



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

Citation: 2012 TMOB 126
Date of Decision: 2012-07-06

**IN THE MATTER OF AN OPPOSITION
by Caterpillar, Inc. to application
No. 1,309,800 for the trade-mark ERKAT
in the name of Jutta Ertmer**

[1] On July 19, 2006, Jutta Ertmer (the Applicant), filed an application for the trade-mark ERKAT based upon proposed use of the Mark in Canada. The statement of wares and services, as amended February 23, 2010, reads as follows:

Wares: Milling machines for milling rock and ground layers, namely milling attachments for excavators.

Services: Engineering services, technical consultancy and construction drafting for construction machines, namely for milling attachments for excavators.

The application was advertised for opposition purposes in the *Trade-marks Journal* of May 16, 2007.

[2] On August 21, 2007, Caterpillar, Inc. (the Opponent) filed a statement of opposition against the application. The grounds of opposition, as amended July 12, 2010, are that the Mark is not registrable pursuant to section 12(1)(d) of the *Trade-marks Act*, R.S.C. 1985, c. T-13 (the Act), the Applicant is not the person entitled to registration of the Mark pursuant to section 16(3)(a), (b) and (c) and the Mark is not distinctive. Each of the grounds is based on confusion

with the Opponent's use and registration of its CAT registered trade-marks, as set out in the attached Schedule A.

[3] The Applicant filed and served a counter statement, amended March 11, 2009, in which it denied the Opponent's allegations.

[4] The Opponent's evidence consists of the affidavit of Terry G. Sharp, World Wide Manager, Solutions and Services, Global Paving of Caterpillar, Inc. The Applicant filed the affidavit of Shannon Young, trade-mark agent with the firm representing the Applicant. Ms. Young was cross-examined on her affidavit and her cross-examination transcript and replies to undertakings form part of the record.

[5] Both the Applicant and the Opponent filed a written argument. An oral hearing was conducted at which both parties were ably represented.

Summary of the Opponent's Evidence

[6] Mr. Sharp explains that the Opponent's wares are used in various fields including, without limitation, the fields of construction, excavation, road construction, demolition, tunnel construction, quarrying, forestry and foundries. The Opponent's business also includes the provision of engineering and consulting services in various fields including, without limitation, the fields of construction, excavation, road construction, demolition, tunnel construction, quarrying, forestry and foundries.

[7] Mr. Sharp states that the Opponent is the owner of 11 registered marks, and 2 pending applications for various CAT trade-marks. Certified copies of each of the Opponent's registered and applied for trade-marks are attached as Exhibit A to Mr. Sharp's affidavit. He refers to all of the Opponent's marks and the Opponent's CAT trade-name collectively as the CAT trade-marks. I note that the most recent statement of opposition, as amended, only refers to 9 of the Opponent's registered CAT marks and neither of its applications.

[8] At paragraphs 8 and 9 of his affidavit, Mr. Sharp states that the Opponent, itself and through its licensees, has continuously used the Opponent's trade-marks and trade-name in association with the Opponent's registered wares and services since at least as early as each of

the marks' respective registration dates. I note that the oldest registration of the Opponent, registration No. UCA31,304, was registered February 4, 1949.

[9] Mr. Sharp explains that the CAT trade-marks are prominently displayed on the Opponent's products, including on the Opponent's wares. Attached as Exhibits B-1 – B 40 of his affidavit are various product photographs, brochures and industry publications showing the prominent display of the CAT trade-marks on the Opponent's wares and in association with the Opponent's services. Exhibit B-2, for example, is a copy of CAT Magazine, Issue 3-2003, which describes many of the Opponent's CAT products. Other examples of how some of the Opponent's marks are being used were highlighted by the Opponent's agent at the oral hearing as follows:

Exhibit B-8- example of how registration No. TMA382,234, and other CAT trade-marks are used in the product line catalogue in association with a wide variety of products;

Exhibit B-11- photo showing CAT and Design (Registration No. TMA678,523) mark fixed on the back of a 450E Back Hoe Loader;

Exhibit B-15 – copy of a brochure showing how trade-mark registration No. TMA382,234 (CAT and Triangle Design) is used in association with a Wheel Dozer, and support services.

