



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

Citation: 2016 TMOB 62
Date of Decision: 2016-04-14

IN THE MATTER OF A SECTION 45 PROCEEDING

Continental Tire de Mexico S.A. de C.V. Requesting Party

and

Eurosport Société Par Actions Simplifiée Registered Owner

TMA763,231 for EUROSPOUR Registration

[1] At the request of Continental Tire de Mexico S.A. de C.V. (the Requesting Party), the Registrar of Trade-marks issued a notice under section 45 of the *Trade-marks Act* RSC 1985, c T-13 (the Act) on December 12, 2013 to Eurosport Société Par Actions Simplifiée (the Owner), the registered owner of registration No. TMA763,231 for the trade-mark EUROSPOUR (the Mark).

[2] The Mark is registered for use in association with the following goods and services:

Goods:

(1) Printed matter, namely, newspapers, manuals, promotional pamphlets, brochures, magazines; publications, namely, magazines, journals, brochures, newsletters; periodicals.

Services:

(1) Internet services, namely the provision of sports, sports news and sports information to the public offered through medium of the Internet, namely on a website, through on-line publications and in the newsletters delivered on a computer network by e-mail.
(2) Multimedia services, namely, the provision of sports news and information through the medium of the internet, namely, on a website.
(3) Advertising and business information, namely, advertising the wares and services of others; advertising agency services; direct mail advertising, namely, selling the wares and

services of others by mail; electronic billboard advertising, namely, advertising the messages of others; placing advertisements for others; preparing advertisements for others; Advertising the wares and services of others by sponsoring.

(4) Television broadcasting by satellite, cable and means of other telecommunication networks; Broadcasting of television programmes and more generally multimedia programmes.

(5) Publication of texts, illustrations, magazines, newspapers, periodicals, publication of all kinds and in all forms, namely, publication of video games for use on television sets, personal computers and handheld devices; organisation of sports events, namely, ice hockey, baseball, basketball, football, soccer, rugby, lacrosse, tennis, squash, golf, alpine and nordic skiing, free-style skiing, volleyball, swimming, auto racing, track and field, gymnastics, weight lifting, horse racing, skateboarding, cycling, luge, bobsleigh, skeleton, water polo, equestrian, curling, mountain biking, snowboarding, wakeboarding, waterskiing, surfing, wind surfing, handball, table tennis, badminton, triathlon, decathlon, rowing, inline speed skating, flying disc, broomball, boat racing, jai-alai, racquetball, figure skating, speed skating, ringette, inline hockey, archery, pool, billiards, darts, bowling, cricket, dodgeball, field hockey, kayaking, canoeing and sailing events, motorcycle racing, snooker; organisation of sports events, namely, ice hockey, baseball, basketball, football, soccer, rugby, lacrosse, tennis, squash, golf, alpine and nordic skiing, free-style skiing, volleyball, swimming, diving, auto racing, track and field, gymnastics, weight lifting, horse racing, skateboarding, cycling, luge, bobsleigh, skeleton, water polo, equestrian, polo, curling, mountain biking, snowboarding, wakeboarding, waterskiing, surfing, wind surfing, handball, table tennis, badminton, triathlon, decathlon, rowing, inline speed skating, flying disc, broomball, boat racing, jai-alai, racquetball, figure skating, speed skating, ringette, inline hockey, archery, pool, billiards, darts, bowling, cricket, dodgeball, field hockey, kayaking, canoeing and sailing competitions, motorcycle racing snooker; production of television programmes, audio visual and multimedia programmes; production and creation of information programmes, namely, sports information television programmes, radio and television entertainment, audio-visual and multimedia programmes; organisation of lotteries and games.

[3] The notice required the Owner to furnish evidence showing that the Mark was in use in Canada, in association with each of the goods and services specified in the registration, at any time between December 12, 2010 and December 12, 2013. If the Mark had not been so used, the Owner was required to furnish evidence providing the date when the Mark was last used and the reasons for the absence of use since that date.

