



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

**Citation: 2017 TMOB 10**  
**Date of Decision: 2017-01-30**

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

**Aird & Berlis LLP**

**Requesting Party**

**and**

**Atlantia Holdings Inc.**

**Registered Owner**

**TMA677,505 for LOGiiX & Design**

**Registration**

[1] At the request of Aird & Berlis LLP (the Requesting Party), the Registrar of Trade-marks issued a notice under section 45 of the *Trade-marks Act* RSC 1985, c T-13 (the Act) on February 5, 2015 to Atlantia Holdings Inc. (the Owner), the registered owner of registration No. TMA677,505 for the trade-mark LOGIIX & Design (the Mark), shown below:

**LOGiiX**  
Plugged in... Switched on.

[2] The Mark is registered for use in association with the following goods and services:

Goods:

Personal computer peripherals, accessories, parts and add-ons namely, cables, hubs, memory card readers, hard drives, speakers, cases, and cleaners. MP3 and digital music players peripherals, accessories, parts and add-ons namely, chargers, audio cables, audio hubs, speakers, cases, cleaners, batteries and earphones.

Services:

Sales of PC computer peripherals, accessories, add-ons, and parts

Sales of Digital Music and MP3 players and peripherals, accessories, add-ons, and parts for them.

[3] The notice required the Owner to furnish evidence showing that the Mark was in use in Canada, in association with each of the goods and services specified in the registration, at any time between February 5, 2012 and February 5, 2015. If the Mark had not been so used, the Owner was required to furnish evidence providing the date when the Mark was last used and the reasons for the absence of use since that date.

[4] The relevant definitions of use in the present case are set out in sections 4(1) and 4(2) of the Act as follows:

4(1) A trade-mark is deemed to be used in association with goods if, at the time of the transfer of the property in or possession of the goods, in the normal course of trade, it is marked on the goods themselves or on the packages in which they are distributed or it is in any other manner so associated with the goods that notice of the association is then given to the person to whom the property or possession is transferred.

(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 section 45 proceedings [*Plough (Canada) Ltd v Aerosol Fillers Inc* (1980), 53 CPR (2d) 62 (FCA)]. Although the threshold for establishing use in these proceedings is low [*Woods Canada Ltd v Lang Michener* (1996), 71 CPR (3d) 477 (FCTD)], and evidentiary overkill is not required [*Union Electric Supply Co Ltd v Registrar of Trade Marks* (1982), 63 CPR (2d) 56 (FCTD)], 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 goods and services specified in the registration during the relevant period.

[6] In response to the Registrar's notice, the Owner furnished the affidavit of Karim Salemohamed, Founder and President of the Owner, together with Exhibits A to Q. Neither party filed written representations; an oral hearing was not requested.

### The Owner's Evidence

[7] In his affidavit, Mr. Salemhamed describes the Owner as a Canadian leader in the technology accessory market. He attests that this line of business includes the marketing and wholesale distribution of computer peripheral and accessories equipment, digital music players and accessories, speakers, chargers, data, audio and power cables, batteries, and technology accessory brands. He further attests that the Owner has approximately 280 wholesale customers in Canada, and covers all levels of distribution of products from importer, manufacturer, distributor, wholesaler, and retailer.

[8] In addition to the above, Mr. Salemhamed attests that the Owner manufactures and distributes technology accessories in association with the Mark, including, screen protectors, cases, speakers, headphones, portable batteries, power adapters, chargers, and cables for use with mobile phones, smart phones, tablets, PC and laptops.

[9] Mr. Salemhamed states that the Mark has been used continuously in Canada since 2005 in association with all of the registered goods and services. In this regard, Mr. Salemhamed attests that the Owner's ordinary course of trade is to sell its goods in association with the Mark through an online store at *www.logiix.net* and through the retail stores of its distributors. He states that the Mark is prominently displayed on all goods as well as on their packaging at the time of transfer to the Owner's customers. He attests that the total sales of "the goods bearing the LOGiiX trade-mark" during the relevant period amounted to \$2,455,997. He further provides a breakdown of sales for each year of the relevant period.

[10] As evidence of use of the Mark during the relevant period, Mr. Salemhamed attaches the following exhibits to his affidavit:

- Exhibit A consists of an excerpt from the Owner's website which lists some of the Owner's Canadian resellers as well as provides links to various branded products distributed by the Owner, including LOGiiX-branded technology accessories.
- Exhibit B consists of printouts from the Owner's website which show a variety of goods available for sale. Mr. Salemhamed attests that these pages show use of the Mark by displaying the Mark on the registered goods *or* in association with the goods. I note that

the word LOGiiX in design form (as per the registration) appears on the upper left corner of each page and also appears on the following goods, namely, a cell phone case, an auxiliary cable, a cassette adapter with microphone, and an armband for use with an MP3 player. However, the “Plugged in... Switched On.” portion of the Mark is not displayed here or elsewhere in the exhibits. Mr. Salemohamed attests that the website has been available for viewing in Canada since 2005.

