



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

Citation: 2012 TMOB 183
Date of Decision: 2012-09-28

**IN THE MATTER OF OPPOSITIONS
by Commscope, Inc. of North Carolina to
applications No. 1,404,791 for the trade-
marks SIGNAMAX and No. 1,404,790 for
the trade-mark SIGNAMAX
CONNECTIVITY SYSTEMS in the
name of Signamax Inc.**

Application No. 1,404,791 File Record

[1] On July 24, 2008, Signamax Inc. (the Applicant) filed an application to register the trade-mark SIGNAMAX (the Mark) in association with:

(1) Computer hardware and computer network hardware; computer software for use in the management of computer networks; hand tools for installation and maintenance of computer networks; measuring and testing apparatus for performance analysis of a copper or fiber cabling system in accordance with TIA/EIA-568-B specifications.

(2) Telecommunications equipment, namely, electric, optical, microwave and data cables, switches, switchboards, distributors, connectors, couplings and junction boxes, light conducting filaments (the Wares); and with:

(1) Wholesale sales of computer hardware and computer network hardware, of computer software for use in the management of computer networks, of hand tools for installation and maintenance of computer networks, and of measuring and testing apparatus for performance analysis of a copper or fiber cabling system in accordance with TIA/EIA-568-B specifications.

(2) Wholesale sales of telecommunications equipment, namely, electric, optical, microwave and data cables, switches, switchboards, distributors, connectors,

couplings and junction boxes, light conducting filaments (the Services).

[2] The application was based on use since at least as early as 1999.

[3] The application was advertised for opposition purposes in the *Trade-marks Journal* of October 8, 2008.

[4] On March 4, 2009 Commscope, Inc. of North Carolina (the Opponent) filed a statement of opposition which was forwarded by the Registrar to the Applicant on March 30, 2009. It was once amended such that the grounds of opposition now pleaded can be summarized as follows:

1. The application does not comply with the requirements of section 30(a) of the *Trade-marks Act* RSC 1985, c T-13, (the Act) in that it does not contain a statement in ordinary commercial terms of the specific wares and services in association with which the Mark has allegedly been used;
2. The application does not satisfy the requirements of section 30(b) of the Act in that the Applicant has not used the Mark within the meaning of section 4(2) of the Act from the claimed date of first use, namely 1999;
3. The application does not satisfy the requirements of section 30(i) of the Act in that Applicant could not have been satisfied that it was entitled to use the Mark in Canada in association with the Wares and Services because it knew, at the filing date of the application the prior adoption and use in Canada and elsewhere of the trade-mark SYSTIMAX by the Opponent and its predecessors in title. The Mark was confusingly similar to the Opponent's trade-mark SYSTIMAX which was registered and used by the Opponent and/or its predecessor in title in Canada and in other countries;
4. The application is not registrable in view of section 12(1)(d) of the Act since the Mark is confusing with the Opponent's registered trade-mark SYSTIMAX, certificate of registration TMA402,162;
5. The Applicant is not entitled to the registration of the Mark pursuant to section 16(1)(a) of the Act in that at the alleged date of first use and at the filing date of the application the Mark was confusing with the Opponent's trade-mark SYSTIMAX which had been previously used in Canada by the Opponent;
6. Pursuant to section 38(2)(d), the Applicant's Mark is not distinctive in that it cannot distinguish and is not adapted to distinguish the Wares and Services from the wares and services of others, and most particularly of the Opponent;
7. Pursuant to section 38(2)(d), the Applicant's Mark is not distinctive in that it does not distinguish the Wares and the Services from the wares and services of others, including those of the alleged predecessors in title and the Applicant's business associates, namely Communication Components Corp. Inc. and AESP, Inc.

[5] In its counter statement filed on May 28, 2009 the Applicant denied all grounds of opposition.

[6] The Opponent filed as its evidence the affidavit Robert Kostash. The Applicant filed the affidavits of Tunde Nemeth and Stephen Daily. As reply evidence the Opponent filed a second affidavit of Mr. Kostash. Mr. Daily was cross-examined and the transcript of his cross-examination has been filed in the record together with the reply to undertakings.

[7] Only the Opponent filed a written argument and no hearing was requested.