[4] 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.

[5] It is well established that mere assertions of use are not sufficient to demonstrate use in the context of section 45 proceedings [*Plough (Canada) Ltd v Aerosol Fillers Inc* (1980), 53 CPR (2d) 62 (FCA)]. Although the threshold for establishing use in these proceedings is low [*Woods Canada Ltd v Lang Michener* (1996), 71 CPR (3d) 477 (FCTD)], and evidentiary overkill is not required [*Union Electric Supply Co Ltd v Registrar of Trade Marks* (1982), 63 CPR (2d) 56 (FCTD)], sufficient facts must still be provided to permit the Registrar to arrive at a conclusion of use of the trade-mark in association with each of the goods and services specified in the registration during the relevant period.

[6] With respect to services, the display of a trade-mark on advertising is sufficient to meet the requirements of section 4(2) when the trade-mark owner is offering and prepared to perform those services in Canada [*Wenward (Canada) Ltd v Dynaturf Co* (1976), 28 CPR (2d) 20 (TMOB)].

[7] Moreover, it is well established that the evidence as a whole must be considered [*Kvas Miller Everitt v Compute (Bridgend) Limited* (2005), 47 CPR (4th) 209 (TMOB)], and while the word “services” is not defined in the Act, services are generally granted a generous or broad interpretation [*Aird & Berlis v Virgin Enterprises Ltd* (2009), 78 CPR (4th) 306 (TMOB)]. As long as some members of the public, consumers or purchasers, receive a benefit from the activity, it is a service [*Renaud Cointreau & Co v Cordon Bleu International Ltd* (2000), 11 CPR (4th) 95 (FCTD), *aff’d*, 2002 FCA 11, 18 CPR (4th) 415].

[8] In response to the section 45 notice, the Owner furnished the affidavit of Dr. Thomas Mayrhofer, General Counsel of the Owner, sworn on July 9, 2014 in Paris, France. Both parties filed written representations and were represented at an oral hearing.

The Owner’s Evidence

[9] In his affidavit, Dr. Mayrhofer states that the Owner is a leading global multimedia sports and entertainment company established in 1989. He explains that the Owner's television sports channels are broadcast to 135 million homes across 54 countries. Dr. Mayrhofer attests that the Owner also owns a family of sports-related websites and an events management subsidiary, Eurosport Events Ltd., which "produces, manages and promotes international sporting events and series".

[10] Dr. Mayrhofer attests that the Owner has used the Mark in association with "all aspects of its business including in association with its sports television channels, its online sports-related websites and in association with the international sporting events produced, managed and promoted by Eurosport Events since as early as 1989". He further attests that the Mark has been used extensively around the world and in Canada, and is prominently displayed in association with all aspects of the Owner's business.

The Owner's Website

[11] Dr. Mayrhofer attests that, during the relevant period, the Owner "provided sports, sports news and sports information ... to the Canadian public through the domain *eurosport.com*, which links the public to 15 different Eurosport websites in 11 languages". Dr. Mayrhofer attests that the EUROSPORT website provided extensive coverage of sports, including "news, photos, videos, schedules, standings, statistics, player and team information pages, and blogs all related to ... various sporting events and competitions". He attests that the Mark was displayed in the banner at the top of every page of the Eurosport website during the relevant period.

[12] Dr. Mayrhofer also attests that the website contained "television videos that were produced, created and broadcast online by the Owner". He explains that the videos contained "sports news, information and entertainment, and were viewable online from Canada during the relevant period". Dr. Mayrhofer attests that each video was preceded by a video advertisement for third-party goods and services.

[13] With respect to access to the EUROSPORT website from Canada during the relevant period, Dr. Mayrhofer attests that the website received over 10 million visits from Canada in 2011, over 12 million in 2012, and over 10 million in 2013.

