

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20150318**

**Docket: A-364-13**

**Citation: 2015 FCA 77**

**CORAM: NOËL C.J.  
GAUTHIER J.A.  
SCOTT J.A.**

**BETWEEN:**

**MEDOS SERVICES CORPORATION,  
MARATHON MEDICAL INC., ALEXANDER  
VLASSEROS**

**Appellants**

**and**

**RIDOUT AND MAYBEE LLP**

**Respondent**

Heard at Montréal, Quebec, on March 18, 2015.  
Judgment delivered from the Bench at Montréal, Quebec, on March 18, 2015.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**NOËL C.J.**

Federal Court of Appeal



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**REASONS FOR JUDGMENT OF THE COURT**  
(Delivered from the Bench at Montréal, Quebec, on March 18, 2015).

**NOËL C.J.**

[1] Of the numerous issues raised by the appellants, only two need be addressed in order to dispose of the appeal. The first is whether the Federal Court judge erred in determining that any breach of natural justice that may have occurred in the proceedings before the Registrar of trademarks (the Registrar) would have been cured by the proceedings in the Federal Court. The

second is whether the Federal Court judge erred in his analysis of what he described as “correspondence with foreign suppliers” (2013 FC 1006 at para. 9).

[2] We can detect no error in the Federal Court judge’s determination that the breach of natural justice alleged by the appellants in the case at bar could be cured by way of the procedure set out in section 56 of the *Trade-marks Act*, R.S.C., 1985, c. T-13. In those cases where the issue is one of notice and the right to be heard before the Registrar, an appeal with new evidence under section 56 can allow for the breach to be cured. The issue is whether the appeal before the Federal Court had this effect in the present case.

[3] In this regard, the only argument advanced in order to demonstrate that the appeal before the Federal Court was not an adequate substitute is the mistaken belief that the burden of proof before the Registrar is lower than before the Federal Court (appellants’ memorandum at para. 30). Though the appellants appear to construe paragraph 7 of the reasons below as setting out a distinction between the procedures followed before the two forums (appellants’ memorandum at para. 31, citing reasons at para. 7), the Federal Court judge drew no such distinction. Specifically, the comments made in that passage by reference to proceedings before the Registrar apply equally to proceedings before the Federal Court.

[4] With respect to the evidence of use and the appellants’ reliance on foreign correspondence, we agree with the Federal Court judge that nothing turns on this. Simply put, although the word “medos” appears in these communications, no mention was made of the trade-mark “MEDOS” (the Mark).

[5] In the email communications, the word “medos” appears in two instances. The first is in the email address used by Mr. Vlasseros, which reads: alexmedossys@hotmail.com (appeal book at pp. 33 to 38). We need only say in this regard that a trade-mark is not used where it is not distinguished from surrounding text (*Terrace City v. Urban Distilleries Inc.*, 2014 FC 833 at para. 11) and that in this instance, the text of the Mark has not been distinguished from any of the other elements of the address in question.

[6] The second appearance of the word “medos” is in the body of an email where “MEDOS SERVICES corp.” is identified as the firm that Mr. Vlasseros represents (appeal book at p. 37). However, use as a company name is distinct from use as a trade-mark and particularly unhelpful in proving use as a trade-mark where the mark is not distinguished from the surrounding text (*Hortilux Schreder B.V. v. Iwasaki Electric Co. Ltd.*, 2011 FC 967 at para. 12).

[7] As for the appellants’ assertion that the Medos name appears at the top of a set of fax transmissions, we would point out that the Mark is not distinguished from its surrounding text in the phrase “MEDOS MARATHON” which appears at the top of the faxes in question (appeal book at pp. 27 to 43). Moreover, we accept the respondent’s submissions that these faxes post-date the relevant period.

[8] The appeal will be dismissed with costs.

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“Marc Noël”  
Chief Justice

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-364-13

**STYLE OF CAUSE:** MEDOS SERVICES  
CORPORATION, MARATHON  
MEDICAL INC., ALEXANDER  
VLASSEROS v. RIDOUT AND  
MAYBEE LLP

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** MARCH 18, 2015

**REASONS FOR JUDGMENT OF THE COURT BY:** NOËL C.J.  
GAUTHIER J.A.  
SCOTT J.A.

**DELIVERED FROM THE BENCH BY:** NOËL C.J.

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