



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2025 TMOB 182

Date of Decision: 2025-09-10

IN THE MATTER OF AN OPPOSITION

Opponent: Shenzhen Telesin Digital Co., Ltd.

Applicant: Shuai Wang

Application: 2169230 for TELESIN

INTRODUCTION

[1] Shuai Wang (the Applicant) has applied to register the trademark TELESIN (the Mark) in association with the following goods:

AA batteries; AC adapters for consumer video game apparatus; audio recorders; baby monitors; bags adapted for computers; bags adapted for laptops; bags for cameras and photographic equipment; bags specially adapted for cameras and photographic equipment; batteries for cell phones; battery boxes; battery cases; bicycle flashing safety lights; bike computers; cable adapters; cable connectors; camera adapters; camera bags; camera batteries; camera battery chargers; camera bipods; camera cases; camera covers; camera filters; camera lenses; camera tripods; computer disc drives; digital cameras; digital photo cameras; digital video cameras

[2] Shenzhen Telesin Digital Co., Ltd. (the Opponent) has opposed registration of the Mark on a number of grounds, all of which turn on the issue of confusion between the Mark and the Opponent's TELESIN & Design

trademark, shown below, used in association with camera accessories, as well as a wide range of electronic devices and other products.

TELESIN

For the reasons that follow, the application is refused.

THE RECORD

[3] The application was filed on February 25, 2022 and advertised for opposition purposes in the *Trademarks Journal* on November 22, 2023.

[4] On January 18, 2024, the Opponent opposed the application by filing a statement of opposition under section 38 of the *Trademarks Act*, RSC 1985, c T-13 (the Act). The grounds of opposition allege that the Mark was filed in bad faith contrary to section 38(2)(a.1), that the Applicant is not the person entitled to registration pursuant to sections 38(2)(c) and 16(1)(a) of the Act, that the Mark is not distinctive contrary to section 38(2)(d) of the Act, that the Applicant was not using or did not propose to use the Mark in Canada contrary to section 38(2)(e) of the Act, and that the Applicant was not entitled to use the Mark contrary to section 38(2)(f) of the Act.

[5] The Applicant filed and served its counter statement on March 19, 2024.

[6] In support of its opposition, the Opponent filed the affidavit of Ming Zhong, sworn June 30, 2024 in Burlington, Ontario, with Exhibits 1-5 (the Zhong Affidavit).

[7] In support of its application, the Applicant filed a letter dated October 30, 2024, to which were attached Exhibits A and B.

[8] No cross-examination was conducted, and no reply or additional evidence was filed.

[9] Both parties submitted written representations. A hearing was not requested.

PRELIMINARY ISSUE – APPLICANT’S LETTER IS INADMISSIBLE AS EVIDENCE

[10] As noted above, the Applicant provided, as its evidence, a letter addressed to the Registrar, including Exhibits A and B. I note that this letter was provided via the Trademarks Opposition Board’s online portal where the letter was identified by the Applicant as a statutory declaration.

[11] The Opponent submits that the Applicant’s letter is inadmissible as it does not constitute a statutory declaration because it was not properly sworn before a notary public or commissioner of oaths [Opponent’s written representations at paras 14-19]. While the Applicant indicated in its written representations that there had been a “procedural oversight” and a further statutory declaration would be submitted, [Applicant’s written representations at para 23], no such evidence was received by the Registrar.

[12] The Applicant argues that “technical errors should not defeat the substantive content of relevant material” [Applicant’s written representations at para 24]. Unfortunately, the issue here is not a matter of mere technicality. To be a proper affidavit or statutory declaration, a document needs to refer to the facts being provided under oath [see *Remitbee Incorporated v Remitly, Inc*, 2022 TMOB 126 at para 23].

[13] While I am conscious of the fact that the Applicant was not represented by counsel or an agent, the fact remains that the letter with accompanying Exhibits A and B provided by the Applicant is neither an affidavit nor a statutory declaration as required pursuant to section 49 of the

Trademarks Regulations, SOR/2018-227. As such, I find the Applicant's letter of October 30, 2024 to be inadmissible as evidence in the present opposition.