[14] In support, at Exhibit A to his affidavit, Dr. Mayrhofer provides printouts from the EUROSPORT website, which he attests are representative examples of how the Mark was displayed during the relevant period in association with the Owner's website services. Consistent with his statement, a variety of news, scores, team information, and photos for sports (including soccer and tennis) appears on the webpages. The Mark is displayed at the top of each page.

[15] Dr. Mayrhofer also provides, at Exhibit B to his affidavit, 17 screenshots from "sports and entertainment videos" available on the website. He attests that each video is preceded by a "video advertisement for third party goods and services". Indeed, I note that 12 of the Exhibit B screenshots show frames of video advertisements for Abarth Cars and DHL. The Mark is displayed at the top left corner of all the screenshots.

Advertising Services

[16] Dr. Mayrhofer attests that the Owner also provided advertising services for third parties in Canada via the EUROSPORT website during the relevant period. He explains that third-party advertisers, including those from Canada, paid the Owner a fee in order to have their advertisements appear on the website, such as on the advertising space on the right side of each page of the website. If a user clicks on an advertisement, they are sent to the website of a third-party advertiser. He further explains that these third-party advertisements are geo-targeted so that if the website is accessed from Canada, for example, the advertisements which appear are customized to goods and services available in Canada. Dr. Mayrhofer notes that these advertisements were always accompanied by the display of the Mark on the website.

[17] In support, at Exhibit C to his affidavit, Dr. Mayrhofer provides screenshots from the EUROSPORT website, which he attests shows third-party advertisements placed by the Owner for goods and services available in Canada. Dr. Mayrhofer attests that these screenshots are representative of the website as it appeared during the relevant period, as well as representative of the manner in which the Owner provided advertising services to third parties in Canada during the relevant period. I note that the screenshots each display an advertisement from either Yellow Pages Canada, Canada Post, Yahoo! Canada, TD Bank, or RBC Insurance on the right side of the page.

[18] In addition to these advertisements on the Owner's website, Dr. Mayrhofer attests that the Owner also provided advertising to major tire companies such as BF Goodrich and Goodyear. Dr. Mayrhofer attests that, during the relevant period, tire companies advertised through various EUROSPORT media platforms including the website, on television, and at events organized and managed by Eurosport Events.

[19] Dr. Mayrhofer sets out the total amounts paid by these tire companies to the Owner for advertising their products and services across all Eurosport media platforms between 2008 to 2013. For example, he states that the advertising expenditures by the tire companies in 2012 was 4.1 million Euros, and that the total advertising expenditures by the tire companies for the years 2008 to 2013 was over 31 million Euros. I note, however, that Dr. Mayrhofer only attests to overall expenditures by the tire companies across all of the Owner's media platforms; he does not make a distinction to show either the specific amounts paid by Canadian advertisers or the specific amounts paid for advertisements that were accessible to Canadians, if any, that were not via the website.

Sports Television Channels

[20] Dr. Mayrhofer attests that the Owner's "roster of sports television channels ... features five different channels broadcasting sporting events and sports news and entertainment 24 hours a day in over 20 different languages". He attests that each of these channels incorporates the Mark in its name and prominently displays the Mark on screen during broadcasts.

[21] With respect to the relevant period, Dr. Mayrhofer attests that the Owner "produced, created and broadcast television programs featuring many sporting events *which took place in Canada*" (emphasis added). At paragraph 16 of his affidavit, Dr. Maryhofer provides a list of 27 such sporting events, most of which occurred between 2009 and 2014.

[22] In particular, Dr. Mayrhofer notes that the Owner had a "strong presence" during the Vancouver 2010 Winter Olympic Games, at which he attests the Owner "produced, created and broadcast television programs featuring coverage of the Games". He further attests that the Owner had a delegation of 55 people involved in television and video production, as well as "onsite production, editing and studio space at each of the two main media centers in Vancouver

and Whistler”. Dr. Mayrhofer also states that the Owner’s budget for television broadcasting of the Olympic Games from Vancouver and Whistler was approximately 1 million Euros.

