

LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADEMARKS

Citation: 2021 TMOB 239

Date of Decision: 2021-10-28

IN THE MATTER OF A SECTION 45 PROCEEDING

Ahmed Bulbulia

Requesting Party

and

Maria Cristina Enrietti-Zoppo

Registered Owner

TMA737,671 for CEZ

Registration

INTRODUCTION

[1] This is a decision involving a summary expungement proceeding with respect to registration No. TMA737,671 for the trademark CEZ (the Mark).

[2] The Mark is registered for use in association with the following goods and services:

GOODS

(1) Printed labels.

(2) Banners.

SERVICES

- (1) Computer programming.
- (2) Translation services.
- (3) Property management.
- (4) Desing [*sic*] printing.
- (5) Operation of a website in any language, offering information in the fields listed as follows: Printed labels, Banners, Computer programming, Translations, Property management, Design printing, Entertainment exhibitions of live and prerecorded music and speeches, Recording and Production (Audio and Video), Teaching in the fields of music, languages, scientific subjects and technical subjects, namely: Computer programming, Desktop publishing, Digital imaging, Domain name registration, Electronic imaging, Electronic mail services, Electronic voice messaging services, Graphic art services, Language interpreting, Preparing audio-visual presentations, Translations, Word processing.
- (6) Teaching in the fields of music, languages, scientific subjects and technical subjects, namely: Computer programming, Graphic arts, Language interpreting, Preparing audio-visual presentations, Translations.
- (7) Teaching in the fields of technical subjects, namely: Desktop publishing, Digital imaging, Domain name registration, Electronic imaging, Electronic mail, Electronic voice messaging, Word processing.
- (8) Entertainment exhibitions of live and prerecorded music and speeches.
- (9) Recording and production (audio and video).

[3] For the reasons that follow, I conclude that the registration ought to be amended.

THE PROCEEDING

[4] At the request of Ahmed Bulbulia (the Requesting Party), the Registrar of Trademarks issued a notice on July 26, 2018, pursuant to section 45 of the *Trademarks Act*, RSC 1985, c T-13 (the Act) to Maria Cristina Enrietti-Zoppo (the Owner).

[5] The notice required the Owner to show whether the Mark was used in Canada in association with the goods and services specified in the registration at any time within the three-year period immediately preceding the date of the notice and, if not, the date when it was last in

use and the reason for the absence of such use since that date. In this case, the relevant period for showing use is between July 26, 2015 and July 26, 2018.

[6] In response to the Registrar's notice, the Owner submitted affidavits in her own name, sworn on October 23, 2018 in Toronto, Ontario.

[7] No written representations were filed. Both parties attended an oral hearing.

PRELIMINARY REMARKS REGARDING THE OWNER'S EVIDENCE

[8] The evidence in this case is somewhat unusual, as the Owner submitted multiple affidavits in her own name, bound together as a single document. Each affidavit is sworn and notarized, and briefly presents the "attachment" which follows each affidavit (which I will sometimes refer to as exhibits in this decision). The attachments are not notarized, and the documents they contain are not identified with cover pages or otherwise separated from each other.

[9] By way of example, in her first affidavit, Ms. Enrietti-Zoppo attests: "the contents of the attached submission are true to the best of my knowledge and belief." The attachment consists of a letter addressed to the Canadian Intellectual Property Office (CIPO) which essentially sets out how the remainder of the evidence – which she identifies as Attachments 1 through 7 – relates to each of the registered goods and services. I will refer to this affidavit as the First Affidavit.

[10] At the hearing, the Requesting Party submitted as a preliminary matter that, given the "unconventional" nature of the evidence, the exhibits are not notarized and are improperly identified. As a result, the Requesting Party argues that statements made therein (such as in the First Affidavit letter) are unsworn and should therefore be given no weight.

[11] However, to the extent that Ms. Enrietti-Zoppo describes the exhibits in her affidavits and I am able to identify them, I am prepared to accept such exhibits as part of the evidence [see *Borden & Elliot v Raphaël Inc* (2001), 16 CPR (4th) 96 (TMOB) where the Registrar accepted exhibited evidence that was not clearly identified as exhibits, and did not bear the signature of

the commissioner for taking oaths]. In coming to this conclusion, I am mindful of the principle that technical deficiencies in an affidavit should not stop a party from successfully responding to a section 45 notice where there is sufficient evidence to conclude the trademark was in use [*Baume & Mercier SA v Brown* (1985), 4 CPR (3d) 96 (FC)].

