OPIC CIPO

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

Citation: 2019 TMOB 31
Date of Decision: 2019-03-29
[UNREVISED ENGLISH CERTIFIED TRANSLATION]

IN THE MATTER OF A SECTION 45 PROCEEDING

Airbus Defence and Space S.A.	**Requesting Party**
and	
2553-4330 Québec Inc.	**Registered Owner**
TMA734,106 for Aeropro	**Registration**

[1] On November 30, 2016, at the request of Airbus Defence and Space S.A. (the Requesting Party), the Registrar sent the notice stipulated in section 45 of the *Trade-marks Act*, RSC 1985, c. T13 (the Act) to 2553-4330 Québec inc. (the Owner), holder of Registration No. TMA734,106 for the Aeropro trade-mark (the Mark).

[2] The Mark is registered in association with the following services: "Transport aérien; nolisement d'aéronefs et services aéroportuaires" (Air transportation; aircraft chartering and airport services) (the Services).

[3] This notice enjoined the Owner to provide an affidavit or a statutory declaration that its Mark was used in association with the Services in Canada at any time between

November 30, 2013, and November 30, 2016 (the relevant period), and, in the negative, indicating the date when the Mark was used for the last time and the reason for its failure to use it since that date.

[4] The relevant definition of "use" in association with services is set out in section 4 (2) of the Act, as follows:

> 4 (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 allegations of use are not enough to establish use in the context of the procedure contemplated in section 45 [*Plough (Canada) Ltd v Aerosol Fillers Inc* (1980), 53 CPR (2d) 62 (FCA)]. It is true that the level of evidence required is low [*Woods Canada Ltd* v *Lang Michener* (1996), 71 CPR (3d) 477 (FCTD] and that it is unnecessary to file an overabundance of evidence [*Union Electric Supply Co v Canada (Registrar of Trade-marks)* (1982), 63 CPR (2d) 56 (FCTD)]. Nonetheless, sufficient facts must be presented to allow the Registrar to conclude that the trade-mark was used in association with each of the goods and services specified by the registration during the relevant period [*John Labatt Ltd v Rainer Brewing Co* (1984), 80 CPR (2d) 228 (FCA)].

[6] Concerning services, the presentation of the trade-mark in the advertisement of the services is sufficient to satisfy the requirements of section 4 (2) of the Act, from the time the owner of the trade-mark offers and is ready to perform the services in Canada [*Wenward (Canada) Ltd v Dynaturf Co* (1976), 28 CPR (2d) 20 (TMOB)].

[7] In response to the Registrar's notice, the Owner filed an affidavit made on February 6, 2017 by its Director, President and representative, Aurèle Labbé. Neither party filed written representations but both attended a hearing.

THE EVIDENCE

[8] In his affidavit, Mr. Labbé certifies that the Owner does business under "the *Aéropro* name and trade-mark". He specifies that the Owner started using the Mark in June 1988 and alleges that it [TRANSLATION] "still uses it on the current date in accordance with the services stipulated at the time of its registration". He adds that the name "Aeropro" was registered as a

name used by the Owner in the Québec Enterprise Register in 1995 and is still in effect. In support, as Exhibit PE-1 to his affidavit, he files a reading of said Register, dated January 26, 2017. In reviewing this document, I note that it also indicates that the Owner is domiciled at 611, 6^{e} avenue de l'Aéroport, in Ville de Québec, and that it describes its activities as follows: "Exploitation et entretien d'aéroports" (Airport operation and maintenance) with the detail "Services aéroportuaires" (Airport services).

[9] Regarding the Services, Mr. Labbé attests that the Owner [TRANSLATION] "has an aircraft hangar and administrative offices located at 611, 6e Avenue de l'Aéroport, […], the whole such as it appears from photographs dated January 12, 2017 attached in looseleaf to this affidavit as Exhibit PE-3." In reviewing them, I more specifically note the first two photographs, dated January 12, 2017, showing a building surrounded by aircraft, the left part of which resembles a hangar and the right part a building for office use. These two photographs show the Mark in decorative font, preceded by a logo representing a bird in flight, displayed above the doors of the hangar section.

[10] Exhibit PE-3 also includes a third photograph, undated, showing a hangar located behind an aircraft displaying the above-mentioned bird logo. A small additional ESSO sign appears to the left of the hangar doors.

