



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

Citation: 2013 TMOB 116
Date of Decision: 2013-07-02

**IN THE MATTER OF AN OPPOSITION
by 2168929 Ontario Inc. (c.o.b. as EDL
Consulting Services) to application
No. 1,457,585 for the trade-mark
EDLCONSULTING in the name of EDL
Consulting Ltd.**

Introduction

[1] This opposition relates to an application filed by EDL Consulting Ltd. (the Applicant) on November 2, 2009 to register the trade-mark EDLCONSULTING (the Mark) in association with information technology consulting services (the Services) based on use in Canada since November 2006 and on use and registration in the United States of America. However on May 18, 2012 the Applicant filed a revised application in which it deleted its claim based on use and registration in the U.S..

[2] The grounds of opposition raised by the opponent 2168929 Ontario Inc., c.o.b. as EDL Consulting Services, (the Opponent), that are still in issue are based on sections 30(b), 30(i), 12(1)(b), 16(1)(a) and 2 (distinctiveness) of the *Trade-marks Act* RSC 1985, c T-13, (the Act). The specific grounds of opposition are detailed in Schedule A annexed to this decision. I purposely deleted any reference to the ground of opposition based on section 16(2) of the Act in view of the amendment made by the Applicant and mentioned above.

[3] The first issue is to determine if the Opponent has furnished sufficient evidence to support its grounds of opposition. If so, then I have to decide if the Mark has been used since the

claimed date of first use; if the Mark is deceptively misdescriptive of the character of the Services or of the persons employed in their production; if the Mark is confusing with the Opponent's trade-mark EDL CONSULTING SERTVICES and trade-name EDL Consulting Services previously used or made known in Canada; and finally if the Mark is distinctive of the Applicant.

[4] On the first issue I conclude that the Opponent has failed to meet its evidential burden with respect to the ground of opposition based on section 30(i) of the Act. I conclude that the Opponent has met its initial burden with respect to section 30(b). However the Applicant has shown use of the Mark as of the claimed date of first use. I also conclude that the Mark is not deceptively misdescriptive of the character of the Services; that the Applicant is entitled to the registration of the Mark as it is not confusing with the Opponent's trade-mark and trade-name; and finally, that the Mark is distinctive.

Legal Onus and Burden of Proof

[5] There is an initial evidential burden on the Opponent to file sufficient admissible evidence from which it could reasonably be concluded that there exist sufficient facts to support each ground of opposition pleaded. If those facts exist, then the Applicant must show that the application complies with the provisions of the Act and the grounds of opposition raised by the Opponent should not prevent the registration of the trade-mark applied for [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), 41 CPR (4th) 223 (FCTD)].

Ground of Opposition based on Section 30(i)

[6] Section 30(i) of the Act only requires the Applicant to declare that it is satisfied that it is entitled to use the Mark in Canada in association with the wares and services described in the application. Such a statement is included in this application. An opponent may rely on section 30(i) in specific cases such as where fraud by the applicant is alleged [see *Sapodilla Co Ld v Bristol Myers Co* (1974), 15 CPR (2d) 152 (TMOB)]. There is no allegation of that nature in the statement of opposition or any evidence in the record to that effect.

[7] The Opponent argues that, prior to registering its trade-name 'EDL Consulting, Ltd' on July 27, 2009, the Applicant would have initiated a business name search to determine the availability of the Applicant's trade-name in Canada. Accordingly, prior to the filing date of the application, the Applicant would have been well-aware of the Opponent's business and the services advertised and being performed by the Opponent. I do not accept the fact that the Opponent can meet its initial evidential burden on the basis of this simple assumption. Mr. Loumpouridis, the Applicant's President, filed an affidavit and could have been cross-examined on this issue, but the Opponent decided not to proceed with his cross-examination despite the issuance of an order to that effect. I note that the document filed by the Opponent to support this argument is entitled 'Extrajurisdictional Company Summary' issued by the British Columbia Registry Services (exhibit J to Ms. Davis-Lewars' affidavit). There is no evidence that a business search is necessary before obtaining the status 'extrajurisdictional company' under the laws of British Columbia.

