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et Corporations Canada

Consumer and
Corporate Affairs Canada

Ottawa / Hull, Canada
K1A 0C9

June 30 1988

Goudreau Gage Dubuc & Martineau Walker
Box 242, Place Victoria
Suite 3400, The Stock Exchange Tower
Montreal, Quebec.
H4Z 1E9

Votre reference Your file

CD/WWG-2-4
Notre reference Our file
447434

Messieurs,

Sujet: PROCÉDURES SELON L'ARTICLE 44
Enregistrement No. 253,351
Marque de commerce: MUX-PLUS

Veillez trouver ci-joint la décision
du Registraire au sujet de l'affaire
précitée.

Bien à vous,

Gentlemen,

Re: SECTION 44 PROCEEDINGS
Registration No. 253,351
Trade Mark: MUX-PLUS

Please find herewith the Registrar's
decision in the above matter.

Yours truly,

D. Savard

pour le REGISTRAIRE DES MARQUES DE COMMERCE
for REGISTRAR OF TRADE MARKS

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Corporate Affairs CanadaOttawa / Hull, Canada
K1A 0C9**June 30 1988**Barlow, Menard & Associates
504 Kent Street
Suite 200
Ottawa, Ontario
K2P 2B9*votre reference Your file*

F-1035-52

NOtre reference Our file

447434

Gentlemen:

RE: SECTION 44 PROCEEDINGS
Registration No.: 253,351
Trade Mark: MUX-PLUS

At the request of Goudreau, Gage, Dubuc & Martineau Walker, the Registrar issued a s. 44 notice dated December 1, 1986 to Systems Technology Services Ltd., the registered owner of the above-referenced trade mark.

The trade mark MUX-PLUS was registered on November 28, 1980 for use in association with computer hardware.

In response to the Registrar's notice the registrant submitted the affidavit of its Executive Vice President, Mr. William Lassner along with Exhibits 1 to 14. Further to the filing of this evidence the requesting party did not reply to the Registrar's invitation to submit arguments.

In his affidavit Mr. Lassner indicates that the registrant has changed its name to STS Systems Ltd., and he encloses as Exhibit 2 the certificate of amendment showing the change of name.

He mentions that the trade mark is in use in Canada and has been in continuous use in association with computer hardware since the filing of the application.

As Exhibits 3 and 5, he submits literature relative to the wares and the trade mark MUX-PLUS. As Exhibit 4 he attaches photographs of a printed circuit board bearing the trade mark. Exhibit 7 consists of instructions regarding an engineering change and Exhibit 8 is a letter from a company called BIOMATICS Inc. with respect to a quotation "for stuffing a MUX-PLUS board".

The above mentioned Exhibits do not show use of the trade mark in association with the registered wares within the meaning of s. 4(1) of the Trade Marks Act. Pursuant to s. 4(1), there must be a transfer of the property or possession of the wares in Canada in the normal course of trade and at such time notice of the association between the trade mark and the wares must be given to the person to whom the property or possession is transferred. The above referenced exhibits do not show any transfer of the possession or property of the wares.

Exhibit 6 refers to "computer software" and not "computer hardware". Therefore it is irrelevant in these proceedings.

Exhibit 9 covers "maintenance services" as well as most of the invoices in Exhibit 12. Again since the trade mark registration covers the wares "computer hardware" only and does not cover "maintenance services thereof", any commercial activities in that area is not considered use in association with the wares within the meaning of s. 4(1) of the Act and is irrelevant to the present proceedings •

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The only invoices forming part of Exhibit 12 that do not cover maintenance services are the first and last invoices. However, the first invoice bears a date which is more than a year prior to the date of the s. 44 notice. As for the last invoice, it is addressed to STS Systems with no indication who issued it. Therefore I cannot conclude that it shows a sale by the registrant since nowhere does the registrant's name appear.

From paragraph 15 to 18 of the affidavit, it would seem that the trade mark MUX-PLUS appears on "printed circuit boards" which boards form an integral part of deskside systems sold by the registrant. It appears that the "board" is inserted in the deskside system. The "deskside system" sold by the registrant is described in the flyer attached as Exhibit 13 to the affidavit, however nowhere on the flyer is there a reference to the trade mark MUX-PLUS or to a printed circuit board bearing the trade mark MUX-PLUS. The only reference to the trade mark is found in Exhibit 14, which consists of an extract from a price list. On the second page of the "price list" it is indicated that the price list has been prepared for use by STS personnel only. In the "Table of Content" it is pointed out that "Deskside Systems" are to be found at page 13. At page 13-4 the price for different items for the deskside system are given namely for disk drives, multiplexors and upgrade options. The trademark MUX-PLUS appears under the heading "Multiplexors". As already noted such price list is only for use by STS personnel. Therefore a purchaser of a deskside system might not be aware that the multiplexor inserted in his deskside system bears the trade mark MUX-PLUS.

As Exhibits 10 and 11 Mr. Lassner submits invoices showing sales of deskside systems. He states that the printed circuit board bearing the subject trade mark is an integral part of the deskside systems. In my opinion, however, this use does not appear to be use as described in s. 4(1) of the Trade Marks Act as there is no indication how notice of the association between the trade mark MUX-PLUS and the "printed circuit board" is given at the time of sale of a deskside system especially since the "printed circuit board" is already inside or has been inserted in the deskside system, therefore notice is not apparent "at the time of transfer •••• ". Unfortunately Mr. Lassner does not elaborate on the matter. The invoices (Exhibits 10 and 11) do not make reference to the trade mark MUX-PLUS. In my view the invoices show sales of deskside systems which do not bear the subject trade mark. They do not show sale of subject trade marked wares.

By reason of the evidence filed I have no alternative but to conclude that the trade mark is not in use in Canada in the normal course of trade in association with computer hardware and that there are no special circumstances which could excuse the absence of use. Therefore the subject trade mark registration ought to be expunged from the register.

Registration No. 253,351 will be expunged accordingly in compliance with the provisions of s-s. 44(5) of the Trade Marks Act.

Yours truly,



Denise Savard
Hearing Officer
for REGISTRAR OF TRADE MARKS

DS:s1

c.c. Goudreau Gage Dubuc & Martineau Walker
(Ref: CD/WWG-2-4)

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