



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2024 TMOB 68

Date of Decision: 2024-03-28

IN THE MATTER OF SECTION 45 PROCEEDINGS

Requesting Party: Burnet, Duckworth & Palmer LLP

Registered Owner: Jainoor (JJ) S. Mumick dba Ignite Technologies

Registrations: TMA856,182 for IGNITE TECHNOLOGIES, and
TMA928,197 for IGNITE TECHNOLOGIES

INTRODUCTION

[1] This is a decision involving summary expungement proceedings under section 45 of the *Trademarks Act*, RSC 1985, c T-13 (the Act) with respect to registration Nos. TMA856,182 for IGNITE TECHNOLOGIES (the Design Mark), and TMA928,197 for IGNITE TECHNOLOGIES (the Word Mark; collectively, the Marks), owned by Jainoor (JJ) S. Mumick dba Ignite Technologies (the Owner). The Design Mark is shown below:




[2] For the reasons that follow, I conclude that the registrations ought to be maintained.

THE RECORD

[3] At the request of Burnet, Duckworth & Palmer LLP (the Requesting Party), the Registrar of Trademarks issued notices to the Owner under section 45 of the Act on August 30, 2022. The notices required the Owner to show whether the Marks had been used in Canada in association with each of the services specified in the corresponding registrations at any time within the three-year period immediately preceding the date of the notice and, if not, the date when the subject trademark(s) 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 August 30, 2019, to August 30, 2022.

[4] The services for each registered trademark are set out below:

 (TMA856,182)	(1) Email marketing solutions, namely development and management of email marketing campaigns for others.
IGNITE TECHNOLOGIES (TMA928,197)	(1) Development and management of email marketing campaigns for others. (2) Website design and development; information technology services, namely, software engineering, design, administration and management of computerized databases, website administration, customized intranet design and implementation.

[5] The relevant definition of use is set out in section 4 of the Act:

(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.

[6] It is well accepted that 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)]. However, sufficient facts must still be provided to permit the Registrar to arrive at a conclusion of use of the trademark in association with each of the services specified in the registration during the Relevant Period.

[7] In response to the Registrar's notices, affidavits of Jainoor (JJ) S. Mumick, a sole proprietor doing business as Ignite Technologies were submitted. Both parties submitted written representations; no oral hearing was held.

EVIDENCE

[8] The two affidavits submitted by Mr. Mumick contain largely the same material and feature examples of use of the Design Mark. Use of the Design Mark, however, qualifies as use of the Word Mark. In this case, the public, as a matter of first impression, would perceive the Word Mark *per se* as being used with an additional design feature as the words while in different size appear as a unitary phrase due to their placement [*Nightingale Interloc Ltd v Prodesign Ltd* (1984), 2 CPR (3d) 535 (TMOB)]. It goes without saying that the registration of IGNITE TECHNOLOGIES allows the Owner to use this trademark in any size and with any style of lettering, color or design [*Masterpiece v Alavida Lifestyles Inc*, 2011 SCC 27, at paras 55-57].

ANALYSIS

development and management of email marketing campaigns for others

[9] The evidence summarized below is sufficient to show use of the Marks in association with the development and management of email marketing campaigns for others by the Owner during the Relevant Period in Canada. The Owner has provided evidence of use of the Design Mark on his LinkedIn page, client portal and email during the Relevant Period. Further, he provides an email from one of the marketing campaigns sent during the Relevant Period including a footer that the email was "powered by Ignite" further supporting the Owner's assertions of use. The evidence is that:

- The services of Ignite Technologies were advertised on Mr. Mumick's personal LinkedIn page which displayed the Marks during the Relevant Period (para 8, Exhibit A). While Mr. Mumick attaches a recent screenshot of his LinkedIn page, he attests that "the content relating to the [Marks] has not changed since the Relevant Period" (para 8).
- The Owner's clients are nightlife and promotions organizations operating in Western Canada (para 6). The Owner's LinkedIn page shows he is based in Vancouver, BC (Exhibit A).
- Mr. Mumick provided services in the nature of development and management of email marketing campaigns for Sunwave Vancouver, for an electronic music event, during the Relevant Period (para 6). Exhibit C is a representative email sent during the Relevant Period on behalf of Sunwave displaying "powered by Ignite" at the bottom. Mr. Mumick also provides information from his backend server showing that a client viewed emails sent by the Owner on behalf of VoicePrint International during the Relevant Period (para 13).
- The Marks were displayed on the client portal during the Relevant Period (para 10, Exhibit B). The client portal includes fields to create campaigns including the body of the email, the "from" and "to" fields, and the possibility to schedule delivery of the email.
- The Marks were displayed on emails with suppliers to the Owner sent during the Relevant Period (para 16, Exhibit F).

[10] The Requesting Party submits that the evidence is problematic since the entry concerning LinkedIn follows a lengthy entry for Mr. Mumick's work at Eventbase, there is no evidence that the client portal was accessed and the emails to suppliers are not concerning the registered services. The Requesting Party further argues that the evidence is ambiguous and includes bare assertions.

