



# Canadian Intellectual Property Office

## **THE REGISTRAR OF TRADEMARKS**

**Citation:** 2025 TMOB 172

**Date of Decision:** 2025-08-27

## **IN THE MATTER OF A SECTION 45 PROCEEDING**

**Requesting Party:** APEX Mobile Media ULC

**Registered Owner:** Salesforce, Inc.

**Registration:** TMA886,424 for APEX

## **INTRODUCTION**

[1] This decision involves a summary expungement proceeding under section 45 of the *Trademarks Act*, RSC 1985, c T-13 (the Act) with respect to registration No. TMA886,424 for the trademark APEX (the Mark), in the name of Salesforce, Inc. (the Owner).

[2] The Mark is registered for use in association with the following services, which I have numbered for ease of reference:

- (1) Providing temporary use of online non-downloadable computer software application development tools and programming language for use in developing, analyzing, coding, checking and controlling other computer software;
- (2) providing temporary use of online non-downloadable computer software that implements a procedural and object-oriented programming language;

- (3) online hosted computer services, namely, designing, developing, customizing and maintaining computer software applications for others;
- (4) and consulting services related thereto.

[3] For the reasons that follow, I conclude that the registration should be maintained.

### **PROCEEDING**

[4] At the request of APEX Mobile Media ULC (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the Act on May 29, 2024, to the Owner.

[5] The notice required the Owner to show whether the Mark was used in Canada in association with each of the 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 May 29, 2021 to May 29, 2024.

[6] The relevant definition of “use” in the present case is set out in section 4 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.

[7] With regard to services, it is established that they are to be given a broad and liberal interpretation [*Renaud Cointreau & Co v Cordon Bleu International Ltd* (2000), 11 CPR (4th) 95 (FCTD), aff’d 2002 FCA 11 and that the display of a trademark on advertising of services is sufficient to meet the requirements of section 4(2) of the Act when the trademark owner is offering and prepared to perform those services in Canada [*Wenward (Canada) Ltd v Dynaturf Co* (1976), 28 CPR (2d) 20 (TMOB)].

[8] The purpose and scope of section 45 of the Act is to provide a simple, summary, and expeditious procedure for removing “deadwood” from the register [*Black & Decker Corp v Method Law Professional Corp*, 2016 FC 1109]. The evidentiary threshold that the registered owner must meet is quite low [*Performance Apparel Corp v Uvex Toko Canada Ltd*, 2004 FC 448] and “evidentiary overkill” is not required [see *Union Electric Supply Co v Canada (Registrar of Trade Marks)* (1982), 63 CPR (2d) 56 (FCTD); *Miller Thomson LLP v Hilton Worldwide Holding LLP*, 2020 FCA 134 (*Hilton*)]. An owner need only establish use on a prima facie basis and all that is required is for evidence to supply facts from which a conclusion of use may follow as a logical inference [*Diamant Elinor Inc v 88766 Canada Inc*, 2010 FC 1184].

[9] Where the owner has not shown “use”, the registration is liable to be expunged or amended, unless there are special circumstances that excuse the absence of use.

[10] In response to the Registrar’s notice, the Owner furnished an affidavit of Kiran Belur, sworn in San Francisco, California, on October 24, 2024, to which were attached Exhibits 1 through 36.

[11] Both parties submitted written representations and were represented at an oral hearing.

### **EVIDENCE**

[12] The evidence in this case is voluminous, totaling nearly 2000 pages. Below, I summarize the portions which I consider to be the most relevant.

[13] Mr. Belur is the Owner’s Head of Trademarks and Copyrights. He states that the Owner is a global leader in customer relationship management (CRM) technology with annual revenues in the billions of dollars [paras 1 and 6]. He explains that the Owner provides enterprise

software products, through the cloud, to help connect customer data across systems, apps and devices, allowing its customers to be more responsive, productive and efficient [para 5].

[14] Mr. Belur explains that, in addition to its core product offerings, the Owner also offers “a variety of other services including application development tools, data integration and visualization, and consulting/training related services to its users” [paras 8-9]. He states that the Mark is used with services, which I will collectively refer to as the APEX Services, which “relate to Salesforce’s various computer software application development tools and online hosted computer services [...] as well as related consulting Services” [para 22]. He explains that the APEX Services:

are interrelated software development and programming Services which Salesforce provides in association with the APEX Trademark to allow developers and other users to perform various functions and carry out various tasks related to the design, development, customization, and maintenance of computer software applications for their use on the Salesforce Platform. These functions include APEX related tools and programming language used in developing, analyzing, coding, checking, i.e. debugging/testing, and controlling such computer software applications for use on the Salesforce Platform [para 28].