[23] At Exhibit H to his affidavit, Dr. Mayrhofer attaches photographs which he attests document the Owner’s presence at the Vancouver Games. The photographs show the Owner’s “production and editing studio space”. I note that the Mark appears on the equipment in the space, as well as on the microphones of “delegates who attended the Games”. Attached at Exhibit I is “a document showing the rights holding broadcasters for the Vancouver 2010 Olympic Winter Games”.

[24] I note, however, that Eurosport is not one of the “Broadcasters” listed for Canada. Moreover, page 9 of Dr. Mayrhofer’s affidavit confirms that the Vancouver Olympic and Paralympic Games were held in February 2010, which is prior to the relevant period.

[25] Similarly, at Exhibit G, Mr. Mayrhofer also attaches “sample broadcasting schedules for the Eurosport sports televisions channels from [the Relevant Period] highlighting some of the sporting events *that took place in Canada* which were covered by Eurosport” (emphasis added). I note, however, that it is not clear that these schedules are for channels that were available *in Canada*.

Eurosport Events

[26] In his affidavit, Dr. Mayrhofer explains that the Owner’s subsidiary, Eurosport Events, “organizes, manages and promotes international sporting events, including motorsport events such as the FIA World Touring Car Championship, the FIA European Touring Car Cup and the FIA European Rally Championship.” Dr. Mayrhofer attests that Eurosport Events is licensed to use the Mark by the Owner, who “controls the quality and character of the goods and services provided by Eurosport Events in association with the [Mark]”. He further attests that Eurosport Events organized dozens of events, producing over 1,500 hours of television programming for EUROSPORT-brand television channels each year, including during the relevant period. He notes that the events are also distributed to 135 television channels in 188 countries.

[27] In particular, Dr. Mayrhofer explains that the World Touring Car Championship (WTCC) is an international touring car series organized and promoted by the Owner through Eurosport Events since 2005. He attests that the WTCC website prominently displays the Mark in the top banner of each page, and contains sports information, images, and videos on the WTCC series. Dr. Mayrhofer attaches, at Exhibit M to his affidavit, printouts from the WTCC website. Mr. Mayrhofer attests that the WTCC website received over 44,000 visits from Canada between 2009 and 2013, and attests that “many of which occurred during the relevant period”.

[28] I note, however, that nothing in the evidence indicates that the WTCC series took place *in Canada* during the relevant period.

Analysis – Goods

[29] During the oral hearing, the Owner conceded non-use with respect to the registered goods. Indeed, aside from a general assertion of use, Dr. Mayrhofer’s affidavit makes no particular reference to these goods at all, and provides no evidence of special circumstances excusing non-use of the Mark in association with the registered goods. Accordingly, the registration will be amended to delete the statement of goods.

Analysis – Services (1) – Internet services on a website

[30] In its written representations, the Requesting Party submits that while the Owner might have carried out activities outside Canada, the evidence is insufficient to support use of the Mark in Canada in association with the services as they have been described in the Owner’s registration. In particular, the Requesting Party submits that the appearance of a trade-mark on a website that can merely be *accessed* by Canadians “does not mean that a party carries out all the activities described on the website in Canada”.

[31] During the oral hearing, the Requesting Party further submitted that the registered “Internet services” in services (1) and the registered “Multimedia services” in services (2) are very similar; as such, it argued that, while there are aspects of the services rendered through the Owner’s website that may constitute “Internet services”, they do not also cover “multimedia services”.

[32] The Owner, however, submitted that the evidence shows that both services (1) and services (2) were performed through the EUROSPORT website. In particular, it argued that “Internet services” relates specifically to the provision of sports information in written form, whereas “multimedia services” relates to the provision of sports information in the form of images and videos.

[33] With respect to services (1), it is clear from the evidence that the Website provides “sports, sports news and sports information to the public” in written form, such as through headlines, news summaries, and game scores. As noted by the Owner, the webpage printouts at Exhibit A, in particular, clearly provide such information in text, and the Mark is prominently displayed on at the top of each webpage.