- Exhibit C consists of excerpts from the Owner’s 2013 product catalogue which Mr. Salemohamed states was distributed to the Owner’s customers in Canada in 2013, and is used by customers to select and order products. The pages display various cell phone cases and although the cases do not display the Mark, the word LOGiiX, in design form, appears on all of the exhibited catalogue pages.
- Exhibit D consists of photographs of goods which Mr. Salemohamed states are representative of the manner in which the Mark is affixed on the goods. The images are of a USB power cube and a cell phone case, both of which display the word LOGiiX in design form.
- Exhibits E and G through P consist of images of the following registered goods or associated product packaging, all of which display the word LOGiiX in design form: audio hubs, hubs, cases, cleaner, audio cables, cables, chargers, batteries, speakers, and memory card readers.
- Exhibit F consists of copies of invoices showing sales of various goods. The invoices are dated within the relevant period. Mr. Salemohamed attests that the invoices show representative sales of the following goods in association with the Mark, identified on the invoices by “LGX” and “Logiix”: keyboard covers, cables, chargers, cases, hubs, earphones, battery packs and power adapters.
- Exhibit Q consists of a printout from the Owner’s website showing earphones for sale. The word LOGiiX in design form appears on the top left corner of the webpage printouts.

## Analysis and Reasons for Decision

### Services

[11] With respect to the registered services, the Owner's evidence shows that it offers for sale products in relation to computers and digital music and MP3 player peripherals, accessories, add-ons, and parts, through its website and its product catalogue, and did so during the relevant period. Furthermore, both the Owner's website and product catalogue clearly feature the word LOGiiX in design form, as per the registration, and in such a manner that the dominant portion of the Mark, that is, the LOGiiX design element, has been preserved [see *Promafil Canada Ltée v Munsingwear Inc*, 44 CPR (3d) 59 (FCA)]. Furthermore, I accept that the Mark is recognizable in spite of the differences between the form in which it was registered and the form in which it was used [*Canada (Registrar of Trade-marks) v Cie International pour l'informatique CII Honeywell Bull* (1985), 4 CPR (3d) 523 (FCA)], and that any differences between the marks are "so unimportant that an unaware purchaser would be likely to infer that both, in spite of their differences identify goods having the same origin" [*Honeywell Bull, supra* at 525].

[12] Accordingly, I am satisfied that the Mark is displayed in the performance and advertising of the registered services such that the Owner has shown use of the Mark in association with the registered services during the relevant period within the meaning of sections 4(2) and 45 of the Act.

### Analysis - Goods

[13] With respect to the registered goods, in brief, the Owner's evidence comprises annual total sales figures, "representative" samples or images of goods and/or associated product packaging, and invoices demonstrating "representative" sales of goods. The following registered goods are represented in the above-noted evidence:

Personal computer peripherals, accessories, parts and add-ons namely, cables, hubs, memory card readers, [...], speakers, cases, and cleaners. MP3 and digital music players peripherals, accessories, parts and add-ons namely, chargers, audio cables, audio hubs, speakers, cases, cleaners, batteries and earphones.

[14] While the earphones displayed on the website printout in Exhibit Q do not appear to bear the Mark, Mr. Salemohamed attests that the Mark was prominently displayed on the packaging of *each* of the goods sold, *representative* examples of which he provides at Exhibit E.

Accordingly, having regard to the evidence as a whole, I am satisfied that the Owner has demonstrated use of the Mark within the meaning of sections 4 and 45 of the Act in association with each of the above-noted goods.

[15] However, unlike the other registered goods, Mr. Salemohamed does not identify “hard drives” as being represented in any of the exhibited invoices, nor does he identify them as appearing in any of the exhibited images or website excerpts. Although evidentiary overkill is not required in section 45 proceedings, the registered owner must still establish a *prima facie* case of use of the trade-mark in association with each of the goods specified in the registration [*Diamont Elinor Inc v 88766 Canada Inc*, 2010 FC 1184, 90 CPR (4th) 428]. In the present case, the Owner has failed to do so with respect to “hard drives”. Accordingly, I am not satisfied that the Owner has demonstrated use of the Mark in association with “hard drives” within the meaning of sections 4 and 45 of the Act. Furthermore, there is no evidence of special circumstances excusing such non-use before me. The registration will be amended accordingly.

Disposition

[16] In view of the foregoing, 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 amended to delete “hard drives” from the statement of goods.

[17] The amended statement of goods will thus read as follows:

Personal computer peripherals, accessories, parts and add-ons namely, cables, hubs, memory card readers, speakers, cases, and cleaners. MP3 and digital music players peripherals, accessories, parts and add-ons namely, chargers, audio cables, audio hubs, speakers, cases, cleaners, batteries and earphones.

[18] The registration will be maintained with respect to the registered services.

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Kathryn Barnett  
Member  
Trade-marks Opposition Board  
Canadian Intellectual Property Office

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

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No hearing held

AGENTS OF RECORD

Miller Thomson LLP

For the Registered Owner

Aird & Berlis LLP

For the Requesting Party