Legal Onus and Burden of Proof

[8] The legal onus is upon the Applicant to show that the application complies with the provisions of the Act, but there is however 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. Once this initial burden is met, the Applicant has to prove, on a balance of probabilities, that the particular grounds of opposition should not prevent the registration of the Mark [see *Joseph E Seagram & Sons Ltd et al v Seagram Real Estate Ltd* (1984), 3 CPR (3d) 325 (TMOB); *John Labatt Ltd v Molson Companies Ltd* (1990), 30 CPR (3d) 293 (FCTD) and *Wrangler Apparel Corp v The Timberland Company* [2005] FC 722].

Section 30(i) Ground of Opposition

[9] All that is required from an applicant under section 30(i) of the Act is to provide a statement that it is satisfied that it is entitled to use the trade-mark applied for in Canada in association with the wares and services described in the application. The application filed does contain such statement. A section 30(i) ground of opposition should only succeed in exceptional cases such as where there is evidence of bad faith on the part of the applicant [*Sapodilla Co Ltd v Bristol-Myers Co* (1974), 15 CPR (2d) 152 at 155]. There is no evidence to that effect in the record. Therefore the third ground of opposition is dismissed for failure by the Opponent to meet its initial burden.

Section 30(a) Ground of Opposition

[10] The Opponent's evidence relating to this ground of opposition is found in the first affidavit filed by Mr. Kostash and can be summarized in these terms:

Mr. Kostash is the Sales Director of CommScope Solutions Canada, Inc. (CommScope Canada), a wholly owned subsidiary of CommScope, Inc. of North Carolina (the Opponent). He has been employed by CommScope Canada and its predecessors in title since July 1996.

Mr. Kostash states the reasons why the wares identified as “switchboards, distributors, and junction boxes” in the Applicant’s application would not be defined in ordinary commercial terms. He alleges that those terms are not recognized in the structured connectivity industry. He alleges that “switchboards” are more accurately described within the industry as “patch panels” or “patching enclosures”. As for “distributors”, the ordinary commercial term would be “electrical and fiber optic cross connects and interconnects”.

He states that even on its website the Applicant does not refer to “distributors” or “switchboards” in the products description section. As for “junction boxes” he alleges that, in standard industry usage, the terms “faceplate, surface mount box, and modular outlet” are more appropriate.

He provides excerpts of the Applicant’s website. They include search results for products “switchboards” which show that such products are not found on the Applicant’s website. The search for “distributor” produces links to product distributors in various states of the USA not links to products themselves. The search for “junction box” results in listings for faceplates, surface mount boxes and the like.

[11] The following is part of the Applicant’s evidence relating to this issue:

Mr. Daily is the Applicant’s President and has been since its incorporation in October 2006. It is a wholly owned subsidiary of Advanced Electronic Support Products, Inc (AESP Inc). Prior to October 2006 Signamax was a division of AESP and he was the Vice-President responsible for Signamax Division. He has been working for the Applicant and AESP Inc since 1999.

He asserts that the terms “switchboards, distributors, and junction boxes” are terms recognized in the industry. He alleges that they may be known by other names but they would still be understood as set out in the application.

[12] The fact that other terms are also used or are more appropriate in a particular industry to describe “switchboards, distributors, and junction boxes” does not mean that the wording used is not in “ordinary commercial terms” within the meaning of section 30(a) of the Act. Moreover the description of the Wares in the application is not restricted to the structural connectivity industry. Finally the statement made by Mr. Daily to the effect that those terms would be understood in the industry has not been commented or contradicted by Mr. Kostash in his affidavit filed as reply evidence, nor was it covered during Mr. Daily’s cross-examination. Under these circumstances I dismiss the first ground of opposition.

Section 30(b) Ground of Opposition

[13] The relevant date for this ground of opposition is the filing date of the application [see *Georgia-Pacific Corporation v Scott Paper Ltd* (1989), 24 CPR (3d) 274 (TMOB)]. The Opponent has an evidential burden with respect to its allegation that the Applicant had not used the Mark at the alleged date of first use claimed in the application in association with each of the Services. Such burden has been characterized as a light one. Moreover the Opponent can rely on the evidence filed by the Applicant itself [see *York Barbell Holdings Ltd v ICON Health & Fitness, Inc* (2001), 13 CPR (4th) 156 (TMOB)]. If that is the case, such evidence must be clearly inconsistent with the statements made by the Applicant in its application [See *Tune Masters v Mr P's Mastertune Ignition Services Ltd* (1986) 10 CPR (3d) 84 (TMOB), *Labatt Brewing Co v Molson Breweries, a Partnership* (1996), 68 CPR (3d) 216 (FCTD) and *Williams Telecommunications Corp v William Tell Ltd*, (1999) 4 CPR (4th) 107 (TMOB)].