[34] Regarding access by Canadians, as noted above, Dr. Mayrhofer clearly attests to over 30 million total visits from Canadians during the relevant period. As well, during the oral hearing, the Owner noted that a number of the Exhibit A webpage printouts specifically display links to “local” sports teams in Canada, such as the Toronto Raptors, Blue Jays, and the Maple Leafs.

[35] In my view, this evidence indicates that the EUROSPORT website includes information specific to Canadians, and supports an inference that the provision of sports information through the Owner’s website was actively targeted at and offered to Canadians [see *Star Island Entertainment LLC v Provent Holdings Ltd*, 2013 TMOB 84, 112 CPR (4th) 321 (TMOB); *McCarthy Tétrault v Lawyers Without Borders Inc* (2010), 87 CPR (4th) 437 (TMOB)].

[36] As such, I am satisfied that the Owner performed “Internet services ... through the medium of the Internet, namely on a website” in association with the Mark during the relevant period in Canada.

Services (1) – Internet services through on line publications and newsletters

[37] In contrast, the Requesting Party submits that Dr. Mayrhofer’s affidavit does not provide any information on the provision of sports news and information through “online publications” or “newsletters delivered on a computer network by email”.

[38] With respect to Internet services “in the newsletters delivered on a computer network by e-mail”, at the oral hearing, the Owner conceded to non-use of the Mark in association with such services. Indeed, Dr. Mayrhofer’s affidavit makes no reference to “newsletters delivered ... by e-mail” at all, and provides no evidence of special circumstances excusing non-use of the Mark in association with such services. As such, the registration will be amended accordingly.

[39] With respect to Internet services “through online publications”, during the oral hearing, the Owner submitted that although Dr. Mayrhofer’s affidavit does not reference “online publications” specifically, this term could be considered to be any information or article that provides information online. As such, the Owner submitted that a blog accessed via the EUROSPORT website can be considered an “online publication”.

[40] However, given that the Owner itself made a distinction in its statement of services between “Internet services ... through the medium of the Internet, namely on a website” and “Internet services ... through online publications”, the Owner is required to furnish evidence showing use of *each* of these services [see *John Labatt Ltd v Rainier Brewing Co et al* (1984), 80 CPR (2d) 228 (FCA)]. In this respect, a website can be considered an “online publication”; as such, for the registration to be maintained for the more general Internet services “through online publications”, the Owner had to show use of the Mark in association with such services otherwise than by reference to the general content of the EUROSPORT website.

[41] In this case, although some of the Exhibit A printouts display links to “blogs” or a “blog” on the left navigation panel of the EUROSPORT website, Dr. Mayrhofer’s affidavit provides no description or representative samples of the contents of such blogs. Even if I were to consider such blogs as being distinct from the EUROSPORT website – and even if such blogs provided “sports, sports news and sports information to the public” – there is no evidence before me that the Mark was actually displayed on or in association with such blogs, rather than some other trade-mark or trade-marks.

[42] As such, I am not satisfied that the evidence is sufficient to demonstrate use of the Mark in association with “Internet services ... through online publications”. Furthermore, as there is no evidence before me of special circumstances excusing non-use of the Mark, the registration will be amended accordingly.

[43] In view of the foregoing, with respect to services (1), I am satisfied that the Owner has demonstrated use of the Mark only in association with “Internet services, namely the provision of sports, sports news and sports information to the public offered through the medium of the Internet, namely on a website” during the relevant period in Canada within the meaning of sections 4 and 45 of the Act.

[44] The registration will be amended to delete “...through on-line publications and in the newsletters delivered on a computer network by e-mail” from services (1).