[12] The Requesting Party also identifies a number of purported ambiguities in the affiant's statements which it submits affect the credibility and reliability of the evidence. I will specifically address these issues below in the analysis.

OVERVIEW OF THE AFFIDAVITS

[13] The contents of the attachments are outlined below:

- The First Affidavit letter, wherein Ms. Enrietti-Zoppo provides explanations as to her offer and performance of each of the registered goods and services. Her statements with respect to each of these goods and services will be discussed in the relevant sections of the analysis below.
- Attachment 1, which is described by Ms. Enrietti-Zoppo as “reproductions of selected webpages”, consists of two webpage printouts dated 22-Oct-18 relating to the Owner's “currently active” website located at *www.cez.com*; a one-page document presenting the Owner as a soprano vocalist; printouts from two third-party websites (*www.nigritelles.com* and *www.mohairafrika.com*); and an invoice issued by “C.E.Z. INCORPORATED” to a client located in Toronto, Canada for “programming and maintenance services relating to the website MOHAIRAFRICA.COM from 1 January to February 28, 2017”. The main texts of the webpage printouts from *www.cez.com* are reproduced below.

<p>CEZ® business activities</p> <p><u>Affordable apartments, flats, rooms for rent in Toronto, Ontario, Canada</u></p> <p><u>Apartments for rent in Aosta, Italy</u></p> <p><u>Intraoral welder Implant-Weld 300</u></p> <p>Translations and interpretation Languages: Italian, English, French. ATIO & Canadian Government certified. General, technical expertise.</p> <p>Music production in Toronto, Ontario, Canada <u>Cristina Enrietti - Singer of Italian Classics</u></p> <p><u>Coro San Marco - Music download</u></p> <p>Music production in Italy <u>Carlo Enrietti</u></p>	<p>Translations and Interpretation: Italian, English, French</p> <p>Extensive experience in translations and interpretation. Specialized in technical manuals. M tongues: Italian and French.</p> <p>Language Combinations * From English to Italian * From Italian to English * From French to English * From French to Italian</p> <p>Qualifications * ATIO certification * Accreditation by Solicitor General Canada * Interpretation training by the Department of the Secretary of State of Canada</p> <p>Our references include: Microsoft, Glasstech, Bessel, EH-101 helicopter manufacturers, Ca Federal Government, Ontario Provincial Government, Toronto's Italian Consulate, and oth</p> <p>For an estimate please contact: Cristina Enrietti-Zoppo at her Toronto, Canada telephone number: 416-925-8570 e-mail: cris@cez.com</p>
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- Attachment 2, which consists of a webpage printout from the Association of Translators and Interpreters of Ontario (ATIO) website providing information on the Owner; a list of translators, including the Owner, that are accepted by the consulate of Italy in Toronto; an e-mail to the Owner providing her formal appointment as an interpreter at the leadership debate held in August 2015 together with an invoice issued by “C.E.Z. INCORPORATED” for those interpretation services; a copy of the Owner’s ATIO membership card; a redacted bank account statement for “C E Z Inc”; and a copy of the Ms. Enrietti-Zoppo’s nametag for the visit of the President of the Italian Republic to Canada in June 2017.
- Attachment 3, which consists of a copy of a “Property Management Agreement” dated November 30, 2010, between “C.E.Z. Inc.” and a numbered Ontario company, relating to the management of properties located in Toronto, Ontario.
- Attachment 4, which consists of printouts of two webpages (reproduced below) from what Ms. Enrietti-Zoppo attests is an “alternate” version of the website located at www.cez.com.

CEZ® business activities

Affordable apartments, flats, rooms for rent in Toronto, Ontario, Canada

Apartments for rent in Aosta, Italy

Intraoral welder Implant-Weld 300

Translations and interpretation
Languages: Italian, English, French. ATIO & Canadian Government certified. General, technical expertise.

