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THE REGISTRAR OF TRADEMARKS

**Citation: 2020 TMOB 104**

**Date of Decision: 2020-08-31**

**IN THE MATTER OF AN OPPOSITION**

**Digicel Caribbean Limited**

**Opponent**

**and**

**Richard Fearing**

**Applicant**

**1,752,690 for DIGICEL  
COMMUNICATIONS**

**Application**

INTRODUCTION

[1] Digicel Caribbean Limited (the Opponent) opposes registration of the trademark DIGICEL COMMUNICATIONS (the Mark), which is the subject of application No. 1,752,690 (the Application), filed on October 29, 2015 by Richard Fearing (the Applicant).

[2] The Application is in association with the list of goods and services set out in Schedule “A” to this decision (collectively the “Goods and Services”), and is based on use of the Mark in CANADA since at least as early as June 30, 2005 in association with Goods (1) and the Services, and use of the Mark in CANADA since at least as early as January 31, 2015 in association with Goods (2).

[3] The Application was advertised for opposition purposes in the *Trademarks Journal* on August 3, 2016. On September 30, 2016, the Opponent filed a statement of opposition under section 38 of the *Trademarks Act*, RSC 1985, c T-13 (the Act). I note that the Act was amended on June 17, 2019. All references in this decision are to the Act as amended, with the exception of references to the grounds of opposition which refer to the Act as it read before it was amended (see section 70 of the Act which provides that section 38(2) of the Act as it read prior to June 17, 2019 applies to applications advertised prior to that date).

[4] The Opponent raises grounds of opposition based on non-distinctiveness under section 2; non-entitlement under sections 16(1)(a) and (c); and non-compliance with sections 30(b) and 30(i) of the Act.

[5] The Applicant filed a counter statement on October 24, 2016.

[6] Both parties filed evidence, which is discussed below. Only the Opponent filed written representations. The Opponent initially requested a hearing (and was the only party to do so), but later withdrew that request and so no hearing was held.

[7] For the reasons that follow, the Application is refused.

## EVIDENCE

### **Opponent's Evidence**

[8] The Opponent's evidence is comprised of four affidavits, which are summarized below and are further discussed in the analysis of the grounds of opposition. None of the Opponent's affiants were cross-examined on their affidavits.

#### Affidavit of Declan Cassidy sworn February 17, 2017 (Cassidy Affidavit)

[9] Mr. Cassidy is the Chief Executive Officer of the Digicel Diaspora Business, which he describes as part of the business of the Digicel Group Limited group of companies. Mr. Cassidy indicates that the Opponent, Digicel Caribbean Limited, is a member of the Digicel Group Limited group of companies; each member of this group of companies being directly or indirectly subsidiaries of the parent corporation Digicel Group Limited [paras. 1 and 2]. For ease

of reference when discussing the facts presented in the Cassidy Affidavit, I will refer to Digicel Group Limited and its subsidiaries collectively as “Digicel”, as is done in the Cassidy Affidavit.

[10] Digicel is a provider of telecommunications related goods and services, including mobile communications, network services, cloud services, and residential cable TV and broadband, in more than 30 markets in the Caribbean, Central America and the South Pacific [para. 10]. Digicel’s initial mobile communications operation was launched in Jamaica in 2001 and it subsequently expanded into other markets in the Caribbean and South Pacific [para. 14].

[11] The Digicel Diaspora Business was launched in 2010 and promotes the sale of telecommunications goods and services through retail and online channels to consumers, particularly immigrant diaspora communities, in Canada, the United States, the United Kingdom, Australia and New Zealand [para. 21]. The Digicel Diaspora Business, through third party distributors, allows immigrant populations in these countries to purchase mobile airtime remotely for Digicel subscribers. This allows individuals residing outside of the Caribbean, Central America and South Pacific to “gift” mobile phone time to friends and families in these regions [para. 22].

