



Date: 20260424

Docket: T-4811-25

Citation: 2026 FC 549

Ottawa, Ontario, April 24, 2026

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

NIELSEN CONSUMER LLC

Applicant

and

THE TORONTO-DOMINION BANK

Respondent

JUDGMENT AND REASONS

[1] This is an appeal from a decision [Decision] of the Registrar of Trademarks [Registrar] that expunged the Appellant's TDLINX word mark [TDLINX Mark], pursuant to section 45 of the *Trademarks Act*, RSC 1985, c T-13 [TMA].

[2] The Appellant asserts that they did not file evidence of use in response to the section 45 Notice [Notice] because of inadvertence. The Appellant requests leave to introduce new evidence relating to the alleged use of the TDLINX Mark.

[3] For the reasons set out below, and considering the factors set out in *Products Unlimited, Inc v Five Seasons Comfort Limited*, 2026 FC 48 [*Products Unlimited*], including that there is no opposition by the Respondent to this application, it is my view that it is in the interests of justice to grant leave for the new evidence to be filed. Based on the new evidence, I am satisfied that the requisite use of the TDLINX Mark has been established except in respect of those goods and services associated with “product listings” and “product” information. Accordingly, the application is allowed, and the TDLINX Mark is reinstated with an amended list of goods and services.

I. **Background**

[4] The Appellant, Nielsen Consumer LLC [Nielsen Consumer], is the owner of Trademark Registration No. TMA704839 for the TDLINX Mark, which was registered on January 16, 2008 for use in association with the following goods and services [Registered Goods and Services]:

Goods

(1) Downloadable electronic databases in the fields of retail marketing and retail sales information, containing retail business locations, product listings, sales information, and marketing information.

Services

(1) Market research services, namely reviewing, coding and conforming retail sales, retail store, product, and marketing data and records; providing an online electronic database in the fields of retail marketing and retail sales information, containing retail business locations, product listings, sales information and marketing information.

[5] On May 16, 2025, at the request of the Respondent, the Toronto-Dominion Bank, the Registrar issued the Notice, pursuant to subsection 45(1) of the TMA. The Notice required the

Appellant to show use of the TDLINX Mark in association with the Registered Goods and Services during the three-year period from May 16, 2022 to May 16, 2025 [Relevant Period].

The Appellant asserts that through inadvertence it did not docket a response to the Notice before the TDLINX Mark was expunged and therefore, did not submit the necessary evidence to maintain the registration.

[6] The Appellant provides an affidavit from Jennifer Lazala, sworn January 15, 2026 [Lazala Affidavit], to explain the circumstances surrounding receipt of the Notice and the Appellant's failure to file evidence. Ms. Lazala is an employee of the Appellant who works in the IP Legal department and is responsible for maintaining the company's trademark portfolio. She states that she inadvertently overlooked an email regarding the Notice, did not docket or note the deadline to respond, and did not bring the Notice to anyone's attention. As a result, the Appellant did not file any evidence of use by the deadline.

[7] On September 29, 2025, the Registrar issued the Decision, expunging the registration for the TDLINX Mark for failure to file any evidence of use. The Decision stated:

Reference is made to the section 45 notice issued on May 16, 2025 in the above referenced matter.

You are advised that by reason of the failure to file the evidence required, the registration will be expunged from the register pursuant to section 45(4) of the Trademarks Act.

The procedure set out in section 45(5) of the Act will be followed unless a notice of appeal is filed with the Registrar and in the Federal Court within the time period set out in section 56 of the Act.

[8] The Lazala Affidavit states that the Appellant only became fully aware of the Notice and the Decision on October 8, 2025, when Ms. Lazala received an email from her instructing US trademark attorney reporting that the Mark would be expunged for failure to file evidence of use.

[9] The Appellant brought this appeal on November 28, 2025 and seeks leave pursuant to subsection 56(5) of the TMA to adduce evidence to demonstrate use of the Mark during the Relevant Period.