Music production in Toronto, Ontario, Canada
Cristina Enrietti - Singer of Italian Classics

Music production in Italy
Carlo Enrietti


Other activities

Interactive Small Business Management workshops

Consecutive interpretation workshops – English <> French

Voice lessons – Music reading lessons

Other CEZ® business activities



Interactive Small Business Management workshops
 Next offer: 9-10 February 2018
 Subject to registration of 3 participants. Maximum number of participants: 5.

You will learn the basics of:

- * Website construction with commercial software
- * Domain registration
- * Use of the most common office desktop software for word processing, presentations, graphic imaging, online communications
- * Use and limitations of online language translation software.

This workshop does not include bookkeeping.

Consecutive interpretation workshops – Languages: English <> French
 Next offer: 16-17 February 2018
 Subject to registration of 3 participants. Maximum number of participants: 5.

You will learn the basics of:

- * How to take notes while doing interpretation work
- * How to behave while interpreting, not to influence the participants
- * Code of ethics regarding interpretation activities
- * Billing practices

Individual voice lessons for high voices
 Offered on Saturday afternoons
 Lessons about reading music scores are available.

For further information and registrations, please contact:
 cris@cez.com

- Attachment 5, which consists of course evaluation forms and a handwritten note. The forms display a one-line footnote which reads: “CEZ Inc. – 48 Oxford Street, Toronto, ON M5T 1N9 – 416-925-8570 – cris@cez.com” and appear to pertain to a *Small Business Management Workshop* on February 9 and 10, 2018 and a *Consecutive Interpretation workshops – Languages: English <> French* on February 16 and 17, 2018. Ms. Enrietti-Zoppo attests that the forms are “course evaluation forms filled by students attending CEZ courses in the winter 2018”. The last document is a handwritten note dated September 11, 2018 which appears to have been drafted by a student confirming that they had “taken music reading lessons from Cristina Enrietti from January to March 2018”.
- Attachment 6, which consists of a copy of what Ms. Enrietti-Zoppo attests is a “thank you card given to [her] by Clients [she] entertained on a birthday party held on January 27, 2018”. The Mark is not displayed or referenced.

- Attachment 7, which consists of a printed label and banner, which Ms. Enrietti-Zoppo describes as “samples” of the registered goods. I note that a stylized version of the Mark appears on the exhibits. However, Ms. Enrietti-Zoppo attests in her First Affidavit that such goods were only “distributed as advertising materials to Clients of my diverse activities”. Furthermore, she does not identify specific services advertised in this matter.

ANALYSIS

Use of the Mark in association with the registered goods

[14] With respect to the registered goods, the relevant definition of use in this case is set out in section 4(1) of the Act as follows:

4(1) A trademark 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.

[15] It has been held that the free distribution of a good merely to promote one’s own brand does not constitute a transfer in the normal course of trade; for such distribution to qualify as a transfer in the normal course of trade, the evidence must show that the good was delivered not merely as a means of promoting other products or services, but as an object of trade in itself [see, for example, *Billboard IP Holdings, LLC v 7320094 Canada Inc*, 2020 TMOB 1 at para 21].

[16] In this case, as confirmed by the Owner in her affidavit, the registered goods were not transferred as objects of trade in themselves, but only as a means of promoting the Owner’s “diverse activities”.

[17] Accordingly, I am not satisfied that the Owner used the Mark in association with the registered goods, namely “Printed labels” and “Banners”, within the meaning of sections 4 and 45 of the Act. As there are no special circumstances excusing non-use of the Mark before me, both registered goods will be deleted.

Use of the Mark in association with the registered services

[18] With respect to the registered services, the definition of use is set out in section 4(2) of the Act as follows:

4(2) A trademark is deemed to be used in association with services if it is used or displayed in the performance or advertising of those services.

[19] In order to conclude to use of a trademark in association with services in the absence of actual performance of the services, the evidence must show not only that the services had been advertised but also that the owner was willing and able to perform the services in Canada during the relevant period [*Wenward (Canada) Ltd v Dynaturf Co* (1976), 28 CPR (2d) 20 (TMOB)].

[20] I will address each of the registered services in turn.