[12] Mr. Cassidy indicates that the Opponent is the owner of Canadian application No. 1,769,209 for the trademark DIGICEL, and that the trademark DIGICEL (as well as various design versions thereof) has been used by Digicel in Canada since at least as early as 2011 in association with telecommunications related goods and services including international calling services, the sale of mobile airtime, mobile phone top-up, and phone cards [paras. 27, 28, 37 and 40]. Mr. Cassidy indicates that the Opponent directly or indirectly controls the character and quality of the goods and services sold in association with the trademark DIGICEL in Canada [paras. 31 and 40]. In view of these statements in the Cassidy Affidavit, and in the absence of any evidence to the contrary, I accept that the use of the trademark DIGICEL in Canada described in the Cassidy Affidavit enures to the Opponent pursuant to section 50(1) of the Act.

[13] DIGICEL branded products and services are sold through a network of approximately 9 master distributors in Canada, which then contract with local sub-distributors who sell the products to retail stores. DIGICEL branded products and services are offered in over 1,300 third party retail stores in Canada. Since 2013, total annual sales of DIGICEL branded goods and

services in Canada have exceeded \$7 million USD and annual advertising expenditures in Canada have exceeded \$300,000 [paras. 33 to 39].

[14] The DIGICEL branded goods and services have been promoted in Canada in a variety of ways, including via a website, social media, radio, print, events and sponsorships [paras. 41 to 50]. Numerous examples of such advertising bearing the trademark DIGICEL are included as exhibits to the Cassidy Affidavit.

[15] Mr. Cassidy describes that for a period prior to 2015, the Applicant Mr. Fearing and his company Unlimicell Corp., were a sub-distributor of DIGICEL branded goods and services in Canada. Mr. Cassidy describes that this business relationship with the Applicant dissolved in late 2016 [para 53(d)]. Mr. Cassidy indicates that the Applicant is not, nor has he ever been, authorized to apply for or to register any of the DIGICEL brand trademarks [para. 6].

Affidavit of Robert Santana sworn February 20, 2017 (Santana Affidavit)

[16] Mr. Santana is the Executive Vice President of the Americas for Ezetop Unlimited Company, trading as Ding (hereinafter “Ding”). He describes Ding as a provider of international mobile phone top-up services, which allow consumers to transfer mobile phone time to the prepaid accounts of friends and family overseas.

[17] As part of its business in Canada, Ding contracted with sub-distributors to resell DIGICEL branded international mobile top-up services to retail operations and direct to consumers in Canada. In this regard, Mr. Santana describes that a company named Unlimicell Corp. (for which the Applicant was the sole director) was acting as a sub-distributor for DIGICEL branded international mobile phone top-up airtime for resale to retail stores and consumers in Canada. Mr. Santana indicates that this business relationship with Unlimicell Corp. came to an end in or around January 2017.

Affidavit of Tamara Caldwell sworn February 16, 2017 (Caldwell Affidavit)

[18] Ms. Caldwell is a licensed private investigator. At the request of the agent for the Opponent, she attended at 268 Lakeshore Road East to determine if an entity by the name of Digicel Top-Up Corporation or any entity operated by Richard Fearing was operating at that

address. Ms. Caldwell details the results of her attendance at that address, including photographs, and she indicates there was no evidence of an entity named Digicel Top-Up Corporation or individual named Richard Fearing operating at that address, or any of the various units at that address.

[19] Ms. Caldwell describes a similar investigative visit to the address listed in the Application, namely, 1060 Caven Street, Apt. 1006, which she observed was a residential apartment building and she did not observe any signage referencing Digicel Top-Up Corporation.

Affidavit of Vince A. Giorno sworn February 22, 2017 (Giorno Affidavit)

[20] Mr. Giorno is a licensed private investigator. At the request of the agent for the Opponent, Mr. Giorno conducted an online search for any use of the trademark DIGICEL COMMUNICATIONS in Canada by the Applicant in association with any goods or services. Mr. Giorno includes as an exhibit a list of over 130 terms, phrases and combinations thereof that he used to conduct these online searches. He indicates that he found no evidence of use of the trademark DIGICEL COMMUNICATIONS in Canada by the Applicant or any related entity in association with any of the goods and services set out in the Application. The Giorno Affidavit also includes the results of various corporate and domain name searches.

