



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2023 TMOB 051

Date of Decision: 2023-03-16

UNREVISED ENGLISH

CERTIFIED TRANSLATION

IN THE MATTER OF OPPOSITIONS

Opponent: Veritas Technologies LLC

Applicant: Bureau Veritas, société anonyme

Applications: 1,749,967 for BUREAU VERITAS 1828 & Design, and
1,749,968 for BUREAU VERITAS

INTRODUCTION

[1] Veritas Technologies LLC (the Opponent) opposes registration of the trademarks BUREAU VERITAS 1828 & Design, illustrated below, and BUREAU VERITAS (collectively, the Marks), the subjects under applications No. 1,749,967 and 1,749,968 respectively.



[2] Each of the applications, in the name of Bureau Veritas, société anonyme (the Applicant), is based on the use and registration of the trademark in France in relation to services. The services associated with each application are identical. The statement of services, including the Nice class (CI) is reproduced below:

[Translation]

CI 42 All technical provision of auditing, namely expertise, testing, certification, analysis, inspection, control, evaluation, diagnostics, all these services being in the field of security, protection, availability, performance, use of intranet and Internet networks, websites, software applications, computer software, related objects, namely webcams, mobile devices, namely cellular telephones, tablets, and smart watches, computers and all transactional services such as online payment services and banking services; design, development, operation, preventive, progressive, curative maintenance of software, software packages, software applications, databases, websites, multimedia works, electronic and computer platforms; study and evaluation of computer projects, namely design and development of wireless computer networks, design, installation, updating, and maintenance of computer software (the Services).

[3] In general, the opposition to each application is based primarily on allegations of confusion between the Marks and the Opponent's trademarks VERITAS (Nos. TMA804,307 and 1,697,454) and VERITAS & Design (Nos. TMA568,853 and TMA611,903) for goods and services in the informatics field.

[4] For the following reasons, I find that the opposition to application No. 2,749,967 ought to be rejected and that application No. 1,749,968 ought to be refused.

THE FILES

[5] Each application was filed on October 9, 2015, and claims the priority filing date of July 1, 2015. The applications were advertised in the Trademarks Journal for opposition purposes on January 4, 2017.

[6] Each of the statements of opposition were filed on March 5, 2018, under section 38 of the *Trademarks Act*, RSC 1985, c. T-13 (the Act), which was amended on June 17, 2019. Consequently, all references to the Act in this decision are to the Act as amended, with the exception of references to grounds of opposition that 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.]

[7] In each case, the Applicant filed a counter statement denying the grounds of opposition.

[8] The Opponent filed evidence in each case, while the Applicant did not file any evidence.

[9] Neither party filed written representations. Both parties were represented at the hearing, where the two files were heard together.

BURDEN OF PROOF

[10] The Applicant bears the legal burden of establishing that each of the applications complies with the requirements of the Act. However, the Opponent must ensure that each of its grounds of opposition is properly pleaded and meet the initial burden of proof by establishing the facts on which it bases its grounds of opposition. Once the initial evidential burden is met, the burden is on the Applicant to establish, on a balance of probabilities, that none of the grounds of opposition presents an obstacle to registering the Marks [*John Labatt Ltd v Molson Companies Ltd.* (1990), 30 CPR (3d) 293 (FCTD); and *Dion Neckwear Ltd v Christian Dior, SA et al*, 2002 FCA 29].

THE OPPONENT'S EVIDENCE

[11] The Opponent's evidence in each case consists of the following affidavits:

- The affidavit of Terry Woo, sworn on January 15, 2019, replacing his affidavit sworn on December 12, 2018, also in the record
- The affidavit of Joel Eusabio, sworn on January 15, 2019

- The affidavit of Bonny Roy, sworn, as applicable, on December 7, 2018 (application No. 1,749,967) or November 27, 2018 (application No. 1,749,968), and
- The affidavit of Iad Hanna, sworn on December 13, 2018

[12] The affidavits sworn by each witness in the two files are essentially identical. I will therefore use the singular to refer to both affidavits by each witness.

[13] I note that the affidavit of Mr. Eusabio is related to the filing of the affidavit of Terry Woo, sworn on January 15, 2019, replacing his affidavit sworn on December 12, 2018. As the admissibility of the replacement affidavit is not at issue, I will not refer to the affidavit of Mr. Eusabio or the affidavit of Mr. Woo from December 12, 2018.

[14] In each case, the Applicant obtained an order for cross-examination of Terry Woo, Bonnie Roy and Iad Hanna. However, the Applicant did not conduct the cross-examinations.

[15] Following is a summary of the evidence filed by the Opponent, which I will examine in more detail, as applicable, in my analysis of the various grounds of opposition.

Affidavit of Terry Woo and his exhibits TW-1 to TW-21

[16] Mr. Woo presents himself as the Opponent's "Senior Legal Director" [para 1].

[17] Mr. Woo states that he has access to the Opponent's business records, which he consulted for the purposes of his affidavit, and that his affidavit is based on his personal knowledge, unless otherwise indicated [paras 2–3]. Mr. Woo states the following at paragraph 4 of his affidavit: "*Where I rely on information and belief rather than personal knowledge, I expressly state so, and in all cases I believe that this information is true.*"

[18] Although Mr. Woo refers in his affidavit to registration Nos. TMA568,853, TMA611,903 and TMA804,307 alleged in support of the oppositions, his affidavit makes

no distinction between the Opponent's VERITAS and VERITAS & Design marks. In fact, Mr. Woo presents the evidence with reference to the VERITAS goods and services.

[19] Thus, Mr. Woo provides information concerning the sale and supply of VERITAS goods and services in Canada. He also provides information concerning the promotion of VERITAS sales and services in Canada.

[20] The documentary evidence submitted by Mr. Woo includes sample invoices, user manuals, data sheets, installation guides, articles and press releases about VERITAS goods and services.

Affidavit of Bonnie Roy and her exhibits BR-1 and BR-2

[21] Ms. Roy, a trademarks assistant employed by the Opponent's agents, submitted certified copies of the registrations alleged by the Opponent.

Affidavit of Iad Hanna and his exhibits IH-1 and IH-2

[22] Mr. Hanna is an articling student employed by the Opponent's agents.

[23] Following his online research, Mr. Hanna submitted pages from the websites *www.itworldcanada.com* and *www.veritas.com* that he accessed on December 7, 2018 [Exhibit IH-1]. He also submitted sample screenshots from the website *www.veritas.com* for the 2004 to 2007 and 2015, from the online system Archive Wayback Machine [Exhibit IH-2].

ANALYSIS OF THE GROUNDS OF OPPOSITION

Preliminary remarks

[24] The Applicant repeatedly argued at the hearing that the Registrar's findings in *Symantec Corporation and Veritas Technologies LLC v Det Norske Veritas AS*, 202 TMOB 143, apply in this case. In that case, the registrar found that there was no likelihood of confusion between the DET NORSKE VERITAS mark, for which registration was sought in association with software, and the marks VERITAS and VERITAS & Design alleged by the joint opponents, including the Opponent.