Services (1) - Computer programming

[21] With respect to services (1), “Computer programming”, Ms. Enrietti-Zoppo attests in her First Affidavit that she designed and programmed several websites. She also refers to the Attachment 1 webpage printouts as “examples of the websites [she] programmed in the past 3 years”. Ms. Enrietti-Zoppo also attests that she billed her services under the name “C E Z Inc”.

[22] It is clear that the Owner provided computer programming services during the relevant period. The issue is whether she did so *in association with the Mark* within the meaning of section 4(2) of the Act.

[23] At the hearing, the Requesting Party submitted that none of the evidence shows display of the Mark in association with computer programming services. Indeed, I note that the exhibited webpages from the Owner’s websites do not refer to computer programming services, nor do the exhibited printed labels and banners.

[24] For its part, the Owner simply argued that the Mark is “clearly displayed” at the top of the Attachment 1 invoice. That invoice’s heading is reproduced below:

C.E.Z. INCORPORATED
48 Oxford Street, Toronto, Ontario, M5T 1N9
Telephone: (416) 925-8570 - Email: cris@cez.com

[25] In this regard, the Requesting Party argued that, first, the invoice displays the trade name C.E.Z. INCORPORATED rather than the Mark as registered and, second, the evidence provides no information regarding the relationship between the Owner and C.E.Z. INCORPORATED, such as whether the Owner exercised any type of control over the quality of any services performed by C.E.Z. INCORPORATED.

[26] On the Requesting Party's second point, I note that this is not a case where services have been performed by an entity other than the Owner. Instead, the Owner provides multiple sworn statements that she billed her services "under the name C E Z Inc." and provides invoices which are consistent with this statement. I also note that the address displayed on the invoice for C.E.Z. Incorporated is identical to the Owner's address.

[27] Considering the evidence as a whole, it is clear that the Owner herself performed, offered, and advertised her services, and simply billed those services under a different trade name or entity, being C.E.Z. Incorporated. I note here that there is no requirement under the Act for the name of the registered owner to appear in association with the trademark [see *Vogue Brassiere Inc v Sim & McBurney* (2000), 5 CPR (4th) 537 (FCTD) at para 36].

[28] That being said, there remains the question of whether the display of the trade name C.E.Z. INCORPORATED constitutes use of the Mark as registered.

[29] Even if I were to accept the addition of periods as a minor deviation from the Mark, "C.E.Z." is not presented on the invoice in a manner which sets it apart from the trade name "C.E.Z. INCORPORATED", or in such a manner that the Mark stands out in any way [see *Nightingale Interloc Ltd v Prodesign Ltd* (1984), 2 CPR (3d) 535 (TMOB) regarding the factors

to consider when determining whether the public would, as a matter of first impression, perceive the trademark *per se* as being used].

[30] While trademark and trade name usage are not necessarily mutually exclusive, I find that in this particular case, the average consumer would perceive “C.E.Z. INCORPORATED” as the mere identification of a legal entity, rather than the display of the Mark *per se* [see *Road Runner Trailer Manufacturing Ltd v Road Runner Trailer Co* (1984), 1 CPR (3d) 443 (FCTD); *Consumers Distributing Co/Cie Distribution aux Consommateurs v Toy World Ltd*, 1990 CarswellNat 1398 (TMOB); *Borden Ladner Gervais LLP v GDC Communities*, 2015 TMOB 50 at para 20].

[31] My finding is reinforced when considering the fact that the trade name also appears at the bottom of the invoice in a note which reads: “Please pay to C.E.Z. Incorporated, at the [address shown in the invoice heading]”.

[32] I am therefore not satisfied that the Owner has demonstrated use of the Mark in association with services (1), namely “Computer programming”, within the meaning of section 4(2) of the Act. As there are no special circumstances before me excusing non-use of the Mark, these services will be deleted from the registration.

Services (2) - Translation services

[33] In her First Affidavit, Ms. Enrietti-Zoppo refers to the Attachment 2 materials, such as her membership card to the ATIO and an invoice for the simultaneous interpretation services offered by Ms. Enrietti-Zoppo at a debate held on August 6, 2015, as documents pertaining to her translation services. In the same affidavit, Ms. Enrietti-Zoppo attests that she bills all of her “translation and interpretation services under the name C E Z Inc.”