**Applicant's Evidence**

Affidavit of Richard Fearing sworn June 21, 2017 (Fearing Affidavit)

[21] The Applicant filed an affidavit in his own name and was cross-examined on his affidavit on April 9, 2018. The transcript and exhibits from that cross-examination also form part of the record.

[22] Mr. Fearing identifies himself in this affidavit as the “owner and operator of Digicel Communications” and as the Applicant for the subject Application. The Fearing Affidavit does not provide any details regarding the nature of “Digicel Communications” as a legal entity or business, or how it is known by that name. On cross-examination, Mr. Fearing undertook to

provide evidence of “Digicel Communications” as a corporate name in Canada, but ultimately did not do so [see Q76-Q82 of the cross-examination transcript].

[23] Mr. Fearing states at paragraph 4 of his affidavit that “[i]n early 2005 I began producing my own calling cards using the name ‘Digicel’”. He states that “I came up with the name ‘Digicel’ entirely on my own when I decided to begin making calling card products” and that “‘Digicel’ is a combination of the words ‘digital’ and ‘cellular’”.

[24] Mr. Fearing indicates that on February 9, 2005, he placed his first order for the printing of “Digicel calling cards”, and in this regard attaches as Exhibit “A” to his affidavit an invoice from a printing company. Mr. Fearing also attaches as Exhibit “B” the design of the calling card, which prominently bears the term “Digicel”. Nowhere on the calling card design in Exhibit “B” is the term DIGICEL COMMUNICATIONS displayed.

[25] Attached as Exhibits “C” through “G” and “I” and “J” are additional invoices to Mr. Fearing from printing companies for calling cards and promotional material (specifically business cards, posters and stickers). No examples of the items referred to in the invoices are included in the Fearing Affidavit, with the exception of the above-referenced calling card design included as Exhibit “B”. Mr. Fearing does not provide any indication as to how or when the promotional materials were displayed or distributed. None of the invoices included in the Fearing Affidavit reference DIGICEL COMMUNICATIONS as either a business name or trademark.

[26] I note that subsequent to Mr. Fearing’s cross-examination, on April 16, 2018, counsel for the Opponent received an email from the address <digicel@digicel.ca> attaching a document which appears to be similar to the calling card design included as Exhibit “B” to the Fearing Affidavit, though it also bears the word “Communications” in small lettering below the word “Digicel”. However, no explanation as to the nature or date of use, if any, of this additional calling card design was provided. The Opponent filed a printout of this email and document with the Registrar on May 9, 2018. By letter dated May 30, 2018, the Registrar indicated that this document would not be made of record as the Opponent had indicated that it was not in response to an undertaking.

[27] In paragraphs 15 through 22 and 25 through 29 of the Fearing Affidavit, Mr. Fearing describes his interactions with entities he identifies as “Digicel Caribbean” and “Digicel Diaspora”. For example, at paragraph 15 Mr. Fearing states that “[i]n 2009 I began selling ‘Digicel Caribbean’ top-up cards, which are used to add minutes to existing prepaid phones” and that “[i]n 2009 I went to Jamaica to meet with Digicel Caribbean to acquire the exclusive rights to sell Digicel Caribbean products in Canada.” At paragraph 20 he states, “Digicel Caribbean informed me at the meeting that I would not be getting exclusive rights to Canada”.

[28] At paragraph 32 of the Fearing Affidavit, Mr. Fearing states “[i]n 2014 I created ‘Digicel Top-up Corporation’ and registered it in Alberta.” At paragraph 33 he states “[t]he purpose of registering in Alberta was to capitalize on the job boom in the oil sands which had created a large market for calling cards.”