[11] Mr. Labbé adds that the Owner holds aviation insurance with Marsh Canada Limited (Marsh). He files in support, as Exhibit PE-4, the cover page of said policy, as well as the first page of a letter dated 26, 2016 from Marsh to the Owner concerning [TRANSLATION] "Aviation general liability insurance". The letter identifies the [TRANSLATION] "Named insured" as "2553-4330 Québec and/or Aeropro and/or Petro Air Services", and the cover page of the insurance contract is entitled "AEROPRO". The letter indicates that the coverage takes effect on April 30, 2016, before the end of the relevant period, and covers [TRANSLATION] "public liability for property damage and bodily injuries occasioned on the insured premises", including "damage occasioned to aircraft". The [TRANSLATION] "insured premises" are not defined in the letter or in the excerpt provided; the mention [TRANSLATION] "and/or Terminal 611" follows the identification of the insured named in the letter, but this mention is crossed out and the pale handwritten note that accompanies it is illegible.

[12] Moreover, Mr. Labbé attests that the Owner [TRANSLATION] "owns and publicizes" a website located at *www.aeropro.qc.ca*. He files in support, as Exhibit PE-2, the home page of said website, printed on January 26, 2017. The Mark in decorative font and the bird logo are displayed in the title. The content of the page mainly consists of a photograph of a hangar displaying the Mark and a small sign (of the same shape and dimensions and in the same place as the small sign on the hangar shown in the undated photograph of Exhibit PE-3), but the photograph does not show the content of this sign. Below the photograph is the notice "© 2009 Aéropro, info@aeropro.qc.ca" and the mentions "CYQB – Québec 418 877-2808" and "CYHU Montréal 514 636-7947". Finally, the menu on the page presents a list of services under the following three headings:

- "Nos Services" (Our Services)—including the menu items "Entretien d'aéronefs" (Aircraft maintenance), "Gestion d'aéronefs" (Aircraft management), "Détection des feux de forêts" (Detection of forest fires), "Inventaire de la faune" (Wildlife inventory) and "Programme météorologique" (Meteorological program);
- "Gestion d'aéroport" (Airport management); and
- "Pétro Air Services"—including the menu items "ESSO/EXXON FBO", "Vente d'essence:" (Gasoline sales) and "Service de rampe" (Rack service).

[13] Mr. Labbé ends his affidavit by attesting that the Owner uses the Mark with government authorities, as well as when entering into various contracts and before the courts. By way of illustration, Mr. Labbé attaches the points discussed below to his affidavit.

[14] Exhibit PE-5 contains [TRANSLATION] "various notices, correspondence and statements of account from the *Canada Revenue Agency*, *Revenu Québec*, the *CSST* [Commission de la santé et de la sécurité du travail] and *Transport Canada"*. All these documents are addressed to "Aéropro"—or to the Owner with the subheading "Aéropro" – and all those dating from the relevant period indicate the address 611, 6^{e} Avenue de l'Aéroport, Québec. Québec. Two mention specific services, namely (i) a notice from Transport Canada dated 2014 discussing the potential transfer of rights [TRANSLATION] "of ownership and operation" of certain airports, in the perspective of Transport Canada's commitment to offer "a safe and secure, efficient and environmentally responsible transportation system"; and (ii) a Transport Canada approval

certificate dated 2006 (the only document under Exhibit PE-5 dated outside the relevant period) authorizing the Owner to perform [TRANSLATION] "maintenance of aeronautic products", including "Aircraft", "Avionics" and "Components", "Instruments" and "Structures".

[15] Exhibit PE-6 contains excerpts from correspondence, contracts and forms relating to eight agreements. The excerpts date from November 1, 2013 to November 30, 2016. Most of the documents identify "Aeropro"—or the Owner followed by the mention "(Aeropro)"—as the addressee of the correspondence or as a party to the contract and several indicate the address 611, 6e Avenue de l'Aéroport. The documents attest to the following agreements:

(1) A contract "to be signed" relating to [TRANSLATION] "management work and maintenance work at Bonaventure Airport", as indicated in a letter from the Ministère des Transports, de la Mobilité durable et de l'Électrification des transports.