[14] The Opponent argues in its written argument that the Applicant has not identified in its application its predecessor(s) in title. It further states that the Applicant's evidence shows that the Mark was first adopted by Communication Components Corp., Inc (CCCI) in 1994. Thereafter AESP Inc adopted the Mark in 1999 and then, when the Applicant was incorporated in October 2006, the Mark was presumably assigned to the Applicant.

[15] In its application the Applicant stated that "The trade-mark has been used in Canada by the applicant or the applicant's predecessor(s) in title AESP, Inc and Communication Components Corp., Inc...". Consequently the Applicant has clearly indicated in its application the identity of the predecessors in title which used the Mark.

[16] Therefore the second ground of opposition is dismissed.

Registrability of the Mark under Section 12(1)(d) of the Act

[17] The relevant date is the date of the Registrar's decision [see *Park Avenue Furniture Corporation v Wickes/Simmons Bedding Ltd* (1991), 37 CPR (3d) 413 at 424 (FCA)].

[18] The Opponent has not filed a copy of certificate of registration TMA402162 for the trade-mark SYSTIMAX. However under this ground of opposition the Registrar has discretion to

check the register to determine if such registration is in good standing [see *Quaker Oats of Canada Ltd/La Compagnie Quaker Oats Ltée v Manu Foods Ltd*, 11 CPR (3d) 410]. I used my discretion and confirm that the Opponent is the current owner of registration TMA402162 and it is extant. The registration covers:

Copper and metal wire, fiber optic cable, wire patch cords, fiber interconnection cables, mounting cords, electronic and mechanical closures, electrical and fiber optic cross connects and interconnects, electrical and fiber optic connectors, plugs, jacks and connecting blocks, fiber optic couplings, copper balun connector coils, electrical and fiber optic adapters to make connections between wire and fiber optic cables, transmission electronic circuitry that repeat, reshape or reformat signals from data terminals and controllers, synchronous and asynchronous data units, fiber optic modems and multiplexers, electrical protection circuitry namely protector panels and protector units used to limit high voltage lightning surges or power line faults, electrical and fiber optic cable brackets, clips and clamps.

[19] As such the Opponent has met its initial burden.

[20] The test to determine if there is a likelihood of confusion between two trade-marks is outlined in section 6(2) of the Act. Some of the surrounding circumstances to be taken into consideration are described in section 6(5) of the Act: the inherent distinctiveness of the trade-marks or trade-names and the extent to which they have become known; the length of time the trade-marks or trade-names have been in use; the nature of the wares, services, or business; the nature of the trade; and the degree of resemblance between the trade-marks or trade-names in appearance, or sound or any ideas suggested by them. Those criteria are not exhaustive and it is not necessary to give each one of them equal weight [See *Clorox Co v Sears Canada Inc* (1992), 41 CPR (3d) 483 (FCTD) and *Gainers Inc v Marchildon* (1996), 66 CPR (3d) 308 (FCTD)]. I also refer to the judgments of the Supreme Court of Canada in *Veuve Clicquot Ponsardin v Boutiques Clicquot Ltée et al* (2006), 49 CPR (4th) 401 and *Mattel Inc v 3894207 Canada inc* (2006), 49 CPR (4th) 321 where Mr. Justice Binnie commented on the assessment of the criteria enumerated under section 6(5) of the Act.

[21] Unfortunately the Applicant has not filed a written argument that could have included an analysis of those criteria while the Opponent's written argument did focus mainly on sections 30(a) and (b) grounds of opposition as well as the lack of distinctiveness of the Mark in view of its use by various entities which are, as mentioned before, the Applicant's predecessors in title.

Inherent distinctiveness of the trade-marks and the extent to which they have become known

[22] Both the Mark and the Opponent's trade-mark SYSTIMAX are coined words. It would appear that the Mark is made up of the contraction of the words "signage" and "maximum". However such combination is quite unique and thus the Mark is inherently distinctive. As for the trade-mark SYSTIMAX, it is the result of the combination of the first syllable of the words "system" and "maximum". It is also inherently distinctive.