#### ONUS AND MATERIAL DATES

[29] The Applicant bears the legal onus of establishing, on a balance of probabilities that the application complies with the requirements of the Act. This means that if a determinate conclusion cannot be reached in favour of the Applicant after a consideration of all of the evidence, then the issue must be decided against the Applicant. However, there is an initial evidential burden on the Opponent to adduce sufficient admissible evidence from which it could reasonably be concluded that the facts alleged to support each ground of opposition exist [see *John Labatt Limited v The Molson Companies Limited* (1990), 30 CPR (3d) 293 (FCTD) at 298].

[30] The material dates with respect to the grounds of opposition are as follows:

- Sections 38(2)(a)/30 of the Act - the filing date of the Application, namely, October 29, 2015 [*Georgia-Pacific Corp v Scott Paper Ltd* (1984), 3 CPR (3d) 469 (TMOB) at 475];
- Sections 38(2)(c)/16(3)(a) and (c) - the dates of use claimed in the Application, namely, June 30, 2005 for Goods (1) and Services, and January 31, 2015 for Goods (2) [section 16(3)(a) and (c) of the Act];

- Sections 38(2)(d) of the Act - the filing date of the opposition, namely, September 30, 2016 [*Metro-Goldwyn-Mayer Inc v Stargate Connections Inc*, 2004 FC 1185, 34 CPR (4th) 317].

#### ANALYSIS OF THE GROUNDS OF OPPOSITION

##### **Section 30(b) Ground of Opposition**

[31] With a ground of opposition based on section 30(b) of the Act, it is well established that if the date of use claimed in the application is earlier than the applicant's actual date of first use of the trademark in Canada, the section 30(b) ground of opposition is successful [see *Scenic Holidays (Vancouver) Ltd v Royal Scenic Holidays Ltd*, 2010 TMOB 63; *Pharmacia AB v Homeocan Inc* (2003), 33 CPR (4th) 375 (TMOB) at paras 6-8; *Hearst Communications Inc v Nesbitt Burns Corp* (2000), 7 CPR (4th) 161 (TMOB) at paras 7-11].

[32] An opponent's initial evidential burden under section 30(b) is light [*Tune Masters v Mr P's Mastertune Ignition Services Ltd* (1986), 10 CPR (3d) 84 (TMOB) at 89] and can be met by reference not only to the opponent's evidence but also to the applicant's evidence [*Labatt Brewing Co v Molson Breweries, A Partnership* (1996), 68 CPR (3d) 216 (FCTD) at 230]. However, an opponent may only successfully rely upon the applicant's evidence to meet its initial burden if the opponent shows that the applicant's evidence puts into issue the claim set forth in the application [*Corporativo de Marcas GJB, SA de CV v Bacardi & Company Ltd*, 2014 FC 323 at paras 30-38].

[33] In the present case, the Opponent's evidence includes affidavits from two private investigators. The Giorno Affidavit describes online searches conducted with numerous different search parameters, looking for any indication that the Mark was used by the Applicant in association with the Goods and Services. The Caldwell Affidavit includes evidence of personal visits to the Applicant's address listed in the Application, as well as to another corporate address related to the Applicant. None of the investigations conducted by the two private investigators disclosed any evidence that the Mark is currently, or was ever, in use by the Applicant. In my view, this evidence from the Opponent is sufficient to meet the Opponent's light initial evidential burden under section 30(b).



[34] However, if I am wrong in the above conclusion, in my view, the Opponent is able to meet its initial evidential burden under section 30(b) via the Applicant's evidence in this case. The Fearing Affidavit, as it relates to the Applicant's alleged use of the Mark, is limited to receipts from printers for calling cards bearing the term "Digicel" and related promotional material, and an example of the calling card design. There is no evidence in the Fearing Affidavit that such calling cards were in fact sold or offered for sale to consumers in Canada as of the date claimed in the Application, nor is there any evidence that the promotional material referred to in the Fearing Affidavit was ever displayed in association with any of the applied for Goods and Services. More significantly, there is no evidence that the calling cards or promotional material referred to in the Fearing Affidavit ever bore the Mark applied for, namely, DIGICEL COMMUNICATIONS. All references in the Fearing Affidavit to purported use of a trademark relate to "Digicel", rather than DIGICEL COMMUNICATIONS. Even if I were to accept that the Fearing Affidavit demonstrated use of the trademark Digicel by the Applicant in association with calling cards, such use would not constitute use of the Mark applied for, namely, DIGICEL COMMUNICATIONS [see *Canada (Registrar of Trade Marks) v Cie internationale pour l'informatique CII Honeywell Bull SA* (1985), 4 CPR (3d) 523 (FCA) at para 5]. Moreover, there is no evidence of any use of the Mark by the Applicant in association with the long list of remaining goods and services set out in the Application. Mr. Fearing's answers on cross-examination to questions relating to his alleged use of the Mark, in my view, do nothing to detract from the above conclusions.