[10] The proposed new evidence, which will be described in greater detail below, includes an affidavit from Francis Parisien, sworn February 13, 2026 [Parisien Affidavit]. Mr. Parisien is the Senior Vice President Sales, Small & Medium Businesses Canada of ACNielsen Company of Canada [ACNielsen], the Appellant's licensee. In his affidavit, Mr. Parisien speaks to the corporate structure of the company and the licensing arrangement relating to the TDLINX Mark. He also provides various exhibits and information to demonstrate the alleged use of the TDLINX Mark in association with the Registered Goods and Services during the Relevant Period.

[11] The Respondent did not file a Notice of Appearance and has not otherwise participated in this appeal.

[12] Pursuant to Direction from the Court on January 16, 2026, the Appellant's request for leave to adduce new evidence was directed to be determined at the same time as the merits of the application.

II. Issues and Standard of Review

[13] There are two issues raised by this application:

- 1) Should the Appellant be granted leave to adduce the Parisien Affidavit?
- 2) If so, does the Parisien Affidavit demonstrate use by the Appellant of the TDLINX Mark in association with its Registered Goods and Services during the Relevant Period?

[14] In *Clorox Company of Canada, Ltd v Chloretec SEC*, 2020 FCA 76 [*Clorox*], the Federal Court of Appeal stated that when new evidence is found to be material, subsection 56(5) of the TMA provides that the Federal Court “may exercise any discretion vested in the Registrar” (at para 21). This statutory language rebuts the presumption of the reasonableness standard set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, and calls for a *de novo* consideration on the correctness standard as to the issues that are affected by the evidence: *Clorox* at para 21.

[15] Although subsection 56(5) of the TMA was recently amended to introduce the requirement to seek leave to file new evidence, Parliament maintained the same language that this Court “may exercise any discretion vested in the Registrar” in respect of the new evidence. Therefore, if leave is granted and in doing so, materiality found, the Federal Court of Appeal’s direction in *Clorox* continues to apply and the issues that are affected by the new evidence are to be considered *de novo*: *Products Unlimited* at paras 42-46.

III. Analysis

A. *Should the Appellant be granted leave to adduce the Parisien Affidavit?*

[16] The test for leave under subsection 56(5) of the TMA was recently considered by my colleague, Justice Nicholas McHaffie, in *Products Unlimited*. As set out at paragraphs 29 and 30 of this decision, the determination of leave “is ultimately directed at the interests of justice and considers all relevant factors applicable in the circumstances”, including: (a) the relevance, credibility, and admissibility of the evidence; (b) the materiality of the evidence; (c) the circumstances surrounding the delay in filing the evidence; and (d) whether granting leave would cause prejudice to the opposing party.

[17] As noted by Justice McHaffie, while the same principles of materiality (*i.e.*, whether the evidence is sufficiently substantial and significant that it could have materially affected the Registrar’s findings) remain relevant under subsection 56(5) of the TMA, determining leave is a distinct exercise from determining the merits of an appeal. At the leave stage, the question remains “whether the new evidence *could* have a bearing on a finding of the Registrar”: *Products Unlimited* at para 29. As stated by Justice McHaffie, “This element parallels the fourth criteria of the *Palmer* test [and] similarly parallels the requirement that evidence ‘will assist the Court’, a factor considered in exercising the Court’s discretion to grant leave to file additional evidence pursuant to Rule 312 of the *Federal Courts Rules*”: *Products Unlimited* at para 29.

[18] In my view, the first two elements of the test for leave are readily met: The evidence is relevant as it relates to use of the TDLINX Mark, which was the only issue before the Registrar.

As there was no cross-examination on the affidavit, and there has been no participation by the Respondent, it is also credible and uncontradicted. Further, as the Registrar did not have any evidence of use before it, the Parisien Affidavit could have materially affected the Registrar's Decision.

[19] The fourth factor of *Products Unlimited* is also met. As the Respondent has taken no position on this appeal, there is no prejudice to the Respondent in connection with the Appellant's request and no opposition to the request to file new evidence.

