Federal Court

Cour fédérale

Date: 20251124

Docket: T-3422-24

Citation: 2025 FC 1864

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Ottawa, Ontario, November 24, 2025

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

FXSWEDE AB

Applicant

and

GENGBIN XU

Respondent

<u>JUDGMENT AND REASONS</u>

I. <u>Overview</u>

[1] In this undefended application, fxswede AB seeks to expunge Gengbin Xu's trademark registration for Tress Wellness, arguing bad faith, non-entitlement and non-distinctiveness.

[2] I find that fxswede's application will be granted on the bad faith and non-distinctiveness grounds. In light of the unique circumstances described below, fxswede has not persuaded me that it can succeed on the non-entitlement ground.

II. Background

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[3] The Applicant fxswede AB is a Swedish limited company (or "Aktiebolag"). Its main brand is TRESS WELLNESS used in association with home waxing kits and waxing accessories. It uses this trademark in word form and with a design; a representation of the latter is shown below [TRESS WELLNESS & Design]:

[4] fxswede applied to register TRESS WELLNESS & Design in Canada for electric warmers to melt wax in Class 21 on January 20, 2022 under application number 2161346. It also owns a registration for the trademark TRESS WELLNESS in the United States of America for waxing related products.

[5] fxswede first began selling its TRESS WELLNESS goods through Amazon's North American Remote Fulfillment Program, and its first Canadian sale occurred on November 30, 2020. It began selling its goods directly through the Amazon Canada Marketplace in January 2021. Through both channels of sale, fxswede has made over CAD $1 million in sales of the TRESS WELLNESS goods in Canada between November 30, 2020, and October 31, 2024. The

trademark TRESS WELLNESS & Design or TRESS WELLNESS is displayed on packaging for fxswede's waxing products sold in Canada.

[6] Coincidentally, Mr. Xu applied on November 30, 2020 to register the trademark Tress Wellness, along with the trademarks Yeelen, BELLA VERDE, and KoluaWax. All but KoluaWax were registered. The trademark application for the latter mark was deemed abandoned after Mr. Xu failed to respond to an opposition by Karuka LLC, which alleged that the application was filed in bad faith.

[7] Mr. Xu's trademark application for Tress Wellness registered on April 5, 2023, under number TMA1,117,533 for goods including depilatory preparations, and depilatory wax, among others.

[8] fxswede's evidence on the expungement application includes the affidavit of Filip Anhera, Chief Executive Officer and co-founder of fxswede. In his affidavit, Mr. Anhera affirms that he is not familiar with Mr. Xu, and that he is unaware of any other use of the trademark TRESS WELLNESS in Canada by anyone else, including Mr. Xu, despite Mr. Anhera's familiarity with the sale of depilatory products and other cosmetic products. Nor is Mr. Anhera aware of any connection between Mr. Xu and the sellers of the goods associated with the other three trademarks, listed above, that Mr. Xu applied for on November 30, 2020.

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[9] fxswede’s evidence also includes the affidavit of Wing Sze “Cinza” Yuen, a legal administrative assistant employed by fxswede’s counsel. Cinza Yuen’s affidavit describes an exchange of correspondence that took place in October 2024 between the parties.

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[10] Specifically, on October 3, 2024, fxswede’s counsel sent to Mr. Xu’s trademark agent a demand letter requesting that Mr. Xu cancel the trademark registration for Tress Wellness because the underlying application was filed in bad faith. On October 10, 2024, fxswede’s counsel received a response from someone purporting to be a representative of the trademark holder. I note that the purported representative was not a named recipient of the demand letter. Further, there is no evidence on record demonstrating how they became aware of the contents of the letter. Nonetheless, in their response, the representative indicated that they did not file the registration in bad faith, that they had used the trademark, and they also offered to negotiate a price for the sale of the registration.

