



LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADE-MARKS

Citation: 2016 TMOB 67
Date of Decision: 2016-04-26

IN THE MATTER OF AN OPPOSITION

Eurosport Société par Actions Simplifiée	Opponent
and	
Continental Tire De Mexico S.A. De C.V.	Applicant
1,604,031 for EUROSPOURT	Application

[1] Eurosport Société par Actions Simplifiée opposes registration of the trade-mark EUROSPOURT (the Mark) that is the subject of application No. 1,604,031 by Continental Tire De Mexico S.A. De C.V.

[2] Filed on November 27, 2012, the subject application is based on proposed use of the Mark in Canada in association with “tires”.

[3] The Opponent alleges that: (i) the application does not conform to several of the requirements set out in section 30 of the *Trade-marks Act*, RSC 1985, c T-13 (the Act); (ii) the Mark is not registrable under section 12(1)(b) of the Act; (iii) the Mark is not registrable under section 12(1)(d) of the Act; (iv) the Applicant is not the person entitled to the registration of the Mark under section 16 of the Act; and (v) the trade-mark is not distinctive under section 2 of the Act.

[4] For the reasons that follow, I refuse the application.

The Record

[5] The Opponent filed its statement of opposition on October 7, 2013, which was amended on April 4, 2014 and further amended on June 3, 2014 with leave from the Registrar. The Applicant filed and served its counter statement on December 5, 2013 denying all of the grounds of opposition.

[6] In support of its opposition, the Opponent filed the affidavit of Dr. Thomas Mayrhofer, General Counsel of the Opponent, and a certified copy of registration No. TMA763,231 for the trade-mark EUROSPOORT. Dr. Mayrhofer was not cross-examined. The Opponent also filed a written argument and attended a hearing held on February 2, 2016.

[7] The Applicant did not file any evidence, did not file a written argument, and did not attend the hearing.

The Parties' Respective Burden or Onus

[8] The Applicant bears the legal onus of establishing, on a balance of probabilities that its application complies with the requirements of the Act. However, there is an initial evidential burden on the Opponent to adduce sufficient admissible evidence from which it could reasonably be concluded that the facts alleged to support each ground of opposition exist [see *John Labatt Ltd v Molson Companies Ltd* (1990), 30 CPR (3d) 293 (FCTD) at 298].

Is the Mark Confusing with the Opponent's Registered Trade-mark?

[9] The Opponent alleges that the Mark is not registrable pursuant to section 12(1)(d) of the Act on the ground that it is confusing with the Opponent's trade-mark EUROSPOORT of registration No. TMA763,231, the particulars of which are reproduced in Schedule "A" to this decision.

[10] The material date for considering this issue, which arises from the section 12(1)(d) ground of opposition, is the date of my decision [see *Park Avenue Furniture Corporation v Wickes/Simmons Bedding Ltd and The Registrar of Trade Marks* (1991), 37 CPR (3d) 413 (FCA)].

[11] An opponent's initial onus is met with respect to a section 12(1)(d) ground of opposition if the registration(s) relied upon is(are) in good standing. In this regard, the Registrar has the discretion to check the register in order to confirm the existence of the registration(s) relied upon by an opponent [see *Quaker Oats of Canada Ltd/La Compagnie Quaker Oats du Canada Ltée v Menu foods Ltd* (1986), 11 CPR (3d) 410 (TMOB)]. Having exercised the Registrar's discretion, I confirm that the trade-mark EUROSPORT of registration No. TMA763,231 is in good standing.

[12] Since the Opponent has satisfied its initial evidential burden, the issue becomes whether the Applicant has met its legal burden to establish, on a balance of probabilities, that there is no reasonable likelihood of confusion between the Mark and the Opponent's registered trade-mark.

[13] For the reasons that follow, I accept this ground of opposition.

[14] The test for confusion is one of first impression and imperfect recollection. Section 6(2) of the Act indicates that use of a trade-mark causes confusion with another trade-mark if the use of both trade-marks in the same area would be likely to lead to the inference that the goods or services associated with those trade-marks are manufactured, sold, leased, hired or performed by the same person, whether or not the goods or services are of the same general class.

