



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

**Citation: 2011 TMOB 165**  
**Date of Decision: 2011-09-14**

**IN THE MATTER OF A SECTION 45 PROCEEDING  
requested by Sim & McBurney against registration  
No. TMA612,423 for the trade-mark WIRED-VISION in  
the name of A.R. Global Vision Ltd.**

**and**

**IN THE MATTER OF A SECTION 45 PROCEEDING  
requested by Sim & McBurney against registration  
No. TMA612,424 for the trade-mark WIREDVISION in  
the name of A.R. Global Vision Ltd.**

[1] At the request of Sim & McBurney (the Requesting Party), the Registrar of Trade-marks issued notices under s. 45 of the *Trade-marks Act* R.S.C. 1985, c. T-13 (the Act) on January 20, 2009 to A.R. Global Vision Ltd., the registered owner of registration No. TMA612,423 for the trade-mark WIRED-VISION and TMA612,424 for the trade-mark WIREDVISION (the Marks).

[2] The Marks are registered for use in association with “Providing products and services on the Internet, namely: distribution of photographic, artistic, film and video images of others, including still, motion and multimedia formats; post-production services, format conversion and duplication, and distribution of cinematographic, video and multimedia productions of others; consultation services in the field of still, motion and multimedia production” (the Services).

[3] Section 45 of the Act requires the registered owner of the trade-mark to show whether the trade-mark has been used in Canada in association with each of the wares and services specified in the registration at any time within the three year period immediately preceding the date of the

notice and, if not, the date when it was last in use and the reason for the absence of such use since that date. In this case, the relevant period for showing use is between January 20, 2006 and January 20, 2009 (the Relevant Period).

[4] The definition of “use” in association with services is set out in s. 4(2) of the Act:

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

[5] It is well established that mere assertions of use are not sufficient to demonstrate use in the context of a s. 45 proceeding [*Plough (Canada) Ltd. v. Aerosol Fillers Inc.* (1979), 45 C.P.R. (2d) 194, aff’d (1980), 53 C.P.R. (2d) 63 (F.C.A.)]. Although the threshold for establishing use in these proceedings is quite low [*Lang, Michener, Lawrence & Shaw v. Woods Canada Ltd.* (1996), 71 C.P.R. (3d) 477 (F.C.T.D.)], and evidentiary overkill is not required [*Union Electric Supply Co. v. Canada (Registrar of Trade Marks)* (1982), 63 C.P.R. (2d) 56 (F.C.T.D.)], sufficient facts must still be provided to permit the Registrar to arrive at a conclusion of use of the trade-mark in association with each of the wares or services specified in the registration during the relevant period.

[6] In response to the Registrar’s notice, the Registrant filed affidavits of Daniel Byette, Vice-President of the Registrant, in respect to each of the s. 45 proceedings, both sworn on July 17, 2009 (the Affidavits). I note that the Affidavits are substantively identical. Only the Registrant filed written representations; an oral hearing was held on May 3, 2011, at which only the Requesting Party made representations.

[7] In the Affidavits, Mr. Byette states that the Registrant carries on business using the name Vision Global A.R. Ltée, the French version of the Registrant’s name. At paragraph 2 of the Affidavits, Mr. Byette explains that the Registrant operates in the field of entertainment and media, offering services related to the creation of special effects and the postproduction, management and distribution of film and television content. He further explains that the Registrant offers services for the dissemination and archiving of feature films, television series, advertisements, video clips, documentaries and other archival media.

[8] In paragraph 4 of the Affidavits, Mr. Byette explains that the Registrant offers its services through a web portal, accessed via the Registrant's main website *www.visionglobale.com*. Exhibit DB-1 is a webpage printout of *www.visionglobale.ca*. I note that a link labelled "WIRED VISION" appears on the right hand side of the page. No date appears on the page.

[9] Exhibit DB-2 is an undated webpage printout of a login page; the login box is labelled "WIRED VISION".

[10] Exhibit DB-3 is three webpage printouts from *www.visionglobale.com* that appears to have been printed on June 1, 2009. I note that a link labelled "WIRED VISION LOGIN" appears on the right hand side of each page. The first two pages list services offered by the Registrant. I note that some of the services could be considered "post-production services, format conversion and duplication services", in that they are described as: "cinematographic laboratory (back end), cinematographic laboratory (front end), duplication, encoding and compression, film transfer and color design, off line editing, online editing, restoration, special effects, standards conversion". The third page is a printout entitled "Wired-Vision". The text on the page describes what appears to be an umbrella service offered by the Registrant, namely "VodX-Change®", which is "Vision Globale's complete data encoding, storage and management and delivery solution for producers, distributors and broadcasters". The schematic of the services appearing below the text includes a box labelled "Wired-Vision", which appears to be used to identify the web portal component of these services.

[11] Exhibit DB-4 is two undated webpage printouts of WIRED VISION pages, one listing videos in storage ("Voûte"), and the other offering various films and related media files through Video on Demand ("Offres VOD"). Mr. Byette explains at paragraph 5 of his affidavit that the Registrant's storage services also include format conversion and duplication services.

