworn statements regarding the distribution of brochures and sales documents bearing the Mark in Canada during the relevant period, as well as invoices demonstrating sales in Canada during the relevant period. For example, although the Requesting Party is correct that the invoices issued by Silicomp do not refer to specific services, Ms. Stanwell-Smith provides a sufficient explanation for the absence of such information on the invoices as well as sworn statements to describe each of the specific services rendered.

[85] With respect to the services offered by International Carriers, however, I agree with the Requesting Party that such services do not appear to be offered in Canada. That is, although International Carriers has “roaming agreements” with Canadian telecom operators that enable customers of these operators to access the Orange cellular network when travelling outside of Canada, this does not constitute performance of the services in Canada pursuant to section 4(2) of the Act [see *Porter v Don the Beachcomber* (1966), 48 CPR 280 (ExCt)].

[86] Nevertheless, based on a review of the evidence concerning the business packages and services provided by OBSC, Silicomp, and Etrali, I am satisfied that the Owner has demonstrated use of the Mark in the performance of each of services (1) and (3) pursuant to section 4(2) and 45 of the Act.

Educational Services - Services (2)

[87] In its submissions, the Owner relies mainly on evidence related to activities of members of the Orange Group, under the Orange Labs division, with respect to the educational services listed under services (2). In particular, the Owner refers to evidence regarding Orange Partner's Orange Developer Centre run through the Wavefront facility in Vancouver, BC (Exhibits 83 and 88), as well as educational activities advertised on the Orange Partner website (Exhibit 87). However, with respect to the specific services "providing on-line electronic publications", the Owner also relies on evidence of use through OBSC, as will be further described below.

[88] The Requesting Party submits that none of the evidence supplied by Ms. Stanwell-Smith supports any such claims. In this regard, the Requesting Party's submissions revolve around the exhibits not being dated within the relevant period. Further to this, the Requesting Party submits that the global press releases, corporate reports, and sponsorship reports at Exhibit 85, regardless of whether they were circulated in Canada, do not indicate that the educational services were performed in Canada.

[89] I agree that the press releases and reports furnished under Exhibit 85 do not refer to any educational services being provided in Canada. Furthermore, while I note that Ms. Stanwell-Smith attests that the Owner has worked with two research institutes during the relevant period in Canada (CRIM and Concordia University), and provides corroborative website printouts evidence (Exhibit 86), it is unclear how this evidence pertains to any of the specific registered services.

[90] However, the Owner notes that the Requesting Party has not made any submissions with respect to the educational activities advertised on the Orange Partner website (Exhibit 87), or the article at Exhibit 88 which details an event held at the Orange Developer Centre at the Wavefront facility in Vancouver, BC. Indeed, the exhibited printout from the website includes a list of webinars on a variety of topics in the area of mobile application development; Ms. Stanwell-Smith confirms that this website had at least 4,500 unique hits originating from Canada during the relevant period. The Mark is clearly displayed on the website printout. Furthermore, the event featured in the exhibited article describes the launch of the Orange Developer Centre in Canada on October 8, 2010. Ms. Stanwell-Smith attests that the Mark was prominently

displayed at the Centre, photographs of which she attaches as Exhibit 83 to her affidavit. The Owner further submits, and I agree, that Ms. Stanwell-Smith confirms that the educational services were provided at the Centre (as described in paragraph 157 of her affidavit).

[91] Having reviewed the aforementioned evidence, I am satisfied that the evidence concerning the Orange Developer Centre and the webinars provided through the Orange Partner website are sufficient to show use of the Mark in association with the registered educational services pursuant to sections 4(2) and 45 of the Act. That is, with the exception of “providing on-line electronic publications”, which as previously indicated, the Owner relies instead on evidence of use through OBSC.

[92] In this regard, the Owner refers to Exhibit 91, which includes copies of a magazine published during the relevant period displaying the Mark. Ms. Stanwell-Smith confirms that OBSC circulated the publication on a quarterly basis via download from its website and through e-mail to subscribers, and that over 60 subscribers in Canada received the June 2011 edition. Consequently, I accept that the Owner has shown use of the Mark in Canada during the relevant period in association with such services through its licensee OBSC.