[15] In applying the test for confusion, the Registrar must have regard to all the surrounding circumstances, including those specifically enumerated in section 6(5) of the Act, namely: (a) the inherent distinctiveness of the trade-marks and the extent to which they have become known; (b) the length of time each has 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 trade-marks in appearance or sound or in the ideas suggested by them. These enumerated factors need not be attributed equal weight [see *Mattel, Inc v 3894207 Canada Inc* (2006), 49 CPR (4th) 321 (SCC); *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée et al, supra*; and *Masterpiece Inc v Alavida Lifestyles Inc* (2011), 92 CPR (4th) 361 (SCC) for a thorough discussion of the general principles that govern the test for confusion].

[16] I will now turn to the assessment of the section 6(5) factors.

Section 6(5)(a) - the inherent distinctiveness of the trade-marks and the extent to which they have become known

[17] The overall consideration of the section 6(5)(a) factor involves a combination of inherent and acquired distinctiveness of the parties' trade-marks. In the present case, the parties' trade-marks are identical; the term EUROSPORT is composed of the prefix EURO followed by the word SPORT. It is not an inherently strong trade-mark as EUROSPORT describes that the parties' goods and services pertain to sports with a connection to Europe. In this regard, *The Canadian Oxford Dictionary* defines the prefix EURO as an abbreviation of the term EUROPE and it has been held that geographical designations are not inherently distinctive [see *London Drugs Limited v International Clothiers Inc* 2014 FC 223 par 49].

[18] The strength of a trade-mark may be increased by means of it becoming known in Canada through promotion or use. Only the Opponent filed evidence of promotion and/or use of its trade-mark.

[19] Dr. Mayrhofer describes the Opponent as "a leading global multimedia sports and entertainment company" with a number of television sports channels that are broadcast to 135 million homes across 54 countries, a family of sports-related websites, as well as a subsidiary (Eurosport Events Ltd.) that produces, manages and promotes international sport events and series.

[20] According to Dr. Mayrhofer, the Opponent has used the trade-mark EUROSPORT in association with all aspects of its business including its sports television channels, its sports-related websites, and by its subsidiary, Eurosport Events Ltd., in sport events production, management and promotion, since as early as 1989. Attached as Exhibit A to his affidavit are a number of sample uses of the Opponent's trade-mark in the form of a series of EUROSPORT logos, a screen shot showing an undated car racing event, a screen shot showing the scores of a number of undated soccer games on a mobile device, a photo of an undated soccer game in a stadium, and a screen shot of an undated Yahoo! SPORT webpage. The trade-mark EUROSPORT appears on each of the sample uses shown.

[21] In terms of the nature of the Opponent's business, Dr. Mayrhofer states that there are five different television channels broadcasting sport events, news, and entertainment, 24 hours a day in over 20 languages using the EUROSPORT trade-mark. These include its flagship pan-European channel EUROSPORT created in 1989 featuring over 3,000 hours of live sports coverage annually in more than 120 different sports, its EUROSPORT 2 channel launched in 2005 which provides additional sports coverage, its sports news channel EUROSPORTNEWS created in 2000, as well as its EUROSPORT ASIA-PACIFIC channel launched in 2006 "bring[ing] the best of Europe's sports to Asia-Pacific" [see "Quick Facts & Figures" attached as Exhibit C]. I note that the Opponent also simulcasts in high definitions on its EUROSPORT HD, EUROSPORT 2 HD, and EUROSPORT ASIA-PACIFIC HD channels. Promotional fact sheets and screenshots showing use of the trade-mark EUROSPORT during broadcasts are attached as Exhibits C and D to Dr. Mayrhofer's affidavit.

[22] According to Dr. Mayrhofer, the Opponent's sports television channels cover many well-known sport events around the world such as the Olympic Games, the FIFA World Cup, a number of tennis tournaments including the Australian Open, the French Open, the US Open, ski racing events, car and motorcycle racing events, Le Tour de France, PGA Tour golf tournaments, etc. Attached as Exhibit E are copies of the Opponent's EUROSPORT television program guides highlighting major events broadcast between 2010 and 2014.

[23] While the Opponent might have a strong presence in the European television market, there is no indication that any of the Opponent's television channels bearing the trade-mark EUROSPORT are broadcast in Canada.