[35] Subsequent to the Applicant's cross-examination, it appears that the Applicant provided the Opponent with a printout of a calling card design which bears the trademark DIGICEL COMMUNICATIONS. However, as noted above, there is no evidence from the Applicant as to when, if ever, this additional calling card design was advertised, sold or offered for sale in Canada.

[36] In my view, the Applicant's evidence regarding its purported use of the Mark raises significant doubts as to whether it has ever used the Mark applied for, namely, DIGICEL COMMUNICATIONS, let alone used that Mark since the dates of first use claimed in the Application in association with the Goods and Services.

[37] To summarize, the Opponent has met its initial evidential burden for the section 30(b) ground of opposition, and the Applicant has not demonstrated on a balance of probabilities that it used the Mark in Canada in association with the Goods and Services since the dates claimed in the Application. Accordingly, the Applicant has not met its legal burden and the section 30(b) ground of opposition succeeds.

## **Section 2 Ground of Opposition**

[38] In order to meet its initial evidential burden under this ground of opposition, an opponent must show that its trademark had a substantial, significant or sufficient reputation in Canada in association with relevant goods and/or services so as to negate the distinctiveness of the applied for trademark [see *Motel 6, Inc v No 6 Motel Ltd*, (1981), 56 CPR (2d) 44 (FCTD); and *Bojangles' International, LLC and Bojangles Restaurants, Inc v Bojangles Café Ltd*, 2006 FC 657, 48 CPR (4th) 427].

[39] In my view, the Opponent's evidence of its use of the trademark DIGICEL in Canada is sufficient for the Opponent to meet its evidential burden for the section 2 ground of opposition. The Opponent has provided evidence of significant use and advertising of the trademark DIGICEL in Canada in association with international calling services, the sale of mobile airtime, mobile phone top-up and phone cards since at least as early as 2013, well prior to the filing of the statement of opposition in this proceeding.

[40] The issue then becomes whether there is a likelihood of confusion between the Applicant's Mark DIGICEL COMMUNICATIONS and the Opponent's trademark DIGICEL. I will keep this discussion brief as in my view each of the relevant factors in the confusion analysis favours the Opponent in this case.

### Test for confusion

[41] The test to determine the issue of confusion is set out in section 6(2) of the Act where it is stipulated that the use of a trademark causes confusion with another trademark if the use of both trademarks in the same area would likely lead to the inference that the goods and services associated with those trademarks are manufactured, sold, leased, hired or performed by the same

person, whether or not the goods and services are of the same general class or appear in the same class of the Nice Classification. In making such an assessment, I must take into consideration all the relevant surrounding circumstances, including those listed in section 6(5) of the Act: the inherent distinctiveness of the trademarks and the extent to which they have become known; the length of time the trademarks have been in use; the nature of the goods and services or business; the nature of the trade; and the degree of resemblance between the trademarks in appearance, or sound or in the ideas suggested by them.

[42] These criteria are not exhaustive and different weight will be given to each one in a context specific assessment [see *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée*, 2006 SCC 23, 49 CPR (4th) 401; *Mattel, Inc v 3894207 Canada Inc*, 2006 SCC 22, [2006] 1 SCR 772 (SCC) at para 54]. I also refer to *Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27, 92 CPR (4th) 361 (SCC) at para 49, where the Supreme Court of Canada states that section 6(5)(e), the resemblance between the marks, will often have the greatest effect on the confusion analysis.