[15] With regard to the Mark, Mr. Belur states that it is used:

in association with an overlapping and integrated set of Services related to application development tools on Salesforce’s development platform, the programming language that allows developers to create applications for use of on the Salesforce Platform, and in association with other computer relates services and consulting services providing training, education and instruction related to the use of these APEX Services [para 12].

[16] Mr. Belur further explains that, although the Owner does not directly monetize the APEX Services, they provide a benefit to its clients by allowing them:

to design, develop, and customize applications for use by their businesses through the Salesforce Platform [...], and by providing customers with the

skills and knowledge to enable them to do these activities through the consulting/training Services [para 14].

[17] Mr. Belur states that the “APEX programming language is used by developers (or other users of the Salesforce Platform) to write code for applications that only run within the Salesforce Platform” [para 20].

[18] Mr. Belur attaches to his affidavit “APEX Developer Guides”, one dated from during the relevant period, and another dated from shortly after, which he states is representative of the relevant period [Exhibits 6-7]. I note that both Developer Guides provide highly technical information for use by specialized developers, and display the Mark throughout.

[19] Mr. Belur further provides pages from the Owner’s website, some of which are archived versions from the relevant period, others of which he states are representative thereof, which describe the APEX Services [paras 31-34, Exhibits 9-15]. He indicates that there were over 1.1 million total views of the Owner’s webpages from Canada during the relevant period, and attaches a Google Analytics report to this effect [para 35, Exhibit 16]. I note that the Mark appears throughout the exhibited webpages.

[20] Mr. Belur also states that the Mark is prominently displayed “during the operation of Salesforce’s online software platform” and attaches screenshots of the platform that display the Mark, which he states are representative of the relevant period [para 36, Exhibits 17-18].

[21] Mr. Belur states that the consulting services provided in association with the Mark are offered:

through our Program Architects, Developer Support, and through other professional services teams, along with the various educational and training courses and modules for Salesforce developers and users in the use of the APEX programming language and related topics and skills [para 39].

[22] Mr. Belur explains that the Owner has provided the consulting services, in the form of training and education services, notably *via* its online training platform for which users must register. He attaches printouts of various course lists and descriptions [para 43, Exhibits 20-21]. I note that, again, these materials display the Mark throughout. He explains that the education and training is module based, and users earn 'badges' as they progress through the modules [paras 39-42]. He further indicates that during the relevant period, Canadian users "completed over 9,000 'badges' related to the APEX Services" [para 46, Exhibit 22].

[23] Mr. Belur explains that training and education regarding the APEX Services is also offered *via* videos posted to the Salesforce Developers YouTube channel [paras 47-48]. He provides a printout and video files of certain of these videos [Exhibits 23-28]. I note that, again, these materials display the Mark throughout. He further states that the Salesforce Developers YouTube channel "cumulatively received a total of over 135,000 views from Canadian users" during the relevant period alone, and attaches a screenshot of a YouTube analytics tool to this effect [para 50, Exhibit 29].

[24] Mr. Belur goes on to state that:

[...] given the complexity and specialized nature of the APEX development and programming Services, skills development and training through the APEX consulting Services is essential for users to be able to proficiently make use of the various features and functionalities of the apex development and programming Services [para 51].

### **REASONS FOR DECISION**

#### ***Services (1), (2) & (4): providing temporary use of... and consulting services...***

[25] Although the Requesting Party did not concede that the Owner's evidence demonstrated use of the Mark in association with services (1), (2) and (4) identified as such above, it did recognize in its written

representations that the evidence describes these services [Requesting Party's written representations, para 22]. It further submits that the Owner's evidence fails to show use of the Mark only with regard to services (3), discussed below.

[26] With regard to services (1) and (2), the Owner's evidence explains that the APEX Services are cloud-based software services allowing users to perform various functions and tasks including designing, developing, customizing and maintaining applications to be used on the Salesforce Platform. The evidence includes notably relevant Developer Guides and website excerpts that display the Mark and describe functions of the APEX Services, which I consider correspond to services (1) and (2).

[27] I note that the Owner's evidence could have been more explicit with regard to users in Canada using the APEX services, or at least registered or subscribed thereto, during the relevant period. However, in view of the significant number of completed trainings and website views from Canada and the evidence in its entirety, I am prepared to infer that the Owner performed the APEX Services, and thus services (1) and (2), in Canada during such time. In any event, at the very least, I accept that the evidence shows advertisement of these services, which the owner was willing and able to perform in Canada during the relevant period.

[28] With regard to services (4), the Owner's evidence clearly correlates these consultation services to education and training regarding its other services, correlation which I note is not disputed by the Requesting Party. The Owner's evidence shows training modules and videos which display the Mark and provides detailed evidence of users in Canada having completed training badges and viewed training videos during the relevant period.