[20] The outstanding issue is whether the circumstances surrounding the delay in filing the evidence are such that it remains in the interests of justice overall to grant leave.

[21] Here, the Appellate concedes that it did receive the Notice; the reason for not filing evidence is because of Ms. Lazala's error in not docketing the Notice for response. Ms. Lazala states that the TDLINX Mark and the subject registration are important to the Appellant. She asserts that if she had noted the deadline in the Notice and alerted her colleagues appropriately, the Appellant would have taken steps to maintain the registration in response to the Notice.

There is no evidence contradicting these assertions.

[22] While the circumstances surrounding the delay in filing evidence is an important factor that may be determinative of the question of leave, the weight given to this factor will be fact specific: *Products Unlimited* at para 29. Here, where all other factors are met and the Respondent has not contested leave nor taken a position in the proceeding, it is my view that the

circumstances surrounding the delay take on less weight, particularly in view of the nature of the evidence proposed.

[23] For all these reasons, leave shall be granted and the Parisien Affidavit is accepted as filed.

B. *Does the Parisien Affidavit demonstrate use of the TDLINX Mark in association with the Registered Goods and Services during the Relevant Period?*

[24] Pursuant to a notice under subsection 45(1) of the TMA, a registered owner is required to submit “an affidavit or statutory declaration showing, with respect to all the goods or services specified in the registration ... whether the trademark was in use in Canada at any time during the three-year period immediately preceding the date of the notice and, if not, the date when it was last so in use and the reason for the absence of such use since that date”.

[25] The burden on a trademark owner to demonstrate use of a trademark during the relevant period is not a heavy one: *Spirits International BV v BCF SENCRL*, 2012 FCA 131 at para 8 [*Spirits International*]. An owner need only provide an affidavit or statutory declaration that sets out sufficient facts for which a reasonable inference can be drawn that the requirements of use set out in section 4 of the TMA have been met for the subject mark: *Spirits International* at paras 7-8; *Diamant Elinor Inc v 88766 Canada Inc*, 2010 FC 1184 at para 9.

[26] While the kind and extent of evidence may vary in each case, the registered owner must show that it used the trademark during the relevant period, or that the trademark was used by another person whose use accrued to the owner’s benefit: *Spirits International* at para 7.

[27] Subsection 50(1) of the TMA provides that if an entity is licensed by or with the authority of a trademark owner to use the trademark, and the owner has, under the license, direct or indirect control over the character or quality of the goods or services, then the use of the trademark by that entity is deemed to have the same effect as such use by the owner. There are three ways of demonstrating “control” for the purposes of subsection 50(1): (i) through a clear statement by the registrant or the licensee attesting to the fact that the registrant exerts the requisite control; (ii) through evidence demonstrating that the registrant exerts the requisite control; or (iii) by providing a copy of the license agreement that explicitly provides for the requisite control: *Empressa Cubana Del Tabaco Trading v Shapiro Cohen*, 2011 FC 102 at para 84, *aff’d* 2011 FCA 340; *Live! Holdings, LLC v Oyen Wiggs Green & Mutala LLP*, 2020 FCA 120 at para 24.

[28] As explained by Mr. Parisien in his affidavit, ACNielsen and the Appellant are both part of the NielsenIQ group of companies. Nielsen Consumer is a consumer intelligence company that provides its clients with information to assist them with marketing their goods and services to grow their business. It conducts its business in Canada under the TDLINX Mark through ACNielsen.

[29] In his affidavit, Mr. Parisien provides an express statement that “ACNielsen provides goods and services in association with the trademark TDLINX in Canada under license from Nielsen Consumer.” He indicates that “[p]ursuant to that license, Nielsen Consumer has had (at all material times) direct or indirect control over the character and quality of the goods and services ACNielsen provides in association with the Trademark **TDLINX** in Canada.” In my

view, this statement is sufficient to satisfy subsection 50(1) of the TMA and to establish that use by ACNielsen inures to the benefit of Nielsen Consumer, the registered owner of the TDLINX Mark.

