



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

Citation: 2014 TMOB 53
Date of Decision: 2014-03-12

**IN THE MATTER OF A SECTION 45 PROCEEDING
requested by Andrews Robichaud against registration No.
TMA614,444 for the trade-mark ALTO l'université à
l'entreprise et dessin in the name of Solutions Alto Inc.**

[1] At the request of Andrews Robichaud (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 February 2, 2012 to the registered owner Solutions Alto Inc. (the Registrant) of registration No. TMA614,444 for the trade-mark ALTO l'université à l'entreprise et dessin (the Mark), shown below.



[2] The Mark is registered in association with the following wares and services:

Wares: *Matériel d'enseignement sous forme papier, notamment livres et manuels, matériel d'enseignement sous forme électronique, notamment livres, manuels et modules en ligne.*

Services : *Services personnalisés d'évaluation, d'élaboration de plans de développement et de formation sur internet et sur les lieux du travail offerts aux personnes occupant des postes de supervision, de coordination ou de gestion au sein d'une entreprise ou d'une organisation, services de formation de formateurs au sein de l'entreprise ou organisation*

concernée, opération d'un portail Internet, organisation et tenue de conférences, cours, ateliers et séminaires dans le domaine de la formation en entreprise.

[3] Section 45 of the Act requires the registered owner of the trade-mark to show whether the trade-mark has been used in Canada in association with each of the wares and services specified in the registration at any time within the three year period immediately preceding the date of the notice and, if not, the date when it was last in use and the reason for the absence of such use since that date. In this case, the relevant period for showing use is between February 2, 2009 and February 2, 2012.

[4] For the purposes of this decision, the relevant definitions of “use” are set out in sections 4(1) and (2) of the Act:

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

(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 a section 45 proceeding [*Plough (Canada) Ltd v Aerosol Fillers Inc* (1980), 53 CPR (2d) 62 (FCA)]. Although the threshold for establishing use in these proceedings is quite low [*Woods Canada Ltd v Lang Michener et al* (1996), 71 CPR (3d) 477 (FCTD)], and evidentiary overkill is not required [*Union Electric Supply Co 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 wares or services specified in the registration during the relevant period.

[6] In response to the Registrar’s notice, the Registrant filed an affidavit of Alain Cléroux, a manager and director for the Registrant. Only the Requesting Party filed a written argument; an oral hearing was not held.

[7] In his affidavit Mr. Cléroux explains the nature of the Registrant's business and states that the Registrant has used the Mark in all communications since the Registrant's creation in 2002.

[8] In terms of the nature of the Registrant's business, Mr. Cléroux states that the Registrant provides a management skills system which is accessible through an online web portal. He attaches to his affidavit a copy of the homepage for the portal which clearly displays the Mark (Exhibit P1). However, the printout is not dated and there is no indication as to whether it is representative of the manner in which the Mark was used during the relevant period.

[9] With respect to the registered wares, Mr. Cléroux explains that the Registrant offers both paper and electronic versions of its teaching materials. He attaches to his affidavit both a photocopy of sample paper teaching materials (Exhibit P3) and printouts from the Registrant's online web portal (Exhibits P4, P5, P6). I note that Exhibits P5 and P6 do not display the Mark and thus are of no relevance to my decision. While Exhibits P3 (paper) and P4 (electronic) clearly display the Mark, neither one is dated and there is no indication as to whether the registered wares were actually sold during the relevant period.

[10] With respect to the services, Mr. Cléroux explains that they are offered both directly by the Registrant and through a partnership strategy. Mr. Cléroux attaches to his affidavit three invoices which he states are samples of the Registrant's partnership activities (Exhibits P7, P8, P9). Two of these invoices are dated in the relevant period and relate to contracts with Canadian customers. The invoice dated November 16, 2011 covers the services: meetings and presentations, use of ALTO repository and profiler, search key competences and developing skills profile; the October 14, 2011 invoice covers the services: demo evaluation 90° (Exhibits P7, P8). The third invoice is not relevant as it postdates the relevant period (Exhibit P9).

[11] Mr. Cléroux states that the Registrant has, since fall 2011, offered a simplified version of its management skills program which is available exclusively through the Registrant's online portal. He attaches to his affidavit a printout of the homepage for this service which displays the Mark (Exhibit P2). Based on a fair reading of paragraph 5 of the affidavit viewed in combination with Exhibit P2, I am satisfied that the Registrant has evidenced use of the Mark in Canada in association with the services defined as "*services personnalisés d'évaluation, d'élaboration de*

plans de développement et de formation sur internet et sur les lieux du travail offerts aux personnes occupant des postes de supervision, de coordination ou de gestion au sein d'une entreprise ou d'une organisation, [...] opération d'un portail Internet ».

[12] Mr. Cléroux makes no reference to the services defined as “[...] *services de formation de formateurs au sein de l'entreprise ou organisation concernée [...] organisation et tenue de conférences, cours, ateliers et séminaires dans le domaine de la formation en entreprise* ».

Disposition

[13] In view of the foregoing, pursuant to the authority delegated to me under section 63(3) of the Act and in compliance with the provisions of section 45 of the Act, the registration will be amended to delete the wares and the following services:

[...] services de formation de formateurs au sein de l'entreprise ou organisation concernée [...] organisation et tenue de conférences, cours, ateliers et séminaires dans le domaine de la formation en entreprise

[14] The amended statement of services will read as follows:

services personnalisés d'évaluation, d'élaboration de plans de développement et de formation sur internet et sur les lieux du travail offerts aux personnes occupant des postes de supervision, de coordination ou de gestion au sein d'une entreprise ou d'une organisation, opération d'un portail Internet

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