



LE REGISTRAIRE DES MARQUES DE COMMERCE  
THE REGISTRAR OF TRADEMARKS

**Citation: 2021 TMOB 209**

**Date of Decision: 2021-09-23**

**IN THE MATTER OF AN OPPOSITION**

**Divert, Inc.**

**Opponent**

**and**

**Resource Recovery Fund Board Inc.**

**Applicant**

**1,795,727 for Divert NS**

**Application**

OVERVIEW

[1] Resource Recovery Fund Board Inc. (the Applicant) has filed application No. 1,795,727 (the Application) to register the trademark Divert NS (the Mark) in association with various services related to waste diversion and recycling identified in Schedule A to this decision (the Services). The Application is based on use of the Mark in Canada since at least as early as May 16, 2016.

[2] Divert, Inc. (the Opponent) has opposed the Application, alleging that the Applicant has not used the Mark in Canada since the date claimed in the Application, and alleging a likelihood of confusion with the Opponent's trademark and trade name DIVERT which the Opponent asserts was previously used in Canada in association with similar goods and services.

[3] I am not satisfied that the evidence of record is sufficient to impugn the date of use claimed in the Application. I am also not satisfied that the Opponent has demonstrated the requisite use or making known in Canada of its trademark or trade name DIVERT in order to meet its initial evidential burden for the grounds of opposition that are based on confusion. Consequently, the opposition is rejected.

#### THE RECORD

[4] The Application was filed on August 12, 2016 and was advertised for opposition purposes in the *Trademarks Journal* on January 24, 2018. On June 12, 2018, the Opponent filed a statement of opposition pursuant to section 38 of the *Trademarks Act*, RSC 1985, c T-13 (the Act). I note that the Act was amended on June 17, 2019, and pursuant to section 70 of the Act, the grounds of opposition in this proceeding will be assessed based on the Act as it read prior to June 17, 2019.

[5] By letter of the Registrar dated April 6, 2020, the opponent was granted leave to amend its statement of opposition to correct two typographical errors which have no bearing on the outcome of this proceeding.

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

[7] The Applicant filed a counter statement denying the grounds of opposition. Both parties filed evidence and written representations. No hearing was held.

#### EVIDENCE

[8] The parties' evidence is summarized below and discussed further in the analysis of the grounds of opposition. None of the affiants were cross-examined.

#### **Opponent's Evidence**

[9] The Opponent filed as its evidence the affidavit of Nick Whitman sworn February 8, 2019 (the Whitman Affidavit). Mr. Whitman is the Treasurer and Secretary of the Opponent. The

Opponent is a corporation organized under the laws of the State of Delaware and its principal place of business is in Concord, Massachusetts.

[10] The Opponent was founded in 2006 under the name Feed Resource Recovery, Inc. and changed its name to Divert, Inc. on April 25, 2016. In this regard, Exhibit NW-1 to the Whitman Affidavit is a copy of a certificate of change of name issued by the Delaware Department of Corporations indicating that the change of name took place on April 25, 2016.

[11] Mr. Whitman states that the Opponent's mission is to develop innovative and efficient solutions for the elimination of waste in the retail industry. The Opponent's operations in the field of waste processing and recycling, recovery, processing, management and recycling of food waste include recovering discarded food from food retailers as well as recovering discarded materials that should be recycled. The Opponent also provides business intelligence services and the services of collecting, compiling, processing, monitoring, analyzing, tracking and reporting of business data and data about product inventory and unsold items for business purposes.

[12] The Opponent offers goods and services related to waste and resource recovery for the retail industry as well as the software required to operate these services. More specifically, Mr. Whitman states that the Opponent offers the list of goods and services set out in Schedule B to this decision. He states that the Opponent's target market are retail supply chains who seek to optimize their inventory processing, increase their recuperation of resources and materials, and reduce their amounts of waste.

[13] Mr. Whitman states that the Opponent's website at *www.divertinc.com* was launched in April 2016 to promote the Opponent's goods and services under the DIVERT trademark to the retail industry and bring awareness to consumers in both Canada and the United States. He indicates that between its launch in 2016 and March 2018, approximately 13,543 users conducted 18,422 sessions on the website, and that 3% of those users (i.e. 400 users) originated from Canada. Mr. Whitman further states that in the first month following the launch of the website, and before May 16, 2016, 15 Canadian users conducted 18 sessions on the website.