[11] The following day, fxswede’s counsel responded to the representative reiterating that Mr. Xu was not entitled to the registration because it was filed in bad faith and offered to purchase the registration for CAD $1,000 to compensate for the costs of securing the registration. On October 22, 2024, Mr. Xu’s representative indicated a willingness to sell the trademark for CAD $30,000.

[12] fxswede brought this expungement application under subsection 57(1) of the *Trademarks Act*, RSC 1985, c T-13 [*TMA*], shortly after the above exchange between the parties. Mr. Xu did not file a notice of appearance. fxswede notified Mr. Xu’s counsel of this hearing, but relying on

rule 145 of the *Federal Courts Rules*, SOR/98-106 [*Rules*], fxswede did not take any steps to serve Mr. Xu with its supporting affidavits or its record.

[13] See Annex "A" below for relevant legislative provisions.

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III. Issues

[14] Against the above factual backdrop, I find that this application raises the following issues:

A. Is fxswede a "person interested" for the purpose of bringing this application?

B. Did fxswede properly serve Mr. Xu with the Notice of Application and, if yes, was fxswede relieved from serving any further documents on Mr. Xu after he failed to serve and file a notice of appearance?

C. Pursuant to paragraph 18(1)(e) of the *TMA*, did Mr. Xu file the Canadian application to register the trademark Tress Wellness in bad faith?

D. Pursuant to paragraph 18(1)(d) of the *TMA*, was Mr. Xu the person entitled to register the trademark Tress Wellness?

E. Pursuant to paragraph 18(1)(b) of the *TMA*, is the trademark Tress Wellness distinctive of Mr. Xu?

[15] Noting that fxswede has the onus to show the registration is invalid on a balance of probabilities, I deal next with each issue in turn: *Blossman Gas, Inc v Alliance Autopropane Inc*, 2022 FC 1794 at para 42.

IV. Analysis

A. *fxswede is a "person interested"*

[16] I am satisfied that fxswede meets the low threshold of establishing that it is a "person interested" as defined in the section 2 and required by subsection 57(1) of the *TMA*: *Unitel Communications Inc v Bell Canada*, 1995 CanLII 19220 (FCTD), 61 CPR (3d) 12 at 23; *Advanced Purification Engineering Corporation (APEC Water Systems) v iSpring Water Systems, LLC*, 2022 FC 388 at para 13.

[17] First, it is sufficient that the person seeking expungement has used the asserted trademark on which they rely in the proceeding prior to the registration of the challenged trademark: *CIBC World Markets Inc v Stenner*, 2010 FC 397 at paras 20-21; *Blue Seal Inc v Poorter*, 2020 FC 178 at para 10; *51.ca Inc v Huang*, 2024 FC 1202 at para 23.

[18] Second, fxswede also has applied to register the trademark TRESS WELLNESS & Design. The continued registration of the trademark in issue poses an obstacle to that application: *Caprice Holdings Limited v West Georgia Lounge Holding Corp*, 2025 FC 68 at para 11.

B. *fxswede properly served Mr. Xu and is relieved from further service*

[19] I address first the easier question of relief from further service. I accept that if fxswede properly served Mr. Xu with its Notice of Application, which I believe it has, then fxswede was not required to serve Mr. Xu with any further documents related to this proceeding, pursuant to

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paragraph 145(a) of the *Rules*, once the time to file a notice of appearance lapsed. Mr. Xu nonetheless is entitled to receive a copy of the Court's decision and to appeal it: *Canada (Human Rights Commission) v Saddle Lake Cree Nation*, 2018 FCA 228 at para 18.

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[20] I deal next with the more difficult question of whether fxswede properly served Mr. Xu. I note that fxswede's affidavit of service of the Notice of Application attests that the document was served on the law firm with which Mr. Xu's trademark agent was connected, rather than on Mr. Xu personally as required by subrule 127(1). There is no evidence, however, that fxswede's counsel sought directions under subrule 304(2) regarding service. Instead, fxswede's counsel essentially sought to "validate" service by relying on rule 135 of the *Rules*.