[10] I accept the use of the Opponent's design marks as use of the Opponent's registered CAT word marks.

[11] Attached as Exhibit C-1 to C-5 of Mr. Sharp's affidavit are print outs from websites belonging to the Opponent's Canadian dealers showing the display of various CAT trade-marks in association with the Opponent's registered wares and services. Although the Applicant argued that there is no documentary evidence that the use by dealers enures to the Opponent's benefit, I note that Mr. Sharp's evidence was not challenged by way of cross-examination. I am therefore prepared to infer that these Canadian dealers are authorized to use the Opponent's CAT trade-marks.

[12] Annual sales of the Opponent's wares and the Opponent's services have been in excess of \$400,000,000 for each of the years from 1998 – 2006, with the annual sales in 2007 being in excess of \$1,000,000,000.00. The Opponent's annual spending for the promotion and advertisement of the Opponent's business in the U.S. and Canada for several years prior to the date of Mr. Sharp's affidavit were in excess of \$4,000,000 each year.

[13] Attached as Exhibit D to Mr. Sharp's affidavit is a print-out from the website www.erkat.de which the Opponent submits shows use abroad of an ERKAT design mark which uses a different colour and font for "k" and which places emphasis on the KAT in ERKAT. In addition, the colour used for "k" is orange, which is a colour associated with the Opponent. The photo also appears to show use of an ERKAT product on a CAT branded machine.

[14] Mr. Sharp also provides his opinion on the likelihood of confusion between the Mark and the Opponent's trade-marks but I am disregarding those portions of his affidavit because that is the issue that is to be ultimately determined by me and Mr. Sharp has not been qualified as an expert on the issue of confusion.

Summary of the Applicant's Evidence

[15] Attached as Exhibit A to Ms. Young's affidavit is a list of all active trade-mark registrations and pending trade-mark applications resulting from a search for trade-marks comprising the terms CAT or KAT and registered or applied for in association with industrial or related goods.

[16] Ms. Young also conducted Internet searches of the Canadian marketplace to locate products bearing some of the marks identified during her prior search. She explains that owing to the expensive nature of the goods as well as the channels of trade through which they travel, it was not possible to purchase any of the goods located for sale in Canada or even obtain direct price quotations since parts and machinery of this type are typically purchased through negotiation and contract. Through discussions with sales associates at Matthews Equipment Limited in Ottawa, Ontario, Tremzac Equipments Inc. located in St. Bonaventure, Quebec, Tigercat, located in Paris, Ontario; Pitman Utility Products Inc. located in Grandville Missouri and through discussions with the vice-president of Industrial Fabrication Inc. located in Sudbury,

Ontario, Ms. Young learned that several products which include the word CAT or KAT as part of their trade-marks are available for sale in Canada. Information regarding the products, including pictures showing the trade-marks on the products, is attached to her affidavit.

Preliminary Issues

[17] At the oral hearing, the Applicant submitted that it did not receive the Opponent's list of case law at least five working days prior to the oral hearing, contrary to what is set out in the *Practice in Trade-mark Opposition Proceedings*. The Applicant submits that it has been disadvantaged as a result.

[18] While I sympathize with the Applicant, I note that many of the cases in the Opponent's list were also listed in its written argument, so the Applicant was aware of the case it had to meet. I also note that all of the cases listed were published decisions. Lawyers and trade-mark agents are asked through the *Practice in Trade-mark Opposition Proceedings* to provide each other with a list of their case law, and any unreported decisions, at least five working days before the oral hearing as a matter of professional courtesy.

