



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2024 TMOB 028

Date of Decision: 2024-02-21

IN THE MATTER OF A SECTION 45 PROCEEDING

Requesting Party: Huawei Technologies Co., Ltd.

Registered Owner: Coolkit Technology Co., Ltd

Registration: TMA1068623 for eWeLink

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. TMA1068623 for the trademark eWeLink (the Mark), currently owned by Coolkit Technology Co., Ltd (the Owner).

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

Physics research; research and development of new products for others; research in the area of semiconductor processing technology; research pertaining to mechanical engineering; computer programming for connecting smart devices with home appliances; computer software design for smart home appliances; updating of computer software; consultancy in the design and development of computer hardware; monitoring of computer systems by remote access; computer

programming consultancy; computer security consultancy; computer software consultancy; cloud computing enabling file storage of payroll data; cloud computing photo sharing services; cloud computing provider services for general storage of data; cloud computing providing software for database management; outsource service providers in the field of computer programming; outsource service providers in the field of computer systems design; outsource service providers in the field of database design and development.

[3] For the reasons that follow, I conclude that the registration ought to be amended to delete “cloud computing enabling file storage of payroll data”.

PROCEEDING

[4] At the request of Huawei Technologies Co., Ltd. (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the Act on January 11, 2023, 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 January 11, 2020 to January 11, 2023.

[6] The relevant definitions of “use” in the present case are 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] It is well established that 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. The evidence in a section 45 proceeding need not be perfect; indeed, a registered owner need only establish a *prima facie* case of use within the meaning of sections 4 and 45 of the Act. This burden of proof is light; evidence must only supply facts from which a conclusion of use may follow as a logical inference [per *Diamant Elinor Inc v 88766 Canada Inc*, 2010 FC 1184 at para 9].

[8] 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.

[9] In response to the Registrar’s notice, the Owner furnished the affidavit of Kebin Zhang, the Owner’s president.

[10] Neither party submitted written representations. Only the Owner requested a hearing; the request was subsequently withdrawn such that the scheduled hearing was cancelled.

REASONS FOR DECISION

Overview of the Owner’s business

[11] In his affidavit, Mr. Zhang explains that the Owner “works with traditional device manufacturers, including home appliances, lighting, security system, and sensors, to provide end-consumers with smart hardware solutions, by providing to such hardware manufacturers services including hardware design and development, embedded software development, global cloud server hosting, multi-language apps, cross-platform control, and multi-platform AI voice support, as well as by providing services in the field of apps and software support directly to the end consumers of such hardware devices” [para 8].

[12] He specifies that the Owner “offers services to partner manufacturers to allow for the cross-connection and integration of such manufacturers’ devices. [The Owner] works with hardware manufacturer partners to empower basic hardware with smart functions such as remote control, schedules, and sharing in the hands of the end-consumers of such devices” [para 9].

[13] He indicates that the Owner works with over 2000 such manufacturers worldwide connecting tens of millions of devices via the “eWeLink Cloud platform” [para 10]. The products supported on this platform are configured and controlled in the “eWeLink app, applet and corresponding web version (collectively, the “eWeLink App”)”, by device end-users. The “eWeLink App allows for the combination and automation of supported

hardware products, allowing for a variety of smart applications ranging from smart home connection to garden irrigation to property management to security” [para 11].

[14] As such, the Owner offers services to both hardware manufacturers and end-users of said manufacturers’ devices [para 13]. Mr. Zhang identifies the former as “Manufacturer-Facing Services”, which he defines as the following services listed in the registration [para 14]:

Physics research; research and development of new products for others; research in the area of semiconductor processing technology; research pertaining to mechanical engineering; computer programming for connecting smart devices with home appliances; computer software design for smart home appliances; updating of computer software; consultancy in the design and development of computer hardware; monitoring of computer systems by remote access; computer programming consultancy; computer security consultancy; computer software consultancy; outsource service providers in the field of computer programming; outsource service providers in the field of computer systems design; outsource service providers in the field of database design and development.

[15] Mr. Zhang identifies the services offered to device end-users as “Consumer-Facing Services”, which he defines as the following services listed in the registration [para 15]:

Monitoring of computer systems by remote access; computer programming consultancy; cloud computing enabling file storage of payroll data; cloud computing photo sharing services; cloud computing provider services for general storage of data; cloud computing providing software for database management.