(2) Amendment of an agreement concerning Havre St-Pierre Airport by the Transport Canada Airport Operations and Maintenance Subsidy Program (the services concerned are not specified).

(3) A service contract with Transport Canada for [TRANSLATION] "airport operation in the Magdalen Islands", namely "an administration, operation and maintenance service" at that airport, as described on the Transport Canada form.

(4) A contract with Ville de Gaspé relating to a [TRANSLATION] "security, bird scaring, gate and barrier management, private aircraft, fare collection and ending machine management service".

(5) Amendment of a contract with Environment Canada for [TRANSLATION] "the aerological program of the Sept-Îles station", involving "Aerological survey [s]", "Reports", "Housekeeping" and "Helium receiving", as described in the Environment Canada form.

(6) An Environment Canada purchase order for the services [TRANSLATION] "Operation of the Radioactivity program in Québec City"; "Operation of the Snow Measuring Program in Québec City" and "Rain Gauge Draining" on call at Québec City Airport, L'Étape, and Ste-Foy Université Laval.

(7) A purchasing contract for the supply to NAV CANADA of [TRANSLATION] "weather observations at Gaspé Airport", printed on NAV CANADA letterhead, which mentions its "environment management system".

(8) A lease agreement for leasing to a Québec company of part of the building located at the Québec City Airport bearing the civic number 714, 7e Avenue de l'Aéroport, which is to [TRANSLATION] "serve exclusively for storage or an aircraft [of the specified type]". The agreement indicates it was entered into on November 1, 2013, nearly one month before the start of the relevant period, but the term of the lease is not specified in this excerpt.

[16] Exhibit PE-7 contains the grounds of a judgment rendered by the Federal Court on October 3, 2015 and a judgment rendered by the Federal Court of Appeal on October 3, 2016, concerning an employee who had worked for the Owner [TRANSLATION] "at the weather observatory at Chibougamau Airport from May 12, 2008 to June 21, 2010". In each decision, the Owner is identified as "2553-4330 QUÉBEC INC. (AÉROPRO)".

THE OBSERVATIONS OF THE REQUESTING PARTY

[17] The Requesting Party argues that many ambiguities and deficiencies exist in the evidence, which raises doubts as to whether the Owner's activities included the Services and whether the Mark was used within the meaning of section 4 (2) during the relevant period.

[18] More specifically, the Requesting Party submits that the evidence does not establish that the Mark was displayed on the building referenced by Mr. Labbé and shown in Exhibit PE-3 before the end of the relevant period. It also submits that the photographs under Exhibits PE-2 and PE-3 showing a hangar with an additional sign are impossible to reconcile with the other two photographs under Exhibit PE-3, which show a hangar without such a sign. Moreover, according to the Requesting Party, the undated photograph of an aircraft displaying the bird logo does not establish, in itself, that the Owner chartered this aircraft or used it to offer air transportation services, whether during or outside the relevant period.

[19] Similarly, the Requesting Party submits that the evidence does not establish that the web page under Exhibit PE-2 was accessible to Canadians during the relevant period. It also argues that the activities enumerated on the web page under the hearing "Nos Services" (Our Services)

do not expressly concern any of the Services. In this regard, it claims in particular that the services “Entretien d’aéronefs” (Aircraft maintenance) and “Gestion d’aéronefs” (Aircraft management) are attached only to aircraft—rather than to the airport itself, as an “airport” service would be—and cannot fall into the field of transportation or chartering. Moreover, according to the Requesting Party, because the services “Gestion d’aéroport” (Airport Management) and “Pétro Air Services” do not appear under the heading “Nos Services” (Our Services), they would not be services offered by the Owner.

[20] Concerning the other documents provided as evidence, the Requesting Party argues that they do not show the Mark used as a trade-mark, namely during the advertising or performance of services within the meaning of section 4 (2) of the Act, but rather as a trade name, to identify the Owner itself. According to the Requesting Party, even if the difference between the two is slim and they can coexist, there must not be confusion between a trade name—that is, the name under which a business operates, regardless of the services—and a trade-mark, which serves to distinguish the services and thus represents a different concept. The Requesting Party claims that the “marks” that are used only as a trade name constitute the type of “dead wood” contemplated in section 45 of the Act.