[8] More importantly in her affidavit Ms. Davis-Lewars, the Opponent's President, explained that the Opponent was incorporated on April 8, 2008 and prior to that she was carrying on business as a sole proprietorship under the business name EDL Consulting Services beginning in March 2007. The Applicant claimed, in its application, a date of first use of the Mark in Canada as early as November 2006, which predates any rights that the Opponent or its predecessor in title, Ms. Davis-Lewars, may have. Consequently, even if a search had been carried out and revealed the Opponent's activities, still the Applicant could claim prior rights. I shall discuss the issue of the claimed date of first use under the ground of opposition based on section 30(b).

[9] I conclude that the Opponent has not met its initial evidential burden. Consequently the ground of opposition based on section 30(i) of the Act is dismissed.

Ground of Opposition based on Section 30(b) of the Act

[10] Paragraphs 4 to 12 inclusive of Ms. Davis-Lewars' affidavit address the issue of the claimed date of first use of the Mark in Canada by the Applicant in association with the Services.

[11] The Applicant, as it appears from its application, is from Illinois, USA. Ms. Davis-Lewars filed various webpages of the Applicant's website using the WayBackMachine Internet

Archive website covering the years 2006 to 2008. While printouts from third party website are generally considered hearsay evidence and cannot be relied upon as evidence of the truth of their contents, I am satisfied that some weight may be placed on the various pages of the website as it belongs to the Applicant. The Applicant had the opportunity to respond to such portion of the evidence if there was concern as to its content.

[12] Firstly, exhibit A to Ms. Davis-Lewars' affidavit shows that the Applicant opened an office in Chicago in 2005. There is no reference to an office located in Canada. However this is not fatal to the Applicant as all it needs to establish is that the Services were promoted and available in Canada as of the date of first use claimed in the application.

[13] Ms. Davis-Lewars filed other webpages to show that the Applicant is using as a trade-mark EDL CONSULTING & Design and/or EDL CONSULTING as illustrated hereinafter and not the Mark:



Consequently the Applicant would not have used the Mark as of the claimed date of first use but a different mark(s). I consider the use of either of these marks to be use of the Mark. The space between EDL and CONSULTING and the use of the design portion as illustrated above do not create a trade-mark so different than the Mark such that a consumer may be lead to believe that the services offered in association with the trade-marks EDL CONSULTING & Design and/or EDL CONSULTING originate from a source other than the Applicant [see *Registrar of Trade-marks v Compagnie Internationale pour l'informatique CII Honeywell Bull* (1985), 4 CPR (3d) 523 (FCA)]. Consequently this portion of the evidence is of no assistance to the Opponent in so far as this ground of opposition is concerned.

[14] Ms. Davis-Lewars filed a copy of a webpage available from the 'News & Events' tab of the Applicant's website going back to August 7, 2006. In this page the Applicant is describing itself as "a national technology services firm". There is no mention on that page that the Applicant offers technology services in Canada. She also filed other pages from the Applicant's

website under the same tab from January 2006 to October 2007 and nowhere is there a mention that the Applicant has started offering its services in Canada.

[15] Exhibit H to Ms. Davis-Lewars' affidavit is a webpage of the Applicant's website going back to January 2007 where there is an announcement that the Applicant expanded into a new location in Illinois. There is no mention that the Applicant has expanded in Canada.

[16] Exhibit I to Ms. Davis-Lewars' affidavit is a webpage of the Applicant's website under the "Careers" tab which contains the following statement: "Our projects span the US, so willingness to visit and work in other cities is essential...However, you may reside anywhere within the continental US". There is no mention that the Applicant's projects extend to Canada or that employees may reside in Canada.

[17] The Applicant registered the entity "EDL Consulting, Ltd" as an extra-provincial corporation in British Columbia only on July 27, 2009 as mentioned above.

[18] I am satisfied from this evidence that the Opponent has met the light initial burden associated to a ground of opposition based on section 30(b) of the Act. Consequently the Applicant has to convince me that it was using the Mark in Canada within the meaning of section 4(2) of the Act in association with the Services as of November 2006. The evidence filed by the Applicant and reviewed hereinafter does support such claimed date of first use.

[19] The relevant allegations and documentation can be summarized as follow. Mr. Loumpouridis explains in paragraph 8 of his affidavit that the Applicant retained the services of Corporate Rain in 2006 to assist it with the advertising and marketing of the Services in Canada. He lists a number of companies to which the Applicant's Services were marketed and advertised in May 2006 in Ontario including, Cisco Systems Canada Co., IBM Canada Ltd, Research in Motion Limited and ATI Technologies Inc.