Material Dates

[19] The material dates that apply to the grounds of opposition are as follows:

- Section 38(2)(b)/Section 12(1)(d) - the date of my decision [see *Park Avenue Furniture Corporation v Wickes/Simmons Bedding Ltd and The Registrar of Trade Marks* (1991), 37 CPR (3d) 413 (FCA)];
- Section 38(2)(c)/Section 16(3) - the filing date of the application [see s. 16(3)];
- Section 38(2)(d)/non-distinctiveness - the date of filing of the opposition [see *Metro-Goldwyn-Mayer Inc v Stargate Connections Inc.* (2004), 34 CPR (4th) 317 (FC)].

Grounds of Opposition

[20] Each of the grounds of opposition is premised on the allegation that the Applicant's trade-mark is likely to cause confusion with one or more of the Opponent's trade-marks. While the

ultimate legal burden is always upon the Applicant, there is an initial evidential burden on the Opponent to establish the facts relied upon by it in support of each of its grounds of opposition [see *Dion Neckwear Ltd v Christian Dior, S.A.* (2002), 20 CPR (4th) 155 (FCA); *Joseph E. Seagram & Sons Ltd v Seagram Real Estate Ltd* (1984), 3 CPR (3d) 325 (TMOB) at 329-330; and *John Labatt Ltd v Molson Companies Ltd* (1990), 30 CPR (3d) 293 (FCTD) at 298].

[21] In view of the evidence as a whole, I am satisfied that the Opponent has met its initial burden with respect to its registrability, section 16(3)(a) and distinctiveness grounds of opposition. With respect to registrability, the burden is met by proof of the existence of the pleaded registrations. With respect to section 16(3)(a), the burden is met by the Opponent's evidence of use of at least some of the CAT trade-marks in Canada prior to July 19, 2006 [see Sharp Affidavit, paragraphs 14-15 and Exhibits B and C]. With respect to distinctiveness, the evidence of Mr. Sharp also shows that as of the filing of its statement of opposition, at least some of the Opponent's CAT trade-marks had become known sufficiently to negate the distinctiveness of the Mark [see *Motel 6, Inc v No 6 Motel Ltd* (1981), 56 C.P.R. (2d) 44 (FCTD) at 58].

Likelihood of Confusion

[22] The test for confusion is one of first impression and imperfect recollection. Section 6(2) of the Act indicates that use of a trade-mark causes confusion with another trade-mark if the use of both trade-marks in the same area would be likely to lead to the inference that the wares or services associated with those trade-marks are manufactured, sold, leased, hired or performed by the same person, whether or not the wares or services are of the same general class. In applying the test for confusion, the Registrar must have regard to all the surrounding circumstances, including those specifically enumerated in section 6(5) of the Act, namely: a) the inherent distinctiveness of the trade-marks or trade-names and the extent to which they have become known; b) the length of time each has been in use; c) the nature of the wares, services or business; d) the nature of the trade; and e) the degree of resemblance between the trade-marks or trade-names in appearance or sound or in the ideas suggested by them.

[23] This list of enumerated factors is not exhaustive and it is not necessary to give each one of them equal weight [see, in general, *Mattel, Inc v 3894207 Canada Inc* (2006), 49 CPR (4th) 321 (SCC); *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée* (2006), 49 CPR (4th) 401

(SCC)]. Recently, in *Masterpiece Inc v Alavida Lifestyles Inc et al.* (2011), 92 CPR (4th) 361 (SCC) , the Supreme Court of Canada 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.

section 6(5)(a) - inherent distinctiveness of the trade-marks and the extent to which each trade-mark has become known

[24] While both parties' marks are inherently distinctive when used in association with their respective wares and services, I consider the Mark to possess a slightly higher degree of inherent distinctiveness than all of the Opponent's marks because it is a coined word.