[12] Exhibit DB-5 is 4 invoices from the Registrant's licensee, CitéLab Inc., to various Canadian customers. Mr. Byette states that the invoices are for services performed in association with the WIRED VISION portal site. It appears from the invoices that the Registrant provides its services to national broadcasters and telecommunication companies. I note that the invoices are dated within the Relevant Period and reflect "storage services" / "frais de voute". I note that the

statement “For invoicing detail consult: *www.wired-vision.com/wvvault*” appears directly above the listed programs/videos for which storage is invoiced.

[13] With respect to CitéLab Inc. and its relationship with the Registrant, Exhibit DB-6 is a printout from the Province of Quebec’s business registry setting out information about CitéLab Inc. including the fact that the Registrant is its majority shareholder. I accept Mr. Byette’s statement of the licence agreement between these companies and the fact that the Registrant maintains control of the character and quality of the services offered by CitéLab pursuant to s. 50 of the Act. Based on the invoices provided at Exhibit DB-5, it is clear that CitéLab offered media storage services during the Relevant Period, and Mr. Byette indicates in paragraph 5 of the Affidavit that said invoices are for the storage services accessed through the WIRED VISION portal shown at Exhibit DB-4. I note the statement on the invoices that “For invoicing detail consult: *www.wired-vision.com/wvvault*”. I also note that CitéLab has the same address as the Registrant and has been in existence continuously since 1999. Accordingly, based on the totality of the evidence before me, I find it reasonable to conclude that the license agreement covered the Registrant’s media storage services during the Relevant Period.

[14] Furthermore, Exhibit DB-7 comprises 10 invoices from the Registrant itself to various Canadian customers dated within the Relevant Period; Mr. Byette states that these invoices reflect services performed in association with the WIRED VISION portal site. The services listed include “VOD services”, “MPEG2 delivery”, “Windows Media delivery”, “MPEG2 CBR encoding”, “Audio 5.1 Encoding”, “VOD multiplexing”, “Video insertion” and “VOD shipping fees”. Again, given these descriptions and their common sense meanings, I find it reasonable to infer that these services fall within the services as registered, in particular, with respect to distribution services (“delivery”, “shipping fees”) and format conversion (“MPEG2”), duplication (“multiplexing”), in addition to other post-production services such as “video insertion”.

[15] With respect to the webpage Exhibits that are undated, it would have been preferable if Mr. Byette had explicitly stated that the webpages displayed WIRED VISION as shown in the exhibits during the Relevant Period. However, noting the reference to the *wiredvision.com* website on the licensee’s invoices (that are dated within the Relevant Period), together with Mr.

Byette's statement regarding how customers accessed the Registrant's services at paragraphs 4 to 7 of his affidavit, I consider it reasonable to conclude that Exhibits DB-2 and DB-4 do reflect the appearance of the WIRED VISION portal site during the Relevant Period.

[16] I would observe at this point that the Affidavit provides no evidence of use of the services "consultation services in the field of still, motion and multimedia production", and provides no explanation for non-use of the Mark in association with such services. The registrations will be amended to delete these services accordingly.

### **Deviation**

[17] At the oral hearing, the Requesting Party noted that the mark WIREDVISION as one word did not appear on any of the exhibits. In their written representations, the Registrant acknowledged that Exhibits DB-1 and DB-2 show the trade-mark as WIRED VISION, rather than WIREDVISION or WIRED-VISION, as registered. However, noting that the mark is phonetically and visually similar, I agree with the Registrant's submission that this is a minor variation that would not mislead an unaware purchaser [see *Unilever Canada Ltd. v. G.H. Wood & Wyant Inc.* (1997), 75 CPR (3d) 533 (TMOB)].

### **Conclusion**

[18] Accordingly, in view of all of the foregoing, I am satisfied that the Registrant has evidenced use of the Marks in Canada in association with the following services within the meaning of s. 45 of s. 4(2) of the Act: "Providing products and services on the Internet, namely: distribution of photographic, artistic, film and video images of others, including still, motion and multimedia formats; post-production services, format conversion and duplication, and distribution of cinematographic, video and multimedia productions of others.

[19] As noted above, however, the Registrant has not evidenced use of the Marks in Canada in association with the following services, "consultation services in the field of still, motion and multimedia production".

[20] Pursuant to the authority delegated to me under s. 63(3) of the Act, registration Nos. TMA612,423 and TMA612,424 will be amended to delete the above mentioned services in

compliance with the provisions of s. 45 of the Act. The amended statement of services for both registrations will be as follows: “Providing products and services on the Internet, namely: distribution of photographic, artistic, film and video images of others, including still, motion and multimedia formats; post-production services, format conversion and duplication, and distribution of cinematographic, video and multimedia productions of others.”

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P. Heidi Sprung  
Member  
Trade-marks Opposition Board  
Canadian Intellectual Property Office