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I S S U E D	FEDERAL COURT COUR FÉDÉRALE
	May 27, 2025 27 mai 2025
	Kadara Thompson
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Court File No.: T-

FEDERAL COURT

BETWEEN:

LODESTAR ANSTALT

Applicant

and

USCONNECT, LLC

Respondent

APPLICATION UNDER Section 56 of the
Trademarks Act R.S.C. 1985, c. T-13 as amended

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Ottawa, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: May 27, 2025

Issued by _____
(Registry Officer)

Address of local office: 90 Sparks Street
Ottawa, ON K1A 0H9

TO: The Administrator
Federal Court

AND TO: USConnect, LLC
324 S. Elm Street, Suite 400
Greensboro, NC 27401
U.S.A.

SMART & BIGGAR LP
Suite 1000, 55 Metcalfe Street
Ottawa, ON K1P 5Y6

Tim Bourne

Agents for the Respondent

AND TO: The Registrar of Trademarks
Canadian Intellectual Property Office
50 Victoria Street, Phase 1, Fourth Floor
Gatineau, QC K1A 0C9

**Served Via the Federal Court Registry Pursuant to Rule 133 of the
Federal Courts Rules**

APPLICATION

This Application is an appeal pursuant to section 56 of the *Trademarks Act* from a decision of Coleen Morrison, Member of the Trademarks Opposition Board, acting on behalf of the Registrar of Trademarks (the “Registrar”) issued March 27, 2025 (the “Decision”) pursuant to section 45 of the *Trademarks Act*, expunging Canadian Trademark Registration No. TMA1067332 (the “Registration”) for the trademark ROUTE 66 & Design (colour) (the “Mark”) in association with the following goods:

Class 32: Soft drinks; energy drinks; preparations for making beverages, namely, concentrates for making fruited beverages, preparations for making aerated water and mineral water, and syrups for making non-alcoholic beverages; beers; lagers; non-alcoholic beers; non-alcoholic lagers; preparations for making beers, lagers, non-alcoholic beers and non-alcoholic lagers.

(the “Goods”)

THE APPLICANT MAKES APPLICATION FOR:

1. An Order allowing this appeal and setting aside the Decision of the Registrar to expunge the Registration, thereby maintaining the Registration in relation to the Goods;
2. Costs of this appeal in favour of the Applicant; and
3. Such further and other relief as this Honourable Court may permit.

THE GROUNDS OF THE APPLICATION ARE AS FOLLOWS:

1. The Registrar issued a notice pursuant to section 45 of the *Trademarks Act* in respect of the Registration on April 13, 2023 (the “Section 45 Notice”).
2. Pursuant to the Section 45 Notice, the Applicant had to show use of the Mark in Canada in association with the Goods listed in the Registration in the three-

year period immediately preceding the date of the Section 45 Notice (the “Relevant Period”).

3. The Applicant filed as its evidence in support of the Registration the Affidavit of André Levy and the Affidavit of Jason Brandt (the “Evidence”).
4. The Applicant did not file written submissions while the Respondent did file written submissions in support of its position. Neither the Applicant nor the Respondent attended an oral hearing.
5. On March 27, 2025, the Registrar issued the Decision (2025 TMOB 78), in which the Registration was expunged in its entirety.
6. The Registrar held that the Applicant had not shown use of the Mark with the registered Goods during the Relevant Period, or special circumstances that excuse the absence of use.
7. The Registrar erred in expunging the Registration pursuant to section 45 of the *Trademarks Act*, as follows:
 - a. the Registrar erred in holding that the Evidence did not demonstrate use of the mark in Canada in association with the Goods during the Relevant Period and, in particular, the Registrar erred in holding that the Evidence did not demonstrate use of the Mark in Canada in association with “beers; lagers;” during the Relevant Period;
 - b. to the extent that there was use of the Mark in Canada in association with one or more of the Goods during the Relevant Period, the Registrar erred in holding that the Evidence did not demonstrate that such use of the Mark in Canada accrued to the benefit of the Applicant;
 - c. to the extent that there was non-use of the Mark in Canada in association with one or more of the Goods during the Relevant Period, the Registrar erred in holding that the Evidence did not demonstrate the existence of special circumstances that excuse said non-use; and

- d. the Registrar erred in finding that the Evidence failed to discharge the low evidential burden on the Applicant and/or the Registrar erred in applying too high of evidential burden.
8. In any event, the Application will be supported by additional evidence that fills the perceived gap in the evidentiary record. As such the Registration should be maintained in relation to the Goods.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

1. A certified copy of the file for Canadian Trademark Registration No. TMA1067332 maintained by the Registrar in respect of the Mark, including the Section 45 proceeding and all evidence filed by the Applicant in such file;
2. Such further and other supporting affidavits and exhibits as the Applicant may serve and file pursuant to Rules 306 and 309 of the *Federal Courts Rules* and this Honourable Court may permit; and
3. Such further and other documents as this Applicant may tender and the Court may permit.

Request for Material in the Possession of Tribunal:

The Applicant requests, pursuant to section 60 of the *Trademarks Act* and Rules 317 and 318 of the *Federal Courts Rules*, that the Registrar send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the Registrar to the Registry and the Applicant:

1. The files for Canadian Trademark Registration No. TMA1067332 maintained by the Registrar in respect of the Mark, including the section 45 proceeding and all evidence filed by the Applicant in such file.

Date: May 27, 2025



Gowling WLG (Canada) LLP
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

Erin Creber
Katherine Beaulieu

Tel: 613-233-1781
Fax: 613-563-9869

Solicitors for the Applicant