[24] Even so, Dr. Mayrhofer states that the Opponent covers many sport events held in Canada throughout the years including curling championships, biathlons, the Vancouver Olympic Winter Games and Paralympic Games, speed skating championships, figure skating championships, alpine skiing races, hockey championships, Formula 1 Grand Prix, tennis tournaments, boxing matches, golf tournaments, etc. Attached as Exhibits F are photos of the Opponent's representatives and production space at the Vancouver 2010 Olympic Winter Games where the trade-mark EUROSPORT appears on the representatives' jackets and microphones. Attached as Exhibit G is a list of rights holding broadcasters for the Vancouver 2010 Olympic

Winter Games; I note that the Opponent's broadcasting rights did not extend to Canada. Attached as Exhibit H are sample broadcasting schedules of the Opponent between 2009 and 2013 highlighting various sport events that took place in Canada.

[25] Once again, there is no indication that the Opponent broadcast these events on television using the trade-mark EUROSPORT in Canada.

[26] Dr. Mayrhofer further states that the Opponent was a sponsor of the UEFA Women's Euro 2013 soccer championship which took place in Sweden and was broadcast by Canadian broadcasters in Canada. In this regard, Dr. Mayrhofer states that the trade-mark EUROSPORT was prominently displayed on advertising signage surrounding the soccer field and was visible to Canadian viewers during the broadcast. There is no indication of the number of Canadians who watched the broadcast.

[27] With respect to its presence on the Internet, Dr. Mayrhofer states that the Opponent owns the domain name *eurosport.com* which links to 15 different regional EUROSPORT websites in 11 languages and receives up to 33 million unique visitors per month worldwide. I note that the Opponent does not have a Canadian or a North American website. Even so, Dr. Mayrhofer asserts that the Opponent's EUROSPORT websites are "heavily accessed" from Canada with over 10 million visits in 2011, over 12 million visits in 2012, and over 10 million visits in the first 9 months of 2013, all from Canada. Attached as Exhibit I are printouts from the Opponent's EUROSPORT websites, said to be representative of the manner in which the trade-mark EUROSPORT is displayed on the websites since 1999. The trade-mark EUROSPORT is shown prominently at the top of every webpage.

[28] Dr. Mayrhofer adds that the Opponent's EUROSPORT websites provide extensive coverage of numerous motorsport events around the world, including news, photos, videos, race calendars, driver and team information, blogs, etc. Attached as Exhibit J are sample printouts of EUROSPORT webpages, representative of the manner in which the trade-mark EUROSPORT has been displayed in association with motorsports on the websites since 1999. The trade-mark EUROSPORT is shown prominently at the top of every webpage.

[29] In addition to its websites, the Opponent also offers a number of mobile applications that can be downloaded by users worldwide, including Canada, since 2009. Screenshots from the Canadian iTunes store for mobile applications providing information regarding various sport events are attached as Exhibit K; the trade-mark EUROSPORT is shown prominently on the webpages and in the screenshots of the applications. According to Dr. Mayrhofer, the total number of times these mobile applications have been downloaded from Canada since their respective launch dates until February 2014 is in excess of 57,000.

[30] Dr. Mayrhofer also references an article from *The Globe and Mail* dated September 2, 2013 on the Tour of Alberta cycling race [Exhibit L]; I note that the article states that the race was being broadcast on “Rogers Sportsnet in Canada, NBC in the United States and Eurosport in Europe”. There is also a press release from the Opponent dated September 16, 2013 on an agreement with Discovery Communications to bring “Eurosport on Velocity” to North American viewers in September 2013 together with an article from *The Hollywood Reporter’s* website dated November 21, 2013 on the agreement [Exhibit L]. I note that the press release is entitled “Eurosport makes its TV Debut in the U.S.”; there is no information on the number of Canadians who would have seen the press release or the program.

[31] Finally, Dr. Mayrhofer discusses the Opponent’s connection to motorsports as follows. The Opponent’s subsidiary Eurosport Events Ltd. organizes, manages and promotes a number of international motorsport events including the FIA World Touring Car Championship (WTCC), the FIA European Touring Car Cup (ETCC), and the FIA European Rally Championship (ERC), resulting in over 1,500 hours of television programming for the EUROSPORT television channels each year, that are also distributed to 135 television channels in 188 countries. Dr. Mayrhofer asserts that Eurosport Events Ltd. is licensed to use the EUROSPORT trade-mark by the Opponent who controls the quality and character of the goods and services provided by the former in association with the trade-mark.