[21] Moreover, the Requesting Party argues that the majority of the services mentioned in the contracts and other documents filed by Mr. Labbé cannot be described as [TRANSLATION] “air transportation”, “aircraft chartering” or “airport services”. It also argues that these documents do not establish the performance or availability of such services during the relevant period from a building displaying the Mark, such as the hangar with administrative offices located at 611, 6e Avenue de l’Aéroport, cited by Mr. Labbé and shown as evidence under Exhibit PE-3. In this regard, the Requesting Party incidentally submits that the possession of a hangar is not in itself a reason to infer that such services are rendered or advertised there. Moreover, according to the Requesting Party, the fact that a service is performed on the site of an airport does not automatically make it an “airport” service—in fact, the “Vidange Pluviomètre” (Rain Gauge Draining) service designated in the Environment Canada purchase order appears to be rendered at airports and a university.

[22] In substance, relying on the decision in *Cornerstone Securities Canada Inc v Canada (Registrar-of Trade-marks)* (1994), 58 CPR (3d) 417 (FCTD), the Requesting Party argues that it is up to the Owner to explain what its industry and its services consist of and attach the evidence to the registered Services, which, according to the Requesting Party, was not done in the case at bar. According to the Requesting Party, even if it is appropriate to interpret the Services in a broad and liberal manner, this is a question of law and fact that must be assessed case by case and according to the evidence filed; yet Mr. Labbé offers no information to make up for the deficiencies in the evidence and clarify the ambiguities on this subject.

[23] Thus, the Requesting Party submits that the Owner has not met the burden of proof in the case at bar, as light as it is.

THE OWNER'S OBSERVATIONS

[24] The Owner, for its part, submits that the Mark is far from being "dead wood".

[25] According to the Owner, the fact that it is located in Canada clearly shows that it is ready to perform in Canada all the Services advertised on its website, as well as those mentioned in the contracts filed as evidence.

[26] Concerning the display of the Mark during the relevant period, the Owner claims that it is obvious that the hangar displaying the Mark, being a building, could not have been erected between the receipt of the notice issued under section 45 of the Act and the taking of the photographs less than two months later.

[27] It also draws attention to the web page of Exhibit PE-2, which displays the Mark as the title and the content of which, according to the Owner's arguments, would not have changed since the date appearing in the "© 2009" notice. The Owner also submits that the organization of the menu of this page, broken down into three main headings, one of which is entitled "Nos Services" (Our Services), does not mean that the Owner is not the source of all of the services described under the other two headings.

[28] The Owner adds that the other documents filed as evidence corroborate its use of the Mark in association with all of the Services during the relevant period. Moreover, it claims that

the contracts under Exhibit PE-6 are equivalent to invoices displaying the Mark, each showing services rendered over several years.

[29] Regarding the precise nature of its services, the Owner cites the decision *TSA Stores, Inc v Canada (Registrar of Trade-marks)*, 2011 FC 273, 91 CPR (4th) 324, overturning *Heenan Blaikie LLP v Sports Authority Michigan, Inc*, 2010 TMOB 9, 2010 CarswellNat 581, in support of the thesis that a broad and liberal interpretation must be given to services, with the result that it is sufficient to prove services "ancillary" to the services registered. The Owner cites the decision *Sim & McBurney v The Rider Travel Group Inc* (2001), 15 CPR (4th) 403 (TMOB), to affirm, in particular, that the *organizing* of transportation is sufficient to prove the "transportation" service itself.

[30] In this perspective, referring to the web page under Exhibit PE-2, the Owner argues that "Gestion d'aéronefs" (Aircraft management) found under the heading "Nos Services" (Our Services) designates a very broad service that encompasses both "air transportation" and "aircraft chartering". More specifically, it claims that the "service aux avions privés" (private aircraft service), as described in the fourth contract referenced under Exhibit PE-6, clearly implies chartering and air transportation, and that "l'entreposage" (storage) of an aircraft, as described in the lease agreement under the same exhibit, for example, serves no purpose if chartering or transport are not done. The Owner also cites the coverage of aircraft damage by the aviation insurance presented under Exhibit PE-4 as evidence indicating that the Owner's activities include air transportation. Moreover, the Owner draws attention to the Transport Canada letter in Exhibit PE-5: according to the Owner's arguments, Transport Canada would not have informed it of the possibility of acquiring rights in its "réseau de transport" (transportation network) if the Owner did not offer a service that could be qualified as a "transportation" service.