[14] Mr. Whitman states that the Opponent started using its DIVERT trademark in all promotional and technical materials describing its goods and services as early as the beginning of

May 2016 in Canada. Attached as Exhibit NW-3 to the Whitman Affidavit is a copy of a document entitled “Digester Level Control: Plan for installation of Guided Radar Level Transmitter” dated May 4, 2016 which Mr. Whitman states was sent to Canadian vendors on May 6, 2016.

[15] Mr. Whitman indicates that the Opponent’s use of the DIVERT trademark has grown and the Opponent’s annual revenue for goods sold and services provided under the DIVERT name and trademark were in excess of US \$5 million for 2016 and in excess of US \$10 million for each of the years 2017 and 2018. No sales data specific to Canada is included.

[16] Exhibit NW-4 to the Whitman Affidavit is a copy of a press release referring to the Opponent which Mr. Whitman states was published in the Canadian *Tactics Magazine for Shopping Centers* magazine in April 2016.

[17] Mr. Whitman states that the Opponent filed its first trademark applications for the trademark DIVERT in the United States of America on March 23, 2016. Exhibit NW-6 are copies of U.S. registration nos. 5233507, 5360569 and 5433944.

### **Applicant’s Evidence**

[18] The Applicant filed as its evidence the affidavit of Jeff MacCallum sworn July 8, 2019 (the MacCallum Affidavit). Mr. MacCallum is the CEO of the Applicant.

[19] The Applicant was established in 1996 as a not-for profit under the Province of Nova Scotia’s *Environmental Act*. The Applicant works with the Department of the Environment to develop and implement programs to help Nova Scotia reach its waste diversion goals through funding and partnership. The Applicant focusses on building a culture of recycling through environmental stewardship, education and programming in Nova Scotia.

[20] Mr. MacCallum states that the Applicant has been known under the trade name and trademark Divert NS since May 2016. Attached as Exhibit A to his affidavit is a certificate of registration of Divert NS as a business name, dated May 12, 2016, under the *Partnerships and Business Names Registration Act* of Nova Scotia.

[21] The Applicant's mandate includes operating a deposit-refund system for beverage containers and to support municipal waste diversion programs. The Applicant manages a network of Enviro-Depots in over 75 locations throughout Nova Scotia. Exhibits B through E to the MacCallum Affidavit include information and examples of use of the trademark Divert NS in association with this program.

[22] At paragraph 8 of his affidavit, Mr. MacCallum states that the Applicant has used the Mark as its trade name and trademark in Canada since at least as early as May 16, 2016. Exhibit H to the MacCallum Affidavit includes, *inter alia*, the following documents outlining the steps taken and the timeline in respect of the Applicant's rebranding to the Mark (from the prior name RRFB Nova Scotia):

- January 2016 and March 2016 – Printouts of slide shows to the Applicant's employees and board members by a public relations firm hired by the Applicant, with various slides bearing the Mark;
- February 2016 – Report regarding focus group testing of the proposed Divert NS name, tagline and logo among members of the general public and several of the Applicant's stakeholders;
- April 1, 2016 – Printouts of a slide show to Applicant employees and board members entitled "RRFB Nova Scotia: New Name & Visual Identity" with various slides bearing the Mark;
- April 13, 2016 – Internal Applicant email providing the Divert NS logo to provide to suppliers;
- May 13, 2016 – Applicant's slide show bearing the Mark entitled "RRFB Nova Scotia 20<sup>th</sup> Anniversary and Re-Brand" presented to the regional chairs;
- May 17, 2016 – Email message from Mr. MacCallum to the Applicant's stakeholder list announcing the Applicant's rebranding under the Mark, and email to all Applicant staff informing them of the official branding change and the new landing page for the Applicant's website at [www.divertns.ca](http://www.divertns.ca);

- May 26, 2016 – Email to Applicant staff advising that the Nova Scotia legislature and Minister of the Environment had formally recognized the launch of the Mark.

[23] Exhibit I to the MacCallum Affidavit are samples of the Applicant’s display of the Mark on letterhead, cheques, promotional and educational materials, and outdoor displays. Mr. MacCallum characterizes these samples as representative of the continuous use of the Mark since May 2016.

#### ONUS

[24] The Applicant bears the legal onus of establishing, on a balance of probabilities, that the Application complies with the requirements of the Act. 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 [*John Labatt Limited v The Molson Companies Limited* (1990), 30 CPR (3d) 293 (FCTD) at 298].