[25] It is a well-recognized principle that each case must be judged on its own facts and evidence. In this respect, I do not intend to discuss at length the differences between the cases and *Symantec Corporation*, above. It is sufficient to note, on the one hand, that the mark DET NORSKE VERITAS differs from each of the Marks in this case. On the other hand, a simple reading of the decision in *Symantec Corporation* supports the Opponent's representations that its evidence before me is not the same as the evidence of the joint opponents in *Symantec Corporation*. In addition, "the principle of judicial comity ... does not apply to factual findings" [*Bauer Hockey Ltd v Sport Maska Inc (CCM Hockey)*, 2021 FCA 166, at para 31].

[26] Finally, contrary to the Applicant's position, I am not bound by the Registrar's conclusions in *Symantec Corporation*, above.

Grounds based on the absence of use of the Marks in France

[27] At the hearing, the Opponent acknowledged that it had not presented any evidence in support of the grounds of opposition alleging that the Applicant was not using the Marks in France. Therefore, in each case, I reject the ground of opposition based on section 38(2)(a) alleging non-compliance with section 30(d) of the Act.

[28] In addition, the non-entitlement grounds of opposition alleging that the Applicant was not using the Marks in France are invalid. In fact, an allegation that a trademark was not used in the country of the Union identified in an application does not form the basis of a ground of opposition pursuant to sections 38(2)(c) and 16(2)(a), (b) or (c) of the Act [*Canada Post Corporation v Deutsche Post AG*, 2011 TMOB 210, at para 138]. Therefore, in each case, I reject the ground of opposition based on section 38(2)(c) alleging non-compliance with section 16(2) of the Act.

Non-compliance of the applications – Section 30(i) of the Act

[29] There are two grounds of opposition raised under sections 38(2)(a) and 30(i) of the Act. In each case, the Opponent argued that the Applicant could not say it was satisfied that it was entitled to use the mark in Canada in association with the services in that:

1. the Applicant was aware of the past use in Canada of the marks VERITAS (Nos. TMA804,307 and 1,697,454) and VERITAS & Design (Nos. TMA568,853 and TMA611,903) by the Opponent and its predecessors in title; and
2. the Applicant is in breach of sections 7(b) and 20 of the Act, in that the Opponent's marks VERITAS and VERITAS & Design are registered.

[30] The material date for assessing this ground of opposition is the filing date of each application [*Georgia-Pacific Corp. v Scott Paper Ltd.* (1984), 3 CPR (3d) 469 (TMOB), at page 475].

[31] At the hearing, the Opponent only submitted that this ground of opposition in each case revolves around the issue of the likelihood of confusion between the parties' marks. For the Applicant, it is sufficient to say that it argued that the ground of opposition must be rejected in each case.

[32] For the following reasons, I reject the two prongs of the ground of opposition based on section 38(2)(a) alleging non-compliance with section 30(i) of the Act.

First prong

[33] Where an applicant has provided the statement required by section 30(i) of the Act, a ground of opposition based upon that section should only succeed in exceptional cases, such as where there is evidence of bad faith on the part of the applicant [*Sapodilla Co Ltd v Bristol-Myers Co* (1974), 15 CPR (2d) 152 (TMOB) at page 155]. In each case, the application contains the required statement and there is no allegation or evidence of bad faith or other exceptional circumstances.

Second prong

[34] The applications are based on the use and registration of the Marks in France. There is no evidence of use of the Marks in Canada. Absent evidence of sales, distribution or advertising of the Services in association with the Marks in the records, there cannot be any infringement of the Opponents registered marks, nor any evidence supporting a likelihood of depreciation of goodwill [*911979 Alberta Ltd. and Shoppers*

Drug Mart Inc. v AKM Hai, 2018 TMOB 96, at para 34]. Further, the Opponent has failed to present evidence of at least one of the components required to show a violation of section 7(b) of the Act, namely the existence of actual or potential damages [see the three components set out in *Ciba-Geigy Canada Ltd. v Apotex Inc.* [1992], 3 SCR 120 cited by *Pharmacommunications Holdings Inc v Avencia International Inc*, 2008 FC 828, at para 41].

Non-registrability of the Marks – Section 12(1)(d) of the Act

[35] The material date for deciding on the grounds of opposition alleging that each of the Marks is non-registrable due to the confusion created with either of the Opponent's registered marks is the date of my decision [*Park Avenue Furniture Corporation v Wickes/Simmons Bedding Ltd.*, (1991), 37 (CPR (3d) 413 (FCA)].

[36] Having exercised the Registrar's discretion and checked the trademarks register, I confirm that registration No. TMA804,307 for the mark VERITAS and registration Nos. TMA568,853 and TMA611,903 for the mark VERITAS & Design, illustrated below, are in force. The details of the registrations are provided in Appendix A.


VERITAS

[37] I note in passing that, based on the entries in the register, the Opponent was listed as the owner of the registration following a merger on March 29, 2016. As the evidence presented by Mr. Woo dates from the early 2000s, for ease of reference, I have reproduced in Appendix B the full entries of changes in title for registration No. TMA568,853 from October 16, 2002.

[38] As the Opponent has met its initial burden of proof, the Applicant must therefore demonstrate, on a balance of probabilities, that there is no likelihood of confusion between each of the Marks and the Opponent's VERITAS and VERITAS & Design marks (collectively the VERITAS Marks).

Test for confusion

[39] The test for confusion is one of first impression and imperfect recollection. According to section 6(2) of the Act, use of a trademark causes confusion with another trademark if the use of both trademarks in the same area would be likely to lead to the inference that the goods or services associated with those trademarks are manufactured, sold, leased, hired or performed by the same person, whether or not the goods or services are of the same general class or appear in the same class of the Nice Classification. Therefore, section 6(2) of the Act does not deal with confusion between trademarks themselves, but with the likelihood that the goods or services from one source will be perceived as being from another source.

[40] In determining whether trademarks cause confusion, the Registrar must have regard to all the surrounding circumstances, including those listed at section 6(5) of the Act, namely: (a) the inherent distinctiveness of the trademarks and the extent to which they have become known; (b) the length of time the trademarks have been in use; (c) the nature of the goods, services or business; (d) the nature of the trade; and (e) the degree of resemblance between the trademarks in appearance or sound or in the ideas suggested by them. This list is not exhaustive, and each of these factors can be assigned a different weight depending on the context. [See *Mattel, Inc v 3894207 Canada Inc*, 2006 SCC 22; *Veuve Cloquet Ponsardin v Boutiques Cliquot Ltée et al*, 2006 SCC 23; and *Masterpiece Inc. v Alavida Lifestyles Inc.*, 2011 SCC 27 for further discussion of the general principles that govern the test for confusion].

[41] I note that distinctions must be made between each of the Marks in assessing certain circumstances of the case. I will therefore subsequently use the designation “the composite Mark” when referring to the mark BUREAU VERITAS 1828 & Design (No. 1,749,967) and “the word Mark” when referring to the Mark BUREAU VERITAS (No. 1,749,968).