Analysis – Services (2) – Multimedia services on a website

[45] With respect to services (2), the Owner submits that the Exhibit B screenshots of a sports video clearly establish use of the Mark in association with the provision of multimedia content on the the Owner’s website. Indeed, as noted above, the Exhibit B printouts display screenshots of a sports video, as well as images next to sports headlines. The Mark is prominently displayed at the top left corner of each page. Moreover, an advertisement for a Canadian company, such as Yahoo Canada or Yellow Pages Canada, is displayed in the panel next to the video screenshot of each webpage. Accordingly, I accept that the multimedia content on the website was targeted at and offered to Canadians.

[46] I further agree with the Owner’s representations, referenced above, that the offering of such multimedia content constitutes a service distinct from those set out in services (1) of the registration.

[47] In view of the foregoing, as well as Dr. Mayrhofer’s clear attestations regarding access of the website by Canadians during the relevant period, I am satisfied that the Owner has demonstrated use of the Mark in association with services (2) within the meaning of sections 4 and 45 of the Act.

Analysis – Services (3) – Advertising Services

[48] During the oral hearing, the Requesting Party submitted that although the Owner may have provided advertising services in association with the Mark, the evidence is unclear as to whether such services actually correspond to particular services listed in the registration. The

Requesting Party cites *Sharp Kabushiki Kaisha v 88766 Canada Inc* (1997), 72 CPR (3d) 195 (FCTD), where the Court noted the following:

... manufacturers have an interest in widening the scope of the trademark protection offered by the Act ... and the use to which their products can be put multiply. However, in so doing, they are specifying different uses. [at para 16]

[49] In this case, the Requesting Party submitted that, as the registration specifies a number of different advertising services, evidence of the performance of a single advertising service is not sufficient to demonstrate use of the Mark in association with *each* of the separate advertising services listed under services (3).

[50] The Owner, on the other hand, argued that to the extent the services offered by the Owner are not merely the placement of advertisements, the rendered services would fall under the other categories of services (3). In particular, the Owner submits that the evidence is sufficient to maintain the registration in association with at least three types of advertising services, namely “advertising the wares and services of others”, “placing advertisements for others”, and “advertising the wares and services of others by sponsoring”.

Advertising the wares and services of others

[51] With respect to “advertising the wares and services of others”, the Owner noted that Dr. Mayrhofer explains how third-party advertisers pay the Owner a fee to have their advertisements placed on the EUROSPORT website. In this respect, during the oral hearing, the Owner noted that each of the webpages shown at Exhibit C displays an advertisement of a Canadian company, including Yellow Pages Canada and RBC Insurance, on the right panel of each page. As above, I accept that this also shows that the services offered through the EUROSPORT website were targeted at and offered to Canadians.

[52] As such, I am satisfied that the evidence shows that the Owner performed the services, “advertising the wares and services of others” in association with the Mark during the relevant period in Canada.

Placing advertisements for others

[53] Similarly, with respect to “placing advertisements for others”, the Owner pointed to the Exhibit B video screenshots, which includes screenshots of video advertisements for Abarth Cars and DHL that preceded sports videos available on the EUROSPORT website. Again, I note that Canadian geo-targeted advertisements for Yahoo Canada and Yellow Pages Canada are displayed beside these videos.

[54] In my view, such geo-targeted placement of advertisements by the Owner on the EUROSPORT website constitutes a service in particular *for advertisers* not necessarily encompassed by the “advertising of the wares and services of others”.

[55] Accordingly, I am satisfied that the evidence shows that the Owner performed the services “placing advertisements for others” in association with the Mark during the relevant period in Canada.

Advertising the wares and services of others by sponsoring

[56] With respect to “advertising the wares and services of others by sponsoring”, Dr. Mayrhofer only attests that the Owner was a sponsor of the UEFA Women’s Euro 2013 soccer championship held in Sweden. It is clear, however, that such sponsorship services were not performed or advertised in Canada.

[57] As such, I am not satisfied that the Owner has demonstrated use of the Mark in association with such services during the relevant period within the meaning of sections 4 and 45 of the Act.

[58] Furthermore, as there is no evidence before me of special circumstances excusing non-use of the Mark with respect to “advertising the wares and services of others by sponsoring”, the registration will be amended accordingly.