[31] The Owner also refers to the web page under Exhibit PE-2 to argue that the "Gestion d'aéroport" (Airport management), under the second heading, encompasses and is even synonymous with "airport services". Moreover, the Owner submits that a broad definition of the Services requires that at the time that a service—such as the "Programme météorologique" (Meteorological program) under the heading "Nos Services" (Our Services)—is rendered in an airport, this service becomes an "airport" service.

ANALYSIS

[32] It is well established that the procedure provided for in section 45 of the Act has a limited scope. Its purpose is to offer a simple, summary and expeditious procedure to rid the register of "dead wood" [*Performance Apparel Corp v Uvex Toko Canada Ltd*, FC 448, 31 CPR (4th) 270]. It does not have the purpose of hearing contested questions of fact: these must be settled instead by addressing the Federal Court under section 57 of the Act [*Meredith & Finlayson v Canada (Registrar of Trade-marks)* (1991), 40 CPR (3d) 409 (FCA)].

[33] Thus, in the context of a procedure under section 45, it is unnecessary for the evidence to be perfect; the registered owner only has to present *prima facie* evidence of the use of the trade-mark within the meaning of sections 4 and 45 of the Act and the Registrar may draw reasonable inferences from the facts presented [see *Diamant Elinor Inc* v *88766 Canada Inc*, 2010 FC 1184, 90 CPR (4th) 428; and *Eclipse International Fashions Canada Inc v Shapiro Cohen*, 2005 FCA 64, 48 CPR (4th) 223]. Moreover, the evidence must be considered as a whole, and not by concentrating on individual evidence [see *Kvas Miller Everitt v Compute (Bridgend) Ltd* (2005), 47 CPR (4th) 209 (TMOB)].

[34] Nonetheless, it is incumbent on the registered owner to prove the presentation of the mark in the performance or advertising of activities that fall under each of the services registered. Moreover, even if it is appropriate to give services a broad interpretation, "the use of a trade-mark in association with a service must be decided on a case-by-case basis" [*Express File Inc* v *HRB Royalty Inc*, 2005 FC 542, 39 CPR (4th) 59 at paragraph 23].

[35] In the present case, the photographs dated January 12, 2017 under Exhibit PE-3 all shows the Mark reproduced in decorative font, accompanied by a logo, on the building containing a hangar and administrative offices. I accept such a sign as a presentation of the Mark as a trade-mark, in association with the services advertised and rendered from or in this building. Although a logo is displayed nearby, the mark stands out; it remains recognizable as such and does not lose its identify. Thus, when I apply the principles set out in *Canada* (*Registrar of Trade-marks) v Cie Internationale pour l'informatique CII Honeywell Bull, SA* (1985), 4 CPR (3d) 523 (FCA); *Nightingale Interloc Ltd v Prodesign Ltd* (1984), 2 CPR (3d) 535 (TMOB); and *Loro Piana SPA*

v Canadian Council of Professional Engineers, 2009 FC 1096, 2009 CarswellNat 3400, I find this is a use of the Mark as registered.

[36] Accounting for the light burden of proof in the context of the procedure provided for in section 45, and given the short time lapse between the end of the relevant period and the taking of these photographs a month and a half later, I am ready to accept that this sign of the Mark was already present on the building during the relevant period. Indeed, the photographs of the hangar displaying an additional sign under Exhibits PE-2 and PE-3—whether they represent this same building at a different time or another hangar belonging to the Owner—do not substantiate a conclusion that the sign of the Mark was erected on an ad hoc basis to protect the registration involved.

[37] Moreover, consider it reasonable to conclude that "airport" services were advertised and rendered in the hangar with the Owner's related administrative offices shown in the photographs dated January 12, 2017 under Exhibit PE-3, namely the one located on the site of the airport where the Owner is domiciled, at 611, 6^{e} Avenue de l'Aéroport, in Québec City. In this regard, it is my opinion that the heading "Gestion d'aéroport" (Airport management) and the items "Entretien d'aéronefs" (Aircraft maintenance) and "Gestion d'aéronefs" (Aircraft management) in the menu of the web page printed on January 26, 2017, filed under Exhibit PE-2, lead to the conclusion that such services were provided or ready to be provided from this hangar with administrative offices, given the photograph of such a hangar presented under said menu. I consider it reasonable to conclude that such services rendered in its own hangar on the site of the airport where it is domiciled constitute "airport services".