[20] Filed as exhibit I to Mr. Loumpouridis' affidavit is an email dated October 29, 2006 discussing some tax issues and paperwork to be completed and remitted to the Canada Revenue Agency relating to a contract with a company identified as Husky in the email. Filed as exhibit H to his affidavit is a copy of a purchase order dated January 30, 2007, prepared by Mr. Rob

Christensen, from Husky Injection Molding Systems Ltd. to the Applicant for 'Business objects universe Development for Comergent order Management system'.

[21] I note that the Applicant's invoice issued to Husky and dated October 30, 2006 is for billable time spent by Mr. Christensen and his traveling expenses including the cost of a passport. The invoice bears the trade-mark EDLCONSULTING & Design as illustrated above.

[22] The Opponent argues that: 1) the invoice was issue to 'Sterling-Husky' located in Chicago, Illinois and 2) there is no evidence that the Mark was used in association with the Services.

[23] Mr. Loumpouridis affirms in his affidavit that Mr. Tony Goar, an Applicant's employee, was working at the premises of Husky located in Bolton, Ontario in October 2006. It appears from the allegations contained in Mr. Loumpouridis' affidavit and the documentation filed to support them, and to which reference was made above, that the Applicant was conducting business activities in Canada as early as October 2006. The question remains if those activities included providing the Services in association with the Mark.

[24] The Opponent claims that it is not the Mark that appears on the invoice exhibit G but the Applicant's corporate name EDL Consulting Ltd. with its address just underneath it. The Opponent is referring to the top left portion of the invoice. As stated above, on the right hand corner of the invoice there is the trade-mark EDLCONSULTING & Design.

[25] In the purchase order (exhibit H) under the chapter 'Scope and Objectives' the Applicant undertook to 'develop a reporting schema facilities reporting on Comergent Order data from both Business Objects and Microsoft Reporting Services' and 'to develop a Business Objects Universe based on normalized Comergent Order data'. I associate these services to the Services.

[26] Mr. Loumpouridis asserts in paragraph 11 of his affidavit that the invoice dated February 23, 2007 (which is in fact a purchase order issued by Husky to the Opponent) was 'for Services rendered by the Applicant to Husky in Canada'. I wish to point out that, despite the fact that the purchase order postdates the relevant date, the services described in the invoice, exhibit G, were performed between October 16 and October 27, 2006 as it appears from the invoice.

[27] The allegations of Mr. Loumpouridis concerning the presence of Mr. Gear on Husky's site in Ontario in October 2006; the invoice, exhibit G bearing the Mark issued in October 2006 for Services rendered in Canada by the Opponent through its employee, Mr. Christensen, enable me to conclude that the Services were not only available in Canada at the relevant date (November 2006) but performed at such date in association with the Mark [see *International Academy of Design & Technology, Toronto Ltd. v. TFC Group Canada Inc.* (2007), 64 CPR (4th) 187 (TMOB)]. Consequently I also dismiss this ground of opposition.

Section 12(1)(b) ground of opposition

[28] The Opponent pleads that the Mark is deceptively misdescriptive as the dominant portion of the Mark is the acronym EDL employed in Canada for 'Enhanced Drivers Licence'. The Opponent argues that the Applicant is not offering consulting services for the deployment of Enhanced Drivers Licences. Consequently, according to the Opponent, from the use of the Mark, the consumers would be deceived into believing that the Applicant was offering consulting services for the deployment of Enhanced Drivers Licences.

[29] The relevant date for this ground of opposition is the filing date of the application (November 2, 2009) [see *Fiesta Barbeques Ltd v General Housewares Corporation* (2003), 28 CPR (4th) 60 (FCTD)].

[30] I note that the Opponent has not pleaded that the Mark is clearly descriptive. The Opponent had therefore the burden to prove that not only EDL is an acronym for Enhanced Drivers Licences, but it would be recognized as such by the average Canadian consumer. Consequently, the latter would be misled as to the character of the Services when the Mark is used in association with them [see *Atlantic Promotions Inc v Canada (Registrar of Trade-marks)* (1984), 2 CPR (3d) 183(FCTD)].

[31] Before summarizing the evidence on this issue, I wish to point out the fact that acronyms may be derived from common words does not mean that they are necessarily clearly descriptive of these words [see *Donvand Ltd v Ghali* (2007), 65 CPR (4th) 408 (TMOB)].

