

Federal Court



Cour fédérale

Date: 20200316

Docket: 20-T-10

Citation: 2020 FC 386

Ottawa, Ontario, March 16, 2020

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

SPECTRUM BRANDS, INC.

Applicant

and

SCHNEIDER ELECTRIC INDUSTRIES SAS

Respondent

ORDER AND REASONS

I. Overview

[1] Spectrum Brands, Inc. (the “Applicant”) brings this motion for an Order for an extension of time to file a Notice of Application (the “Motion”) against a split decision of the Registrar of Trademarks (the “Registrar”) filed by Schneider Electric Industries SAS (the “Respondent”). This split decision (the “Decision”) was dated September 11, 2019, and was dispatched to the parties on September 25, 2019 concerning the trademark WISER, whose registration is sought by

the Respondent and had been opposed before the Registrar by the Applicant. The Decision refused, in part, the Respondent's application to register its trademark.

[1] The deadline for the Applicant to file a Notice of Application against the Decision was November 25, 2019. However, I note that this Motion was filed with the Court on February 21, 2020.

[2] For the reasons below, I find that the Applicant's Motion is dismissed as it does not satisfy the requirements to obtain an extension of time under the applicable criteria set out in the jurisprudence.

II. **Facts**

[3] On September 11, 2019, the Registrar rendered a split decision, in which it refused, in part, an opposition by the Applicant against the Respondent's Canadian Trademark Application No. 1,556,162 for the trademark WISER.

[4] The Notice of the Registrar's Decision was dispatched to the parties on September 25, 2019.

[5] The Registrar refused the Respondent's application with respect to the following goods (the "Refused Goods"):

“contrôleurs de température; appareils et installations électriques de commande, de télécommande, de radiocommande et de gestion pour les appareils et installations électriques domestiques; écrans et interfaces de commande pour les appareils et installations électriques domestiques” ([TRANSLATION]: “temperature controllers; electric apparatus and installations for the control, remote control, radio control and management of household

electric apparatus and installations; control interfaces and displays for household apparatus and installations”).

[6] The Registrar otherwise rejected the opposition with respect to the remaining goods and the services (the “Allowed Goods and Services”):

Electric apparatus and instruments, namely switches, press buttons, transfer switches, selector switches, all the foregoing excluding for door locks, door keys and related door hardware; plugs, sockets, power bars; transformers; programmers; timers; electric selectors excluding for door locks, door keys and related door hardware; light dimmers; meters; electric indicators excluding for door locks, door keys and related door hardware; electric displays excluding for door locks, door keys and related door hardware; apparatus for measuring the electricity generated by photovoltaic panels or wind turbines; electrical charge controllers; apparatus for testing electric car batteries; apparatus for testing electric generators; apparatus and instruments for measuring and regulating temperature, namely temperature sensors, thermostats, thermostat sensors, apparatus and instruments for measuring and monitoring the consumption of electricity, water, gas; transmitters, receivers, radio transmitters; apparatus for communication by computer terminal, namely modems, modem cards, computers, computer servers, computer interface cards, network interface cards, blank memory cards for computers, connection cables, namely audio cables, video cables, computer cables, network hubs, routers, Internet gateways; computer software for the design, encryption, management, control and remote control of electric installations, all the foregoing excluding for door locks, door keys and related door hardware.

Communication services in the fields of electric installations, electrical energy management and building management, namely transmission of information in the fields of electric installations, electrical energy management and building management via web browsers, Ethernet, communications buses and communications servers, transmission of data, namely texts, sounds, still and animated images, analog and digital signals via web browsers, Ethernet, communications buses and communications servers, formatting of data, namely texts, sounds, still and animated images, analog and digital signals and uploading of information (online) in the fields of electric installations, electrical energy management and building management in real time via web

browsers, Ethernet, communications buses and communications servers. Consulting and audits related to energy efficiency; computer programming, computer software development and database design in the fields of electrical energy management and building management; design of computer portals; online provision of computer applications and computer software in the fields of electrical energy management and building management.

[7] As each party was partly unsuccessful, the Applicant and Respondent both had a deadline of November 25, 2019 under section 56 of the *Trademarks Act*, RSC 1985, c T-13 (the “*Trademarks Act*”) to contest the unfavourable part of the Decision before this Court.

[8] On November 25, 2019, the Respondent filed a Notice of Application challenging the Registrar’s Decision with respect to the Refused Goods (File No. T-1906-19).

[9] Also, on November 25, 2019, a copy of the Respondent’s Notice of Application was sent by fax to Gowling WLG (Canada) LLP, the Trademark agents for the Applicant.

[10] On or before November 25, 2019, the Applicant did not file a Notice of Application against any part of the Decision.