[32] In this regard, the ETCC is an annual touring car racing series held at various locations throughout Europe that is sponsored by a single tire manufacturer, namely Yokohama since 2006, who provides the tires for all of the competitors. The sponsor’s trade-mark is prominently shown on ETCC’s website and at ETCC events. Attached as Exhibit M are printouts from

ETCC's website where the Opponent's trade-mark EUROSPORT is displayed. Dr. Mayrhofer attests that the printouts are representative of the manner in which the Opponent's trade-mark EUROSPORT appears on the website since 2004. The tire supplier's trade-mark YOKOHAMA also appears in the printouts.

[33] The ERC is a car rallying competition held in Europe, which the Opponent has been a promoter since 2013. Unlike the ETCC, the competitors of the ERC can choose their own brand of tires. Tire suppliers who become official tire sponsors/partners of the ERC, including Michelin, Pirelli and Yokohama, have their trade-marks shown on ERC's website and at ERC events. Attached as Exhibit N are printouts from ERC's website where the Opponent's trade-mark EUROSPORT is displayed. Dr. Mayrhofer attests that the printouts are representative of the manner in which the Opponent's trade-mark EUROSPORT appears on the website since 2013. The tire suppliers' trade-marks MICHELIN, PIRELLI and YOKOHAMA also appear in the printouts. Dr. Mayrhofer states that the ERC website has received over 5,000 hits from Canada in 2013.

[34] The WTCC is an international touring car series organized and promoted by Eurosport Events Ltd. since 2005 that is sponsored by a single tire manufacturer, namely Yokohama since 2006, who provides the tires for all of the competitors. The sponsor's trade-mark is prominently shown on WTCC's website. Attached as Exhibit P are printouts from WTCC's website where the Opponent's trade-mark EUROSPORT is displayed. Dr. Mayrhofer attests that the printouts are representative of the manner in which the Opponent's trade-mark EUROSPORT appears on the website since 1999. The tire supplier's trade-mark YOKOHAMA also appears in the printouts. Dr. Mayrhofer states that the WTCC website has received over 44,000 hits from Canada between 2009 and 2013.

[35] In his affidavit, Dr. Mayrhofer also discusses the Intercontinental Rally Challenge (IRC), an international car rallying series created and operated by the Opponent from 2006 to 2012, through Eurosport Events Ltd. and another subsidiary which has since disbanded. The IRC was held in Europe, South America, Africa and Asia where the competitors were able to choose their own brand of tires. Tire suppliers who became official tire sponsors/partners of the IRC have their trade-marks shown on IRC's website. Attached as Exhibit O are printouts from IRC's

website where the Opponent's trade-mark EUROSPORT is displayed. Dr. Mayrhofer attests that the printouts are representative of the manner in which the Opponent's trade-mark EUROSPORT appears on the website between 2009 and 2013. Tire suppliers' trade-marks such as BFGOODRICH, MICHELIN, PIRELLI and YOKOHAMA also appear in the printouts. Dr. Mayrhofer states that the IRC website received over 20,000 hits from Canada between 2009 and 2013.

[36] Dr. Mayrhofer states that major tire companies have invested heavily in the WTCC, ETCC, ERC and IRC. In exchange for their sponsorship, the companies are provided with exposure during the events such as tire visibility on the vehicles, advertising signage, flags, hospitality areas and merchandise sales. The trade-marks are also shown on event websites, as well as advertisements during television broadcasts. According to Dr. Mayrhofer, the total sponsorship expenditures by YOKOHAMA, PIRELLI and MICHELIN with "members of the [Opponent's] group" as the official sponsors/partners of WTCC, ETCC, ERC and IRC exceed 10 million Euros between 2008 and 2014.