[21] fxswede's argument in favour of proper service starts with the premise that normally it would not be appropriate to serve a trademark agent of record with an originating document. I agree. As I understand the argument, the circumstances here are unusual, however, and justify service on the trademark agent who, fxswede asserts, does more than just register trademarks.

[22] I note as well fxswede's evidence that it took the step of serving the trademark agent only after an unsuccessful attempt to serve Mr. Xu at an address for service on Bloor Street in Toronto, Ontario listed on the now abandoned trademark application for KoluaWax. The affidavit of attempted service indicates that when service at the Bloor Street address was attempted, the process server was informed that Mr. Xu was no longer at that address.

[23] For rule 135 to apply, four requirements must be satisfied. First, the person concerned does not reside in Canada. Second, the non-resident enters into contracts or business transactions in Canada. Third, the non-resident regularly makes use of the services of the resident in Canada in connection to the contracts or business transactions in Canada. Fourth, the non-resident made use of the resident's services in connection to the specific contracts or business transactions giving rise to the proceedings. Only when all four requirements are met will the service of a document on the resident in Canada be effective: *Lex Tex Canada Ltd v Highland Mills Ltd*, 1977 CanLII 2987 (FC), [1978] 2 FC 185 at 187.

[24] According to fxswede, the trademark agent is the sole means by which Mr. Xu conducts the business of filing bad faith applications to register third party trademarks and selling the registrations obtained in Canada. The trademark agent, says fxswede, facilitates communications between the registered owner in China, i.e. Mr. Xu, and the legitimate rights holder in Canada. As an example, fxswede points to the demand letter it sent to Mr. Xu's Canadian trademark agent, that resulted in a response from the purported representative of Mr. Xu (someone named "Cathy" having the email address cathy@jdvat.com) that included an offer to negotiate a price for the sale of the registration, as described in paragraphs 10-11 above. The inference here is that the Canadian trademark agent forwarded the demand letter to either Mr. Xu or "Cathy," thereby facilitating communications between Mr. Xu and fxswede.

[25] Relying on this Court's jurisprudence, fxswede argues that the facilitation of communications by the trademark agent between the seller in China and the potential purchaser in Canada takes place separately from the trademark system: *North Shore Health Region v Alpha*

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Cosmos (The) (TD), 1998 CanLII 9110 (FC), [1999] 1 FC 583 [*North Shore*]. In other words, the trademark agent is not acting as such but rather is acting in his capacity as a "person resident in Canada" for the purposes of paragraph 135(a) of the *Rules*.

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[26] Considering rule 135 with reference to the guidance in *North Shore*, I believe there is no question that Mr. Xu resides outside Canada. Although there are no contracts *per se* in evidence in this proceeding, I am prepared to find that Mr. Xu conducted business transactions with the Canadian Intellectual Property Office in applying to register the four trademarks Yeelen, BELLA VERDE, Tress Wellness and KoluaWax for the purpose of selling the registrations. The application process would have entailed paying applicable filing fees.

[27] The evidence of four trademark applications filed on behalf of Mr. Xu lends support, in my view, to the requirement of "regularly makes use of the services of" the trademark agent who resides in Canada. Finally, the instant proceeding arises from the asserted bad faith filing of the application for Tress Wellness. This is reinforced, in my view, by Karuka LLC's opposition to Mr. Xu's application for KoluaWax that was not defended, resulting in the abandonment of the application.

[28] I also consider that, although the trademark agent neither accepted nor rejected the service of the Notice of Application, fxswede could be relatively certain that, by serving the trademark agent, the document would come to Mr. Xu's attention, in part because the trademark agent was acting outside his role as such. This is in keeping, in my view, with the observation in *North Shore* (at para 22) that "rule 135 should continue to be interpreted strictly as an exception

to the general rule that originating documents should be served personally… principally to ensure that defendants have actual knowledge of the claim."