[14] I note that even had the letter and exhibits been considered admissible as evidence, at best for the Applicant, the invoice shows one sale by the Applicant to a customer in Canada in 2009. No images of the product are included. I would therefore not have found this evidence to have meaningfully assisted the Applicant in any event.

LEGAL ONUS AND EVIDENTIAL BURDEN

[15] The legal onus is on the Applicant to show that its application complies with the provisions of the Act. However, there is an initial evidential burden on the Opponent to adduce sufficient admissible evidence from which it could reasonably be concluded that the facts alleged to support each ground of opposition exist. Once this initial burden is met, the Applicant must satisfy the Registrar, on a balance of probabilities, that the grounds of opposition pleaded should not prevent the registration of the Mark [see *John Labatt Ltd v Molson Companies Ltd* (1990), 30 CPR (3d) 293 (FCTD) at 298; *Dion Neckwear Ltd v Christian Dior, SA* (2002), 20 CPR (4th) 155 (FCA)].

OPPONENT'S EVIDENCE

[16] Ming Zhong is the legal representative and general manager of the Opponent [para 1]. She explains that the Opponent's main activities pertain to a wide range of products and services, most of which relate to various technological products such as drones, VR glasses, cameras and equipment, wearable devices, smart home device, etc. [para 6].

[17] She explains that the "TELESIN" Brand was established in China in 2013, and expanded to global online and offline sales via platforms such as AliExpress, Amazon, eBay, independent websites, etc. in 2015 [para 7]. She

indicates that the TELESIN trademark is one of the Opponent's most important and prominent brands, and that "products bearing the brand have been sold in North America, EU, England, Japan, Russia, Australia, China, Brazil, India, Indonesia, Singapore, Philippine, Malaysia, Thailand, New Zealand and some other countries" [para 10].

[18] With regard to Canada specifically, Ms. Zhong states that the Opponent filed trademark application number 2172332 for TELESIN & Design on March 12, 2022 in association with a wide range of electronic devices and other products. She further states that the Opponent primarily sells its "TELESIN products" in Canada through its Amazon store and provides a printout therefrom, although she indicates that the Opponent also sells products through AliExpress [para 9, Exhibit 3]. The TELESIN trademark is prominently displayed on the Opponent's products or their packaging, and examples of such products are provided, consisting primarily of battery charger kits and other action camera accessories (e.g. waterproof camera cases and storage bags, selfie stick, waterproof remote control, camera suction mounts) "as sold in Canada primarily through the Opponent's online store at Aamazon.ca [sic]" [para 11, Exhibit 4].

[19] Ms. Zhong further states that the Opponent "started to sell the products bearing the trademark "TELESIN" in Canada at least as early as 2016" [para 12] and provides a sample order from AliExpress dated July 19, 2016 as well as sample orders of Amazon.ca from 2017 to 2023 [Exhibit 5]. She confirms that the specimens attached as Exhibits 4 and 5 to her affidavit accurately represent how the TELESIN trademark was displayed on the goods at the time of their sale in Canada and that "most" of the battery charger kits and other action camera accessories she describes have been "consistently sold in Canada since 2016, through the Opponent's online store at Aamazon.ca [sic] and AliExpress across Canada" [para 13].

GROUND OF OPPOSITION

Sections 16(1)(a) and 38(2)(c)

[20] The Opponent pleads that:

The Applicant is not entitled to registration under Section 16(a) of the Act, in that at the filing date of the Applicant's Trademark Application, the Applicant's Trademark is confusing with the Opponent's "TELESIN& Design" mark (Application No.: 2172332), which had been previously used or made known in Canada and continues to be used by the Opponent and/or its licensees in association with "bags for cameras and photographic equipment; bags specially adapted for cameras and photographic equipment; battery boxes; battery cases; camera adapters; camera bags; camera batteries; camera battery chargers; camera bipods; camera cases; camera covers; camera filters; camera lenses; camera tripods; cable adapters; cable connectors", sold at Amazon.ca and not abandoned in Canada as of the filing date and the date of advertisement of the Applicant's Trademark Application and all other material dates.