[42] In *Masterpiece*, above, the Supreme Court of Canada noted that the degree of resemblance between the trademarks in appearance or sound or in the ideas suggested by them is often the factor that is likely be the most important in the analysis of

confusion. The Court decided to begin its analysis by examining this factor. Therefore, I begin by examining the degree of similarity between each of the Marks and the Opponent's VERITAS Marks.

The degree of resemblance between the trademarks in appearance, sound or the ideas suggested by them

[43] It is well established in jurisprudence that, in assessing confusion, trademarks should not be dissected into their constituent parts. Trademarks must instead be examined as a whole.

[44] While it is also true that, in some cases, the first word is the most important element in establishing the distinctiveness of a trademark, it is preferable to first consider whether there is an aspect of the trademark that is particularly striking or unique [*Masterpiece*, above, para 64].

[45] Clearly, the striking aspect of the Opponent's VERITAS Marks is the VERITAS element.

[46] The Opponent submits that the most striking aspect of each of the Marks is the VERITAS aspect, as BUREAU is an ordinary dictionary word in French and English. In this respect, the Opponent submits that, in French, the word BUREAU suggests products for use in an office; in English, the work BUREAU suggests an organization. Ultimately, the Opponent argues that BUREAU is not an arbitrary term, as it suggests something.

[47] The Opponent also submits that the graphic elements at the centre of the composite mark, which I reproduce below for ease of reference, are not a striking aspect of the mark.



[48] In this respect, the Opponent essentially argues that that portion of the composite Mark consists of numerous abstract and indiscernible graphic elements. In the words of the Opponent at the hearing concerning that portion of the composite Mark: “*It is too busy and abstract to discern what the design is*”. The Opponent thus submits that an average consumer, on seeing the composite Mark, would not be struck by that portion of the composite Mark.

[49] For its part, the Applicant argues that the parties’ marks share only the VERITAS element and that the other elements of each of the Marks are significant enough to distinguish them from the VERITAS Marks.

[50] In this respect, the Applicant submits that the word BUREAU has no suggestive connotation related to the Services. Apart from the importance of the word BUREAU as the first element of the word Mark, the Applicant submits that the combination of words making up the word Mark is the most striking aspect. Finally, the Applicant submits that the graphic portion of the composite mark, of which the Opponent disputes the importance, is not only made up of clearly discernible elements, such as the drawing of a silhouette of a woman holding a torch, but it is an important aspect of the composite Mark.

[51] I agree with the Applicant that the word BUREAU has no suggestive connotation in the context of the Services. That said, it is a common word. I am therefore not satisfied that the word BUREAU is an aspect that is as striking or more striking than VERITAS.

[52] Finally, considering the marks as a whole, I find that the word Mark and the VERITAS Marks share more similarities than differences.

[53] With respect to the composite Mark, I am not satisfied that there are significant differences between it and the VERITAS Marks in terms of sound. In my view, an average consumer would pronounce the composite Mark based on the graphic elements. It would instead be pronounced based on the words BUREAU VERITAS. Given its position, I find that the 1828 element of the composite Mark would not be

pronounced by a consumer. However, I agree with the Applicant that the graphic portion of the composite Mark significantly contributes to distinguishing the VERITAS Marks in appearance.

[54] Finally, considering the marks as a whole, I find that any resemblance between the composite Mark and the VERITAS Marks attributable to the VERITAS element cannot outweigh the differences between the marks in appearance. I am therefore of the view that the differences in the appearance of the marks is significant enough to distinguish the composite Mark from the VERITAS Marks.

[55] In light of the above, I find that the overall assessment of the degree or resemblance between the word Mark and the VERITAS marks favours the Opponent, but that the overall assessment of the degree of resemblance between the composite Mark and the VERITAS Marks favours the Applicant.

The inherent distinctiveness of the trademarks and the extent to which they have become known

[56] The overall consideration of this factor involves a combination of inherent and acquired distinctiveness of the trademarks. The acquired distinctiveness of a mark refers to the extent to which it has become known.

[57] The parties agree that the Marks and the VERITAS Marks all possess inherent distinctiveness. Moreover, the Opponent acknowledges that the graphic elements of its VERITAS & Design mark, i.e., the font and the triangle representing the dot on the letter “i”, do little to increase its inherent distinctiveness.

[58] Ultimately, the debate between the parties is related to the importance of the graphic elements of the composite Mark in assessing its distinctiveness. In my view, the oval forming the border of the composite Mark does not to increase its inherent distinctiveness. However, I agree with the Applicant that the other graphic elements contained in the composite Mark significantly contribute to its inherent distinctiveness.

[59] As the Applicant has not submitted any evidence concerning the use or promotion of each of the Marks, it is not possible to draw any conclusion about the extent to which they have become known in Canada.

[60] With respect to the extent to which the Opponent's VERITAS Marks have become known in Canada, I note that Mr. Woo presented evidence without distinction between the VERITAS Marks.

[61] Moreover, based on my review of the documentary evidence provided by Mr. Woo, I note that the VERITAS & Design mark only appears on the installation guides from 2003 and 2004 [para 8, Exhibit TW-19]. As Mr. Hanna submitted as evidence screenshots of archived versions of the website *www.veritas.com*, I also note that the VERITAS & Design mark only appears on the archived versions for 2004 and 2005 [Exhibit IH-2]. This simple evidence clearly does not help the Opponent establish that the VERITAS & Design mark has become known in Canada.

[62] Ultimately, I find that the Opponent's evidence does not support any conclusion about the degree to which the VERITAS & Design mark has become known in Canada.

[63] That said, for the following reasons, I find that the Opponent's evidence supports the conclusion that the VERITAS mark has become widely known in Canada.

[64] To begin, and to the extent that the evidence provided by Mr. Hanna is relevant to the VERITAS mark, I note references to "VERITAS Software" in the screenshots of the archived versions of the website *www.veritas.com* for 2006 and 2007 [Exhibit IH-2]. I also note that VERITAS™, in the stylized form shown below, appears in the screenshots of the archived version of the website for 2015 [Exhibit IH-2] and on the pages of the website on December 7, 2018 [Exhibit IH-1].

The image shows the word "VERITAS" in a bold, sans-serif font. The letters are closely spaced and have a slightly irregular, hand-drawn appearance. The word is centered horizontally and is the only text element on the page.

[65] I consider that the use of VERITAS in this stylized form also constitutes a use of the Opponent's VERITAS word mark. Thus, all reliable evidence of the use and

promotion of VERITAS in this stylized form also constitutes reliable evidence of the use and promotion of the VERITAS word mark.

[66] I will now consider the evidence presented by Mr. Woo.

[67] Mr. Woo attached invoices to his affidavit that he asserts are representative of VERITAS goods and services identified in the registrations, and sold or provided to Canadians from March 2, 2008 to August 18, 2018 [para 5, Exhibit TW-1]. I note the following about that lengthy documentary evidence.