[29] Even if I am incorrect in determining that service on the trademark agent in these circumstances satisfies the requirements of rule 135, I am prepared to validate service under rule 147. I agree with the finding in *North Shore* (at para 48) that "rule 127 does not preclude service of an originating document under rule 135, which is 'deemed personal service', and [there is] no reason why rule 147 should not validate an attempted service under rule 135 that does not comply with its requirements."

C. *Mr. Xu filed the Canadian trademark application for Tress Wellness in bad faith*

[30] I am persuaded by the evidence in this matter that Mr. Xu filed the underlying application to register Tress Wellness in bad faith and, therefore, fxswede is entitled to have Mr. Xu's trademark registration expunged pursuant to paragraph 18(1)(e) of the *TMA*.

[31] The relevant date for assessing this ground of expungement is the filing date of the underlying trademark application. In my view, this is implicit in the wording of the provision. That said, as this Court recently held, "later evidence may also be relevant where it helps to clarify the reason for filing the application": *Beijing Judian Restaurant Co Ltd v Meng*, 2022 FC 743 [*Beijing Judian*] at para 38.

[32] A purpose of paragraph 18(1)(e) is to prevent the use of the trademarks regime as a means to extract money from the rightful owner of a mark: *Beijing Judian*, above at paras 30-31.

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[33] Where a party has a pattern of activity that involves applying for in-use trademarks with no known connection to the party, this may indicate that the party filed the applications without a legitimate business purpose; where the party has engaged in such a pattern of activity, rebutting an inference of bad faith may be more difficult: *Beijing Judian*, above at paras 47-48.

[34] Here, Mr. Xu filed the application to register Tress Wellness on November 30, 2020, along with applications for three other trademarks – Yeelen, BELLA VERDE, and KoluaWax. Because Mr. Xu did not participate in this proceeding, there is no evidence that he has any connection to any of these trademarks. This is borne out to some extent, in my view, by Karuka LLC's opposition to the now abandoned trademark application for KoluaWax. Apart from the bald assertion by his representative of the use of Tress Wellness, in the above-described exchange of correspondence between the parties in October 2024, there is no evidence that Mr. Xu has used any of these trademarks in Canada.

[35] I find that fxswede, however, has shown a legitimate commercial interest in the trademark TRESS WELLNESS, having accrued over CAD $1 million in Canadian sales. In addition, fxswede's evidence demonstrates that Mr. Xu, through a person purporting to be his representative, attempted to sell the trademark to fxswede for CAD $30 000, which far exceeds the reasonable costs of registering the trademark: *Beijing Judian*, above at para 46.

[36] I am prepared to infer from the above circumstances that, on a balance of probabilities, Mr. Xu's registration for TRESS WELLNESS was made in bad faith. Further, because Mr. Xu has not filed any evidence or arguments in this proceeding, he has not rebutted the inference.

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This is sufficient in itself to declare the registration *void ab initio*, as sought by fxswede, and to expunge the registration.

D. *fxswede has not established that Mr. Xu was not the person entitled to register Tress Wellness*

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[37] The issue of non-entitlement turns on whether fxswede has established previous use of its trademark TRESS WELLNESS & Design. I am not persuaded by fxswede’s arguments that it has shown the requisite prior use.

[38] The relevant date to assess invalidity on the basis of entitlement, pursuant to paragraph 18(1)(d) of the *TMA*, is the earlier of the filing date, or the date of first use, with reference to paragraph 16(1)(a). The challenge faced by fxswede in attempting to make out the ground of non-entitlement is that the evidence of record shows that Mr. Xu filed the underlying trademark application on the same date that fxswede first used the trademark TRESS WELLNESS in Canada, namely, November 30, 2020. There simply is no evidence that sequentially, fxswede’s use occurred prior to the time of filing of the trademark application by Mr. Xu (i.e. “previously used” mentioned in paragraph 16(1)(a) of the *TMA*). fxswede's arguments, rooted as they are in speculation about a test purchase of its goods from within Canada by Mr. Xu prior to the filing of his trademark application, are unpersuasive.