*Inherent distinctiveness of the trademarks and extent to which they have become known*

[43] The Opponent's trademark DIGICEL has a moderate degree of inherent distinctiveness. In my view, the trademark DIGICEL is somewhat suggestive of digital cellular phone services, but there is no evidence in this proceeding to suggest that the term is descriptive or has become generic. The Applicant's trademark DIGICEL COMMUNICATIONS similarly has a moderate degree of inherent distinctiveness.

[44] With respect to the extent to which the parties' trademarks have become known, the Opponent's evidence suggests that its trademark DIGICEL is known to some extent at least in Canada by virtue of the Opponent's use of the trademark in Canada since at least as early as 2013 (out of an abundance of caution, I am referencing 2013 as this is the earliest year for which the Opponent's evidence includes sales figures in association with its trademark in Canada). By comparison, the Applicant has not provided any evidence to demonstrate that its Mark is known in Canada at all.

[45] This factor therefore favours the Opponent.

*Length of time the trademarks have been in use*

[46] The Opponent's evidence demonstrates that it has been using its trademark DIGICEL in Canada since at least as early as 2013.

[47] As noted above in the discussion of the section 30(b) ground of opposition, the Applicant's evidence does not demonstrate any use of the trademark DIGICEL COMMUNICATIONS at any time.

[48] Therefore, in my view, this factor also favours the Opponent.

*Nature of the goods; nature of the trade*

[49] There is significant overlap between the goods and services offered by the Opponent in Canada in association with the trademark DIGICEL, and the list of Goods and Services set out in the Application; both fundamentally relate to telecommunication and cellular phone services, and closely connected promotional goods. Also, the channels of trade appear to directly overlap. Indeed, both parties' evidence indicates that at one point the Applicant was selling the Opponent's products in Canada.

[50] Therefore, this factor favours the Opponent.

*Degree of resemblance*

[51] The degree of resemblance between the Opponent's trademark DIGICEL and the Applicant's Mark DIGICEL COMMUNICATIONS, in terms of appearance, sound and idea, is high. The most striking element of both marks, namely, "DIGICEL", is identical, and the second component of the Applicant's Mark is descriptive of the relevant services. Consequently, this factor also favours the Opponent.

Conclusion regarding the section 2 ground of opposition

[52] Taking all of the above into consideration, I find that the Applicant has not met its legal burden to demonstrate that there is no likelihood of confusion between the Mark and the Opponent's trademark DIGICEL. The Applicant has therefore not met its legal burden to

demonstrate that the Mark is distinctive of the Applicant in Canada pursuant to section 2 of the Act as of the material date. Consequently, the section 2 ground of opposition is successful.

### **Remaining Grounds of Opposition**

[53] As I have found that the Opponent succeeds with respect to the section 30(b) and section 2 grounds of opposition, I will refrain from considering the remaining grounds of opposition.

### DISPOSITION

[54] In view of the above, pursuant to the authority delegated to me under section 63(3) of the Act, I refuse the application pursuant to section 38(12) of the Act.

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Timothy Stevenson  
Member  
Trademarks Opposition Board  
Canadian Intellectual Property Office

## SCHEDULE A

Good and Services in Application No. 1,752,690 for DIGICEL COMMUNICATIONS

### **Goods**

(1) Telecommunications, multimedia and interactive telecommunications and information technology equipment, namely, telephones, cell phones, cell phone accessories, namely, cell phone cases, USB power cords, USB data transmission cables, and screen protectors, modems, handheld computers, prepaid phone service cards, carrying cases and pouches for telephones, cell phones and handheld computers, microphones, electrical adapters for use in connection with the foregoing telecommunications equipment, headsets, batteries and chargers for foregoing telecommunications equipment, faceplates, cameras, external memory storage devices, namely, computer memory cards and USB flash drives for use in connection with the foregoing telecommunications equipment; phone cards and prepaid phone cards; user manuals; and computer games