- It includes invoices for each year from 2008 to 2018.
- Depending on the year in question, the invoices were issued either by the Opponent, or by “Symantec”, with its place of business in the United States. Based on the recorded changes of title for registration No. TMA568,853, I can reasonably infer that the invoices issued by “Symantec” were from the Opponent’s predecessors in title, namely Symantec Operation Corporation or Symantec Corporation [see Appendix B].
- The names of the clients and a portion of their addresses are redacted on the invoices. However, the unredacted portions of the addresses (city, province and postal code) are sufficient to see that: (i) the invoices were issued to clients domiciled in Canada with a delivery address in Canada, and (ii) the invoices issued to clients domiciled in the United States show delivery addresses in Canada.

[68] Mr. Woo stated that the abbreviation “VRTS” displayed on some invoices refers to the fact that the goods or services listed were sold in association with the VERITAS mark. He also states that the references to “Netbackup” and “eDiscovery Platform” on the invoices are references to goods and services sold in association with the VERITAS mark [para 6].

[69] Mr. Woo states that he attached to his affidavit documentation dated December 19, 2016, concerning “VERITAS eDiscovery Platform” and the data sheet for the “VERITAS Netbackup” goods and services [para 6, Exhibit TW-18]. Mr. Woo

produced that documentary evidence without any explanation about the nature of the “VERITAS Netbackup” goods and services. However, from my understanding of the information in the data sheet, it seems to be relevant to goods and services related to computer data backup and recovery software.

[70] At the Hearing, the Opponent noted that the abbreviation “VRTS” was replaced by the VERITAS mark on invoices beginning in 2015. In this respect, the Opponent noted that the first invoices displaying VERITAS in the description of items is invoice No. 16874942, dated July 9, 2015. The Opponent also noted that VERITAS™, in the stylized form shown above, is displayed in the upper left corner of all invoices issued as of December 2015.

[71] I agree with the Applicant that the abbreviation “VRTS” on the invoices is not the VERITAS mark. However, I accept that the invoices displaying VRTS in the description of items corroborate Mr. Woo’s assertions concerning the sale and supply of VERITAS goods and services in Canada.

[72] I also agree with the Applicant that Mr. Woo made no statement about the replacement of VRTS with VERITAS on invoices in 2015. However, the lack of a statement by Mr. Woo in this respect has no impact. Indeed, I can see on my own that VERITAS is displayed in the descriptions of items invoiced as of 2015, while VRTS is not displayed.

[73] The issue is whether the presence of VERITAS on the invoices, whether in the description of items or in the upper left corner, constitutes a use of the mark in association with goods and services under section 4(1) of the Act. In this respect, the evidence must show that the invoices accompanied goods at the time of transfer [*Hortilux Schreder BV v Iwasaki Electric Co.*, 2011 FC 967, affirmed by 2012 FCA 321].

[74] As Mr. Woo does not specify whether the invoices accompanied the goods when they were delivered, it must be asked whether the evidence allows for such an inference. Given the cities, provinces and postal codes for invoicing and delivery addresses, I accept to infer that some of the invoices in the sampling accompanied the

goods when they were delivered. Regardless, as discussed below, there is evidence other than the invoices to support the use of the VERITAS mark in Canada.

[75] Mr. Woo provides user manuals for the period from 2008 to 2015, which display the VERITAS mark, stating the following [para 7, Exhibit TW-2]:

...Such user manuals bearing the VERITAS mark were provided to Canadian consumers in conjunction with the VERITAS goods throughout the period of March 2008 to October 2015. I confirm that similar user manuals were also provided to Canadian consumers in conjunction with the VERITAS goods in 2017 and in 2018.

[76] In the absence of cross-examination and inconsistencies in Mr. Woo's affidavit, I have no request to question his testimony that the user manuals displaying the VERITAS mark were sent to Canadian customers with the goods.

[77] Mr. Woo provides installation guides, which I discussed above, and data sheets, simply stating that they date from 2003, 2004, 2010, 2011 and 2016 [para 6, Exhibit TW-19]. I note the following about that documentary evidence:

- The installation guides are from June 2003 and July 2004. They refer to the VERITAS mark. The guides appear to be relevant to goods and services related to computer data backup and recovery software.
- According to the copyright notices, the installation guides were from Veritas Software Corporation. Having exercised the Registrar's discretion and checked the trademarks register, I can confirm that Veritas Software Corporation is the entity that filed the application for the VERITAS & Design mark (also displayed on the guides) register as No. TMA568,853.
- The data sheets are from 2010, 2011 and 2016. They refer to the VERITAS mark. According to the copyright notices, the data sheets from 2010 and 2011 were from Symantec Corporation and the one from 2016 was from the Opponent.
- Based on my understanding of the information contained in the data sheets, it seems that: (1) the one from 2020 is relevant to goods and services related to disaster recovery software; (ii) the one from 2011 is relevant to goods and

services related to data storage, server management and storage network services software, and (iii) the one from 2016 is relevant to goods and services related to a computer peripheral for computer data backup and recovery. I note that the data sheet from 2016 contains an image of the computer peripheral showing the VERITAS mark displayed on it.

[78] The Applicant submits that the installation guides and data sheets must be excluded from the evidence because Mr. Woo makes no statement about their distribution in Canada. The Opponent submits that the evidence in this case supports the inference that the installation guides and data sheets were distributed in the ordinary course of trade. As the Opponent cites *Castel Engineering NV v Eneready Products Ltd.*, 2018 TMOB 64, at para 38, I note that each case must be judged on its own facts and evidence.

[79] I agree with the Applicant that Mr. Woo does not state the manner or the extent of distribution of the installation guides and data sheets. Despite these shortcomings, I am not prepared to exclude this documentary evidence. In this respect, I note that the years in question are identified on the installation guides and data sheets. Moreover, not only does the distribution of guides containing software installation instructions and technical support information seem compatible with the sale of software to be installed by the buyers, but the provision of such guides seems essential. Regardless, assuming that it is not reasonable to infer that the installation guides from June 2003 and July 2004 accompanied the products at the time of transfer of ownership, I find that I can nonetheless reasonably infer that those installation guides were distributed to Canadian clients.

[80] Similarly, the distribution of the sheets containing general and specific technical information for computer software or peripherals, including information about related services, seems compatible with the supply of those goods and services. In this case, therefore, I find it reasonable to infer that the data sheets from 2010, 2011 and 2016 were distributed to existing or potential clients.

[81] I agree with the Applicant that Mr. Woo does not provide any information concerning the volume or monetary value of the sales of VERITAS goods and services in Canada. Rather, the Opponent seems to want to show the extent of sales through Mr. Woo's statements, with supporting evidence, concerning the Opponent's clients.

[82] For example, Mr. Woo states that the Opponent obtained a contract from the Government of Canada on December 23, 2016, and produces an excerpt from the Government of Canada website showing the contract award [para 10, Exhibit TW-4]. However, Mr. Woo provides no information on the value of that contract and there is no information about that in the excerpt of the website.