[25] The strength of a trade-mark may be increased by means of it becoming known through promotion or use. As described in more detail above, Canadian sales of the Opponent's wares and services for the last 10 years have been substantial. In addition, the Opponent's annual spending for the promotion and advertisement of the Opponent's business in the U.S. and Canada has been in excess of \$4,000,000. While the Applicant noted several deficiencies in the Opponent's evidence, i.e. the fact that it did not break down its sales by wares or services or marks, I note again that Mr. Sharp was not cross-examined. I therefore conclude from Mr. Sharp's evidence, technical deficiencies aside, that the Opponent's marks have become very well known in Canada. As there is no evidence of any use of the Mark, this factor favours the Opponent.

section 6(5)(b) - the length of time each trade-mark has been in use

[26] The length of time that each mark has been in use favours the Opponent.

sections 6(5)(c) and (d) - the nature of the wares, services or business; the nature of the trade

[27] It is the Applicant's statement of wares and services as defined in its application versus the Opponent's registered wares and services that govern my determination of this factor [see *Henkel Kommanditgesellschaft auf Aktien v Super Dragon Import Export Inc.* (1986), 12 CPR (3d) 110 (FCA); *Mr. Submarine Ltd v Amandista Investments Ltd.* (1987), 19 CPR (3d) 3 (FCA); *Miss Universe Inc v Bohna* (1994), 58 CPR (3d) 381 (FCA)].

[28] The Opponent's CAT trade-marks are registered in association with a variety of wares and services. Registration No. TMA382,234, for example, includes, *inter alia*, excavators and front shovels. Both registration Nos. TMA682,848 and 682,842 include attachments for use with machinery for earth moving, earth conditioning and material handling. Some of the wares registered in association with registration No. UCA31304 for the trade-mark CAT, include the following:

scraping, carrying and dumping units adapted to be employed for scraping and collecting earth, rock, or like materials and transporting and dumping said materials; power and manually controlled graders, scarifiers, scrapers, bulldozers, rippers and plows adapted to be employed for the construction and maintenance of roads, for moving and removing of earth, rock, snow and like materials, for preventing soil erosion and for other industrial and agricultural uses; tractors adapted to be employed in farming operations, road building, mining, logging, earth moving, hauling, pushing and for other industrial and agricultural purposes; hydraulic-control units for controlling hydraulically actuated equipment for earth moving and agricultural purposes,... and parts, tools, and attachments associated with all such products.

The services registered in association with registration No. TMA382,234, for the mark CAT and Triangle Design, include the following:

Providing technical assistance, marketing and marketing research services, and business consulting in connection with application engineering, systems analysis, job analysis, seismic analysis, material handling analysis, equipment specification and custom engineering services, machine customizing services, computer application services namely, order processing and parts and machine locating the field of earthmoving, construction, materials handling, and power generating equipment, service and preventive maintenance programs; providing financial counseling services in the field of business, equipment economics and maintenance and cost record systems, financing equipment inventories and purchases; maintenance and repair services in the field of earthmoving, construction, materials handling and power generating equipment; leasing services in the field of earthmoving and material handling equipment; education services namely, conducting training classes and seminars concerned with management and maintenance training and finance; inspection life prediction services for earthmoving, construction, materials handling and power generating equipment; parts exchange services, component exchange services and oil sampling services.

[29] The applied for wares, on the other hand, are restricted to milling machines for milling rock and ground layers, namely milling attachments for excavators. The applied for services are engineering services, technical consultancy and construction drafting for construction machines, namely for milling attachments for excavators.

[30] I consider the parties' services to overlap because both include engineering and consulting services that would presumably be offered to and performed for customers engaged in excavation and/or construction. With respect to the parties' wares, while I acknowledge that they are not identical, I consider it reasonable to assume that they do overlap since the Opponent's wares include excavators, machines for removing rock, as well as their attachments, and the applied for wares are comprised of milling attachments for excavators. In the absence of evidence to the contrary, the parties' channels of trade would presumably overlap as well.

[31] I note that the Opponent has provided as Exhibit D to Mr. Sharp's affidavit an excerpt from the website "erkat.de" belonging to Erkat GmbH which allegedly shows a photograph of the Applicant's wares, namely ERKAT branded milling attachments, being used on one of the Opponent's CAT branded excavating machines.