[37] Dr. Mayrhofer further states that major tire companies advertise through the Opponent's various media platforms including its EUROSPORT websites, the WTCC, ETCC, ERC and IRC websites, on television and at events organized by Eurosport Events Ltd. In this regard, the tire companies' advertisements appear in close proximity to the Opponent's EUROSPORT trade-mark. According to Dr. Mayrhofer, the total advertising expenditures by these tire companies on the Opponent's various media platforms exceed 31 million Euros between 2008 and 2013. Dr. Mayrhofer did not provide a breakdown of those advertising expenditures per platform or the proportion of the total amount attributable to advertisements from Canadian companies or seen by consumers in Canada/targeted and offered to Canadians.

[38] In the end, when Dr. Mayrhofer's affidavit is read in its entirety together with the accompanying exhibits, I am satisfied that the Opponent's trade-mark EUROSPORT has become known to a certain extent in Canada in association with the Opponent's and its subsidiary's websites which provide coverage of numerous sport events around the world, including motorsports, since at least as early as 2009. Further, Canadians have been exposed to the use of the EUROSPORT trade-mark in association with various motor competitions which also

prominently feature various tire brands through visits to the ERC, ETCC, WTCC and IRC websites. However, I am not satisfied that the Opponent's trade-mark EUROSPORT has become known in Canada to any extent in association with its television sport channels as they are not broadcast in Canada.

[39] In the end, as there is no evidence of promotion or use of the Mark by the Applicant in Canada, it can only be concluded that the Opponent's trade-mark EUROSPORT has become known in Canada to a greater extent than the Mark.

[40] Accordingly, the section 6(5)(a) factor favours the Opponent.

Section 6(5)(b) - the length of time the trade-marks have been in use

[41] The application for the Mark is based upon proposed use in Canada and there is no evidence that the Mark has been used to date.

[42] In comparison, the Opponent's registration No. TMA763,231 claims use of the trade-mark EUROSPORT in Canada since at least as early as January 16, 1999 in association with, *inter alia*, the provision of sport related information to the public through a website. As discussed above, the Opponent has provided evidence of use of the trade-mark EUROSPORT in association with the Opponent's and its subsidiary's websites which provide coverage of numerous sport events around the world, including motorsports, seen in Canada since at least as early as 2009.

[43] Accordingly, the section 6(5)(b) factor significantly favours the Opponent.

Sections 6(5)(c) and (d) - the nature of the goods, services, trade and business

[44] Sections 6(5)(c) and (d) factors involve the nature of the goods, services, trade and business.

[45] When considering sections 6(5)(c) and (d) of the Act, it is the statements of goods and services as defined in the application for the Mark and in the Opponent's registration No. TMA763,231 that govern the assessment of the likelihood of confusion under section 12(1)(d) of the Act [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)].

[46] Furthermore, the statements of goods and/or services must be read with a view to determine the probable type of business or trade intended by the parties rather than all possible trades that might be encompassed by the wording. In this regard, evidence of the actual trades of the parties is useful [see *McDonald's Corp v Coffee Hut Stores Ltd* (1996), 68 CPR (3d) 168 (FCA); *Procter & Gamble Inc v Hunter Packaging Ltd* (1999), 2 CPR (4th) 266 (TMOB); *American Optical Corp v Alcon Pharmaceuticals Ltd* (2000), 5 CPR (4th) 110 (TMOB)].

[47] With respect to the Applicant's business, the Mark is applied for use in association with "tires". The Applicant has not provided any evidence of the actual trade it is engaged in.

[48] Even so, I note that attached as Exhibit Q to Dr. Mayrhofer's affidavit is a series of email exchanges between May and August 2012 between a member of the Opponent's Legal Department and the Head of Trademark Group at Continental AG regarding applications for the trade-mark EUROSPORT that were filed by the Applicant in Latin America. Notably, Continental AG, described by Dr. Mayrhofer as "a significant advertiser" on the Opponent's EUROSPORT online and television platforms in and outside of Germany since 2004, confirmed that the Applicant is its subsidiary and that the former represents the latter in all trade-mark related matters.

[49] In comparison, the Opponent's trade-mark EUROSPORT is registered for use in association with, *inter alia*, the provision of sport related information to the public through a website. Dr. Mayrhofer's affidavit provides clear evidence of use of the trade-mark EUROSPORT in association with the Opponent's and its subsidiary's websites which provide coverage of numerous sport events around the world, including motorsports.