[83] Mr. Woo's statements concerning the number of the Opponent's clients are found primarily in paragraph 12 of his affidavit, which reads as follows:

Veritas Technologies also has a significant number of clients in Canada, as appears from the invoices, Exhibit TW-1. The website idatalabs.com states that close to 300 companies use the NetBackup product in Canada which also bears the VERITAS trademark. I attach hereto as Exhibit TW-6 an excerpt from idatalabs.com's website providing information as to the number of companies using the VERITAS branded NetBackup product, per country, including Canada. I confirm that there are at least that number of customers in Canada for the VERITAS branded product alone.

[84] As the names of the clients are redacted on the invoices, I cannot determine the number of clients involved. However, I can see that six Canadian provinces are identified in the invoicing or delivery addresses (British Columbia, Alberta, Manitoba, Ontario, Quebec, Nova Scotia).

[85] I can also see for each invoice the cost of each invoiced item and the total amount. I therefore find that the lack of a statement by Mr. Woo about the monetary value of the sales of VERITAS goods and services is not fatal to the Opponent's case here. Indeed, there is no need for me to add up the total amount of each invoice to agree with the Opponent that an objective consideration of the large sample of invoices makes it possible to infer the extent of the monetary value of sales since 2008. In this respect, I note in general that invoices show sales that total: (i) tens of thousands of dollars, such as invoice No. 16881986 from July 21, 2015 totalling US\$21,982.03; (ii) hundreds of thousands of dollars, such as invoice No. 15603001 from

June 30, 2011, totalling US\$566,520.42; and (iii) millions of dollars, such as invoice No. 2200199096 from September 25, 2017, totalling US\$2,467,913.32.

[86] With respect to the excerpt from the *idatalabs.com* website, apparently printed on December 7, 2018, I note that it indicates there are 286 companies in Canada “...that use Symantec Veritas”. Although the excerpt of the website does not establish the veracity of its content, I am nonetheless prepared to give weight to Exhibit TW-6, to the extent that Mr. Woo cites that evidence to attest the number of clients in Canada for the VERITAS NetBackup product. Indeed, I agree with the Opponent that Mr. Woo is able to attest to the veracity of the information concerning the number of the Opponent’s clients.

[87] With respect to the evidence concerning the promotion of VERITAS goods and services, Mr. Woo states that the Opponent invested over \$2 million between 2015 and 2018 (with a breakdown of the amounts for the years in question) for the promotion, marketing and advertising of VERITAS goods and services [para 21]. I agree with the Applicant that Mr. Woo does not provide any details about how the amounts were spent. However, a considerable amount was invested in promotion over a three-year period.

[88] Mr. Woo provides evidence concerning the “Veritas Vision Solution Day” events. He explains that, during those events, participants can speak with the Opponent’s experts and learn more about the goods and services with the VERITAS mark [para 18]. The evidence relevant to Canada is related to events organized by the Opponent in 2018 and the Opponent in cooperation with the Canadian company KTI Kanatek Technologies Inc. in 2017.

[89] In this respect, Mr. Woo’s statements about holding a “Veritas Vision Solution Day” event in Toronto on October 24, 2018, are corroborated by the Opponent’s press release identifying that event [para 18, Exhibit TW-13]. As well, while the press release is from KIT Kanatek Technologies Inc. does not establish the veracity of its content, I am nonetheless prepared to accept it as evidence corroborating Mr. Woo’s statements about events held in Vancouver, Calgary, Montréal, Toronto and Ottawa in 2017 [para 20, Exhibit TW-21].

[90] Mr. Woo stated that the Opponent and the VERITAS goods and services were the subject of articles that circulated in Canada [para 22]. In support of his statements, Mr. Woo produced examples of articles from the *itworldcanada.com* and *computerdealnews.com* websites [para 22, Exhibit TW-15], and an example of a press release from the Opponent published on the *cantechletter.com* website [para 24, Exhibit TW-17], and an article published by Dell Power Solutions in 2005 [para 25, Exhibit TW-20]. Regardless of the probative value of Mr. Woo's statements about the circulation of those articles and press releases in Canada, I agree with the Applicant that the evidence does not establish the extent of their circulation. I therefore cannot conclude that those articles and press releases significantly contributed to making the VERITAS mark known in Canada.

[91] Mr. Woo states that some of the Opponent's clients publicly announced that their software solutions had been developed using VERITAS goods and services [para 13]. He produced an excerpt from the Ricoh Canada website in support of that statement [Exhibit TW-7]. Again, I agree with the Applicant that this evidence is insufficient to conclude that the communications from the Opponent's clients contributed significantly to making the VERITAS mark known in Canada.

[92] Finally, I find from all of Mr. Woo's statements and supporting evidence that the VERITAS mark has been widely used across Canada since at least as early as 2008. I also find it reasonable to conclude that holding "Veritas Vision Solution Day" events in Canada in 2017 and 2018 contributed to making the VERITAS mark known.

[93] In light of all of the above, the assessment of the factor set out in section 6(5)(a) of the Act favours the Opponent with respect to the VERITAS mark.

The length of time the trademarks have been in use

[94] The applications were filed on October 9, 2015 based on the use and registration of the Marks in France. The Applicant did not produce any evidence showing use of the Marks in Canada.

[95] The VERITAS & Design mark proceeded to registration following statements of use filed on October 8, 2002 (No. TMA568,853) and May 6, 2004 (No. TMA611,903). However, the mere existence of registrations cannot establish a continuous use of the VERITAS & Design mark in Canada [*Tokai of Canada v. Kingsford Products Company, LLC*, 2018 FC 951, at para 36; and *Entre Computer Centres Inc. v Global Upholstery Co.* (1991), 40 CPR (3d) 427 (TMOB)]. In addition, the Opponent's evidence is insufficient to conclude that there was continuous use of the VERITAS & Design mark in Canada following the production of the statements of use. As indicated above, the evidence for that mark is limited to the documentary evidence for the period from 2003 to 2005.

[96] Registration No. TMA804,307 for the VERITAS mark claims use of the mark since at least as early as December 1995. In addition, in light of my analysis above, the Opponent's evidence allows me to conclude at least continuous use of the VERITAS mark in Canada in relation to goods covered by the registration since at least as early as 2008.

[97] The factor set out in section 6(5)(b) of the Act therefore favours the Opponent with respect to the VERITAS mark.

The nature of the goods, services or business and the nature of the trade

[98] In the context of a ground of opposition based on section 12(1)(d) of the act, I must assess the factors set out in sections 6(5)(c) and 6(5)(d) of the Act by comparing the statement of services from the applications for the Marks with the statement of goods or services in the registrations of the VERITAS Marks [see *Henkel Kommanditgesellschaft auf Aktien v Super Dragon Import Export Inc.* (1986), 12 CPR (3d) 110 (FCA); and *Mr. Submarine Ltd. v Amandista Investments Ltd.* (1987), 19 CPR (3d) 3 (FCA)].