(1) Use of the Mark in Association with the Registered Goods

[30] Subsection 4(1) of the TMA provides the following definition of “use” of a trademark in association with goods:

4(1) A trademark is deemed to be used in association with goods if, at the time of the transfer of the property in or possession of the goods, in the normal course of trade, it is marked on the goods themselves or on the packages in which they are distributed or it is in any other manner so associated with the goods that notice of the association is then given to the person to whom the property or possession is transferred;	4(1) Une marque de commerce est réputée employée en liaison avec des produits si, lors du transfert de la propriété ou de la possession de ces produits, dans la pratique normale du commerce, elle est apposée sur les produits mêmes ou sur les emballages dans lesquels ces produits sont distribués, ou si elle est, de toute autre manière, liée aux produits à tel point qu’avis de liaison est alors donné à la personne à qui la propriété ou possession est transférée.
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[31] As noted earlier, the Registered Goods are:

Downloadable electronic databases in the fields of retail marketing and retail sales information, containing retail business locations, product listings, sales information, and marketing information.

[32] The Applicant concedes that “product listings” should be deleted from the list of Registered Goods. With this exclusion, in my view the evidence establishes use in compliance with subsection 4(1) of the TMA for all other Registered Goods.

[33] As explained by Mr. Parisien, the information the Appellant provides to its clients in Canada is organized into databases in the form of flat-file spreadsheets. The spreadsheets are downloadable and are delivered to clients online through email or through an on-line web-portal. The databases include retail marketing and retail sales information that help clients make data-driven decisions on how to expand their business. This information includes data such as, retail store locations, annual sales volumes, All Commodity Volume [ACV] (which is a store's overall sales), the type of trade in which a store operates, and whether a store is part of a chain or if they are independent.

[34] Mr. Parisien attaches examples of contracts between ACNielsen and Canadian clients during the Relevant Period for databases that were marked with the TDLINX Mark. The contracts set out the information to be included in the database and establish that databases were prepared for clients in Canada during the Relevant Period for retail marketing and retail sales information, including retail store locations, ACV, and other marketing information.

[35] Mr. Parisien attaches exhibits that show the TDLINX Mark displayed on the first sheet of the flat file spreadsheet that contains the downloaded data. He explains that the client immediately sees this sheet upon opening the downloaded spreadsheet. The examples show the TDLINX Mark prominently displayed along the top of the page next to the words "Store List – Canada".

[36] As noted by the Appellant, where a trademark is displayed with additional material, it will still constitute use of the trademark if the public would perceive the mark *per se* as being

used, such as where the additional material is a descriptive word or is recognized as another trademark: *Nightingale Interloc Ltd v Prodesign Ltd*, 1984 CanLII 5914 (TMOB), citing *Carling O'Keefe Ltd v Molson Cos Ltd* (1982), 70 CPR (2d) 279 at 280-281.

[37] In this case, I agree with the Appellant the client would recognize the use of “TDLinx Store List – Canada” on the first sheet of the flat file spreadsheet as use of the TDLINX Mark. The additional words present (“Store List – Canada”) are merely descriptive of the information on the spreadsheet and do not take away from the distinctiveness of the TDLINX Mark.

[38] As acknowledged by Mr. Parisien, the printout is for a database that was prepared and downloaded outside the Relevant Period. However, he confirms that it is representative of how the TDLINX Mark was displayed on the databases downloaded by clients in Canada during the Relevant Period. In my view, this is sufficient to establish how the TDLINX Mark was displayed on the Registered Goods during the Relevant Period.

[39] In addition to the first page of the database, Mr. Parisien also provides a screenshot of a representative downloadable database in a flat-file spreadsheet format. The screenshot shows how information was presented during the Relevant Period and includes columns for “Store Status”, “Store Name”, “Store Number”, “Street Address”, “City”, “State” and “Zip Code”. The screenshot includes a column at the left for the “TDLinx Code”. Mr. Parisien confirms that the screenshot is representative of how information would have been displayed in a database prepared for a Canadian customer during the Relevant Period. The screenshot serves as a further

example of an association of the TDLINX Mark with the Registered Goods that would come to the attention of the Canadian consumer upon transfer of the goods.