[23] The distinctiveness of a trade-mark can be enhanced through its use or promotion. Both parties have provided evidence of use of their respective trade-marks in Canada. I shall now summarize that portion of the evidence.

[24] Mr. Kostash provides a history of the Opponent's corporate background including its predecessors in title. He alleges that the Opponent provides infrastructure solutions for communication networks worldwide. It operates in 3 segments: enterprise, broadband, and carrier. The enterprise segment provides structured cabling systems that connect voice and data communication devices, video and building automation devices, switching equipment, and other information-management systems to one another, as well as to outside communication networks for business enterprise applications. Through the SYSTIMAX and Uniprise brands, the Opponent is the global leader in structured cabling systems for business enterprise applications.

[25] He alleges that the Opponent is a world leader in the design and manufacture of cable and connectivity solutions for the communication networks "last mile" which is the distribution access and final link to the customer. It offers a complete end-to-end physical layer solution, including cables and connectivity, enclosures, intelligent software and network design services for business enterprise applications.

[26] He then provides a history of the use of the trade-mark SYSTIMAX by the Opponent's predecessors in title that goes back to 1989 by American Telephone and Telegraph Company, which became AT & T Corp. Over the years the rights to the trade-mark SYSTIMAX were assigned to various entities and presently the Opponent owns that mark.

[27] He describes the history of the use of the trade-mark SYSTIMAX in Canada. It goes back to at least as early as 1991.

[28] Mr. Kostash then goes on to state that the Opponent and its predecessors in title have published a product guide identifying and providing specifications for its extensive inventory of connectivity products sold under the trade-mark SYSTIMAX. He filed cover pages of SYSTIMAX product guides made available in Canada by the Opponent's predecessors in title as well as the current one published by the Opponent.

[29] Mr. Kostash has filed various brochures wherein SYSTIMAX cables, connectors, patch cords, plugs, outlets and panels can be combined to house and integrated servers and handle information traffic. He filed pictures of various products which, themselves or their packaging, bear the trade-mark SYSTIMAX.

[30] Mr. Kostash has provided a table of the annual sales of the Opponent's predecessors in title of products sold in Canada bearing the trade-mark SYSTIMAX since 1992 as well as the Opponent's total sales in Canada for the period of 2000 to 2007. They went from \$3.3 million in 1992 to \$20 million in 1999. We do not have a breakdown on an annual basis for the period of 2000 to 2007. He provides samples of advertising material published in Canada. He states that the Opponent's predecessors in title did participate in trade shows held in Canada starting in 1994.

[31] From this evidence I conclude that the Opponent's trade-mark SYSTIMAX is known in Canada.

[32] Mr. Daily states that AESP Inc is a US corporation that has been in business since 1983. He affirms that Communication Components Corp., Inc (CCCI) was a business based in Pennsylvania. It was a manufacturer of structured cabling products and developed the brand SIGNAMAX in 1994. CCCI sold SIGNAMAX branded products through the United States and Canada since that time. He refers to a catalogue widely distributed in Canada in 1994 by CCCI but there is no copy of it filed and no information as to how it was distributed. He refers to advertisements in Cabling Business Magazine starting in June 1996 but again no information was provided as to how it was distributed in Canada and the extent of such distribution.

[33] Mr. Daily alleges that in 1999 AESP, Inc. purchased CCCI. After such acquisition he asserts that SIGNAMAX products were sold by AESP worldwide and lists some of the countries. However there is no reference to Canada in the list of those countries.

[34] Mr. Daily filed a copy of two of the Applicant's brochures as well as copies of three different advertisements showing the Mark but we have no information about their publication date and the scope of their distribution.

[35] It appears from such summary that we have no information as to the extent of the use of the Mark in Canada by the Applicant and/or its predecessor(s) in title. Consequently I conclude that the evidence in the file shows that the Opponent's trade-mark SYSTIMAX is more known than the Mark in Canada.

The length of time the trade-marks or trade-names have been in use

[36] The evidence described above shows use of the Opponent's trade-mark SYSTIMAX since at least as early as 1991 while we have no clear evidence of use of the Mark by the Applicant or its predecessor(s) in title within the meaning of section 4 of the Act. Even taking at its face value the statement made by Mr. Daily that the Mark has been used in Canada since 1994, this factor would still favour the Opponent.

The nature of the wares, services, or business; the nature of the trade

[37] As appears from the description of the list of wares covered by registration TMA402162 and the Wares and Services, there is definitely an overlap between them.