[32] The Applicant submits that this evidence is inadmissible for the following reasons. First, this evidence is clearly hearsay and the Opponent has not made any submissions regarding its necessity or reliability. Second, it is unclear whether such evidence is from the Applicant's website as the Applicant Jutta Ertmer is not identified anywhere on the website. Finally, there is no indication that the cutter attachment shown in the photo is a milling attachment. I agree with all of the Applicant's submissions on this issue. As a result, I will not be giving any weight to the photo attached as Exhibit D to Mr. Sharp's affidavit.

section 6(5)(e) - the degree of resemblance between the trade-marks in appearance or sound or in the ideas suggested by them

[33] While the Supreme Court of Canada in *Masterpiece* observed that the first word of a trade-mark may be the most important for purposes of distinction [see also *Conde Nast Publications v Union des Editions Modernes* (1979), 46 CPR (2d) 183 (FCTD)], it opined that the preferable approach is to begin by determining whether there is an aspect of the trade-mark that is particularly striking or unique.

[34] In the present case, it is clear that the most dominant feature of the majority of the Opponent's marks is the word CAT. As noted above, I find this word to be inherently strong in relation to the Opponent's registered wares and services.

[35] While the Applicant's mark is a two syllable word, the component KAT is the second and arguably most dominant component.

[36] I therefore conclude that, although there are differences between the parties' marks in appearance, sound and ideas suggested, the degree of resemblance between the marks as whole is nevertheless significant in view that, when sounded, the Mark includes the dominant component of most of the Opponent's marks.


Surrounding circumstances

[37] As a further surrounding circumstance, the Applicant has relied on the state of the register evidence of Ms. Young. State of the register evidence is only relevant insofar as one can make inferences from it about the state of the marketplace, and inferences about the state of the marketplace can only be drawn where large numbers of relevant registrations are located [*Ports International Ltd v Dunlop Ltd* (1992), 41 CPR (3d) 432 (TMOB); *Welch Foods Inc v Del Monte Corp* (1992), 44 CPR (3d) 205 (FCTD); *Kellogg Salada Canada Inc v Maximum Nutrition Ltd* (1992), 43 CPR (3d) 349 (FCA)].

[38] While Ms. Young identified 80 registered and applied for trade-marks in her search, the Applicant's agent submitted that of the marks found, there were "at least 15-20 highly relevant marks" contained on the register. The Opponent objected to the relevance of many of these trade-marks for various reasons including the fact that many of these marks differ significantly from the Mark (eg. TOM CAT DRILLING JAR and Design), not all of the marks relied upon are registered marks (eg. Application Nos. 1,271,128 for CURBCAT (opposed) and 1,399,743 for WILDCAT (formalized)), and many of the marks relied upon are for unrelated wares or services (eg. both FACTORY CAT and TOM CAT are registered for use in association with cleaning machines for industrial and commercial use).

[39] I agree with the Opponent that several of the 15-20 marks relied upon by the Applicant are not relevant for many of the reasons the Opponent has submitted. From my review of Ms. Young's evidence, I consider the following registered marks to be the most relevant:

Trade-mark	Registration No.	Relevant Wares/Services
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BOBCAT	TMA264,408	(1) Four-wheel drive rigid frame skid steered tractor vehicle.
BOBCAT	TMA247,412	(1) Self-propelled vehicles having front-end mounting means for various attachments actuated by the power means of the vehicle and attachments therefor.
	TMA410,180	Wares: Various attachments for loaders Parts manuals; owners manuals; service manuals; front end loaders; skid steer loaders; backhoes. Excavators... Services: Operation of a business providing instruction in the operation and repair of farm and industrial machinery and the rental of skid steer loaders.
BRUSHCAT	TMA550,343	(1) Vehicle mounted rotary mowers.
MINECAT	TMA678,620	(1) Underground mine utility vehicles.
FORCAT	TMA690,780	Various types of forestry machines
TIGERCAT	TMA526,815	Various types of forestry machines
POLECAT	TMA124,852	(1) Vehicle mounted post hole digging and pole pulling apparatus.
BIGCAT	TMA547,146	(1) Portable mixing devices namely, cement, mortar and stucco mixers.
KAT	TMA164,469	(1) Portable welding machines and accessories therefor, ...