[34] I note that the Attachment 2 invoice is very similar to the Attachment 1 invoice in that it displays “C.E.Z. INCORPORATED” together with corporate information at the top, and indicates that the invoice should be paid to “C.E.Z. Incorporated”. Consequently, for the same reasons as those set out with respect to computer programming services, I find that the invoice

merely displays the trade name C.E.Z. Incorporated and does not constitute use of the Mark *per se*.

[35] Having said that, in contrast to my conclusion with respect to computer programming services, I note that “Translation and interpretation” services are listed as part of the “CEZ® business activities” on the exhibited webpages from the Owner’s websites, namely the “currently active” website (Attachment 1) and the “alternate website version” (Attachment 4). In her First Affidavit, Ms. Enrietti-Zoppo explains that she posts the alternate version of her website when her translation business slows down, typically in the winter season, in order to promote her “alternative activities” such as teaching workshops. While these printouts are undated, I note that a webpage on this alternate website version promotes two workshops to be held over the course of four days in February 2018.

[36] The Requesting Party argues that the website evidence provided by the Owner is unreliable because Ms. Enrietti-Zoppo does not indicate (i) who printed the website excerpts, (ii) that the printouts are representative of the manner in which the webpages appeared during the relevant period, and (iii) how many Canadians, if any, visited the exhibited webpages. In support of the latter point, the Requesting Party relies on the principle set out in *Ridout & Maybee LLP v Residential Income Fund LP*, 2015 TMOB 185, namely that the mere existence of a webpage is, in itself, insufficient to constitute advertising within the meaning of section 4(2) of the Act.

[37] First, I do not consider who physically printed the exhibited webpages to be relevant. Ms. Enrietti-Zoppo’s sworn statements regarding the printouts are sufficiently clear to conclude that they correspond to excerpts from the Owner’s website, *www.cez.com*.

[38] Second, although Ms. Enrietti-Zoppo does not indicate whether the printouts are representative of the manner in which the webpages appeared during the relevant period, the Attachment 4 webpage excerpt promotes workshops in February 2018, that is to say, during the relevant period.

[39] Third, while I agree with the Requesting Party that a website must be “distributed to” or accessed by prospective customers in order to constitute advertising [see, for example, *Shift Law v Jefferies Group, Inc*, 2014 TMOB 277], I find that there is sufficient evidence in this case to conclude that Canadians accessed the Owner’s website during the relevant period. Indeed, a clear statement that customers accessed the webpages may be sufficient, but as noted in *Ridout & Maybee LLP, supra*, in the alternative, there should be some evidence from which access can be reasonably inferred.

[40] In this case, Ms. Enrietti-Zoppo attests in her First Affidavit that she “verbally” offers her alternative activities to her translation clients and that she details these activities in the alternate website version that she posts “when necessary”. As such, I find it reasonable to infer that the website was accessed during the relevant period by customers and potential customers in Canada, given that Ms. Enrietti-Zoppo directed her clients to the website for more detailed information about her services.

[41] While I do not accept the exhibited invoice as constituting display of the Mark *per se*, I accept that the invoice demonstrates that, at a minimum, the Owner was able to and did perform the translation services advertised on the Owner’s website in association with the Mark during the relevant period [*per Wenward (Canada) Ltd, supra*].

[42] In view of the above, I am satisfied that the Owner has demonstrated use of the Mark in association with services (2), “Translation services”, within the meaning of sections 4(2) and 45 of the Act.

Services (3) - Property management

[43] With respect to services (3), “Property management”, the Owner attests in her First Affidavit that she manages 11 store locations in Toronto for the benefit of a numbered Ontario company and explains that she bills and is paid for such services “under the name C E Z Inc.” In support, she refers to the Attachment 3 “Property Management Agreement” dated November 30, 2010, which she attests remains in effect. The agreement displays a heading similar to that of the

aforementioned invoices, albeit with the first line displaying “C.E.Z. INC.” instead of C.E.Z. INCORPORATED. I also note that the text refers to the obligations and responsibilities of “C.E.Z. INC.” under the agreement.

[44] As with the invoices, “C.E.Z.” is not presented on the agreement in a manner which sets it apart from the trade name “C.E.Z. INC.”, or in such a manner that the Mark stands out in any way. In any event, although the agreement remains in force, the document was signed prior to the relevant period and as such could not itself constitute display of the Mark in the advertisement or performance of services during the relevant period [see *Conergy AG v ATCO Electric Ltd*, 2013 TMOB 139 at para 9 for a similar conclusion].