[39] Further, fxswede properly acknowledges the conundrum and admits they are unaware of any Canadian or US jurisprudence that addresses it. They argue in favour of a large and liberal interpretation of the *TMA* that prioritizes use over filing, especially in the case of an application

filed in bad faith. I find that a plain reading of paragraph 16(1)(a) does not support the advocated construction. A person is entitled to registration unless at the person's date of filing or first use, whichever is earlier, a trademark had been "previously used" by another person. While the *TMA* permits opposition or expungement on the basis of "bad faith," which is not defined, nowhere does the *TMA* provide that use has priority over filing. To the contrary, section 3 seemingly puts filing and use on even footing insofar as adoption is concerned.

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[40] Regardless, because fxswede will succeed on at least one ground of invalidity in this matter, I find it unnecessary to rule definitively on the issue of unresolved, competing priorities and, thus, I will say no more on it.

E. *The trademark Tress Wellness is not distinctive of Mr. Xu*

[41] Unlike the grounds of invalidity based on bad faith and entitlement, the relevant date for assessing invalidity by reason of non-distinctiveness, pursuant to subparagraph 18(1)(b) of the *TMA*, is the date of the application for expungement. Here, that date is December 6, 2024, and I find that fxswede also will succeed on this ground.

[42] To be considered distinctive, as this term is defined in section 2 of the *TMA*, a trademark must convey to the public the message that the person using it is the source of the goods: *De Luca v Geox SPA*, 2024 FC 1441 at para 29. Distinctiveness involves three conditions, namely, that: (i) a mark and a product are associated; (ii) the owner uses the association between the mark and the product, and is manufacturing and selling the product; and (iii) the association permits the owner to distinguish its product from that of others: *Naked Whey, Inc v N8ked Brands Inc*,

2023 FC 1079 at para 51, citing *Labatt Brewing Co v Molson Breweries, A Partnership*, 1992 CanLII 15483 (FCTD), 42 CPR (3d) 481 at 494.

[43] Further, the owner of the rival or opposing mark must show that it is known to some extent at least; it is not necessary, however, to show that it is well known or that it has been made known solely by the restricted means provided in section 5 of the *TMA*. It is sufficient to demonstrate that the other rival or opposing mark has become known sufficiently to negate the distinctiveness of the mark under attack: *Bojangles' International LLC v Bojangles Café Ltd*, 2006 FC 657 at para 29, citing *Motel 6, Inc v No 6 Motel Limited*, 1981 CanLII 4710 (FC), [1982] 1 FC 638 at 652-653.

[44] I find that here, fxswede has established that the trademark TRESS WELLNESS is associated with its waxing kits, which overlap with the goods described in the impugned registration, and that the branded kits are sold in Canada. This association distinguishes fxswede's goods from those of others because it is the only one to use the trademark in association with these types of goods in Canada. Given the volume of sales (i.e. over CAD $1 million in sales of the TRESS WELLNESS goods in Canada between 2020 and 2024), the mark in my view has become known in Canada sufficiently to negate any possible distinctiveness in Mr. Xu. In fact, there is no evidence that trademark is distinctive of Mr. Xu, or that Mr. Xu has used the trademark in Canada or anywhere else for that matter.

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V. Conclusion

[45] For the above reasons, fxswede's application will be granted. Registration number TMA1,174,533 for Tress Wellness thus will be expunged on the bases of paragraphs 18(1)(e) and 18(1)(b) of the *TMA*.

VI. Costs

[46] fxswede claims costs of approximately $17,000 based on the top end of Column V of Tariff B, indicating that its actual costs exceed this amount. With reference to the Court's discretion in awarding costs pursuant to rule 400 of the *Rules*, I determine that fxswede will be awarded lump sum costs of $6,500 including permitted disbursements and applicable taxes, which in my view are more in keeping with an uncontested proceeding, including the hearing.