[32] In paragraph 25 of his affidavit Ms. Davis-Lewars alleges that since 2008 provincial governments in Canada have published documents discussing ‘Enhanced Drivers Licence’. She filed as exhibit S to her affidavit a copy of a report that was issued by the government of British Columbia on February 5, 2008 discussing concerns with plans to implement Enhanced Drivers Licences in Canada. She filed as exhibit T a news report published by the CBC on July 25, 2008 discussing Enhanced Drivers Licences. She filed as exhibit U to her affidavit a document issued by the government of the Province of Manitoba. However we have no information as to its date of publication. There are indicia that suggest that it was published after January 1, 2010, which is after the relevant date, as it contains forms which have at the bottom left corner the mention ‘REV. 01/10’. Filed as exhibit V to her affidavit is a copy of a document entitled ‘Introducing the New Ontario Enhanced Driver’s Licence-Applicant’s Guide’. The deponent asserts that such document was published in 2009. Finally Ms. Davis-Lewars filed as exhibit W to her affidavit a copy of a news column of the Toronto Star published May 14, 2009 entitled ‘New driver’s licence spurs privacy fears’.

[33] Ms. Gallvitz is a registered trade-mark agent with the law firm acting as agents for the Applicant. Her affidavit contains some information on the use of the expression ‘EDL’ in the public. She conducted searches on the Internet. She filed an article from Wikipedia; and results of Google searches using the terms ‘enhanced driver’s licence’, ‘EDL acronym’, and ‘EDL abbreviation’. Even though these searches were conducted after the relevant date some of the results refer to publications that predate the material date. I note from those earlier publications that EDL is the acronym for:

Electronic Differential Lock

Edit Decision List

Estimated Detection List

East Durham Link

Electrical Double Layer

[34] From the admissible evidence in the record I cannot conclude that the average Canadian consumer would use the acronym EDL to identify ‘Enhanced Driver’s Licence’. There are two documents published in 2008 and 2009 by Provincial governments (British Columbia and Ontario), one news report on CBC and one article published in the Toronto Star that make use of the acronym EDL for Enhanced Driver’s Licence. I cannot assume from these documents that there has been widespread use, as of the relevant date, of the acronym EDL to mean ‘Enhanced Driver’s Licence’ such that the average Canadian consumer would make such association. This is certainly not a case where the acronym is defined in English dictionaries such as NAFTA [see *Bank of Montreal v Midland Walwyn Capital Inc / Capital Midland Walwyn Inc* (1998), 86 CPR (3d) 555 (TMOB)].

[35] Since EDL cannot be considered to be clearly descriptive of ‘Enhanced Driver’s Licence’ in the minds of Canadian consumers, it cannot be considered, when used in association with the Services, as deceptively misdescriptive. Consequently the ground of opposition based on section 12(1)(b) of the Act is dismissed seeing that the Opponent has not met its initial burden of proof.

Entitlement Ground of Opposition

[36] This ground of opposition is based on the allegation that the Mark was or was likely to cause confusion with the Opponent’s trade-mark and trade-name EDL CONSULTING SERVICES at the relevant material date, namely the date of first use of the Mark, November 2006 [see section 16(1) of the Act]. However the Opponent argues that the Applicant failed to show use of the Mark at the claimed date of first use namely, November 2006. As such the relevant date would be the filing date of the application [see *American Cyanamid Co v Record Chemical Co Inc* (1972), CPR (2d) 278 (TMOB)]. I already determined above that the Applicant did establish use of the Mark at the claimed date of first use. Consequently the Opponent’s initial burden under this ground is to prove use of its trade-mark and/or trade-name EDL CONSULTING SERVICES in Canada prior to November 2006 or that its aforesaid trade-mark was known at such date.

[37] In her affidavit Ms. Davis-Lewars states that in March of 2007 she launched EDL Consulting Services (EDLCS) as a sole Proprietorship. Then on April 8, 2008 she incorporated the Opponent to continue the business of EDLCS. EDLCS and the Opponent have provided

business consulting services to start-up and small businesses in assisting their clients with finding start-up capital, formulating a business plan, choosing a business name and/or logo, advertising and marketing, web site design, domain name selection, strategic web site advertising, and budgeting (the Opponent's services).