[40] I note that the 10 marks identified above are in the names of 7 different third party owners. In my view, the number of relevant third party registrations is insufficient for me to make any meaningful decisions concerning the state of the marketplace.

[41] As noted above, the Applicant has also filed state of the marketplace evidence. Through discussions with sales associates at Matthews Equipment Limited in Ottawa, Ontario, Tremzac Equipments Inc. located in St. Bonaventure, Quebec, Tigercat, located in Paris, Ontario; Pitman Utility Products Inc. located in Grandville Missouri and through discussions with the vice-president of Industrial Fabrication Inc. located in Sudbury, Ontario, Ms. Young confirmed that the following products are available for sale in Canada:

- BOBCAT branded loaders, excavators, utility vehicles, construction equipment, and attachments;
- BRUSHCAT branded rotary cutters;
- FORCAT branded skidders, loaders and other forestry equipment;
- TIGERCAT branded forestry and logging equipment;
- POLECAT branded digger derricks and cranes;
- MINECAT branded products including forklifts, utility vehicles, loaders and backhoes.

[42] The Opponent submits that the contents of the websites located by Ms. Young, and the information provided to her about the various CAT products via telephone conversation and e-mail all comprise hearsay and should therefore be found inadmissible. Even if the deficiencies in the Applicant's evidence were set aside, the Opponent submits that only a handful of marks located by the Applicant are potentially relevant. Finally, the Opponent submits that the marks found differ from the ERKAT and CAT marks to a greater extent than the ERKAT and CAT marks differ between themselves.

[43] The Applicant, on the other hand, submitted that the hearsay evidence in the present case should be considered admissible because it satisfies the criteria of reliability and necessity. The Applicant submitted that it was not realistic for the affiant to obtain direct evidence of sales because of the nature of the wares. In this regard, since construction machinery and parts are typically purchased through negotiation and contract, the Applicant submits that dealers do not want details about sales to be made a matter of public record. The Applicant further submits that the information found by Ms. Young on the Internet and was told by the various entities corroborates some of Ms. Young's state of the register evidence.

[44] While I agree with the Opponent that the Applicant's evidence does have evidentiary limitations, I consider Ms. Young's evidence to be useful in attesting to the reliability of the Internet and state of the register search results that were provided. Further, while evidence of use of other marks in the marketplace would have been ideal, I agree with the Applicant that, owing

to the nature of the wares in this case, either purchasing these expensive wares or trying to get the participation of the dealers to disclose competitive sales information would not have been realistic or even possible to obtain in this case. I am therefore prepared to give some weight to the Applicant's state of the marketplace evidence.

[45] I do have to admit, however, that although I am prepared to give some weight to the Applicant's state of the marketplace evidence, I do not consider it of much assistance to the Applicant's case. In this regard, in view of the Opponent's acquired reputation in the construction industry, I am of the view that the component CAT alone would be associated with the Opponent. I also find that none of the marks evidenced by the Applicant bear as much resemblance, in both appearance and in respect of overlapping wares, to each other as the marks in the present case.

Conclusion

[46] The Applicant submitted in its written argument that small differences will suffice to distinguish marks when goods or services are technical and specialized. In this regard, the Applicant stated the following at paragraph 99 of its written submissions:

“Even assuming that the Opponent has used a relevant mark in association with machinery that might be used in the rock milling industry, the expensive, specialized and technical nature of the goods will allow prospective purchasers to differentiate ERKAT milling attachments from CAT branded machinery, regardless of which CAT trade-mark is considered.”

[47] This submission is not in line with the relevant test. The Supreme Court of Canada has recently affirmed that the test is one of “first impression” and has stated that what is relevant is the attitude of the consumer when he or she first encounters the mark in the marketplace, without consideration of the research, inquiries, or care that may be subsequently taken [see *Masterpiece*, *supra*, paragraphs 67-74]. In the present case, the test to be applied is a matter of first impression in the mind of a casual consumer somewhat in a hurry who sees or hears the mark ERKAT at a time when he or she has no more than an imperfect recollection of the Opponent's

CAT marks, and does not pause to give the matter any detailed consideration or scrutiny, nor to examine closely the similarities and differences between the marks.