[45] Further, there is no clear evidence that the Owner’s property management services were ever advertised otherwise. On this point, I note that the website evidence shows “Affordable apartments, flats, rooms for rent in Toronto, Ontario, Canada” and “Apartments for rent in Aosta, Italy” as part of the “CEZ® business activities”. However, these items appear to be advertisements for properties available to rent, rather than advertisements of the Owner’s property management services. Without further evidence on this point, I am unable to conclude that these items relate to the particular registered services “property management”.

[46] I am therefore not satisfied that the Owner has demonstrated use of the Mark in association with services (3), namely “Property management”, within the meaning of sections 4(2) and 45 of the Act. As there are no special circumstances before me excusing non-use of the Mark, these services will be deleted.

Services (4) - Design printing

[47] With respect to services (4), misspelled in the registration as “Desing printing”, Ms. Enrietti-Zoppo explains in her First Affidavit that design printing is “necessary in the context of translations, when the text and the images embedded in [the translation] require rendering the original for a precise reproduction”. She further explains that “examples of the

printing capabilities of [her] equipment” are shown in some of the attachments and specifically refers to Attachment 1 as one such example.

[48] In other words, design printing services would appear to only *sometimes* be required, and the evidence is silent as to whether they were, in fact, required or performed during the relevant period as part of any translation services performed by the Owner.

[49] In addition, as was the case for computer programming services, the Owner’s website does not advertise design printing services *per se*.

[50] I am therefore not satisfied that the Owner has demonstrated use of the Mark in association with services (4), namely “Desing [*sic*] printing”, within the meaning of sections 4(2) and 45 of the Act. As there are no special circumstances before me excusing non-use of the Mark, these services will be deleted.

Services (5) - Operation of a website [...]

[51] Services (5) is as follows:

Operation of a website in any language, offering information in the fields listed as follows: Printed labels, Banners, Computer programming, Translations, Property management, Design printing, Entertainment exhibitions of live and prerecorded music and speeches, Recording and Production (Audio and Video), Teaching in the fields of music, languages, scientific subjects and technical subjects, namely: Computer programming, Desktop publishing, Digital imaging, Domain name registration, Electronic imaging, Electronic mail services, Electronic voice messaging services, Graphic art services, Language interpreting, Preparing audio-visual presentations, Translations, Word processing.

[52] While I note some ambiguity in the phrasing of services (5), given the scope of services (6) and the submissions of the parties, I accept that services (5) is properly read as being with respect to the operation of a website offering information in enumerated fields, rather than any listing of services otherwise. For example, services (5) is not with respect to “Word processing” services *per se*, but rather the “Operation of a website ... offering information in the [field of] Word processing”.

[53] With respect to such website services, Ms. Enrietti-Zoppo explains in her First Affidavit that “most advertising is done by websites” and indicates that some of her “activities” relating to services (5) are “detailed in Attachments 1 and 2”.

[54] With respect to the “operation of a website”, I accept Ms. Enrietti-Zoppo’s sworn statement that she occasionally posts the alternate version of her website as evidence of her operating that website. However, based upon my review of Attachments 1 and 4, I note that the Owner’s website does not offer information in the many fields listed in the registration such as “music” or “languages”. Instead, the exhibited webpages (reproduced above) display little more than a promotional listing of services offered by the Owner.

[55] Likewise, even if I were to accept that the Owner operated the third-party websites *www.mohairafrika.com* and *www.nigritelles.com*, the exhibited webpage printouts from these websites do not offer information in any of the registered fields.

[56] Consequently, I am not satisfied that the Owner has demonstrated use of the Mark in association with services (5) within the meaning of sections 4(2) and 45 of the Act. As there are no special circumstances excusing non-use of the Mark, these services will be deleted.

Services (6) and (7) – Teaching in the fields of [...]