[47] fxswede prepared a bill of costs based on Column III and Column V of Tariff B that claims the top end of Column V in terms of total units. Given the uncontested proceeding, however, I see no reason to depart from the top end of Column III in terms of calculating the total units. I note that the bill of costs includes a line item for discovery of documents which I believe is not appropriate to an uncontested application. Instead, I find that "preparation and filing of an uncontested motion, including all materials," is more applicable in the circumstances. Further, there is no evidentiary support for the photocopying, printing and scanning charges, nor for the process servers or the courier charges. I note, however, that fxswede's counsel was working from a paper record during the hearing and, consequently, I infer that at least one paper record was produced for the hearing. Therefore, I determine that photocopying charges are

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permitted based on the size of fxswede's record and book of authorities: *Merck & Co v Canada (Minister of Health)*, [2007] FCJ No 428, 2007 FC 312. Taking these adjustments into account and rounding up the resulting sum leads to the above award of $6,500.

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<u>JUDGMENT in T-3422-24</u>

THIS COURT'S JUDGMENT is that:

1. The Applicant's application under subsection 57(1) of the *Trademarks Act*, RSC 1985, c T-13, is granted.
2. Trademark registration number TMA1,117,533 for TRESS WELLNESS is declared invalid pursuant to paragraphs 18(1)(e) and 18(1)(b) of the *Trademarks Act* and shall be struck from the register by the Registrar of Trademarks.
3. The Applicant is awarded lump sum costs in the amount of $6,500, inclusive of permitted disbursements and applicable taxes, payable by the Respondent.

"Janet M. Fuhrer"
Judge

Annex "A": Relevant Provisions

***Trademarks Act*, RSC 1985, c T-13**
***Loi sur les marques de commerce*, LRC 1985, c T-13**

Definitions	**Définitions**
2 In this Act,	**2** Les définitions qui suivent s'appliquent à la présente loi.
[…]	…
person interested includes any person who is affected or reasonably apprehends that he may be affected by any entry in the register, or by any act or omission or contemplated act or omission under or contrary to this Act, and includes the Attorney General of Canada; (*personne intéressée*)	***personne intéressée*** Sont assimilés à une personne intéressée le procureur général du Canada et quiconque est atteint ou a des motifs valables d'appréhender qu'il sera atteint par une inscription dans le registre, ou par tout acte ou omission, ou tout acte ou omission projeté, sous le régime ou à l'encontre de la présente loi. (*person interested*)
distinctive, in relation to a trademark, describes a trademark that actually distinguishes the goods or services in association with which it is used by its owner from the goods or services of others or that is adapted so to distinguish them; (*distinctive*)	***distinctive*** Se dit de la marque de commerce qui distingue véritablement les produits ou services en liaison avec lesquels elle est employée par son propriétaire de ceux d'autres personnes, ou qui est adaptée à les distinguer ainsi. (*distinctive*)
When deemed to be adopted	**Quand une marque de commerce est réputée adoptée**
3 A trademark is deemed to have been adopted by a person when that person or his predecessor in title commenced to use it in Canada or to make it known in Canada or, if that person or his predecessor had not previously so used it or made it known, when that person or his predecessor filed an application for its registration in Canada.	**3** Une marque de commerce est réputée avoir été adoptée par une personne, lorsque cette personne ou son prédécesseur en titre a commencé à l'employer au Canada ou à l'y faire connaître, ou, si la personne ou le prédécesseur en question ne l'avait pas antérieurement ainsi employée ou fait connaître, lorsque l'un d'eux a produit une demande d'enregistrement de cette marque au Canada.
When deemed to be made known	**Quand une marque de commerce est réputée révélée**
5 A trademark is deemed to be made known in Canada by a person only if it is used by that person in a country of the Union, other	**5** Une personne est réputée faire connaître une marque de commerce au Canada seulement si elle l'emploie dans un pays de