[48] The legal onus is on the Applicant to show that the Mark is not reasonably likely to cause confusion with the Opponent's marks. This means that the Applicant must prove that the absence of confusion is more probable than its existence. Having considered all of the surrounding circumstances, I am unable to conclude that, on a balance of probabilities, a consumer who has a general and not precise recollection of any of the Opponent's marks, will, upon seeing the Mark, not be likely to think that the wares share a common source or that the Applicant's wares or services are in some way associated with the Opponent's wares or services. Given the lack of evidence of any use of the Mark, contrasted with the notoriety of the Opponent's mark and the nexus between the wares and services, the Applicant has not satisfied its burden.

[49] With respect to the registrability ground of opposition, the likelihood of confusion is to be assessed between the Opponent's registered trade-marks and the Mark as of today's date. Overall, I think it more probable than not that there is a likelihood of confusion as of today's date between the Opponent's registered trade-marks and the Mark. The section 12(1)(d) ground of opposition therefore succeeds.


[50] The remaining grounds of opposition also turn on a determination of the issue of the likelihood of confusion between the Mark and the Opponent's marks. In my view, the differences in material dates do not have any significant impact on the determination of the issue of confusion between the trade-marks of the parties. Thus, my finding above that the trade-marks are likely to be confused applies to these grounds of opposition which also succeed.



Disposition



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

Cindy R. Folz
Member,
Trade-marks Opposition Board
Canadian Intellectual Property Office

TRADE-MARK	REGISTRATION NO.	WARES/SERVICES
CAT	UCA31304	(1) Internal combustion engines, diesel engines and other power -supplying machinery adapted for employment as the source of power for self-propelled vehicles, and as stationary or portable power units for industrial, marine and agricultural uses; scraping, carrying and dumping units adapted to be employed for scraping and collecting earth, rock, or like materials and transporting and dumping said materials; power and manually controlled graders, scarifiers, scrapers, bulldozers, rippers and plows adapted to be employed for the construction and maintenance of roads, for moving and removing of earth, rock, snow and like materials, for preventing soil erosion and for other industrial and agricultural uses; tractors adapted to be employed in farming operations, road building, mining, logging, earth moving, hauling, pushing and for other industrial and agricultural purposes; cable-control units for controlling cable actuated equipment for earth-moving and agricultural purposes; hydraulic-control units for controlling hydraulically actuated equipment for earth moving and agricultural purposes; electric generators and diesel electric generator sets for furnishing electric power; and parts, tools, and attachments associated with all such products.
CAT	TMA165,286	(1) The inspection, maintenance and repair of tractors and work performing vehicles; engines; electric power plants; and parts and related equipment.
CAT	TMA205,367	(1) Engines, transmissions, gears, speed reducers, marine gears, trucks, tractors, all terrain vehicles, material handling machines and vehicles, lifting and transporting devices, fork lift trucks, straddle carriers, loaders, pipelayers, log skidders, tree harvesters, snow removing equipment, winches, bulldozers,