[38] All these activities took place after the relevant date. Consequently the ground of opposition based on section 16(1) of the Act is dismissed as the Opponent failed to meet its initial burden.

Distinctiveness Ground of Opposition

[39] The Opponent pleads that the Mark is not distinctive because it is not adapted to distinguish the Services from the services provided by the Opponent or third parties.

[40] The generally accepted material date associated with this ground of opposition is the filing date of the statement of opposition (January 18, 2011) [see *Andres Wines Ltd. and E & J Gallo Winery* (1975), 25 CPR (2d) 126, (FCA) and *Metro-Goldwyn-Meyer Inc v Stargate Connections Inc* (2004), 34 CPR (4th) 317 (FCTD)].

[41] The Opponent has the initial evidential burden to prove that its trade-mark and/or trade-name EDL CONSULTING SERVICES or those of the third parties, identified in the statement of opposition, had become sufficiently known in Canada on January 18, 2011 to negate the distinctiveness of the Mark [*Motel 6, Inc v No 6 Motel Ltd* (1981), 56 CPR (2d) 44 at 58 (FCTD) and *Bojangles' International LLC v Bojangles Café Ltd* (2006), 48 CPR (4th) 427 (FCTD)]. If this initial burden is met, the Applicant has a legal onus to show, on a balance of probabilities, that the Mark was not confusing with the Opponent's trade-mark and/or trade-name EDL CONSULTING SERVICES or those of third parties at the relevant date such that it was adapted to distinguish or actually did distinguish throughout Canada the Services from the Opponent's services or those of third parties [see *Muffin Houses Incorporated v The Muffin House Bakery Ltd* (1985), 4 CPR (3d) 272 (TMOB)].

[42] The Opponent's evidence on its use of its trade-mark and trade-name EDL CONSULTING SERVICES in Canada can be summarized as follow. As stated above, since

March of 2007, EDLCS and the Opponent have provided the Opponent's services. I wish to point out that nowhere in her affidavit did Ms. Davis-Lewars define the term EDL Consulting Services. I shall assume that for the period of March 2007 to April 7, 2008 she is referring to EDLCS and after the latter date, to the Opponent.

[43] Ms. Davis-Lewars alleges that on May 12, 2009 the Opponent registered the domain name EDLCONSULTINGSERVICES.com and she filed a WHOIS report for this domain name. However the report does not identified the owner of that domain name nor there is reference to the Opponent. In any event the registration of a domain name does not necessarily make proof of use of a trade-mark [see *Cogan v Emusic.com Inc* (2011), 92 CPR (4th) 345 (TMOB)].

[44] Ms. Davis-Lewars asserts that since 2007 EDL Consulting Services has advertised its services via discussions she had with prospective clients she met at various business seminars throughout Ontario and by handing out business cards bearing the name EDL Consulting Services. She failed to: indicate which seminars she attended over the years; mention how many prospective clients she met; file a sample of the business card distributed; and provide the number of business cards distributed during such period of time.

[45] Ms. Davis-Lewars declares that in 2009, EDL Consulting Services expanded its advertising of services by launching a website with the domain name EDLCONSULTING SERVICES.com. She filed a copy of the home page of the website as well as the 'Getting Started' page, on which appears the trade-mark EDL CONSULTING SERVICES & Design. In the text there is reference to the trade-name EDL Consulting Services. She then provides the number of hits to the website for the years 2009 (814 hits) and 2010 (3839 hits) that she obtained from the Opponent's website hosting service provider. However as pointed out by the Applicant, we have no information indicating that those visitors made a single visit each for the total number of hits or if the latter represents multiple visits made by different visitors. Also we do not know if those number of hits are limited to Canadian visitors.

[46] Ms. Davis-Lewars then provides, on a yearly basis, the number of clients in Canada to whom EDLCS and the Opponent provided their services. Except for the year 2009, where there were 7 clients, from 2007 to 2010 there was only 1 client per year. We have no information if there were repeat customers.

[47] In all, the Opponent's evidence about its use of its trade-mark EDL CONSULTING SERVICES or its trade-name EDL Consulting Services falls way short of establishing that either of them was sufficiently known in Canada at the material date to negate any distinctiveness of the Mark.

[48] Lastly, I shall review the evidence filed by the Opponent about third party's use of similar trade-marks or trade-names.