[11] On January 8, 2020, the Applicant filed a Notice of Appearance in the Respondent’s Application with the consent of the Respondent.

[12] On January 10, 2020, the Respondent filed a motion on consent to an extension of time to file evidence in the Respondent’s Application, so that parties could pursue settlement.

[13] On February 21, 2020, the Applicant filed this Motion for an extension of time to file its Notice of Application.

III. **Issue**

[14] Should the Applicant be granted an extension of time to file the Notice of Application attached as Schedule “B” to the Notice of Motion?

IV. **Analysis**

[15] Pursuant to section 56 of the *Trademarks Act*, the Applicant was to serve and file an appeal of the Decision by November 25, 2019, which was two months from the date on which the notice of the Decision was dispatched by the Registrar.

[16] As noted above, the Applicant’s Motion was filed on February 21, 2020.

[17] Rule 8 of the *Federal Courts Rules*, SOR/98-106 (the “*Rules*”) permits the Court, on a motion, to extend a period fixed by the *Rules*. Such a motion may be brought before or after the end of the period sought to be extended.

[18] The conditions to be satisfied by the moving party to obtain an extension of time were outlined in *Canada (Attorney General) v Hennelly*, 1999 CanLII 8190 (FCA) [*Hennelly*] at para 3 (See also *Centre Ice Ltd v National Hockey League* (1995), [1995] FCJ No. 1363, 101 FTR 303 at para 19). The test is whether the applicant has demonstrated:

- 1) a continuing intention to pursue his or her application;
- 2) that the application has some merit;
- 3) that no prejudice to the respondent arises from the delay; and
- 4) that a reasonable explanation for the delay exists.

[19] With regard to the first factor, the Applicant submits that it has had a continuing intention to respond to the Respondent's Application, and that this was evinced by filing a Notice of Appearance on January 8, 2020, and this Motion before the Court. However, in my view, the Applicant's intention to respond to the Respondent's Application is not a relevant consideration when determining the issue of the Applicant's intention to commence its own application within the appeal deadline. I find that the Applicant did not possess a continuing intention to pursue its application.

[20] Second, I find that the subject appeal does hold some merit, as it stems from a split decision from the Registrar, which has already been appealed.

[21] Third, I find the Respondent is not prejudiced by the extension being sought, as no substantive procedural steps have taken place in the Respondent's Application.

[22] On whether there was a reasonable explanation for the delay, the Applicant submits that there was a reasonable explanation because it took time to re-examine the Decision in light of the Respondent's Application during a "busy holiday season". The Applicant notes that the Notice of Application by the Respondent was filed just before the Thanksgiving holiday in the United States, that the Notice of Application was served on the Applicant on December 10, 2019, and that these two dates proceeded the holiday season.

[23] However, as noted by the Respondent, there is nothing inherently unpredictable about the period surrounding statutory holidays such as Thanksgiving Day or Christmas Day. Parties are aware of these dates well in advance, and should be expected to plan and work within time frames that include statutory holidays.

[24] Moreover, the Applicant has not provided an explanation as to how the holiday season delayed the Applicant's decision to file a Notice of Application, or to request an extension of time. Furthermore, the Applicant has not provided an explanation for the delay in the period following the holiday season, i.e. January to February 20, 2020. Overall, I note that the time elapsed between November 25, 2019 and February 21, 2020 is even lengthier than the two-month period set out in section 56 of the *Trademarks Act*, but the Applicant has not established a reasonable explanation for its delay.

V. **Conclusion**

[25] The Applicant has failed to establish a continuing intention to pursue the application or to establish a reasonable explanation for its delay. The Applicant's Motion does not satisfy the requirements to obtain an extension of time under the applicable criteria and test set out in *Hennelly*.

[26] Accordingly, this motion is dismissed.

ORDER in 20-T-10

THIS COURT ORDERS that:

1. The Applicant's motion for an extension of time to file the Notice of Application is dismissed without costs.

"Shirzad A."

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: 20-T-10

STYLE OF CAUSE: SPECTRUM BRANDS, INC. v SCHNEIDER ELECTRIC
INDUSTRIES SAS

**MOTION DEALT WITH IN WRITING, WITHOUT APPEARANCE OF THE PARTIES,
AT OTTAWA, ONTARIO**

ORDER AND REASONS: AHMED J.

DATED: MARCH 16, 2020

WRITTEN SUBMISSIONS BY:

Robert MacDonald

FOR THE APPLICANT

Barry Gamache

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Gowling WLG (Canada) LLP
Barristers and Solicitors
Ottawa, ON

FOR THE APPLICANT

Robic, LLP
Barristers and Solicitors
Montreal, Quebec

FOR THE RESPONDENT