[57] In the First Affidavit, below the headings of services (6) and of services (7), Ms. Enrietti-Zoppo states that “these are some of the activities [she is] able to perform, and often [is] requested to teach them, by people who acknowledge [her] experience in such fields”. In other words, she essentially indicates that she is proficient in the fields listed in the registered “teaching” services (6) and (7), and that she has taught in these fields. After these statements, she simply states “See Attachment 5”, referring to the handwritten note drafted by a student and the course evaluation forms.

[58] At the hearing, the Requesting Party questioned the authenticity of the exhibited course evaluation forms, noting the similar handwriting across the different forms. However, Ms. Enrietti-Zoppo provides the sworn statement that the forms were “filled by students” and it

is a well-established principle that an affiant's statements are to be accepted at face value and must be accorded substantial credibility in a section 45 proceeding [see *Oyen Wiggs Green & Mutala LLP v Atari Interactive Inc*, 2018 TMOB 79 at para 25].

[59] I note that the course names displayed on the course evaluation forms and their dates match the two workshops advertised on a webpage of the Owner's alternate website, namely an *Interactive Small Business Management* workshop and an "English < > French" *Consecutive interpretation* workshop. The subjects covered in these workshops are outlined on that webpage, alongside the aforementioned stylized version of the Mark. The same webpage also offers "Individual voice lessons for high voices" and "Lessons about reading music scores".

[60] Although "CEZ Inc." is displayed in the course evaluation form footnotes, for the same reasons as those set out with respect to computer programming services, I find that this does not constitute use of the Mark *per se*. Nevertheless, I am prepared to accept the forms as evidence that the Owner was able to and did perform some of the registered teaching services during the relevant period, as advertised on the Owner's website in association with the Mark.

[61] Based on the description of the scheduled workshops and lessons offered on the website, I accept that the Owner has demonstrated use of the Mark within the meaning of sections 4(2) and 45 of the Act in association with the following services:

(6) "Teaching in the fields of music, languages, ... technical subjects, namely: Computer programming, Graphic arts, Language interpreting, Preparing audio-visual presentations, Translations", and

(7) "Teaching in the fields of technical subjects, namely: Desktop publishing, Digital imaging, Domain name registration, Electronic imaging, Electronic mail, Electronic voice messaging, Word processing."

[62] In coming to that conclusion, I am mindful of the principle that, when interpreting a statement of services in a section 45 proceeding, one is not to be "astutely meticulous when dealing with [the] language used" [see *Aird & Berlis LLP v Levi Strauss & Co*, 2006 FC 654 at para 17].

[63] On the other hand, the evidence is silent with respect to the field of “scientific subjects”. This field is not specifically referenced by Ms. Enrietti-Zoppo, other than being included in her identification of the registered services, and is nowhere identified in the supporting evidence.

[64] As such, I am not satisfied that the Owner has demonstrated use of the Mark in association with part of services (6), namely “[Teaching in the fields of ...] scientific subjects” within the meaning of sections 4(2) and 45 of the Act. As there are no special circumstances before me excusing non-use of the Mark, “scientific subjects” will be deleted.

Services (8) - Entertainment exhibitions of live and prerecorded music and speeches

[65] In the First Affidavit, Ms. Enrietti-Zoppo explains that the registered “Entertainment exhibitions” are provided “when requested”. She makes no reference to the Mark and whether it was displayed in the performance or advertisement of such services.

[66] With respect to advertising, the CEZ® business activities page of the Owner’s website identifies “Cristina Enrietti – Singer of Italian Classics” immediately below the heading “Music production in Toronto”. However, without further evidence, I am not prepared to accept this simple reference to Ms. Enrietti-Zoppo as a singer as constituting advertising for the registered services “Entertainment exhibitions of live and prerecorded music and speeches”.

[67] In addition, I note that Attachment 1 includes a document which outlines Ms. Enrietti-Zoppo’s background and experience as a soprano vocalist, along with the services she offers in relation to musical performances. However, the significance of this document is at best unclear. While Ms. Enrietti-Zoppo describes Attachment 1 as “reproductions of selected pages” of the websites located at *www.cez.com*, *www.mohairafrika.com* and *www.nigritelles.com*, the attachment includes more than webpage printouts (e.g. the aforementioned invoice for website programming services). I also note that, unlike other exhibited webpage printouts in the attachment, the document in question does not display any page headers or footers indicating that it was printed from the Owner’s website. Accordingly, I am not prepared to accept that this page emanates from the Owner’s website. Moreover, if this

document was some sort of flyer or advertisement, there is no evidence regarding its distribution to Canadians during the relevant period or otherwise.