#### ANALYSIS OF THE GROUNDS OF OPPOSITION

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

[25] The Application claims use of the Mark in Canada in association with the Services since at least as early as May 16, 2016. The Opponent’s ground of opposition under section 30(b) of the Act is set out in paragraph 1(b) of the amended statement of opposition. Specifically, the Opponent alleges that “the Applicant wrongly stated that it had used its mark in Canada in association with all of the services in application number 1,795,727, for which use in Canada is claimed.”

[26] In its written representations, the Opponent advances two lines of argument in respect of its section 30(b) ground. First, the Opponent contests the May 16, 2016 date of use claimed in the Application; asserting that the evidence demonstrates use of the Mark no earlier than May 17, 2016. Second, the Opponent argues that to the extent there has been any use of a trademark by the Applicant, it was not use of the Mark as applied for, but instead the trademark “Divert NS” in combination with the phrase “Nothing Wasted”.

[27] I note that at paragraph 17 of its written representations, the Applicant contests whether the Opponent's section 30(b) ground was sufficiently pleaded in order to allow the Applicant to know the case it had to meet. With respect to the first aspect of the Opponent's section 30(b) ground, namely, whether the Applicant had used the Mark since the date claimed, I consider that the ground was sufficiently pleaded to permit the Opponent to know the case it had to meet. Indeed, paragraph 1(a) of the Applicant's counter statement makes it apparent that Applicant was alive to the issue of whether the Mark had been used since the date claimed. With respect to the second aspect of the Opponent's section 30(b) ground of opposition, namely, the argument that the Applicant was not using the Mark as applied for but instead a different trademark, in my view, the section 30(b) ground of opposition is not pleaded in such a way as to support that line of argument [see *Imperial Developments Ltd v Imperial Oil Ltd* (1984), 79 CPR (2d) 12 (FCTD) for the general proposition that an opponent cannot rely on a ground of opposition which it has not pleaded; see also *Le Massif Inc v Station Touristique Massif du Sud (1993) Inc*, 2011 FC 118]. Therefore, I reject that second aspect of the Opponent's section 30(b) ground of opposition on the basis that it was not sufficiently pleaded.

[28] However, even if I were to consider both aspects of the section 30(b) ground to be sufficiently pleaded, for the reasons set out below, both aspects of the ground of opposition fail.

#### Use of the Mark Since the Claimed Date

[29] 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 an 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 [*Scenic Holidays (Vancouver) Ltd v Royal Scenic Holidays Ltd*, 2010 TMOB 63].

[30] An opponent's initial 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].

[31] As noted above, the Application claims use of the Mark in Canada since May 16, 2016. The Opponent did not file any evidence which calls that claimed date into question. Consequently, it is worth noting that in these circumstances the Applicant was not obliged to submit any evidence to substantiate its claimed date of use in order to succeed on the section 30(b) ground.

[32] The Opponent seeks to rely solely on the Applicant's own evidence to demonstrate that the Applicant did not use the Mark since the claimed date. In particular, the Opponent focusses on the evidence in the MacCallum Affidavit which indicates that the Applicant's official branding change and the launch of the new landing page for the Applicant's website took place on Tuesday, May 17, 2016 - one day after the date of use claimed in the Application. However, on the facts of the present case, I do not consider that sufficient for the Opponent to meet its initial evidential burden under section 30(b). First, none of the Services listed in the Application are expressly or inherently limited to being provided online, and so I am not prepared to assume that the first use of the Mark by the Applicant would necessarily have been via its website [for a similar analysis, see *Littlewoods Ltd. v. Grabish*, 2013 TMOB 34, 111 CPR (4th) 438 (TMOB) at para 14]. Second, given the statement in the MacCallum Affidavit that the Applicant has used the Mark in Canada since at least as early as May 16, 2016, and given the evidence regarding the Applicant's development and testing of the Mark in the months leading up to that date, I am not prepared to assume that no use of the Mark took place prior to May 17, 2016. Ultimately, I do not consider the MacCallum Affidavit to be clearly inconsistent with the May 16, 2016 claimed date of first use.