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than Canada, in association with goods or services, and **(a)** the goods are distributed in association with it in Canada, or **(b)** the goods or services are advertised in association with it in **(i)** any printed publication circulated in Canada in the ordinary course of commerce among potential dealers in or users of the goods or services, or **(ii)** radio broadcasts ordinarily received in Canada by potential dealers in or users of the goods or services, and it has become well known in Canada by reason of the distribution or advertising.	l'Union, autre que le Canada, en liaison avec des produits ou services, si, selon le cas : **a)** ces produits sont distribués en liaison avec cette marque au Canada; **b)** ces produits ou services sont annoncés en liaison avec cette marque : **(i)** soit dans toute publication imprimée et mise en circulation au Canada dans la pratique ordinaire du commerce parmi les marchands ou usagers éventuels de ces produits ou services, **(ii)** soit dans des émissions de radio ordinairement captées au Canada par des marchands ou usagers éventuels de ces produits ou services, et si la marque est bien connue au Canada par suite de cette distribution ou annonce.
Entitlement to registration **16 (1)** Any applicant who has filed an application in accordance with subsection 30(2) for the registration of a registrable trademark is entitled, subject to section 38, to secure its registration in respect of the goods or services specified in the application, unless at the filing date of the application or the date of first use of the trademark in Canada, whichever is earlier, it was confusing with **(a)** a trademark that had been previously used in Canada or made known in Canada by any other person;	**Droit à l'enregistrement** **16 (1)** Tout requérant qui a produit une demande conforme au paragraphe 30(2) en vue de l'enregistrement d'une marque de commerce enregistrable a droit, sous réserve de l'article 38, d'obtenir cet enregistrement à l'égard des produits ou services spécifiés dans la demande, à moins que, à la date de production de la demande ou à la date à laquelle la marque a été employée pour la première fois au Canada, la première éventualité étant à retenir, la marque n'ait créé de la confusion : **a)** soit avec une marque de commerce antérieurement employée ou révélée au Canada par une autre personne;
When registration invalid **18 (1)** The registration of a trademark is invalid if […] **(b)** the trademark is not distinctive at the time proceedings bringing the validity of the registration into question are commenced; […]	**Quand l'enregistrement est invalide** **18 (1)** L'enregistrement d'une marque de commerce est invalide dans les cas suivants : … **b)** la marque de commerce n'est pas distinctive à l'époque où sont entamées les procédures contestant la validité de l'enregistrement; …

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(d) subject to section 17, the applicant for registration was not the person entitled to secure the registration; or **(e)** the application for registration was filed in bad faith.	**d)** sous réserve de l'article 17, l'auteur de la demande n'était pas la personne ayant droit d'obtenir l'enregistrement; **e)** la demande d'enregistrement a été produite de mauvaise foi.
Exclusive jurisdiction of Federal Court **57 (1)** The Federal Court has exclusive original jurisdiction, on the application of the Registrar or of any person interested, to order that any entry in the register be struck out or amended on the ground that at the date of the application the entry as it appears on the register does not accurately express or define the existing rights of the person appearing to be the registered owner of the trademark.	**Compétence exclusive de la Cour fédérale** **57 (1)** La Cour fédérale a une compétence initiale exclusive, sur demande du registraire ou de toute personne intéressée, pour ordonner qu'une inscription dans le registre soit biffée ou modifiée, parce que, à la date de cette demande, l'inscription figurant au registre n'exprime ou ne définit pas exactement les droits existants de la personne paraissant être le propriétaire inscrit de la marque de commerce.