		<p>earthmovers, wagons, scrapers, graders, compactors, excavators, back hoes, bearings, hardware, track links, track shoes, track pins, track bushings, cutting edges, bits, tooth groups, generators.</p> <p>(2) Batteries, lights, lamps, fuses, electrical cables, conduits, fasteners and terminals, switches, starting systems, spark plugs, spark plug firing indicators, signal systems, flashers, alarms, buzzers, horns, gauges, meters, windshield wipers, seat belts.</p> <p>(3) Mud flaps, hose, hose couplings, tires, vee belts, link belts, filters.</p> <p>(4) Grease, oil and lubricants, adhesives, rust inhibitors.</p> <p>(5) Hand tools.</p>
	<p>TMA519,058</p>	<p>(1) Rental of construction equipment, mining equipment, farming equipment, materials handling equipment, and generators.</p>
	<p>TMA382,234</p>	<p><u>WARES:</u></p> <p>...machinery for earth moving, earth conditioning and material handling namely, track-type tractors, wheel tractors, loaders, track-type loaders, wheel loaders, backhoe loaders, pipe layers, lift trucks, motor graders, scrapers, standard wheel tractor-scrappers, elevating scrapers, tandem powered scrapers, push-pull scrapers, bulldozers, compactors, landfill compactors, single drum and double drum vibratory compactors, pneumatic tired compactors, rippers and tool bars, cable controls and hydraulic controls for the foregoing goods and replacement parts, and attachments for the foregoing goods; excavators and front shovels therefore; ...forest product swing machines, feller bunchers; skidders; integrated toolcarriers; pavement profilers; asphalt pavers; road reclaimer/soil stabilizer; vehicles for earth and material hauling and handling namely, trucks, articulated dump trucks and tractors, engines for vehicles, replacement parts, and attachments for all the foregoing;</p> <p><u>SERVICES</u></p>

		<p>(1) Providing technical assistance, marketing and marketing research services, and business consulting in connection with application engineering, systems analysis, job analysis, seismic analysis, material handling analysis, equipment specification and custom engineering services, machine customizing services, computer application services namely, order processing and parts and machine locating the field of earthmoving, construction, materials handling, and power generating equipment, service and preventive maintenance programs; providing financial counseling services in the field of business, equipment economics and maintenance and cost record systems, financing equipment inventories and purchases; maintenance and repair services in the field of earthmoving, construction, materials handling and power generating equipment; leasing services in the field of earthmoving and material handling equipment...</p>
	<p>TMA682,847</p>	<p>Machinery for earth moving, earth conditioning and material handling, and structural, repair and replacement parts for all of the foregoing; structural, repair and replacement parts for engines for all of the foregoing; ...and structural, repair and replacement parts for all of the foregoing; oil, gas and air filters for motors and engines; vehicles for earth moving, earth conditioning and material handling; fork lift trucks; ...repair and replacement parts for all of the foregoing; structural, repair and replacement parts for engines for the foregoing vehicles; transmissions for land vehicles and structural, repair and replacement parts therefor.</p>
	<p>TMA682,843</p>	<p>Machinery for earth moving, earth conditioning and material handling, and structural, repair and replacement parts for all of the foregoing; structural, repair and replacement parts for engines for all of the foregoing;...; vehicles for earth moving, earth conditioning and material handling; fork lift trucks; pallet movers; locomotives; agricultural tractors; combines; windrowers; balers; disc mowers and conditioners,... repair and replacement parts for all of the foregoing; structural, repair and replacement parts for engines for the foregoing vehicles;</p>

		transmissions for land vehicles and structural, repair and replacement parts therefor.
	TMA682,848	Attachments (namely, asphalt cutters, augers, backhoes, blades, block-handling tools, hydraulic brooms, buckets, cold planers, compactors, vibratory compactors, couplers, crushers, cutting jaws, de-limbers, forks, pallet forks, grapples, hammers, hoppers, lift groups, lifting hooks, material handling arms, multi-processors, plows, pulverizers, pulverizing jaws, rakes, rippers, saws, scarifiers, scoops, shears, snow blowers, snow plows, snow wings, stump grinders, thumbs, tillers, trenchers, truss booms) for use with machinery for earth moving, earth conditioning and material handling.
	TMA682,842	Attachments (namely, asphalt cutters, augers, backhoes, blades, block-handling tools, hydraulic brooms, buckets, cold planers, compactors, vibratory compactors, couplers, crushers, cutting jaws, de-limbers, forks, pallet forks, grapples, hammers, hoppers, lift groups, lifting hooks, material handling arms, multi-processors, plows, pulverizers, pulverizing jaws, rakes, rippers, saws, scarifiers, scoops, shears, snow blowers, snow plows, snow wings, stump grinders, thumbs, tillers, trenchers, truss booms) for use with machinery for earth moving, earth conditioning and material handling