[99] The Applicant does not dispute the Opponent's position concerning the overlap between the Services and the goods and services covered by the registrations for the

VERITAS Marks. Indeed, the Applicant acknowledged the existence of such an overlap at the hearing.

[100] Mr. Woo explained that the VERITAS goods and services are not only sold and offered by the Opponent itself, but also by Canadian resellers and retailers [para 16]. For instance, Mr. Woo identified the company Cendirect Canada as offering the Opponent's goods; he provided excerpts from the Cendirect Canada website [para 16, Exhibit TW-10]. I can see the offer of various subscriptions for the Opponent's "Veritas Enterprise Vault.cloud Discovery and Personal Archive Continuity" licences in the excerpts of the website. I can also see the terms "Corporate", "Government" or "Academic" in the descriptions of the subscription offers. I find it reasonable to infer from the context of their use that these terms refer to the types of clients targeted by the subscriptions offered.

[101] As the Applicant acknowledged an overlap in the nature of the Services and the goods and services covered by the Opponent's registrations, absent evidence from the Applicant, I am not prepared to exclude a potential overlap in the nature of the parties' trade, including their clientele.

[102] The factors set out in sections 6(5)(c) and 6(5)(d) of the Act therefore favour the Opponent.

Likelihood of confusion

BUREAU VERITAS 1828 & Design mark

[103] Following my assessment of all the factors set out in section 6(5) of the Act, I am of the view that the Applicant has met its legal burden of establishing that there is no likelihood of confusion between the Mark and the BUREAU VERITAS 1828 & Design mark and the Opponent's VERITAS mark (No. TMA804,307). Indeed, although the assessment of each factor set out in section 6(5)(a) to (d) of the Act favours the Opponent, I find that the factor set out in section 6(5)(e) of the Act definitively tips the balance of probabilities in favour of the Applicant.

[104] I would add that, in concluding so, I do not lose sight of the fact that the Opponent's registration No. TMA804,307 gives it the right to use the VERITAS mark in the size and the style of lettering, colour or design of its choice, in accordance with the principle set out in paragraph 55 of *Masterpiece*, above. However, "one should be careful not to give the principle set out at paragraph 55 of *Masterpiece* too great a scope, for there would no longer be any need to register a design mark when one has a word mark" [*Pizzaiolo Restaurants Inc v Les Restaurants La Pizzaiolle Inc.*, 2016 FCA 265, at para 33].

[105] Finally, as the Opponent cannot succeed based on its registration No. TMA804,307 for the VERITAS mark, it cannot be any more successful based on registration Nos. TMA568,853 and TMA611,903 for the VERITAS & Design mark.

[106] I therefore reject the ground of opposition based on section 12(1)(d) of the Act against application No. 1,749,967.

BUREAU VERITAS mark

[107] As the Opponent is favoured by all the factors set out in section 6(5) of the Act concerning is VERITAS mark (No. TMA804,307), I find that the Applicant has not met its legal burden of establishing that there is no likelihood of confusion between the BUREAU VERITAS mark and the Opponent's VERITAS mark (No. TMA804,307).

[108] With respect to the likelihood of confusion between the BUREAU VERITAS mark and the VERITAS & Design mark (Nos. TMA568,853 and TMA611,903), I find that the factors set out in sections 6(5)(a) and (b) are neutral factors, while the factors set out in sections 6(5)(c), (d) and (e) of the Act favour the Opponent. I therefore find that the Applicant has not met its legal burden of establishing that there is no likelihood of confusion between the BUREAU VERITAS mark and the Opponent's VERITAS & Design mark (Nos. TMA568,853 and TMA611,903).

[109] I therefore allow the ground of opposition raised under section 12(1)(d) of the Act against application No. 1,749,967.

Non-entitlement to register the Marks – Section 16(2) of the Act

[110] In each case, the Opponent argued three grounds of opposition based on section 16(2) of the Act. In this respect, the Opponent argues that the Applicant is not the person entitled to registration of each of the Marks due to confusion with:

- the VERITAS and VERITAS & Design trademarks alleged to have been previously used and made known in Canada by the Opponent and its predecessors in title in association with the goods and services identified in the registrations and the application alleged by the Opponent (section 16(2)(a) of the Act);
- application No. 1,697,454 for the VERITAS mark alleged to have been previously produced in Canada by the Opponent in association with services (section 16(2)(b) of the Act); and
- the trade name VERITAS alleged to have been previously used and made known in Canada by the Opponent and its predecessors in title in the information technology sector (section 16(2)(c) of the Act).

[111] The material date for assessing grounds of opposition based on non-entitlement under sections 16(2)(a), (b) and (c) of the Act is the priority filing date of July 1, 2015.

Grounds of opposition based on section 16(2)(a) of the Act

[112] In addition to having to establish the use or making known of either of its VERITAS and VERITAS & Design marks in Canada on the material date, the Opponent must establish that its marks had not been abandoned at the date of advertisement of the Applicant's applications.

[113] Following my review of its evidence, I find that the Opponent has not met its burden of establishing the use of the VERITAS & Design mark in Canada as of July 1, 2015. Similarly, I find that the Opponent has not met its burden of establishing that the VERITAS & Design mark *was made known* in Canada through the means set out in section 5 of the Act to the extent that the mark was well known at the material date.

[114] That said, I find that the Opponent's evidence establishes the continuous use of the VERITAS mark in Canada since at least as early as 2008 in association with goods and services related in particular, but not limited to, computer data backup and recovery software.

[115] As the Opponent has met its initial burden of proof for the VERITAS mark the Applicant must therefore demonstrate, on a balance of probabilities, that there was no likelihood of confusion between each of the Marks and the VERITAS mark as of July 1, 2015.

[116] The difference between the material date for this ground of opposition and the ground of opposition raised under section 12(1)(d) of the Act has no significant impact on my analysis of the circumstances of the case.

BUREAU VERITAS 1828 & Design mark

[117] For similar reasons to those set out above, I find that the Applicant has met its legal burden of establishing that there is no likelihood of confusion between the BUREAU VERITAS 1828 and Design mark and the Opponent's VERITAS mark as of July 1, 2015.

[118] I therefore reject the ground of opposition based on section 16(2)(a) of the Act against application No. 1,749,967.

BUREAU VERITAS mark

[119] For similar reasons to those set out above, I find that the Applicant has not met its legal burden of establishing that there was no likelihood of confusion between the BUREAU VERITAS mark and the Opponent's VERITAS mark as of July 1, 2015.

[120] I therefore allow the ground of opposition based on section 16(2)(a) of the Act against application No. 1,749,968 to the extent that that ground is based on allegations of use of the Opponent's VERITAS mark in Canada.

Grounds of opposition based on section 16(2)(b) of the Act

[121] In addition to having to establish that application No. 1,607,454 for the VERITAS mark had been filed prior to the material date, the Opponent must establish that the application had not been abandoned as of the date of advertisement for the Applicant's applications.

[122] I note that the Opponent made no specific representations concerning this ground of opposition and did not submit any evidence of application No. 1,697,454.

