

IN THE MATTER OF AN OPPOSITION  
by Entre Computer Centers, Inc.  
to application No. 593,236 for  
the trade-mark ENTRE filed by  
Global Upholstery Co. Limited

On October 9, 1987, the applicant, Global Upholstery Co. Limited, filed an application to register the trade-mark ENTRE for "office furniture, namely chairs" based on proposed use in Canada. The application was advertised for opposition purposes on May 18, 1988.

The opponent, Entre Computer Centers, Inc., filed a statement of opposition on September 16, 1988, a copy of which was forwarded to the applicant on October 6, 1988. The first ground of opposition is that the application does not comply with the provisions of Section 30(i) of the Trade-marks Act because (1) the application does not contain a statement that the applicant is satisfied that it is entitled to use its applied for mark in Canada and (2) the applicant could not have made such a statement since it was aware of the opponent's trade-marks and trade-names.

The second ground of opposition is that the applied for mark is not registrable pursuant to Section 12(1)(d) of the Act because it is confusing with the following registered trade-marks of the opponent:

<u>Trade-mark</u>	<u>Reg. No.</u>	<u>Services</u>
ENTRÉ	334,767	Rendering of business and technical assistance in the establishment and operation of stores specializing in the sale of computer hardware and software for personal, professional and business uses; and training and instructional services relating to the operation and use of computer hardware and software; retail store services specializing in computer hardware and software.
ENTRÉ CENTRE D'INFORMATIQUE	334,768	[same as above]
ENTRÉ COMPUTER CENTRE & Design	336,064	[same as above]

The third ground of opposition is that the applicant is not the person entitled to registration pursuant to Section 16(3) of the Act because, as of the applicant's filing date, its applied for mark was confusing with the three registered marks noted above and with the trade-name Entre Computer Centers, Inc. previously used in Canada by the opponent in association with the above-noted services and in association with furniture and the sale and distribution of furniture. The fourth ground is that the applied for trade-mark is not distinctive in view of the opponent's prior and continuing use of its trade-name and trade-marks.

The applicant filed and served a counter statement. The opponent's evidence comprises certified copies of its three trade-mark registrations. The applicant did not file evidence. Only the opponent filed a written argument. However, an oral hearing was conducted at which only the applicant was represented.

As for the third ground of opposition, there was an evidential burden on the opponent to evidence use of its trade-name or at least one of its trade-marks prior to

the applicant's filing date. Since the opponent failed to file evidence on point, it failed to satisfy that burden and the third ground is therefore unsuccessful. Likewise, there was an evidential burden on the opponent respecting its fourth ground of opposition to evidence at least some use or reputation in Canada for its trade-name or trade-marks. Since the opponent filed no evidence on point, the fourth ground is also unsuccessful.

As for the first aspect of the first ground of opposition, it is unsuccessful since the applicant's application did contain the statement required by Section 30(i) of the Act. As for the second aspect of the first ground, the opponent has failed to file evidence in support of its allegation that the applicant was aware of the opponent's marks and name. Thus, this aspect of the first ground is also unsuccessful.

As for the ground of opposition based on Section 12(1)(d) of the Act, the material time for considering the circumstances respecting the issue of confusion with a registered trade-mark is as of the date of my decision: see the opposition decision in The Conde Nast Publications Inc. v. The Canadian Federation of Independent Grocers (1991), 37 C.P.R.(3d) 538 at 541-42. The onus or legal burden is on the applicant to show no reasonable likelihood of confusion between the marks at issue. Furthermore, in applying the test for confusion set forth in Section 6(2) of the Act, consideration is to be given to all of the surrounding circumstances including those specifically set forth in Section 6(5) of the Act. Finally, since the most pertinent of the opponent's marks is ENTRÉ (registered under No. 334,767), a consideration of the issue of confusion between that mark and the applicant's mark will effectively decide the outcome of the second ground of opposition.

The marks of both parties are inherently distinctive, neither having any readily apparent meaning relating to the associated wares or services. Since there is no evidence on point from either party, I must conclude that neither mark has become known at all in Canada. The opponent has submitted that since registration No. 334,767 claims use since November 1984 and that since there are seven registered users recorded in respect of that registration, I can presume that there has been some use of the opponent's registered mark. However, the most that I can presume from the mere existence of the registration is that there has been 'de minimis' use of the mark. Even if I could presume that there has been some minor use of the mark, there is no evidence to show the manner of use. Thus, I would not be able, in any event, to gauge the extent to which the opponent's mark has become known to consumers.

In the absence of evidence of continuing use by the opponent of its mark, the length of time the marks have been in use in Canada is not a material circumstance in this case. The applicant's wares are chairs; the opponent's services are all related to computer software and hardware. In the absence of additional evidence, I presume that the opponent's services are completely different in nature from the applicant's wares. Consequently, I must also presume that the trades of the parties would be different.

As for Section 6(5)(e) of the Act, the opponent has submitted that the marks are identical but this is not so. To the average bilingual consumer, the pronunciation of and the idea suggested by the applicant's mark ENTRE differ from the pronunciation of and the idea suggested by the opponent's mark ENTRÉ. However, the marks do bear a high

degree of visual resemblance.

In applying the test for confusion, I have considered that it is a matter of first impression and imperfect recollection. In view of my findings above, and particularly in view of the differences between the wares, services and trades of the parties and the absence of any reputation associated with the opponent's mark, I find that the marks at issue are not confusing. The second ground of opposition is therefore unsuccessful.

In view of the above, I reject the opponent's opposition.

DATED AT HULL, QUEBEC, THIS 31<sup>st</sup> DAY OF DECEMBER 1991.

David J. Martin,  
Member,  
Trade Marks Opposition Board.