[21] As there is no evidence of use of the Mark, the material date for assessing confusion is February 25, 2022, the filing date of the application.

[22] The Applicant argues that the Opponent is improperly relying on its pending trademark application as it was filed on March 12, 2022, after the filing date of the application on February 25, 2022. I note, however, that although the Opponent references its pending application in its pleading, I consider the ground of opposition to be alleging and relying upon the Opponent's prior use of its TELESIN trademark in association with the specific goods identified. Further, had the Opponent been solely relying on its trademark application in support of this ground, it would have based its pleading under section 16(1)(b) of the Act as opposed to section 16(1)(a). As such, the Opponent's application is not relied upon for this ground of opposition.

[23] The Applicant also argues in its written representations that the Opponent's evidence fails to demonstrate prior use of its TELESIN trademark in Canada. It submits that the Opponent's evidence has not demonstrated

sustained commercial activity in Canada between 2016 and the date of filing of the application in 2022. The Applicant further argues that the evidence of listings on Amazon.ca alone is inadequate “without verified Canadian shipment, customer feedback, or local invoices” [Applicant’s Written Arguments, para 9].

[24] Ms. Zhong was not, however, cross-examined on her evidence. Moreover, I am satisfied that her statements of use in Canada of the Opponent’s mark, as described above, are also supported by other evidence included in the Zhong affidavit. For example, Ms. Zhong states in her affidavit that the Opponent has consistently sold “most” of the camera equipment and accessories shown in its evidence in association with the TELESIN trademark in Canada since at least as early as 2016. The Opponent provides a printout from an AliExpress dashboard pertaining to an order dated July 19, 2016. I note that under the “buyer” column, a Canadian flag icon appears next to the customer name and the legible portion of the “product information” reads “TELESIN Floating Strap 2-pak”.

[25] As such, I accept that the Opponent has demonstrated use of its TELESIN trademark in Canada since at least 2016, which is before the filing date of the application. I therefore find that the Opponent has met its initial evidential burden regarding this ground. Hence, the Applicant must establish, on a balance of probabilities, that there was no reasonable likelihood of confusion between the Mark and the Opponent’s trademark at the filing date of the Application.

Test for confusion

[26] The relevant test for confusion is outlined in section 6(2) of the Act, which stipulates that the 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.

[27] The test for confusion is assessed as a matter of first impression in the mind of a casual consumer somewhat in a hurry who sees the applicant's mark, at a time when they have no more than an imperfect recollection of the opponent's trademark, and do not pause to give the matter any detailed consideration or scrutiny, nor to examine closely the similarities and differences between the marks [*Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée*, 2006 SCC 23 at para 20].

[28] In determining whether two trademarks are confusing, all the surrounding circumstances should be considered, including the following listed in section 6(5) of the Act: (i) the inherent distinctiveness of the trademarks and the extent to which they have become known; (ii) the length of time the trademarks have been in use; (iii) the nature of the goods and services or business; (iv) the nature of the trade; and (v) the degree of resemblance between the trademarks, including in appearance or sound or in the ideas suggested by them.

[29] These criteria are not exhaustive, and different weight will be given to each one in a context specific assessment [*Mattel, Inc v 3894207 Canada Inc*, 2006 SCC 22 at para 54; *Veuve Clicquot, supra*]. I also refer to *Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27 at para 49, where the Supreme Court of Canada states that section 6(5)(e), the resemblance between the marks, will often have the greatest effect on the confusion analysis.

Degree of resemblance

[30] Given the importance of this factor, I address it at the outset. The degree of resemblance between two trademarks must be assessed by considering each trademark in its totality, with a consideration of whether there is an aspect of the trademarks that is particularly striking or unique [*Masterpiece, supra* at para 64].