[123] Having exercised the Registrar's discretion [*Royal Appliance Mfg Co v Iona Appliance Inc* (1990), 32 CPR (3d) 525 (TMOB), at p. 529], I confirm that the application was originally filed by Symantec Corporation on October 9, 2014, and that it was pending on January 4, 2017. The statement of services for application No. 1,697,454 is reproduced in Appendix C.

[124] As the Opponent's initial burden of proof was met, the Applicant must therefore demonstrate, on a balance of probabilities, that there was no likelihood of confusion between each of the Marks and the VERITAS mark in application No. 1,697,454 as of July 1, 2015.

BUREAU VERITAS 1828 & Design mark

[125] There is no need to address this ground of opposition in detail to conclude that the Applicant has met its legal burden of establishing that there is no likelihood of confusion between the BUREAU VERITAS 1828 and Design mark and the VERITAS in application No. 1,697,454 mark as of July 1, 2015. Indeed, for reasons similar to those set out above, I find that the factor set out in section 6(5)(e) of the Act definitively tips the balance of probabilities in favour of the Applicant.

[126] I therefore reject the ground of opposition based on section 16(2)(b) of the Act against application No. 1,749,967.

BUREAU VERITAS mark

[127] In light of the statement of services for application No. 1,697,454, and for similar reasons to those set out above, I find that the Applicant has not met its legal burden of establishing that there was no likelihood of confusion between the BUREAU VERITAS mark and the VERITAS mark in application No. 1,697,454 as of July 1, 2015.

[128] I therefore allow the ground of opposition based on section 16(2)(b) of the Act against application No. 1,749,967.

Grounds of opposition based on section 16(2)(c) of the Act

[129] I first note that it is clear from a simple reading of section 16(2)(c) of the Act that the “making known” of a trade name cannot be cited in support of a ground of opposition based on this section. The ground of opposition based on allegations the trade name VERITAS being “made known” is therefore invalid.

[130] In addition to having to establish the use of the trade name VERITAS at the material date, the Opponent must establish that the trade name was not abandoned as of the date of advertisement of the Applicant’s applications.

[131] Again, I note that the Opponent made no specific representations concerning this ground of opposition. I also find from an objective reading of Mr. Woo’s affidavit that the Opponent’s evidence is related primarily to the VERITAS Marks. Regardless, for the following reasons, I find that there is no need to decide the issue of whether the Opponent has met its initial burden of proof under this ground of opposition.

BUREAU VERITAS 1828 & Design mark

[132] Assuming that the Opponent must meet its initial burden, the result of the ground of opposition would be the same as the one based on section 16(2)(a) of the Act, by which the Opponent alleges past use of its VERITAS trademark. Indeed, given the importance of the factor set out in section 6(5)(e) of the Act, I would conclude that the Applicant has met its legal burden of establishing that there was no likelihood of

confusion between the BUREAU VERITAS 1828 & Design mark and the VERITAS trade name as of July 1, 2015.

[133] I therefore reject the ground of opposition based on section 12(1)(c) of the Act against application No. 1,749,967.

BUREAU VERITAS mark

[134] As I have already allowed grounds of opposition against application No. 1,749,968, there is no need to decide on the ground of opposition based on section 16(2)(c) of the Act against that application.

Non-distinctiveness of the Marks – Section 2 of the Act

[135] The Opponent argues that the Marks are not distinctive of the Applicant's services, within the meaning of section 2 of the Act, due to the use and/making known of the VERITAS and VERITAS & Design trademarks and the Opponent's VERITAS trade name.

[136] The material date for assessing grounds of opposition is the filing date of the statement of opposition [see *Metro-Goldwyn-Mayer Inc. v Stargate Connections Inc.* (2004), 34 CPR (4th) 317 (FC)].

[137] I find that there is no need to consider the prong of the grounds of opposition alleging use and/or making known of the VERITAS trade name. Indeed, in this case, I consider that, if the Opponent cannot be successful based on its VERITAS and VERITAS & Design marks, it cannot be any more successful based on the trade name.

[138] The Opponent bears the initial burden of establishing that its VERITAS and VERITAS & Design marks were sufficiently known in Canada as of March 5, 2018, to negate the distinctiveness of the Marks [*Motel 6 Inc. v No 6 Motel Ltd.* (1981), 56 CPR (2d) 44 (FCTD); *Bojangles' International LLC v Bojangles Café Ltd.*, 2006 FC 657].

[139] I find that the Opponent's evidence allows it to meet its initial burden *only* with respect to the VERITAS mark. Moreover, the difference between the material date for this ground of opposition and the other grounds of opposition has no significant impact on my analysis of the circumstances of the case in assessing the likelihood of confusion between each of the Marks and the Opponent's VERITAS mark.

[140] I therefore find that the Applicant has met its legal burden of demonstrating that the BUREAU VERITAS 1828 & Design mark was distinctive to the Services on the material date. The ground of opposition raised under section 38(2)(d) of the Act is therefore rejected with respect to application No. 1,749,967.

[141] However, I find that the Applicant has not met its legal burden of demonstrating that the BUREAU VERITAS mark was distinctive to the Services on the material date. The ground of opposition raised under section 38(2)(d) of the Act is therefore allowed with respect to application No. 1,749,968 to the extent that that ground is based on allegations of use of the VERITAS mark.

DISPOSITION

[142] For the reasons set out above and pursuant to the authority delegated to me under section 63(3) of the Act:

- I reject the opposition to application No. 1,749,967 for the BUREAU VERITAS 1828 & Design mark, and
- I refuse application No. 1,749,968 for the BUREAU VERITAS mark,

pursuant to the provisions of section 38(12) of the Act.

Céline Tremblay
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

Certified translation

Gerald Woodard


The English is WCAG compliant.

APPENDIX A

Details of the registrations of the VERITAS Marks

Registration number / date	Trademark	Goods or services
<p>TMA804,307 August 11, 2011</p>	<p>VERITAS</p>	<p><u>Goods:</u> (1) Computer software for use in file, disk and systems management; computer software for use in data storage, server, and service management and storage area networks; computer software for backing up and restoring computer data; computer software for use in disaster recovery; computer software for use in removable storage media management; computer software for monitoring, identifying, and rectifying file, disk, system, and computer network problems and errors; computer software for use in the field of enterprise information management; computer software for use in the field of online analytical processing (OLAP); computer software for generating reports from databases; computer software for scheduling automated processes; computer software for use in the central management of computers attached to a computer network; computer software for replicating and archiving files from one data store to another; computer software for metering the use of other computer software; computer software for use in developing data analysis applications and other computer software; computer software for accessing, managing and setting up storage networks, computers, and operating systems; computer software for monitoring, analyzing, reporting, and solving performance issues of application software, databases, network, storage, and other computer</p>