[49] Ms. Davis-Lewars filed a copy of the Certificate of Status that was issued by the government of the Province of Ontario on June 28, 2011 for EDL Consultants Ltd. However as appears from the said certificate such entity was dissolved on February 5, 2007. She also filed a copy of the Business Names Report that was issued by the government of the Province of Ontario for EDL Consulting. However there is no evidence in the record of any business activities carried out by such entity. Finally she filed a copy of the results of a Corporation/Non-Profit Search of the Alberta Corporate Registration System for EDL Consulting Ltd. It shows that it was registered on August 14, 2008. It was struck but after the relevant date. There is no evidence of business activities carried out by such entity.

[50] From this evidence I cannot conclude that any of these third parties were sufficiently known in Canada to negate any distinctiveness of the Mark. The Opponent failed to meet its initial burden and consequently I dismiss this final ground of opposition.

Disposition

[51] Pursuant to the authority delegated to me under s. 63(3) of the Act, I reject the opposition pursuant to section 38(8) of the Act.

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

Schedule A

The relevant grounds of opposition can be summarized as follow:

1. The application does not comply with the requirements of section 30(b) of the *Trade-marks Act* RSC 1985, c T-13, (the Act) in that the Applicant has not use the Mark in Canada in association with the Services since the claimed date of first use.
2. The application does not comply with the requirements of section 30(i) of the Act in that the Applicant could not have been satisfied at the filing date of its application that it was entitled to use the Mark in Canada in association with the Services because:
 - a) Commencing September 2007, the Opponent has been carrying on business in Canada under the trade-name EDL Consulting Services, and has been using the trade-mark EDL CONSULTING SERVICES in Canada in association with business consulting services. The Applicant did not commence use of the Mark in Canada in association with the Services prior to the Opponent's date of first use. The Applicant applied for the registration of the Mark on November 2, 2009, knowing the Mark to be confusing with the Opponent's trade-name and trade-mark. The Applicant applied for registration of the Mark knowing that the Mark did not actually distinguish, nor was adapted so as to distinguish the Services from the services of the Opponent; and
 - b) Third parties namely, EDL Consultants Ltd. has been carrying on business in Canada since March 5, 1998. EDL Consulting has been carrying on business in Canada since November 8, 2006. EDL Consulting Ltd. has been carrying on business in Canada since August 2008. The Applicant applied for the registration of the Mark on November 2, 2009, knowing the Mark to be confusing with these trade-names and trade-marks. The Applicant applied for registration of the Mark knowing that the Mark did not actually distinguish, nor was adapted so as to distinguish the Services from the services of others in Canada.
3. The Mark is not registrable in view of section 12(1)(b) of the Act since the Mark is deceptively misdescriptive of the Services or of the persons employed in their production. The dominant component of the Mark is EDL, which is an acronym employed in Canada for 'Enhanced Drivers Licence'. The Applicant is not offering consulting services for the deployment of Enhanced Drivers Licences. From the Mark, consumers would be deceived into believing that the Applicant was offering consulting services for the deployment of Enhanced Drivers Licences.
4. The Applicant is not the person entitled to the registration of the Mark pursuant to section 16(1)(a) and (c) of the Act in that commencing September 2007, the Opponent has been carrying on business in Canada under the trade-name EDL Consulting Services, and has been using the trade-mark EDL CONSULTING SERVICES in Canada in association with business consulting services. The Applicant did not commence use of the Mark in

Canada in association with the services listed in the Application prior to the Opponent's date of first use. As at the Applicant's actual date of first use of the Mark in Canada (if any) the Mark was confusing with the Opponent's trade-mark and trade-name previously used or made known in Canada by the Opponent.

5. The Mark is not distinctive of the Applicant because:
 - a) The Mark does not actually distinguish nor is it adapted so as to distinguish the Services from the services of the Opponent. The Opponent is carrying on business in Canada under the trade-name EDL Consulting Services, and is using the trade-mark EDL CONSULTING SERVICES in Canada in association with business consulting services; and
 - b) The Mark does not actually distinguish nor is it adapted so as to distinguish the Services from the services of others in Canada namely, EDL Consultants Ltd. which has been carrying on business in Canada since March 5, 1998; EDL Consulting which has been carrying on business in Canada since November 8, 2006; EDL Consulting Ltd. which has been carrying on business in Canada since August 2008.
 - c) The dominant component of the Mark is EDL, which is an acronym employed in Canada for 'Enhanced Drivers Licence'.