Remaining Advertising Services

[59] With respect to the remaining services listed under services (3), notwithstanding Dr. Mayrhofer’s general assertion of use of the Mark in association with all of the registered services, these particular services are not otherwise referenced in the evidence. Furthermore, as

there is no evidence before me of special circumstances excusing non-use of the Mark, the registration will be amended accordingly.

[60] In view of the foregoing, with respect to services (3), I am satisfied that the Owner has demonstrated use of the Mark only in association with “advertising the wares and services of others” and “placing advertisements for others” during the relevant period in Canada within the meaning of sections 4 and 45 of the Act.

[61] The registration will be amended to delete the remainder of services (3).

Analysis – Services (4) – Television Broadcasting

[62] With respect to the service, “television broadcasting by satellite, cable and means of other telecommunication networks” listed under services (4), it is clear from the evidence that the Owner does not broadcast content by *satellite or cable* in Canada, but only provides content via the Internet, namely through its website.

[63] Indeed, during the oral hearing, the Owner conceded non-use with respect to television broadcasting by satellite or cable. However, it submitted that the evidence demonstrated use of the Mark in association with “television broadcasting by means of *other* telecommunication networks”, namely the Internet.

[64] Noting that simply deleting “satellite, cable” would arguably broaden the statement of services, the Owner suggested that “television broadcasting by satellite, cable and means of other telecommunication networks” be amended to “television broadcasting by means of the Internet”.

[65] However, I note that the Registrar has no authority to amend the registration in the manner suggested by the Owner [see, for example *Sim & McBurney v Anipet Animal Supplies Inc*, 2015 TMOB 130, CarswellNat 4052].

[66] Furthermore, as “telecommunication networks” is broad enough to include “satellite” and “cable” networks, amending the services to “television broadcasting by means of telecommunication networks” would be effectively meaningless.

[67] In this case, the fact that there would be difficulty in amending the statement of services to encompass the purported services in ordinary commercial terms is telling. As per section 30 of the Act, services must be stated in ordinary commercial terms, and whether a trade-mark has been used in association with the services as registered is to be determined on a case-by-case basis [see *Express File Inc v HRB Royalty Inc*, 2005 FC 542, 39 CPR (4th) 59]. Accordingly, registered services should be interpreted in accordance with common sense and given their ordinary meaning.

[68] Although the Owner asserts that it provides “television broadcasting” via the Internet, in my view – and on the facts of this particular case – I disagree. While the Owner provides “television broadcasting” services in other countries, it does not do so in Canada. Despite operating “five different channels broadcasting sporting events and sports news and entertainment 24 hours a day in over 20 different languages” and “across 54 countries”, none of these channels were available in Canada during the relevant period. To the extent that some of content originally broadcast on these television channels may have been available through the Owner’s website to Canadians, such services would appear to more properly fall under services (2), “multimedia services”.

[69] As such, the registration will be amended to delete “television broadcasting by satellite, cable and means of other telecommunication networks”.

Broadcasting of television programmes

[70] While I am not satisfied that the multimedia services provided via the EUROSPORT website constitutes “television broadcasting” in this case, the further issue is whether the evidenced broadcasting to other countries *from* Canada constitutes “Broadcasting of television programmes and more generally multimedia programmes”.

[71] In this respect, during the oral hearing, the Requesting Party submitted that mere *coverage* of Canadian sporting events does not equate to the performance of *broadcasting* services in Canada. As noted above, while the Owner has a number of “television channels ... broadcasting sporting events”, such broadcasts were for channels not available in Canada.

[72] For example, the EUROSPORT channel is described in Dr. Mayrhofer's affidavit as "Europe's number 1 pan-European television channel reaching ... 54 countries", and the EUROSPORT ASIA-PACIFIC channel is described as being "distributed in 16 countries across the Asia-Pacific region".