[33] I appreciate that there are circumstances in which an applicant's own evidence (even in the absence of cross-examination) necessarily calls the claimed date of use into question such that an opponent can meet its initial evidential burden [for example, see *911979 Alberta Ltd v Hero Nutritionals, Inc*, 2014 TMOB 72, 122 CPR (4th) 256]. However, for the reasons set out above, in my view, the present opposition is not such a case.



### Use of the Mark as Applied-for

[34] The Opponent argues in its written representations that the Application does not comply with section 30(b) because the trademark actually used by the Applicant was not Divert NS, *per se*, but instead Divert NS combined with the phrase “Nothing Wasted”. The basis for this argument is that much of the evidence of the display of the Mark in the MacCallum Affidavit includes the term “Divert NS” in design form directly above the phrase “Nothing Wasted”.

[35] However, I am not persuaded by the Opponent’s submissions on this point. In my view, the term “Divert NS” – which is depicted in larger and more prominent fonts on its own line above the expression “Nothing Wasted” – would be perceived as a trademark on its own, with the expression “Nothing Wasted” being perceived as a separate tag-line. In short, I consider the evidence in the MacCallum Affidavit of the display of “Divert NS” to be use of the Mark as applied-for.

### Conclusion regarding Section 30(b)

[36] In view of the above, the section 30(b) ground of opposition is rejected.

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

[37] The Opponent pleads that the Applicant could not have been satisfied of its entitlement to use the Mark because it was aware, or should have been aware, of the Opponent’s trademark and trade name DIVERT.

[38] Section 30(i) of the Act requires an applicant to include a statement in the application that the applicant is satisfied that it is entitled to use the trademark in Canada. Where an applicant has provided the required statement, the jurisprudence suggests that non-compliance with section 30(i) of the Act can be found only where there are exceptional circumstances that render the applicant’s statement untrue, such as evidence of bad faith [see *Sapodilla Co Ltd v Bristol-Myers Co* (1974), 15 CPR (2d) 152 (TMOB) at 155]. Mere knowledge of the existence of an opponent’s trademark is not sufficient to support a section 30(i) ground of opposition [see *Woot Inc v WootRestaurants Inc*, 2012 TMOB 197].

[39] In the present case, the Application contains the requisite statement and there is no evidence that this is an exceptional case. Accordingly, the section 30(i) ground of opposition is rejected.

## **Sections 16(1)(a) and (c) Grounds of Opposition**

### Summary of the Law

[40] The material date for the section 16(1)(a) and (c) grounds of opposition is the date of use claimed in the Application, namely, May 16, 2016.

[41] With its ground of opposition under section 16(1)(a), the Opponent has an initial evidential burden to demonstrate that it had used or made known its trademark DIVERT in Canada prior to the material date. Similarly, with its ground of opposition under section 16(1)(c), the Opponent has an initial evidential burden to demonstrate that it used its trade name DIVERT in Canada prior to the material date.

[42] The requirements to demonstrate use of a trademark are set out in section 4 of the Act, the relevant provisions of which are as follows (I cite here the provisions as they read prior to the June 17, 2019 amendments; however, the wording of sections 4 and 5 has not changed other than the removal of the hyphen from the word “trade-mark”):

**4 (1)** A trade-mark is deemed to be used in association with goods if, at the time of the transfer of the property in or possession of the goods, in the normal course of trade, it is marked on the goods themselves or on the packages in which they are distributed or it is in any other manner so associated with the goods that notice of the association is then given to the person to whom the property or possession is transferred.

**(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.

[43] While display of a trademark in advertising in Canada can constitute use of the trademark in association with services pursuant to section 4(2) of the Act, in order to do so, the trademark owner must also be willing and able to provide those services in Canada [see *HRB Royalty Inc v Express File Inc* (2002), 25 CPR (4th) 94 (TMOB), aff'd 2005 FC 542, 39 CPR (4th) 59; and *McCarthy Tétrault LLP v Pascal Information Technology Ltd* (2005), 47 CPR (4th) 314 (TMOB)].

[44] The requirements to demonstrate that a trademark has been made known in Canada are set out in section 5 of the Act:

**5** A trade-mark is deemed to be made known in Canada by a person only if it is used by that person in a country of the Union, other than Canada, in association with goods or services, and

(a) the goods are distributed in association with it in Canada, or

(b) the goods or services are advertised in association with it in

(i) any printed publication circulated in Canada in the ordinary course of commerce among potential dealers in or users of the goods or services, or

(ii) radio broadcasts ordinarily received in Canada by potential dealers in or users of the goods or services,

and it has become well known in Canada by reason of the distribution or advertising.