[29] From this evidence, I find that the Owner has demonstrated use of the Mark in association with services (1), (2) and (4), identified as such above, in Canada during the relevant period within the meaning of sections 4(2) and 45 of the Act.

***Services (3): online hosted computer services, namely...***

[30] The main issue in this case is whether the Owner has demonstrated use of the Mark in association with services (3) as identified above: “online hosted computer services, namely, designing, developing, customizing and maintaining computer software applications for others”.

[31] The Requesting Party submits that, from their description in the registration, services (3) require that the designing, developing, customizing and maintaining of computer software applications be performed by the Owner for the benefit of others [Requesting Party’s written representations, para 20, my emphasis]. It submits that this is fundamentally different from providing temporary use of software as described in services (1) and (2).

[32] The Requesting Party argues that the evidence shows that it is not the Owner, but users of its APEX Services who design, develop, customize and maintain any created computer software applications and that, as such, the Owner has failed to demonstrate use of the Mark in association with services (3) as articulated in the registration.

[33] In this regard, Requesting Party cites various decisions; however, I do not consider any to be factually akin to the present case. For example, it cites *Miller Thomson LLP v IAGC Global Trade & Consultancy Inc.*, 2024 TMOB 138, which pertains to an entirely different sector and distinguishable services, *i.e.* “bakery shops” vs the operation of a commercial facility producing baked goods for wholesale. The Requesting Party also cites *Finastra International Limited v Fenestrae B.V.*, 2022 TMOB 085, which



pertains to goods and where the specification was difficult to interpret given “arguably incongruous terms, namely ‘computer programs namely, backup hard drives for computers’ and multiple nested ‘namely’ terms” [para 49], which I do not consider to be the case here. In any event, it is well established that each case is to be decided on its own facts [*Heenan Blaikie LLP v Sports Authority Michigan Inc*, 2011 FC 273; *Supershuttle International, Inc v Fetherstonhaugh & Co*, 2015 FC 1259; *Hilton*, above].

[34] The Owner, on the other hand, argues that the Requesting Party’s interpretation ignores the preamble of services (3): “online hosted computer services, namely”, is inconsistent with the jurisprudence indicating that services should be construed liberally, and fails to consider the evidence as a whole, including notably the particular context of the Owner’s business, *i.e.* a CRM company whose clients are other companies who, in turn, build and offer custom applications to their clients.

[35] It submits that the evidence is clear that the APEX Services include and correspond to services (3) insofar as they are services hosted online by the Owner, that allow users (who are themselves developers), to design, develop, customize and maintain computer software applications for others, *i.e.* the ultimate clients of the developer users within the CRM model.

[36] The Owner argues that it is in a better position to understand and interpret the services listed in the registration. It submits that the evidence shows that the APEX Services are akin to a suite of software-related offerings, designed to work in conjunction with each other and share common features and functions described in services (1), (2) and (3) [Owner’s written representations, paras 72-79]. It acknowledges that the descriptions may overlap to a certain extent, but submits that this is not fatal, citing notably *Clark Wilson LLP v 7299362 Canada Inc*, 2022 TMOB 17; *Barrette Legal Inc v Cloudbees, Inc*, 2024 TMOB 134.

[37] Keeping in mind the purpose and low evidentiary threshold applicable in section 45 proceedings, and that such proceedings do not lend themselves to a matrix-type approach to interpreting a specification of goods and services [*Fasken Martineau Dumoulin LLP v GENTEC*, 2021 TMOB 56] or to an astutely meticulous reading of the language used [see *Aird & Berlis LLP v Levi Strauss & Co*, 2006 FC 654], I agree with the Owner.

[38] Indeed, I consider the Owner's interpretation of services (3) to be logical and consistent with their ordinary commercial meaning and the evidence as a whole, which is to the effect that services (3) correspond to and are part of the interrelated software development and programming services making up the APEX Services.

[39] As such, given the determination above that the APEX Services were performed, or at least advertised and available in Canada during the relevant period, and that the Mark was displayed in association with them, I consider the Owner's evidence sufficient to demonstrate use of the Mark in association with services (3), as identified above, within the meaning of sections 4(2) and 45 of the Act.

#### **DISPOSITION**

[40] 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 maintained.

Emilie Dubreuil  
Member  
Trademarks Opposition Board  
Canadian Intellectual Property Office

# Appearances and Agents of Record

**HEARING DATE:** 2025-07-08

## **APPEARANCES**

**For the Requesting Party:** Abbas Kassam

**For the Registered Owner:** James Green

## **AGENTS OF RECORD**

**For the Requesting Party:** Fasken Martineau Dumoulin LLP

**For the Registered Owner:** Gowling WLG (Canada) LLP