[38] Mr. Kostash explains the business relationship with those retailers that purchase the Opponent's wares and related services, called the "business partners", which are independent companies that provide cabling implementation services and IT cabling infrastructure solutions based on the Opponent's technologies to corporate, government and small/medium business customers. Those business partners purchase products bearing the trade-mark SYSTIMAX through authorized distributors for resale to end users. He provides a list of those business partners.

[39] Mr. Kostash alleges that when a business partner installs a SYSTIMAX connectivity infrastructure, it provides that customer with a site warranty certification to the project. The certificate bears the trade-mark SYSTIMAX and Mr. Kostash has provided a copy of the first certificate issued in Canada in 1994 by the Opponent's predecessor in title AT&T. Since then more than 8400 of those certificates have been issued.

[40] Mr. Daily alleges that the Applicant's products are sold by independent distributors who in turn sell those products to end users, system integrators and electrical and datacom installation companies.

[41] In his affidavit Mr. Daily states that to the best of his knowledge none of the Applicant's distributors sell the Opponent's products. This does not mean that in the future such a situation could not happen.

[42] The description of the parties' channels of trade combined with the overlap in the nature of the parties' wares and services leads me to conclude that, in the absence of evidence to the contrary, there is a potential overlap in the parties' channels of trade.

[43] These factors also favour the Opponent.

The degree of resemblance

[44] In its judgment in *Masterpiece Inc v Alavida Lifestyles Inc et al* 2011 SCC 27, the Supreme Court of Canada has clearly indicated that the most important factor amongst those listed under section 6(5) of the Act is often the degree of resemblance between the marks. The marks in issue must be looked at in their totalities and should not be dissected into their components. The test is really: would a consumer with an imperfect recollection of the Opponent's trade-mark who is in contact with Wares or Services offered in association with the Mark likely think that those Wares or Services originate from the Opponent.

[45] There is some resemblance in appearance, sound and ideas suggested by the marks in issue. The first and last portions of the marks are either identical or phonetically similar. Thus on an imperfect recollection basis, they could very well be mistaken for one another. As for the ideas suggested by them the first syllable of the Mark is taken from the word "signal" while the

first portion of the Opponent's trade-mark is taken from "system". Both of those words can suggest interconnectivity. Perhaps a detailed analysis of the trade-marks in issue would show that the middle portion is different, but this is not the applicable test. At best for the Applicant the analysis of this criteria would result in a conclusion that it is equally balanced. However the burden lies on the Applicant.

Other surrounding circumstances

[46] In his affidavit Mr. Daily alleges that he has not been made aware of any instances of confusion despite the coexistence of those marks for a long period of time. In its written argument the Opponent argues that the absence of evidence on the extent of the Applicant's use of the Mark in Canada prevent a fair assessment of that fact. I agree with the Opponent. Without knowing the extent of the Applicant's sales in Canada and in which parts of the country, it is difficult to give some weight to this argument. The absence of instances of confusion might very well be caused by the fact that there have been only minimal sales in Canada by the Applicant over the relevant period of time.

[47] The Applicant has filed state of the register evidence in the form of an affidavit by Ms. Tunde Nemeth. She has been a registered trade-mark agent working for the firm representing the Applicant. On January 12, 2010 she conducted various searches of the Canadian trade-mark register maintained by the Canadian Intellectual Property Office. The first one was a search for the term "max" in a trade-mark in combination with the word "cable" in the "wares and services" field. She filed the results of such search. She filed, out of the 35 hits obtained, the extracts of 2 registrations namely TMA684191 for the trade-mark DSMAX, and TMA527565 for the trade-mark SAFETYMAX.

[48] Ms. Nemeth then searched the same database for the term "sys" in the trade-mark, in combination with the word "wire" in the "wares and services" field. She filed the results of such search and extracts of registrations TMA6030 for SYSTEM 500; TMA527471 for TRANSYS & Design; and TMA510820 for SYSTEMAX (which seems not to be part of the results of that search).

[49] Subsequently Ms. Nemeth performed a similar search to the first one described above but on the trade-mark database maintained by the U.S. Patent and Trademark Office and filed the results of such search. She then filed a printed copy of U.S. registered trademark 2793882 for SIGNAMAX CONNECTIVITY SYSTEMS; U.S. registered trademark 3534396 for the trademark SYSTEMAX; and U.S. registration 3150291 for SYSTEMAX PRO. I note that there is a difference between these trade-marks and those involved in this opposition.