[73] The Requesting Party further submitted that "videos" and "television programmes" refer to different concepts, and that making videos that are later available on the Owner's website does not correspond to the registered "broadcasting of television programmes".

[74] The Owner submitted that the evidence must be considered as a whole. In this respect, it argued that, despite being outside of the relevant period, the evidence relating to the 2010 Vancouver Olympics is "not completely devoid of meaning", as it shows that the Owner does broadcast from Canada, and that there were individual commentators in Canada.

[75] However, I do not accept the Owner's submission that broadcasting *from* Canada constitutes performance of such services *in* Canada without evidence of such broadcasts being received in Canada. The nature of the Owner's business is such that although events in Canada may have been recorded, there is no evidence that television broadcast of such content via one of the Owner's EUROSPORT channels actually occurred in Canada.

[76] Furthermore, while some of the EUROSPORT website content may have originated as television programmes broadcast abroad, with respect to Canada, the evidence only supports use of the Mark in association with the multimedia services set out in services (2), or otherwise by the Internet services in services (1). In the context of the registered services and the evidence furnished, this better reflects the services actually offered in Canada by the Owner during the relevant period.

[77] Accordingly, as there is no evidence before me of special circumstances excusing non-use of the Mark with respect to "broadcasting" services, the registration will be amended to delete services (4).

Analysis – Services (5) – Publication, Organization and Production Services

[78] With respect to the service, “production and creation of ... sports information television programmes”, in its written representations, the Owner submits that Dr. Mayrhofer made clear attestations that:

- the Owner “produced, created and broadcast television programs featuring coverage” of the Vancouver 2010 Winter Olympic Games;
- the Owner “sent a large delegation to Canada to cover the Games”; and
- the Owner also had “onsite production, editing and studio space at each of the two main media centers in Vancouver and Whisler”.

[79] As noted by the Requesting Party, however, the Vancouver Olympic and Paralympic Games were held in February 2010, which is prior to the relevant period.

[80] In any event, the Owner furnished no evidence that such services were advertised in Canada and, as above with respect to broadcasting *from* Canada, it is not clear to me that the mere production of programmes relating to Canadian sporting events constitutes performance of such services in Canada within the meaning of section 4 of the Act. Notably, at the oral hearing, the Owner made no submissions with regards to services (5).

[81] As there is no evidence before me of special circumstances excusing non-use of the Mark with respect to such production services, the registration will be amended accordingly.

[82] With respect to the remaining services listed under services (5), aside from the general assertion of use, Dr. Mayrhofer’s affidavit makes no particular reference to these services at all. In the absence of evidence of special circumstances excusing non-use of the Mark, the registration will be amended to delete services (5) in its entirety.

Disposition

[83] In view of the foregoing, pursuant to the authority delegated to me under section 63(3) of the Act in compliance with the provisions of section 45 of the Act, the registration will be

amended to delete the statement of goods in its entirety and the following from the statement of services:

- “...through on-line publications and in the newsletters delivered on a computer network by e-mail” from services (1);
- “...advertising agency services; direct mail advertising, namely, selling the wares and services of others by mail; electronic billboard advertising, namely, advertising the messages of others; ... preparing advertisements for others; Advertising the wares and services of others by sponsoring” from services (2);
- services (4); and
- services (5).

[84] The amended statement of services will be as follows:

(1) Internet services, namely the provision of sports, sports news and sports information to the public offered through medium of the Internet, namely on a website.

(2) Multimedia services, namely, the provision of sports news and information through the medium of the internet, namely, on a website.

(3) Advertising and business information, namely, advertising the wares and services of others; placing advertisements for others.

Andrew Bene
Hearing Officer
Trade-marks Opposition Board
Canadian Intellectual Property Office

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

Hearing Date: 2016-01-15

Appearances

Michael O'Neil	For the Registered Owner
Barry Gamache	For the Requesting Party

Agents of Record

Gowling WLG (Canada) LLP	For the Registered Owner
Robic	For the Requesting Party