***Federal Courts Rules*, SOR/98-106**
***Règles des Cours fédérales*, LRC 1985, c T-13**

Service of originating documents **127 (1)** An originating document that has been issued, other than in an appeal from the Federal Court to the Federal Court of Appeal or an *ex parte* application under rule 327, shall be served personally.	**Signification de l'acte introductif d'instance** **127 (1)** L'acte introductif d'instance qui a été délivré est signifié à personne sauf dans le cas de l'appel d'une décision de la Cour fédérale devant la Cour d'appel fédérale et dans le cas d'une demande visée à la règle 327 et présentée *ex parte*.
Deemed personal service on a person outside Canada **135** Where a person	**Signification présumée** **135** Dans une instance découlant d'un contrat ou d'une opération commerciale, la signification à personne d'un document à une personne résidant au Canada vaut signification à la personne résidant à l'étranger si cette dernière, à la fois :
(a) is resident outside Canada and, in the ordinary course of business, enters into contracts or business transactions in Canada in connection with which the person regularly makes use of the services of a person resident in Canada, and	**a)** dans le cours normal des affaires, conclut des contrats au Canada ou effectue des opérations commerciales au Canada dans le cadre desquelles elle utilise régulièrement les services de la personne résidant au Canada;

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(b) made use of such services in connection with a contract or business transaction, in a proceeding arising out of the contract or transaction, personal service of a document on the person resident outside Canada is effected by personally serving the person resident in Canada.	**b)** a utilisé les services de la personne résidant au Canada relativement à ce contrat ou à cette opération commerciale.
When no further service required **145** Subject to subsection 207(2) or unless the Court orders otherwise, a party who has been served with an originating document is not required to be served with any further documents in the proceeding prior to final judgment if **(a)** the party has not filed a notice of appearance or a defence within the time set out in these Rules; or **(b)** the party has no address for service and has not served and filed a notice of consent to electronic service in Form 141A.	**Cas où la signification n'est pas nécessaire** **145** Sous réserve du paragraphe 207(2) et sauf ordonnance contraire de la Cour, si la partie qui a reçu signification d'un acte introductif d'instance se trouve dans l'une des situations ci-après, il n'est pas nécessaire de lui signifier d'autres documents dans le cadre de l'instance avant le jugement final : **a)** elle n'a pas déposé d'avis de comparution ni déposé de défense dans le délai prévu par les présentes règles; **b)** elle n'a pas d'adresse aux fins de signification et n'a pas signifié et déposé d'avis de consentement à la signification électronique établi selon la formule 141A.
Validating service **147** If a document has been served in a manner that is not authorized by these Rules or by an order of the Court, the Court may validate the service if it is satisfied that the document came to the notice of the person to be served or that it would have come to that person's notice except for the person's avoidance of service.	**Validation de la signification** **147** Si un document a été signifié d'une manière non autorisée par les présentes règles ou une ordonnance de la Cour, celle-ci peut valider la signification si elle est convaincue que le destinataire a pris connaissance du document ou qu'il en aurait pris connaissance s'il ne s'était pas soustrait à la signification.
Motion for directions as to service **304(2)** Where there is any uncertainty as to who are the appropriate persons to be served with a notice of application, the applicant may bring an *ex parte* motion for directions to the Court.	**Directives sur la signification** **304(2)** En cas de doute quant à savoir qui doit recevoir signification de l'avis de demande, le demandeur peut, par voie de requête *ex parte*, demander des directives à la Cour.
Discretionary powers of Court **400 (1)** The Court shall have full discretionary power over the amount and	**Pouvoir discrétionnaire de la Cour** **400 (1)** La Cour a le pouvoir discrétionnaire de déterminer le montant des dépens, de les

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allocation of costs and the determination of by whom they are to be paid. […]	répartir et de désigner les personnes qui doivent les payer. …
Tariff B **(4)** The Court may fix all or part of any costs by reference to Tariff B and may award a lump sum in lieu of, or in addition to, any assessed costs.	**Tarif B** **(4)** La Cour peut fixer tout ou partie des dépens en se reportant au tarif B et adjuger une somme globale au lieu ou en sus des dépens taxés.

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FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-3422-24
STYLE OF CAUSE:	FXSWEDE AB v GENGBIN XU
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	OCTOBER 29, 2025
JUDGMENT AND REASONS:	FUHRER J.
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APPEARANCES:

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