[38] In this regard, even if they do not concern the same airport, it is my opinion that the contracts under Exhibit PE-6 corroborate the nature of the services advertised and rendered (or ready to be rendered) from the hangar with administrative offices shown in the photographs dated January 12, 2017 under Exhibit PE-3. I note, in particular, the contracts indicating that the Owner, during the relevant period, planned or was already committed to perform "travaux de gérance et travaux d'entretien" (management work and maintenance work) at Bonaventure Airport, a "service aux avions privés" (private aircraft service) for Ville de Gaspé, and "exploitation aéroportuaire" (airport operation) consisting of "un service d'administration,

d'opération et d'entretien" (an administration, operation and maintenance service) in the Magdalen Islands. I also note the Transport Canada notice under Exhibit PE-5, discussing the transfer of the Owner of rights "de propriété ou d'exploitation" (of ownership or operation) of certain airports. I am ready to infer that the Owner offered and performed (or was ready to perform) services of the same nature from the hangar with administrative offices at the airport where it was domiciled. Once again, I find that such services in this context constitute "airport services".

[39] Moreover, Mr. Labbé attests that the Owner "publicise" (publicizes) the above-mentioned website, which advertises the "Gestion d'aéroport" (Airport management), "Entretien d'aéronefs" (Aircraft maintenance) and "Gestion d'aéronefs" (Aircraft management) services under the heading "Aéropro" in decorative font. I find it reasonable to infer that as a consequence of said advertising and all of the Owner's activities described in the evidence, at least some Canadians—for example, customers or potential customers of the Owner—would have visited this Canadian web page during the relevant period. In this regard, nothing in the evidence, read in its context, is incompatible with the interpretation whereby Mr. Labbé's statement recording the advertising of the website—although formulated in the present tense—concerns the advertising done by the Owner in general, including during the relevant period.

[40] Thus, objectively interpreted and considered a whole, the evidence filed by the Owner shows more than mere allegations of use. All in all, I consider the evidence as a whole sufficient to allow me to infer that the Owner used the Mark within the meaning of sections 4 and 45 of the Act in association with "airport services" during the relevant period.

[41] However, I am not convinced that the Owner proved the use of the Mark within the meaning of sections 4 and 45 of the Act in association with "transport aérien" (air transportation) or "nolisement d'aéronefs" (aircraft chartering) during the relevant period.

[42] Although Mr. Labbé alleges that the Owner uses the Mark [TRANSLATION] "in accordance with the service stipulated at the time of its registration", he does not precisely affirm that this use concerns *each* of these services. In fact, his affidavit makes no mention of "nolisement d'aéronefs" (aircraft chartering) or "transport aérien" (air transportation). Neither of

these activities is described in the Owner's registration in the Québec Enterprise Register. The web page enumerating the services offered by the Owner does not mention them either.

[43] Finally, none of the various contracts and other documents filed under Exhibits PE-4 to PE-7 mentions either air transportation or aircraft chartering. In this regard, in the first place, I am not convinced that the aerological, meteorological or environmental services named in the documentation of the agreements under Exhibit PE-6—and in the menu of the web page under Exhibit PE-2—can be validly considered as "aircraft chartering" or "air transportation" services. If these services involve aircraft chartering or air transportation, Mr. Labbé makes no mention of this in his affidavit.

[44] Moreover, I am not convinced that the aircraft services described, for example, as "Entretien d'aéronefs" (Aircraft maintenance) or "Gestion d'aéronefs" (Aircraft management) on the web page under Exhibit PE-2, or as "service aux avions privés" (private aircraft service) or "entreposage d'un aéronef" (storage of an aircraft) in the excerpts from contracts under Exhibit PE-6, necessarily result in chartering or air transportation services, rendered by the Owner in association with the Mark. Just because an airport is part of a "transportation network" does not mean that all the services rendered from an airport are "transportation" services. On this basis, in my opinion, the decisions cited by the Owner do not apply in the case at bar.