[45] For the reasons discussed below, I am not satisfied that the Opponent has met its initial evidential burden for either of the non-entitlement grounds of opposition. In particular, I am not satisfied that the Opponent has used or made known its trademark DIVERT in Canada, or used its trade name DIVERT in Canada, prior to the material date.

### Analysis

[46] I will begin with the section 16(1)(a) ground of opposition. The Opponent's evidence demonstrates that as of April 2016 the Opponent had adopted and was displaying the trademark DIVERT in association with various waste and recycling services. However, the Whitman Affidavit states that the Opponent's principal place of business is in the United States, and in my view it is unclear from the evidence what services, if any, the Opponent provided, or was able to provide, in Canada prior to the material date. Based on the description in the Whitman Affidavit, it appears that the Opponent's services include waste treatment and recycling services on a commercial or industrial scale, along with the provision of related software as a service. I do not have any evidence in this case that the Opponent has provided these services in Canada, or a sufficient indication that the Opponent was able to provide these services in Canada as of the material date.

[47] For example, while the Whitman Affidavit identifies 15 Canadian "users" of the Opponent's website prior to the material date, there is no explanation as to what constitutes a

“user” beyond simply being a visitor to the website. There is no mention of what service, if any, is being provided on the Opponent’s website, or what benefit a Canadian visitor to the Opponent’s website receives, that might constitute use of the trademark DIVERT in Canada in association with a service pursuant to section 4(2) of the Act.

[48] Similarly, with respect to the printed document entitled “Digester Level Control: Plan for installation of Guided Radar Level Transmitter” included as Exhibit NW-3 to the Whitman Affidavit, I do not consider that I have sufficient information regarding the nature of this document to assess whether it constitutes use of the Opponent’s trademark DIVERT in Canada in association with any service. In particular, there is no explanation as to how the document relates to the performance of any service in Canada, why the document was sent, and when it was actually received in Canada.

[49] With respect to the press-release included as Exhibit NW-4, which includes reference to the Opponent, the content of this press-release relates entirely to activities in the United States. While the affiant indicates that a copy of the press-release was published in the “*Canadian Tactics Magazine for Shopping Centers* magazine”, it is apparent that the document included as Exhibit NW-4 is a printout from the website at [www.prnewswire.com](http://www.prnewswire.com). Further, no information is included to support the characterization of the magazine as Canadian – in particular, there is no statement from the affiant that the magazine containing the press-release was in fact distributed in Canada.

[50] Consequently, I am not able to conclude that the Opponent used its trademark DIVERT in Canada in association with any services, in accordance with section 4(2) of the Act, prior to the material date.

[51] In addition, there is no evidence of sales of any goods by the Opponent in Canada, and thus there is no evidence of the use of the trademark DIVERT in Canada in association with any goods under section 4(1) of the Act.

[52] Further, there is insufficient evidence to conclude that the Opponent had made known its trademark DIVERT in Canada under section 5 of the Act prior to the material date. While the Opponent has included as Exhibits NW-3 and NW-4 to the Whitman Affidavit two printed

documents, discussed above, which the Opponent suggests show the display of the trademark in Canada, the Opponent has not demonstrated that its trademark had become well known as a result of any such distribution or advertising in Canada, as required by section 5.

[53] With respect to the section 16(1)(c) ground of opposition, while there is evidence that the Opponent had adopted the trade name DIVERT in the United States as of April 2016, in my view, there is no evidence of the use of that trade name in Canada prior to the material date. In this regard, I note that there is no specific definition of “use” of a trade name in the Act; however, the principles in sections 2 and 4 of the Act regarding trademark use have been held to apply, such that display of a trade name in the performance or advertising of services available in Canada will suffice to show use of the trade name in the course of business [see *Pacific Carbon Trust Inc v Carbon Trust* (2013), 116 CPR (4th) 1 (FCTD) at para 68; see also *Barbara Lee Murray v Guide Outfitters Association of British Columbia*, 2021 TMOB 63, 183 CPR (4th) 201 at para 49]. In the present case, since I have concluded that there was no use of the Opponent’s trademark DIVERT in Canada in association with any goods or services prior to the material date, for essentially the same reasons I conclude that there was no use of the trade name DIVERT in Canada prior to the material date.