[31] Here, the parties' trademarks are effectively identical in appearance, sound and ideas suggested. The most striking element of both parties' trademarks is the term TELESIN, and I do not consider the design of Opponent's mark to give rise to any meaningful difference in appearance between the trademarks at issue. Moreover, the Mark is a word mark, such that it could be depicted in any font or style.

[32] I therefore find that this factor strongly favours the Opponent.

Inherent distinctiveness and extent known

[33] With regard to inherent distinctiveness, as the trademarks are essentially identical, they have the same level of inherent distinctiveness. This factor therefore favours neither party.

[34] With regard to the extent to which the trademarks have become known, as I have found some evidence of use by the Opponent of its TELESIN trademark in Canada for almost a decade, and as there is no admissible evidence filed by the Applicant, this factor favours the Opponent.

Length of time the trademarks have been in use

[35] In the absence of admissible evidence from the Applicant, and in view of my finding above that the Opponent has established use of its TELESIN trademark in Canada since July 2016, this factor favours the Opponent.

Nature of the goods, services or business; and nature of the trade

[36] The Applicant's application covers a wide variety of goods, including notably cameras and photographic equipment and accessories such as camera bags and camera batteries. There is direct overlap between these goods and those in association with which the Opponent has used its TELESIN trademark in Canada.

[37] With regard to the nature of the trade and channels of trade, the Opponent has stated that it sells its products in Canada primarily through its *Amazon.ca* online store. In the absence of evidence to the contrary from the Applicant, I assume that the parties' channels of trade could overlap.

[38] Overall, this factor favours the Opponent.

Surrounding circumstances – absence of actual confusion

[39] The Applicant submits that the Opponent's claim of confusion is unsupported by any instances of actual confusion.

[40] While the Opponent is not under an obligation to file evidence of actual confusion, the failure to file such evidence in the face of an extensive period of coexistence may result in a negative inference being drawn [see *Mattel, supra*].

[41] In this case, however, there is no evidence of extensive concurrent use. This factor therefore does not assist the Applicant.

Conclusion

[42] Having considered all of the surrounding circumstances, I find that the Applicant has not met its legal onus to demonstrate, on a balance of probabilities, that there is no reasonable likelihood of confusion between the parties' trademarks. I reach this conclusion in view of all of the relevant surrounding circumstances favouring the Opponent.

[43] Accordingly, the non-entitlement to registration ground is successful.

Remaining grounds of opposition

[44] As the Opponent has already succeeded under the non-entitlement to registration ground of opposition, I will only make the following brief comments regarding the remaining grounds.

[45] Even if I were to accept the remaining grounds as being proper grounds and sufficiently pleaded – issues on which I make no finding – I would not have considered the Opponent to have met its initial evidential onus with regard to any of them.

[46] With regard to the non-distinctiveness ground, the Opponent provides no evidence of overall sales, advertising or other indicia of reputation of its TELESIN trademark in Canada. As explained in *Bojangles*, one cannot simply assert that its trademark is known in Canada; there must be clear evidence of the extent to which it is known. In the present case, the Opponent's evidence falls short of demonstrating that its trademark was sufficiently known in Canada or well known in a specific area of Canada on the material date for this ground, *i.e.* January 18, 2024, the filing date of the opposition.

[47] With regard to the other grounds, there is no evidence to support a finding that the application was filed in bad faith, that the Applicant was not using or did not propose to use the Mark, or that the Applicant was not entitled to use the Mark as of the applicable material date.

DISPOSITION

[48] Pursuant to the authority delegated to me under section 63(3) of the Act, I refuse the application pursuant to section 38(12) of the Act.

Cindy R. Folz
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

Appearances and Agents of Record

HEARING DATE: No hearing held

AGENTS OF RECORD

For the Opponent: Xin Xu

For the Applicant: No agent appointed