[93] Having regard to the aforementioned, I am satisfied that the Owner has demonstrated use of the Mark in association with each of the registered educational services within the meaning of sections 4(2) and 45 of the Act.

Disposition

[94] Accordingly, pursuant to the authority delegated to me under section 63(3) of the Act, the registration will be maintained with respect to the registered services in its entirety, and will be amended to delete reference to “modems” and “parts and fittings for all the aforesaid goods” in compliance with the provisions of section 45 of the Act.

[95] As such, the amended statement of goods will read as follows:

Computer software to enable connection to databases, local area networks and the Internet; computer software to enable teleconferencing, videoconferencing and videophone services; computer software to enable searching and retrieval of data; computer software for accessing databases, telecommunications services, computer networks and electronic bulletin boards.

Kathryn Barnett
Member
Trade-marks Opposition Board
Canadian Intellectual Property Office

Schedule A

Goods

Computer software and modems to enable connection to databases, local area networks and the Internet; computer software to enable teleconferencing, videoconferencing and videophone services; computer software to enable searching and retrieval of data; computer software for accessing databases, telecommunications services, computer networks and electronic bulletin boards; modems; parts and fittings for all the aforesaid goods.

Services

- (1) Telecommunications services and communications services, namely, telephone, mobile telephone, message collection and transmission, radio-paging, call diversion, answerphone, and electronic mail services; electronic message delivery services; on-line information services relating to telecommunications; data interchange services; transfer of data by telecommunication; broadcasting and delivery of multimedia content over electronic communications networks; video messaging services; video conferencing services; video telephone services; transmission of web pages via the Internet; providing user access to the Internet; providing telecommunications connections or links to the Internet or databases; provision and operation of electronic conferencing, discussion groups and chat rooms; hire, leasing or rental of apparatus, instruments, installations or components for use in the provision of the aforementioned services; advisory, information and consultancy services relating to all the aforementioned.
- (2) Educational services, namely, developing, arranging and conducting educational conferences, programmes, and providing courses of instruction in the fields of information technology, telecommunications; providing on-line electronic publications; organising exhibitions for purposes of telecommunications, computing, information technology purposes; arranging and conducting of conferences, seminars, symposia, tutorials and workshops; interactive and distance learning courses and sessions provided on-line via a telecommunications link or computer network or provided by other means; provision and operation of electronic conferencing, discussion groups and chat rooms; provision of information and advice relating to all of the aforesaid services; none of the aforesaid services in connection with college level courses of instruction or college level sporting events.
- (3) Computer services, namely, computer hardware development, customisation of computer hardware and software; maintenance, updating and design of computer hardware, computer firmware, computer software and computer programs; computer programming services; preparation and provision of information in relation to computers and computer network facilities; technical advice and consultation services in the field of information technology and telecommunications; design and development of computer systems and of telecommunications systems and equipment; computer management services; operational support services for computer networks, telecommunications networks and data transmission networks; on-line computer services, namely, design and development of on-line computer software systems, providing specific information as requested by

customers via the Internet; computer programming for others provided on-line; provision of access to an electronic on-line network for information retrieval; computer rental; creating, operating and maintaining databases, Intranets and web sites; installation and maintenance of computer software; creating, operating and maintaining web sites, web pages and portals for logging text images and music provided either via computers or mobile telephones; provision of information and advisory services on-line from a computer database or via the Internet; information and advisory services relating to all the aforesaid services.

**TRADE-MARKS OPPOSITION BOARD
CANADIAN INTELLECTUAL PROPERTY OFFICE
APPEARANCES AND AGENTS OF RECORD**

Hearing Date: 2015-08-04

Appearances

Sanjukta Tole

For the Registered Owner

No one appearing

For the Requesting Party

Agents of Record

Sim & McBurney

For the Registered Owner

McMillan LLP

For the Requesting Party