[50] Neither the Opponent's registration nor the subject application contains any restriction on the parties' channels of trade. While I see no similarity between tires and the provision of sport related information, in the absence of evidence to the contrary from the Applicant, I am of the view that there is potential for overlap between the parties' channels of trade as the Opponent's

evidence shows that tire companies regularly advertise via its television channels and websites covering motorsports.

[51] In view of the foregoing, for the purpose of assessing confusion, I conclude that the 6(5)(c) factor favours the Applicant while the 6(5)(d) factor favours the Opponent.

Section 6(5)(e) - the degree of resemblance between the trade-marks in appearance or sound or in the ideas suggested by them

[52] When considering the degree of resemblance, the law is clear that the trade-marks must be considered in their totality.

[53] The parties' trade-marks are identical in appearance, sound and in ideas suggested. As discussed in the section 6(5)(a) analysis, both parties' marks describe that the parties' goods and services pertain to sports with a connection to Europe.

[54] Accordingly, this factor significantly favours the Opponent.

Additional surrounding circumstances

[55] In its written argument and at the hearing, the Opponent submits that a relevant surrounding circumstance in this case is the worldwide renown of the Opponent's trade-mark EUROSPORT. In support, the Opponent points to its EUROSPORT television channels broadcast in Europe and the significant number of visitors to its websites worldwide. The Opponent also refers to its hundreds of trade-mark registrations that consist or include the term EUROSPORT in over 85 countries and regions around the world [Exhibit B to Dr. Mayrhofer's affidavit]. The Opponent did not refer to any case law in support of this submission, nor provide any evidence which suggests that Canadians would have become aware of the EUROSPORT brand in view of its registrations and reputation abroad.

[56] In the absence of such evidence, I fail to see the relevance of foreign registrations and of the extent to which the Opponent's trade-mark is known in other jurisdictions in assessing the issue of confusion between the Mark and that of the Opponent in Canada.

Conclusion in the likelihood of confusion

[57] In *Masterpiece*, the Supreme Court of Canada noted that the degree of resemblance is the statutory factor that is often likely to have the greatest effect on the confusion analysis. In applying the test for confusion, I have considered it as a matter of first impression and imperfect recollection. Having considered all of the surrounding circumstances including the parties' identical trade-marks, the extent to which the Opponent's trade-mark has become known in Canada in connection with websites providing sports related information including motorsports, and the potential for overlap in the channels of trade by virtue of the close relationship between the Opponent, various motorsports events, and promotion of different tires brands, despite the dissimilarity between the parties' goods and services, I am not satisfied that the Applicant has discharged its burden of showing, on a balance of probabilities, that there is no reasonable likelihood of confusion between the two parties' trade-marks EUROSPORT.

[58] Although the public may not mistake the Applicant's tires as being manufactured by the Opponent, the public may believe that the Applicant's tires are somehow associated or that the Opponent has in some way approved, licensed or sponsored the Applicant's tires sold in association with the Mark [see *Conde Nast Publications Inc v Gozlan Brothers Ltd* (1980), 49 CPR (2d) 250 (FCTD); *Courvoisier International SARL v Paragon Clothing Ltd* (1984), 77 CPR (2d) 168 (TMOB)].

[59] In view of the foregoing, the section 12(1)(d) ground of opposition is successful.

Non-entitlement under section 16(3)(a) of the Act

[60] The Opponent alleges that the Applicant is not the person entitled to registration of the Mark pursuant to sections 16(3)(a) of the Act, on the ground that it is confusing with the trade-mark EUROSPORT which has been previously used in Canada by the Opponent in association with the goods and services set out in Schedule "A" to this decision.

[61] The material date for considering this ground of opposition is the filing date of the subject application, namely November 27, 2012.

[62] For the reasons that follow, this ground of opposition is successful.

The Opponent's Initial Evidential Burden

[63] The Opponent has the initial burden of proving that the trade-mark alleged in support of this ground of opposition was used in Canada prior to the material date and had not been abandoned at the date of advertisement of the application for the Mark, namely August 7, 2013 [section 16(5) of the Act]. As per my review of Dr. Mayrhofer's affidavit, I am satisfied that the Opponent has discharged its evidentiary burden to show prior use and non-abandonment of the trade-mark EUROSPORT in association with websites which provide coverage of numerous sport events, including motorsports, in Canada.