[68] Before proceeding, I also note that Ms. Enrietti-Zoppo indicated, at the hearing and in her First Affidavit, that recordings of her performances exist but that she was unable to file such recordings because evidence on digital media is not accepted by CIPO. I would first mention that the Registrar accepts evidence in a variety of formats, in particular through CIPO's e-filing system. In any event, the question is not only whether Ms. Enrietti-Zoppo performed the registered services, but that she did so in association with the Mark. Even without submitting recordings, the Owner was free to provide factual particulars regarding the services she performed, such as dates and locations of her performances, and how the Mark was used or displayed in association with such "exhibitions". In this case, there is no such evidence.

[69] In view of the above, I am not satisfied that the Owner has demonstrated use of the Mark in association with services (8), namely "Entertainment exhibitions of live and prerecorded music and speeches", within the meaning of sections 4(2) and 45 of the Act. As there is no evidence of special circumstances before me, these services will be deleted.

Services (9) - Recording and production (audio and video) services

[70] With respect to "Recording and production (audio and video) services", Ms. Enrietti-Zoppo attests in her First Affidavit that her language interpretation and musical activities "may be recorded and broadcast upon Clients' requests" and refers the reader to Attachment 1 as one example of an "interpretation broadcast". Ms. Enrietti-Zoppo does not explain how Attachment 1, which comprises of webpage printouts, an invoice for website programming services and the page presenting the Owner as a soprano vocalist, relates to these "recording and production" services.

[71] In any event, there is no evidence demonstrating that the Owner has herself ever performed audio/video recording and production services, let alone in association with the Mark.

[72] Even if I were to accept the item simply titled “Music production in Toronto, Ontario, Canada” on the Owner’s website as advertising of the registered services “Recording and production (audio and video) services”, the evidence provides insufficient details to allow me to conclude that the Owner was willing and able to perform the particular “recording and production” services as registered during the relevant period in Canada [*per Wenward (Canada) Ltd, supra*].

[73] As such, I am not satisfied that the Owner has demonstrated use of the Mark in association with services (9), namely “Recording and production (audio and video) services”, within the meaning of sections 4(2) and 45 of the Act. As there is no evidence of special circumstances before me, these services will be deleted.

DISPOSITION

[74] Pursuant to the authority delegated to me under section 63(3) of the Act, and in compliance with the provisions of section 45 of the Act, the registration will be amended to delete the entirety of the registered goods, as well as the following registered services:

- (1) Computer programming.
- (3) Property management.
- (4) Design printing.
- (5) Operation of a website in any language, offering information in the fields listed as follows: Printed labels, Banners, Computer programming, Translations, Property management, Design printing, Entertainment exhibitions of live and prerecorded music and speeches, Recording and Production (Audio and Video), Teaching in the fields of music, languages, scientific subjects and technical subjects, namely: Computer programming, Desktop publishing, Digital imaging, Domain name registration, Electronic imaging, Electronic mail services, Electronic voice messaging services, Graphic art services, Language interpreting, Preparing audio-visual presentations, Translations, Word processing.
- (6) ... scientific subjects and...
- (8) Entertainment exhibitions of live and prerecorded music and speeches.

(9) Recording and production (audio and video).

[75] The Mark will now be registered in association with the following services:

(2) Translation services.

(6) Teaching in the fields of music, languages, technical subjects, namely: Computer programming, Graphic arts, Language interpreting, Preparing audio-visual presentations, Translations.

(7) Teaching in the fields of technical subjects, namely: Desktop publishing, Digital imaging, Domain name registration, Electronic imaging, Electronic mail, Electronic voice messaging, Word processing.

Eve Heafey
Hearing Officer
Trademarks Opposition Board
Canadian Intellectual Property Office

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

HEARING DATE: September 21, 2021

APPEARANCES

Maria Cristina Enrietti-Zoppo

For the Registered Owner

Ahmed Bulbulia

For the Requesting Party

AGENTS OF RECORD

No agent appointed

For the Registered Owner

Ahmed Bulbulia

For the Requesting Party