#### Conclusion re Sections 16(1)(a) and (c) Grounds

[54] In view of the above, the Opponent has not met its initial evidential burden under the sections 16(1)(a) and (c) grounds of opposition, and these grounds are therefore rejected.

#### **Section 2 Ground of Opposition**

[55] It is well established that in order to meet its initial evidential burden under this ground, an opponent must show that its mark had a substantial, significant or sufficient reputation in Canada in association with relevant goods and/or services, prior to the date of the statement of opposition [*Bojangles’ International, LLC and Bojangles Restaurants, Inc v Bojangles Café Ltd*, 2006 FC 657, 48 CPR (4th) 427 (FC) at para 34].

[56] In the present case, the Opponent has not provided sufficient evidence from which I could assess the extent of its reputation in Canada, if any, in the trademark or trade name

DIVERT, as is necessary to meet the Opponent's initial evidential burden. For example, I have no total or annual sales figures or advertising figures in Canada for the Opponent's business that would permit me to assess the scope of any reputation. I do not consider the Opponent's evidence of 400 Canadian visitors to the Opponent's website between April 2016 and March 2018 to be sufficient to demonstrate a substantial, significant or sufficient reputation in Canada in accordance with *Bojangles, supra*. Consequently, I reject the section 2 ground of opposition as the Opponent has failed to meet its initial evidential burden.

DISPOSITION

[57] Pursuant to the authority delegated to me under section 63(3) of the Act, I reject the opposition pursuant to section 38(12) of the Act.

---

Timothy Stevenson  
Member  
Trademarks Opposition Board  
Canadian Intellectual Property Office

SCHEDULE A

**Application No. 1,795,727 for Divert NS**

**Services**

(1) Developing and providing education and awareness programs in the field of waste diversion, and reducing, reusing, recycling and recovering resources; providing expertise in the field of waste diversion, and reducing, reusing, recycling and recovering resources such as paper and packaging, beverage containers, used tires, used clothing and textiles, and household hazardous waste, including recycling systems for used tires, recycling systems for future stewarded materials and stewardship programs, and composting; developing and implementing stewardship agreements in the field of waste diversion, and reducing, reusing, recycling and recovering resources, including in partnership with municipalities and industry; providing funding for research and development in the field of waste diversion, and reducing, reusing, recycling and recovering resources; promotion of innovation by providing financial assistance to businesses, municipalities, academia and NGOs for the purpose of supporting the development of value-added products from materials recovered from the waste stream; operation of a deposit and refund system for beverage containers; funding support for waste diversion programs; developing and implementing province-wide awareness initiatives for composting, paper recycling, used tires, used clothing and textiles, and household hazardous waste.

SCHEDULE B

**Opponent's Goods and Services Identified in the Whitman Affidavit**

- Waste treatment services; treatment and management of waste materials for energy production; treatment and management of waste materials for the manufacture of fertilizer; waste to energy generation services; food waste recovery, treatment, management, namely, food waste processing and recycling services; recycling; waste processing services; organic waste management; turnkey operations for food waste processing facilities, namely, processing third party materials in the nature of food waste, recycling, and food donations;
- Software as a service (SAAS) services featuring software for collecting, processing, monitoring, tracking, managing and reporting data about recycling services, waste treatment services, the treatment and management of materials for energy production, the treatment and management of materials for the manufacture of fertilizer, waste to energy generation services, food waste recovery, treatment, management, and recycling services, waste processing, and organic waste management; software as a service (SAAS) services featuring software for optimizing recycling services, waste treatment services, the treatment and management of materials for energy production, the treatment and management of materials for the manufacture of fertilizer, waste to energy generation services, food waste recovery, treatment, management, and recycling services, waste processing, and organic waste management;
- Software as a service (SAAS) services featuring software for collecting, compiling, processing, monitoring, tracking, analyzing, and reporting data about product inventory and unsold items from businesses;
- Providing business intelligence services; collecting, compiling, processing, monitoring, analyzing, tracking and reporting business data; collecting, compiling, processing, monitoring, analyzing, tracking and reporting data about product inventory and unsold items for business purposes;
- Radio frequency identification (RFID) tags, chips and readers.



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

---

**HEARING DATE** No Hearing Held

**AGENTS OF RECORD**

Gowling WLG (Canada) LLP

For the Opponent

Kirby Eades Gale Baker

For the Applicant