[64] Even though the material date for the section 16 ground of opposition falls earlier than today's date, the different dates do not result in a different outcome.

[65] For the reasons set out with the section 12(1)(d) ground of opposition, I find that there is a reasonable likelihood of confusion between the Mark and the trade-mark EUROSPORT.

Remaining Grounds of Opposition

[66] Since I have already accepted the opposition under two grounds, I do not consider it necessary to address the remaining grounds of opposition.

Disposition

[67] Pursuant to the authority delegated to me under section 63(3) of the Act, I refuse the application under section 38(8) of the Act.

Pik-Ki Fung
Member
Trade-marks Opposition Board
Canadian Intellectual Property Office

**TRADE-MARKS OPPOSITION BOARD
CANADIAN INTELLECTUAL PROPERTY OFFICE
APPEARANCES AND AGENTS OF RECORD**

HEARING DATE: February 2, 2016

APPEARANCES

Michael O'Neill For the Opponent

AGENTS OF RECORD

Gowling WLG (Canada) LLP For the Opponent

Robic For the Applicant

Schedule "A"

Trade-mark EUROSPOORT

Registration No. TMA763,231

Statement of Goods

(1) Printed matter, namely, newspapers, manuals, promotional pamphlets, brochures, magazines; publications, namely, magazines, journals, brochures, newsletters; periodicals.

Statement of Services

(1) Internet services, namely the provision of sports, sports news and sports information to the public offered through medium of the Internet, namely on a website, through on-line publications and in the newsletters delivered on a computer network by e-mail.

(2) Multimedia services, namely, the provision of sports news and information through the medium of the internet, namely, on a website.

(3) Advertising and business information, namely, advertising the wares and services of others; advertising agency services; direct mail advertising, namely, selling the wares and services of others by mail; electronic billboard advertising, namely, advertising the messages of others; placing advertisements for others; preparing advertisements for others; Advertising the wares and services of others by sponsoring.

(4) Television broadcasting by satellite, cable and means of other telecommunication networks; Broadcasting of television programmes and more generally multimedia programmes.

(5) Publication of texts, illustrations, magazines, newspapers, periodicals, publication of all kinds and in all forms, namely, publication of video games for use on television sets, personal computers and handheld devices; organisation of sports events, namely, ice hockey, baseball, basketball, football, soccer, rugby, lacrosse, tennis, squash, golf, alpine and nordic skiing, free-style skiing, volleyball, swimming, auto racing, track and field, gymnastics, weight lifting, horse racing, skateboarding, cycling, luge, bobsleigh, skeleton, water polo, equestrian, curling, mountain biking, snowboarding, wakeboarding, waterskiing, surfing, wind surfing, handball, table tennis, badminton, triathlon, decathlon, rowing, inline speed skating, flying disc, broomball, boat racing, jai-alai, racquetball, figure skating, speed skating, ringette, inline hockey, archery, pool, billiards, darts, bowling, cricket, dodgeball, field hockey, kayaking, canoeing and sailing events, motorcycle racing, snooker; organisation of sports events, namely, ice hockey, baseball, basketball, football, soccer, rugby, lacrosse, tennis, squash, golf, alpine and nordic skiing, free-style skiing, volleyball, swimming, diving, auto racing, track and field, gymnastics, weight lifting, horse racing, skateboarding, cycling, luge, bobsleigh, skeleton, water polo, equestrian, polo, curling, mountain biking, snowboarding, wakeboarding, waterskiing, surfing, wind surfing, handball, table tennis, badminton, triathlon, decathlon, rowing, inline speed skating, flying disc, broomball, boat racing, jai-alai, racquetball, figure skating, speed skating, ringette, inline hockey, archery, pool, billiards, darts, bowling, cricket, dodgeball, field hockey, kayaking, canoeing and sailing competitions, motorcycle racing snooker; production of television programmes, audio visual and multimedia programmes; production and creation of information programmes, namely, sports information television programmes, radio and television entertainment, audio-visual and multimedia programmes; organisation of lotteries and games.