Manufacturer-Facing Services

[16] Mr. Zhang states that, as it relates to Canada, “during the Relevant Period, the ordinary course of trade [...] for the Manufacturer-Facing Services in association with the [Mark]” was:

- (a) Research on behalf of and with hardware manufacturers “in the areas of physics, hardware and computer hardware, semiconductor processing technology, and mechanical engineering [...] with the provision of an open development platform to hardware manufacturers, including in Canada”;

- (b) provision of the open development platforms eWeLink Developer Center and eWeLink Smart Cloud Platform, which allow hardware manufacturers to “create their own applications to access device statistics, control devices, remotely monitor computer systems, and apply other features via [the Owner’s] cloud services”. Mr. Zhang specifies that, via the eWeLink Developer Center, the Owner offers consultancy services in the fields of “computer programming, security, systems design, database design and development, and software”;
- (c) provision of “computer programming services for connecting smart devices with home appliances, computer software design for smart home appliances, and updating of computer software, for the benefit of hardware manufacturers via the provision of its eWeLink App to Canadian end consumers of the hardware manufacturers’ products” [para 16].

[17] Mr. Zhang details how Canadians can access the eWeLink Developer Center via the Owner’s website. He further specifies that to register and use the platform, users must register by clicking the “get started” button on the website. This prompts a “country/region” selection menu, which includes Canada [paras 17-20]. Mr. Zhang also clearly states that the “Pricing” information to use the platform includes for “Enterprise Developers” in Canada [para 21].

[18] Mr. Zhang includes in his affidavit a screenshot of the sign-in page to the eWeLink Developer Center on the Owner’s website, which clearly displays the Mark [para 17]. He also attaches various copies of the Owner’s webpage, from different time periods including during the relevant period, which reference the eWeLink Developer Center [Exhibits 1, 9-10]. He indicates that the Owner’s website appeared in this manner during the relevant period, was available to Canadians, and “describes and advertises the Manufacturer-Facing Services” [para 29]. He further attaches Google Analytics data indicating that during the period from January 1, 2020 until February 2023, more than 6,500 users accessed the Owner’s website from within Canada [para 31, Exhibit 11].

[19] Mr. Zhang also provides a lengthy overview document which he indicates “describes some of the features of the platform” [Exhibit 2].

[20] The overview document and website excerpts, which display the Mark, describe various hardware smart solutions, software and cloud computing services provided by the Owner to device manufacturers. As such, in view of the clear detailed explanations of the Owner’s services as well as the documentation provided by Mr. Zhang, I accept that Owner advertised, promoted and offered smart device development and integration services as described.

[21] Mr. Zhang provides no direct evidence that such services were performed in Canada. That being said, Mr. Zhang clearly states that the Owner’s website describes and advertises the services offered to device manufacturers, and provides documentary evidence that thousands of users from Canada accessed the Owner’s website during the relevant period. I therefore accept that the Mark was displayed in the advertisement of the Owner’s services to device manufacturers in Canada. Moreover, given the clear statements that the eWeLink Developer Center was available to “Canadians and entities and individuals within Canada” [para 17] and that the pricing indicated for Enterprise Developers included “those in Canada” [para 21], as well as the evidence of Canada being available as a “region/country” designation when registering for use of the eWeLink Developer Center, I find that the Owner has demonstrated it was, at the very least, willing and able to perform said services in Canada during the relevant period [*Wenward (Canada) Ltd v Dynaturf Co (1976)*, 28 CPR (2d) 20 (TMOB)].

[22] Also, I find that the services described in Mr. Zhang’s evidence logically correspond to those listed in the registration, which he defines as “Manufacturer-Facing Services”. I am guided in this regard by the fact that services should 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; *Live! Holdings LLC v Oyen Wiggs Green & Mutala LLP*, 2019 FC 1042, *aff’d* 2020 FCA 120]. Moreover, unlike with goods, the Registrar has previously held that “in certain cases, statements of services contain overlapping and redundant terms in the sense that the performance of one service

would necessarily imply the performance of another” [*Gowling Lafleur Henderson LLP v Key Publishers Co*, 2010 TMOB 7 at para 15; see also *Provent Holdings Ltd v Star Island Entertainment, LLC*, 2014 TMOB 178 at para 22; *GMAX World Realty Inc v RE/MAX, LLC*, 2015 TMOB 148 at para 69].

[23] I therefore find that the Owner has demonstrated use of the Mark in association with the Manufacturer-Facing Services within the meaning of sections 4(2) and 45 of the Act.

Consumer-Facing Services

[24] Mr. Zhang states that, as it relates to Canada, during the relevant period, the Owner’s ordinary course of trade for the Consumer-Facing Services in association with the Mark was to make the eWeLink App available for free download in Canada, either via intermediaries such as Google Play and the Apple App Store, or directly from the Owner’s website. Users could then access the eWeLink App via their personal devices such as phones, tablets and computers. Mr. Zhang provides a screenshot showing how the eWeLink App would appear on such devices, which displays an icon with the Mark appearing directly below it [para 22].