[11] The evidence in a section 45 proceeding need not be perfect; a registered owner need only establish a prima facie case of use within the meaning of sections 4 and 45 of the Act [*Diamant Elinor Inc v 88766 Canada Inc*, 2010 FC 1184]. This burden of proof is

light; evidence must only supply facts from which a conclusion of use may follow as a logical inference [*Diamant* at para 9]. Bearing in mind that evidence must be considered as a whole, and dissection of an affidavit in an overly technical manner is inconsistent with the purpose of section 45 proceedings, I find that there are sufficient facts given that Mr. Mumick has provided a sample email campaign (Exhibit C), and that the client portal displaying the Marks includes information required for the setting up and sending of an email campaign (Exhibit B). Bearing in mind that drawing an inference is a matter of reasonably probable, logical deductions from the evidence [*Sim & McBurney v En Vogue Sculptured Nail Systems Inc*, 2021 FC 172 at para 15], I infer that similar to emails sent to Mr. Mumick's suppliers during the Relevant Period (Exhibit F), emails sent to customers would have included the Marks.

[12] As such, I am satisfied that the Owner has demonstrated use of the above-noted registered services within the meaning of sections 4(2) and 45 of the Act.

website design and development; information technology services, namely, software engineering, design, administration and management of computerized databases, website administration, customized intranet design and implementation

[13] These services are only in the Word Mark registration. As discussed in paragraph 8, use of the Design Mark is also use of the Word Mark.

[14] Advertisement of services in association with a trademark is sufficient to establish use of that trademark pursuant to section 4(2) of the Act, where an owner offers and is willing and able to perform the services in Canada [*Wenward (Canada) Ltd v Dynaturf Co* (1976), 28 CPR (2d) 20].

[15] In this case, Mr. Mumick indicates that he does not purchase advertising and rather relies on word of mouth and referrals to promote his services (para 7). That being said, Mr. Mumick's evidence is that he offered these services prior to the Relevant Period, advertised them on his LinkedIn page and was prepared to offer them during the Relevant Period (para 15, Exhibit A). The LinkedIn page does include the Word Mark at the bottom of Mr. Mumick's entry shown below which references several software

development and management services. Mr. Mumick further attests that the content relating to the Marks has not changed since the Relevant Period.



[16] Promotional material posted online must be “distributed to” or accessed by prospective customers in order to constitute advertising and there must be evidence from which it can reasonably be inferred that customers accessed the webpages [*Ridout & Maybee LLP v Residential Income Fund LP*, 2015 TMOB 185, 136 CPR (4th) 127]. In the present case, although the Owner did not provide access data or other particulars showing views for his LinkedIn page, I am prepared to infer that at least some Canadians would have viewed this page, given the evidence that multiple companies actually availed themselves of the Owner’s services during the Relevant Period (paras 12-13).

[17] Given that Mr. Mumick has advertised the services in association with the Word Mark at the bottom of the LinkedIn entry (Exhibit A) shown above and has attested that he was prepared to perform them in Canada (paras 15-16), I find that his evidence meets the prima facie burden of demonstrating use. While Mr. Mumick does not relate each of the services on his LinkedIn page with the statement of services, I am able to correlate them as follows:

- “developed webforms” correlates to website design and development;

- “developed application logic” and “implemented maintenance plan on SQL database” correlates to software engineering, design, administration and management of computerized databases; and
- “developed webforms” and “designed and integrated complete user interface” correlates to website administration, customized intranet design and implementation.

In so doing, I am mindful that services are generally granted a generous or broad interpretation [*Renaud Cointreau & Cie v. Cordeau Bleu International Ltd.*, 2000 CanLII 15741 (FC) at para 26]. Furthermore, the Registrar has held that a statement of services may contain overlapping and redundant terms such that the advertising or performance of one service necessarily implies the performance of another [*Gowling Lafleur Henderson LLP v Key Publishers Company Ltd*, 2010 TMOB 7 at para 15; see also *GMAX World Realty Inc v RE/MAX, LLC*, 2015 TMOB 148 at para 69].

[18] With respect to the availability of the Registered Services in Canada, in support of his assertions that he was willing and able to perform them, Mr. Mumick provides an email with a supplier for transfer of cloud hosting which he describes as “technology support” allowing him to be able to provide these services (para 16, Exhibit F). Mr. Mumick’s also confirms that he had designed and developed a website prior to the Relevant Period (para 15, Exhibit E).

[19] As such, I am satisfied that the Owner has demonstrated use of the above-noted registered services within the meaning of sections 4(2) and 45 of the Act.

DISPOSITION

[20] In view of all 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, Registration No. TMA928,197 and Registration No. TMA856,182 will be maintained.

Natalie de Paulsen
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

Appearances and Agents of Record

HEARING DATE: No hearing held

AGENTS OF RECORD

For the Requesting Party: Burnet, Duckworth & Palmer LLP

For the Registered Owner: COASTAL TRADEMARK SERVICES LIMITED