(2) Clothing, namely, shirts, sweat shirts, sweaters, vests, pants, shorts, gloves, belts, pajamas, underclothes, socks, jackets, coats, beachwear, warm-up suits; headwear, namely, sunglasses, visors, hats, caps, bandanas; footwear, namely, shoes, sneakers, boots, sandals, slippers; souvenirs, namely, writing instruments, fridge magnets, CD carrying cases, towels, namely, bath towels, golf towels, and wash cloths, key chains, novelty buttons and coffee mugs; and printed matter, namely, note paper, loose leaf paper, books, decals, bumper stickers, trading cards, note cards, posters, folders and calendars; software for online tracking of vehicles and packages; point of sale terminals; vending machines

### **Services**

(1) International mobile phone top up, mobile money, prepaid phone card and phone card services, namely, the addition of funds to the foregoing; international mobile top up services, namely, the operation of a licensed dealer program for the sale and resale of telecommunications services and equipment, namely, telephones, mobile telephones, SIM cards and phone cards, and accessories, namely, batteries, battery chargers, belt clips, and hands-free headsets and carrying cases, the rental of cellular telephones, pagers, personal digital assistants, mobile SIM cards, computers and handheld portable computers; the installation, maintenance, repair and upgrade of telecommunications equipment, namely, telephones, cell phones, mobile telephones, computers and handheld portable computers; the operation of a mobile phone top up network for the addition of funds to telephones, cell phones and handheld computers; cellular telephone services, namely, telephone rate plans and packages; prepaid cellular telephone services; video conferencing services, namely, video calls conducted via wireless communication devices; telephone calling card services; the retail sale of telecommunication equipment namely, telephones, mobile telephones, and SIM cards and phone cards, and accessories, namely, batteries, battery chargers, belt clips, and hands-free headsets and carrying cases, offered through electronic commerce via a global computer network; retail mobile phone top up store services, namely, the addition of funds to a mobile phone account; online retail store services in the field of telecommunication equipment namely, telephones, mobile telephones, and SIM cards and phone cards, and accessories, namely, batteries, battery chargers, belt clips, and hands-free

headsets and carrying cases; promoting the sale of wares and services through a consumer loyalty program and franchising services, namely, granting others the right to market the aforementioned wares and services in association with trade-marks and trade-names of the applicant, and offering technical assistance in the establishment and operation of mobile phone store franchises; online sale of telecommunications products, namely international mobile top up of funds for cellular phones in other countries; developing, distributing and providing access to downloadable games, software, programs and applications; electronic funds transfer services; services allowing users to conduct financial and commercial transactions online, using secured access offered over a telecommunications and/or data network; electronic commerce solutions for buying and selling over the internet, namely, electronic processing and transmission of bill payment data; consulting and contract services for the selection, installation, operation, maintenance, repair, refurbishing and repurchase of telecommunications services, namely, mobile phone top up, mobile money, prepaid phone card and phone card services, namely, the addition of funds to the foregoing; the operation of retail stores and online websites for the sale, rental, demonstration, consultation, installation, maintenance, repair, refurbishing and repurchase of telecommunications services, namely, mobile phone top up, mobile money, prepaid phone card and phone card services, namely, the addition of funds to the foregoing; operating client care, information help lines and operations services regarding the provision of telecommunication services, namely, mobile phone top up, mobile money, prepaid phone card and phone card services, namely, the addition of funds to the foregoing, and international mobile top up; and voice over internet protocol (VoIP) transmissions; telematic in-vehicle communication service providing wireless vehicle navigation and tracking; tracking and tracing of packages in transit; automatic cash, debit and payment machines

**TRADEMARKS OPPOSITION BOARD  
CANADIAN INTELLECTUAL PROPERTY OFFICE  
APPEARANCES AND AGENTS OF RECORD**

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No Hearing Held

**AGENTS OF RECORD**

Gowling WLG (Canada) LLP

For the Opponent

No Agent Appointed

For the Applicant