[25] Mr. Zhang indicates that to use the eWeLink App, Canadian end-users were required to register for an account. Once registered, end-users could:

- (a) manage and connect their home devices, control and monitor devices including computer systems by remote access, create their own device shortcuts using basic guided programming, trigger smart scenes with NFC tags, and store and manage data; and
- (b) purchase an eWeLink Advanced Plan for an annual or monthly subscription fee that allows access to additional Services in association with the [Mark] including, for example: (i) controlling and monitor smart devices (including computer systems) on a web browser by remote access, (ii) enabling “If This Then That” (“IFTT”) functionality allowing users to program their own devices using a condition precedent trigger [...]

with accompanying support and consultancy provided as needed [...] for such computer programming done by the user; and (iii) allowing a user's phone to be set up as a security camera, including the capability to share photos and videos from same across other smart devices [para 22].

[26] Mr. Zhang indicates that upon registration for an account, Canadian end-users received a "welcome email", a sample of which is provided, which displays the Mark prominently [para 25, Exhibit 3].

[27] Mr. Zhang provides representative samples of the download pages for the eWeLink App from the Google Play and Apple App Store, which he indicates are substantially how such pages appeared during the relevant period. Both download pages display the Mark. He also provides reviews by Canadian users from the Apple App Store dated during the relevant period [paras 25-26, Exhibits 4-7].

[28] Mr. Zhang also provides the number of monthly active Canadian end-users obtained from both from the Apple IOS system and the Android system from Google Play, totaling over 25,000 Canadian users for the month ending March 12, 2023. Mr. Zhang specifically indicates that "this figure has increased since the end of the relevant period, but the vast majority of these monthly active users were also monthly active users of the eWeLink App during the relevant period" [paras 33-34, Exhibits 12-13].

[29] As such, I find that the Owner has demonstrated that the services offered via the eWeLink App were performed in Canada during the relevant period. This finding is based notably on the sworn statements and documentation pertaining to the number of active end-users, as well as reviews of the eWeLink App from Canada dated during the relevant period.

[30] I also find that the Mark was displayed in Canada, during the relevant period, in the performance and advertising of the services offered via the eWeLink App. In arriving at this conclusion, I have considered the display of the Mark on the Apple App Store and Google Play store pages at the time of download, as well as the display of the Mark under the icon of the eWeLink App on end-users' personal devices.

[31] With regard to the correlation between the services offered via the eWeLink App to end-users and those listed in the registration, in view of the clear descriptions, details and documents provided, I accept Mr. Zhang's correlation between the services described and detailed in his evidence and the Consumer-Facing Services as defined, with the only exception of "cloud computing enabling file storage of payroll data" services.

[32] With regard to such payroll related services, all the details, description and documentation provided regarding the services offered to end-users pertain strictly to home applications and do not refer to payroll or any type of banking, or business-related functionality as the term payroll would imply. Moreover, although I may have been prepared to include such services as part of those offered to third party manufacturers or consultants, Mr. Zhang specifically defines such services as only consumer-facing. As such, I consider including services relating to payroll within the end-user services offered would be more in the realm of speculation than inference.

[33] I therefore find that the Owner has shown that the Mark was displayed in the performance of all the Consumer-Facing Services in Canada during the relevant period with the exception of the services "cloud computing enabling file storage of payroll data". The Owner has therefore demonstrated use of the Mark accordingly within the meaning of sections 4(2) and 45 of the Act.

DISPOSITION

[34] 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 the services "cloud computing enabling file storage of payroll data".

[35] The amended statement of services will read as follows:

Physics research; research and development of new products for others; research in the area of semiconductor processing technology; research pertaining to mechanical engineering; computer programming for connecting smart devices with home appliances; computer software design for smart home appliances; updating of computer software; consultancy in the design and development of computer hardware; monitoring of computer systems by remote access; computer

programming consultancy; computer security consultancy; computer software consultancy; cloud computing photo sharing services; cloud computing provider services for general storage of data; cloud computing providing software for database management; outsource service providers in the field of computer programming; outsource service providers in the field of computer systems design; outsource service providers in the field of database design and development.

Emilie Dubreuil
Hearing Officer
Trademarks Opposition Board
Canadian Intellectual Property Office

Appearances and Agents of Record

HEARING DATE: No hearing held

AGENTS OF RECORD

For the Requesting Party: Osler, Hoskin & Harcourt LLP

For the Registered Owner: Burk Law PC