[40] To demonstrate that databases marked with the TDLINX Mark were delivered to Canadian customers during the Relevant Period in the normal course of trade, Mr. Parisien provides copies of representative invoices from the Relevant Period. The invoices indicate that the sender is ACNielsen and include Canadian customer addresses. The invoices refer to a “TDLINX BASE RATE” in the body of the invoice, which Mr. Parisien states refers to the payment amount agreed upon in the contract for the TDLINX Registered Goods and Services.

[41] According to Mr. Parisien, “[d]uring the Relevant Period, Nielsen Consumer, through ACNielsen provided more than eight (8) clients in Canada with downloadable electronic databases containing retail business locations, sales information and marketing information in the normal course of trade.”

[42] Taken together, in my view the evidence submitted establishes all elements of subsection 4(1) of the TMA: The TDLINX Mark was used in association with the Registered Goods during the Relevant Period, the Registered Goods displaying the TDLINX Mark were transferred in the normal course of trade to Canadian consumers during the Relevant Period, and the TDLINX Mark was used in association with the Registered Goods in a manner such that the mark came to the attention of consumers when the goods were transferred.

(2) Use of the Mark in Association with the Registered Services

[43] Pursuant to subsection 4(2) of the TMA, a trademark is used in association with services if “it is used or displayed in the performance or advertising of those services”.

[44] Services have been “performed” under subsection 4(2) when persons in Canada have derived a tangible benefit from the services during the relevant period: *Miller Thomson LLP v Hilton Worldwide Holding LLP*, 2020 FCA 134 [*Miller Thomson*] at para 117.

[45] To demonstrate use through the advertisement of services, the trademark owner must show not only that it advertised the services in association with the mark to prospective customers in Canada but that it was willing and able to perform its services in Canada: *Live! Holdings, LLC v Oyen Wiggs Green & Mutala LLP*, 2019 FC 1042 at para 80, aff’d 2020 FCA 120; *Vass v Leef Inc*, 2022 FC 1192 at para 53.

[46] As noted earlier, the Registered Services are:

Market research services, namely reviewing, coding and conforming retail sales, retail store, product, and marketing data and records; and providing an online electronic database in the fields of retail marketing and retail sales information, containing retail business locations, product listings, sales information and marketing information.

[47] As with the Registered Goods, the Appellant concedes that services relating to “product” information and “product listings” should be deleted from the list of Registered Services. With this exclusion, in my view the evidence establishes use in compliance with subsection 4(2) of the TMA for all other Registered Services.

[48] While the evidence speaks to both the performance and advertisement of the Registered Services, I will focus my analysis on the advertisement of the Registered Services as this is sufficient of the purposes of this appeal.

[49] The evidence demonstrates that the Appellant advertised the Registered Services in association with the TDLINX Mark during the Relevant Period in two ways: through promotional materials distributed to prospective clients and on the Appellant's website.

[50] The Parisien Affidavit attaches various promotional materials, including a sales sheet and presentations which Mr. Parisien states were distributed to potential clients in Canada during the Relevant Period. The sales sheet is undated but includes a copyright notice from 2024. The presentations are dated April 2023 and March 2023.

[51] The sales sheet displays the TDLINX mark prominently at the top of the sheet and describes some of the services offered in association with the mark in the body text. Under the heading "What is it", the sales sheet provides:

TDLinx provides detailed data across addresses, ownership, ACV, store count, etc. giving a current representation of the **ever-changing industry**. With these insights, you can spot historical trends or pinpoint exact store geographies where changes are happening.