[45] More specifically, in the *Rider* case, *supra*, the evidence included a clear allegation of use of the trade-mark involved in association with air transpiration services, and proved that the registered owner provided such services through agents, namely air carriers. The author of the affidavit had named the ways in which the registered owner claimed to perform the air transportation services (reserving and issuing tickets, chartering jets and helicopters, shipping purchases, etc.) and had given examples of related material (ticket folders, stationery, labels, brochures, etc., all bearing the trade-mark involved). In the case at bar, however, there are no comparable allegations or evidence.

[46] In the *TSA* case, *supra*, the evidence included a clear allegation of use of the trade-mark involved in association with retail services offered by the registered owner through its website. The evidence proved this site was a real retail store from which purchases could be made. The question was whether consumers benefitted from it in Canada, even though the store only

delivered purchases to American addresses. By answering in the affirmative, the Court concluded that consumers nonetheless could benefit from other interactive elements of the online store, which the Court described as "ancillary" retail services. Considering these interactive elements as a whole, the Court considered that a consultation of the website was likened to an on-site visit to a traditional store. Thus, the "ancillary" services involved did not appear in isolation; the evidence showed they were part of the "main" service of the retail store provided by the registered owner.

[47] The situation in the case at bar is different. The evidence shows that the Owner offered aircraft storage, management and maintenance services. However, the evidence did not establish that these services constituted "ancillary" aspects of an air transportation of aircraft chartering service rendered by the Owner. The evidence does not continue any clue from which it could reasonably be inferred that the aircraft stored, managed, maintained or otherwise serviced by the Owner could be chartered by the Owner or otherwise serve to render transportation services to third parties. If the Owner had granted a licence to a third party allowing it to use the Mark in association with air transportation or aircraft chartering services, or if the Owner offered such services through any agents, Mr. Labbé makes no mention of this in his affidavit.

[48] Even if I accept that the Owner operated the aircraft displaying the bird logo shown in front of the hangar in the last photograph under Exhibit PE-3, Mr. Labbé does not specify whether the Owner chartered this aircraft or used it itself for transportation, or used it for other purposes, such as aerological observations, for example. Moreover, it is not clear if this photograph of the aircraft dates from the relevant period.

[49] Likewise, even if the aviation insurance shown under Exhibit PE-4 covered damage occasioned to the aircraft during the relevant period, it remains that neither the documents provided as evidence or Mr. Labbé himself indicated if this involved damage occasioned during the performance of "airport" services or "transportation" or "charter" services.

[50] Indeed, the various documents provided as evidence in the case at bar refer to many services—management, maintenance, storage, observation, etc.—and yet there is no mention of "transportation" or "chartering" or services that could be qualified as such. If transportation or

chartering nonetheless were included among the Owner's services, it would have been simple to mention this expressly. Yet Mr. Labbé did not do so.

[51] In view of the foregoing, in the absence of additional details, I cannot conclude that the Owner proved the use of the Mark during the relevant period within the meaning of sections 4 and 45 of the Act in association with the services described in the registration as "transport aérien" (air transportation) and "nolisement d'aéronefs" (aircraft chartering). Consequently, given that I do not have evidence of special circumstances justifying this default of use, the "transport aérien" (air transportation) and "nolisement d'aéronefs" (aircraft chartering) services will be deleted from the registration.

DECISION

[52] In view of all the foregoing, in the exercise of the powers delegated to me under the provisions of section 63 (3) of the Act and in accordance with the provisions of section 45 of the Act, the registration will be amended to delete the services "transport aérien" (air transportation) and "nolisement d'aéronefs" (aircraft chartering) from the statement of services.

[53] The amended statement of services will be worded as follows: "Services aéroportuaires" (Airport services).

Oksana Osadchuk
Member
Trade-marks Opposition Board
Office de la propriété intellectuelle du Canada

Certified true translation
Arnold Bennett

TRADE-MARKS OPPOSITION BOARD
CANADIAN INTELLECTUAL PROPERTY OFFICE
APPEARANCES AND AGENTS OF RECORD

HEARING DATE 2018-11-06

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Gabriel St-Laurent	FOR THE REQUESTING PARTY

AGENT(S) OF RECORD

Karine Labbé	FOR THE REGISTERED OWNER
ROBIC	FOR THE REQUESTING PARTY