[50] Ms. Nemeth was then asked to investigate the Internet to locate trade-marks and business names that were similar to SYSTIMAX with a particular focus on computer or technology-related trade-marks or companies. She located: SYSTEMEX, SYSTEMEX INC, SYSTEMATIX, SYSTEMAX and SYSTEM APEX INC.

[51] She then visited the websites corresponding to these trade-marks and filed extracts of them. There is no information on these websites such that I cannot determine if they are official websites [see *ITV Technologies, Inc v WIC Television Ltd* (2003), 29 CPR (4th) 182 (FCTD)]. Moreover I have no evidence as to the origin of those sites, if they have been viewed by Canadians, and if so to what extent. For these reasons I am not giving any weight to this portion of the Applicant's evidence.

[52] She also filed a printed copy of registered trade-mark TMA283300 for the trade-mark SYSTEMATIX.

[53] The Applicant has not provided an analysis of the conclusions to be drawn from Ms. Nemeth's evidence. Two registrations having as a suffix the term "max" and three registrations having as prefix "sys" or "system" does not create a presumption that the terms "max", "sys" and "system" are common terms part of trade-marks used in the marketplace in association with wares and services of the same general category as of those of the parties in this opposition such that the consumer is accustomed to make the distinction between those trade-marks [see *Kellogg Salada Canada Inc v Maximum Nutrition Ltd* (1992), 43 CPR (3d) 349 (FCA)].

[54] As to what is on the register in the United States, without deciding on the relevancy of such evidence, again the marks cited are different than those involved in this opposition.

[55] For the foregoing reasons Ms. Nemeth's evidence does not assist the Applicant.

Conclusion

[56] From this analysis of the relevant criteria, I conclude that the Applicant has failed to demonstrate on a balance of probabilities that the Mark would not likely cause confusion with the Opponent's trade-mark SYSTIMAX when used in association with the Wares and Services. All the relevant factors favour the Opponent.

[57] The fourth ground of opposition is maintained.

Entitlement under Section 16(1) of the Act

[58] The Opponent has the initial burden to prove that it has used or made known its trade-mark SYSTIMAX in Canada prior to the claimed date of first use alleged in the Applicant's application and that it has not abandoned such use at the advertising date of the application [see sections 16(1) and (5) of the Act]. From the Opponent's evidence described above, I conclude that the Opponent has met its initial burden.

[59] Therefore I have to determine if at the relevant date (the alleged date of first use of the Mark) the Mark was likely to cause confusion with the Opponent's trade-mark SYSTIMAX. The difference in the relevant dates associated with the registrability of the Mark under section 12(1)(d) and the entitlement to its registration under section 16(1) would not be a factor in the analysis of the same criteria listed under section 6(5) of the Act. Such analysis at an earlier date would generate the same results.

[60] Consequently the fifth ground of opposition is maintained for the same reasons outlined under the registrability ground of opposition.

Distinctiveness ground of opposition

[61] The Opponent having been successful under two separate grounds of opposition, it is not necessary for me to assess the two grounds of opposition raising the lack of distinctiveness of the Mark.

Application No. 1,404,790 File Record

[62] The file record (the relevant dates, the grounds of opposition raised, the evidence filed by the parties and the written argument filed by the Opponent) is identical to what has been described in application 1,404,790 except for the trade-mark applied for.

[63] I reach the same conclusions for each of the grounds of opposition analyzed above for the same reasons detailed hereinabove. However I have to make the following additional comment.

[64] In the analysis of the degree of resemblance I would add that the main distinctive component of the trade-mark SIGNAMAX CONNECTIVITY SYSTEMS is SIGNAMAX as “connectivity systems” is at least highly suggestive, if not descriptive of some of the Wares and Services (for example: electric, optical, microwave and data cables, computer network hardware, etc...). Therefore “connectivity systems” would not serve to distinguish the Applicant trade-mark SIGNAMAX CONNECTIVITY SYSTEMS from the Opponent’s trade-mark SYSTIMAX.

Disposition

[65] Pursuant to the authority delegated to me under section 63(3) of the Act, I refuse applications No. 1,404,791 and No. 1,404,790 pursuant to section 38(8) of the Act.

Jean Carrière
Member
Trade-marks Opposition Board
Canadian Intellectual Property Office