[52] The presentations similarly display the TDLINX mark throughout. As explained by Mr. Parisien, the body of the first presentation promotes the reviewing, coding and conforming services, describing "TDLinx" as "the worldwide leader in Location Information Management that provides a universally accepted account coding structure of Retail selling locations". The

presentation refers to the data providing benefits to manufactures and retailers to “facilitate customer reporting”, “integrate data”, “enable targeted execution” and “synchronize activity”. It also explains that the data “provides benefits throughout the client organization” such as through “[s]eamless communication and integration internally and across systems and departments”.

[53] The second presentation contains data taken from the TDLINX databases. Mr. Parisien states that it was distributed to potential clients “to demonstrate how valuable the TDLINX databases can be in making decisions regarding the marketing and distributing of their products”. In the second presentation, TDLINX is referenced in association with services that “[assign] a unique coding structure to every store or outlet within [the] industry standard channel database, allowing data and activity to be rolled up by account, market and supplier affiliate”. The TDLINX databases are also described as “offer[ing] a dynamic catalog of 38,000 Canadian retail and on-premise location information that delivers a consistent view of store-level performance and strategic needs”.

[54] As a further attachment to his affidavit, Mr. Parisien also provides printouts from the Nielsen Consumer website as they appeared during the Relevant Period. These excerpts prominently display the TDLINX Mark. The website introduces “TDLinx” as a “dynamic catalog of retail and on-premise location data that delivers a current view of the retail landscape”. It promotes “TDLinx” as “the universal language for store location insights” that provides the advantage of “[e]nhanced collaboration” through “[u]niversal TDLinx codes” that “enable integration with other store-level data sets and ensure seamless communication across business

operations and partners”. The website refers to “[g]ranular store information from ACV to selling square”.

[55] Taken together, in my view the evidence demonstrates that the Appellant was using the TDLINX Mark to promote its marketing research services and its services of providing online electronic databases of retail marketing and retail sales information.

[56] The evidence establishes that the promotional materials were distributed to and/or made available to Canadian clients during the Relevant Period.

[57] In his affidavit, Mr. Parisien states that he believes the promotional materials were widely distributed to at least 200 manufacturers in Canada during the Relevant Period by email. He also provides website analytics indicating that 200 Canadians visited the collective webpages that are attached to his affidavit during the Relevant Period.

[58] The evidence further establishes that the Appellant was willing and able to perform the services advertised during the Relevant Period. The representative contracts and invoices provided in the evidence demonstrate that databases of the type advertised by the Appellant were sold by ACNielsen to clients in Canada during the Relevant Period. From this, I am satisfied that the Appellant has established that they were able to perform the Registered Services as advertised.

[59] As all requirements have been addressed through the Parisien Affidavit, I am satisfied that the Appellant has shown use of the TDLINX Mark in association with the Registered Services.

[60] As such, the appeal will be allowed and Trademark Registration No. TMA704839 shall be reinstated except in respect of those goods and services associated with “product listings” and “product” information.

[61] As costs were not requested and as none are justified in this circumstance, none shall be awarded.

JUDGMENT IN T-4811-15

THIS COURT'S JUDGMENT is that

1. The appeal is allowed and the decision of the Registrar dated September 29, 2025 is set aside.
2. Trademark Registration No. TMA704839 for the trademark TDLINX is hereby maintained in relation to the following goods and services only:

Goods: Downloadable electronic databases in the fields of retail marketing and retail sales information, containing retail business locations, sales information, and marketing information

Services: Market research services, namely reviewing, coding and conforming retail sales, retail store, and marketing data and records; providing an online electronic database in the fields of retail marketing and retail sales information, containing retail business locations, sales information and marketing information

3. There is no order as to costs.

"Angela Furlanetto"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-4811-25

STYLE OF CAUSE: NIELSEN CONSUMER LLC v THE TORONTO-DOMINION BANK

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: APRIL 15, 2026

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DATED: APRIL 24, 2026

APPEARANCES:

Jamie-Lynn Kraft
Pelle Berends

FOR THE APPLICANT

No one appearing

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Ottawa, Ontario

FOR THE APPLICANT