		<p><i>components and programs; instruction manuals supplied in electronic form; electronic publications.</i></p>
<p>TMA568,853 October 16, 2002</p>		<p><i>Goods: (1) Computer utility software; computer software for use in file, disk and systems management; computer software for use in data storage management and storage area networks; computer software for backing up and restoring computer data; computer software for use in disaster recovery; computer software for defining, evaluating, safeguarding, collecting, distributing, organizing, storing, manipulating, controlling, and sharing data in the field of enterprise information management; computer software for defining, evaluating, safeguarding, collecting, distributing, organizing, storing, manipulating, controlling, and sharing data in the field of online analytical processing (OLAP); computer software for generating reports from databases; computer software for scheduling automated processes; computer software for use in the central management of computers attached to a computer network; computer software for replicating and archiving files from one data store to another; computer software for metering the use of other computer software books, magazines, newsletters, work books, quick reference guides, technical reference manuals and conference materials; computer software for use in developing data analysis applications and other computer software; computer software for use in deploying and updating operating system and application software over computer networks; computer software for use in management and administration of local, wide, and storage area networks; instruction manuals supplied as a unit</i></p>

		<p><i>with the foregoing; computer user manuals; printed matter and publications, namely books, magazines, newsletters, work books, quick reference guides, technical reference manuals, computer user manuals and conference materials in the field of computers, computer software, computer peripherals, and computer networks; computers; computer hardware; computer peripherals; disk drives; tape drives; flash memory devices.</i></p>
<p>TMA611,903 June 3, 2004</p>		<p><u>Services:</u> (1) <i>Providing access to text, graphics, audiovisual content, databases, and on-line information services pertaining to computers, computer software, computer hardware, computer networks and computer-related services, to computer users via computer and communication networks, including the Internet; provision of information regarding computers, computer software, computer hardware, computer networks, computer-related services, data storage management, enterprise information management and on-line analytical processing (OLAP); providing on-line electronic bulletin boards for the posting and exchange of messages among computer users; providing on-line chat rooms for the transmission of messages, data, motion video among computer users; computer programming for others; providing computer consulting, computer support and computer software design services; remote or on-site monitoring of computer systems; monitoring the computer systems of others and providing back-up computer programs and facilities.</i></p>

APPENDIX B

Footnotes for registration No. TMA568,853 for the VERITAS trademark

Recordables (known also as "Footnotes")

CHANGE IN TITLE / CHANGEMENT EN TITRE:

TYPE OF CHANGE / GENRE DE CHANGEMENT: Name and Address / Nom et adresse

DATE REGISTERED / DATE DE L'ENREGISTREMENT: 2008-03-27

DATE OF CHANGE / DATE DE CHANGEMENT: 2006-10-28

COMMENTS / COMMENTAIRES: FROM: VERITAS Operating Corporation (a Delaware Corporation),

TO: Symantec Operating Corporation (a Delaware corporation)

Voir Preuve au dossier/See evidence on File No. 871887

CHANGE IN TITLE / CHANGEMENT EN TITRE:

TYPE OF CHANGE / GENRE DE CHANGEMENT: Assignment / Cession

DATE REGISTERED / DATE DE L'ENREGISTREMENT: 2015-08-07

DATE OF CHANGE / DATE DE CHANGEMENT: 2015-06-02

COMMENTS / COMMENTAIRES: FROM: Symantec Operating Corporation (a Delaware corporation)

TO: Symantec Corporation (a Delaware corporation)

Voir Preuve au dossier/See evidence on File No. 1032056

CHANGE IN TITLE / CHANGEMENT EN TITRE:

TYPE OF CHANGE / GENRE DE CHANGEMENT: Assignment / Cession

DATE REGISTERED / DATE DE L'ENREGISTREMENT: 2016-05-24

DATE OF CHANGE / DATE DE CHANGEMENT: 2016-01-29

COMMENTS / COMMENTAIRES: FROM: Symantec Corporation (a Delaware corporation)

TO: Veritas US IP Holdings LLC

Voir Preuve au dossier/See evidence on File No. 1032056

Merger and Address / Fusionnement et adresse

DATE REGISTERED / DATE DE L'ENREGISTREMENT: 2016-05-24

DATE OF CHANGE / DATE DE CHANGEMENT: 2016-03-29

COMMENTS / COMMENTAIRES: FROM: Veritas US IP Holdings LLC

TO: Veritas Technologies LLC

Voir Preuve au dossier/See evidence on File No. 1032056

APPENDIX C

Statement of services for application No. 1,697,454 for the VERITAS trademark

1) Electronic general storage services for archiving databases, images and electronic data files; Electronic storage of data files for clients to store and retrieve data via a global computer network; electronic document archiving services; email archiving services; computer services featuring software as a service for use in data storage and information management solutions, namely data retention, backup, recovery, availability, visibility, insight, continuity, archiving, discovery, and analysis; cloud computing services for data storage and information management, namely data retention, backup, recovery, availability, visibility, insight, continuity, archiving, discovery, and analysis; computer software installation services; design, development, updating and maintenance of software in the field of database management; application service provider services featuring software as a service for use in data storage and information management solutions, namely data retention, backup, recovery, availability, visibility, insight, continuity, archiving, discovery, and analysis; provision of information and online database regarding computers, computer hardware, computer software, computer networks, computer-related data storage and information management services, namely data retention, backup, recovery, availability, visibility, insight, continuity, archiving, discovery, and analysis, data storage management, enterprise information management, namely data retention, backup, recovery, availability, visibility, insight, continuity, archiving, discovery, and analysis and online analytical processing (OLAP); computer consultation in the fields of data storage and information management, namely data retention, backup, recovery, availability, visibility, insight, continuity, archiving, discovery, and analysis; software consultation; technical support services in the form of troubleshooting of computer hardware and software problems; computer support services, namely, provision of technical assistance and technical support in the form of troubleshooting of computer hardware and software problems; computer software design for others; remote or on-site monitoring of computer systems; monitoring the computer systems of others and providing back-up computer programs and facilities; providing data conversion services of computer program data and information; internet, software and computer application hosting services; providing temporary use of on-line non-downloadable cloud computing software featuring software as a service for use in data storage and information management solutions, namely data retention, backup, recovery, availability, visibility, insight, continuity, archiving, discovery, and analysis; cloud hosting provider services in the fields of data storage and information management, namely data retention, backup, recovery, availability, visibility, insight, continuity, archiving, discovery, and analysis; cloud computing featuring software for use in data capture, data recovery and data management; platform as a service (PAAS) featuring computer software platforms for cloud-based services in the fields of data storage and information management, namely data retention, backup, recovery, availability, visibility, insight, continuity, archiving, discovery, and analysis; Software as a service (SAAS) featuring computer software for cloud-based services in the fields of data storage and information management, namely data retention, backup, recovery, availability, visibility, insight, continuity, archiving, discovery, and analysis; computer disaster recovery planning and computer disaster recovery services

Appearances and Agents of Record

DATE OF HEARING: 2023-01-31

APPEARANCES

For the Opponent: Michael Shortt

For the Applicant: William Audet

AGENTS OF RECORD

For the Opponent: Fasken Martineau Dumoulin LLP

For the Applicant: Bereskin & Parr LLP/S.E.N.C.R.L., S.R.L.