

# FEDERAL COURT

BETWEEN:

**Remitbee Incorporated**

-and-

**Remitly, Inc.**

**Appellant**  
(Applicant for the  
Trademark  
REMITBEE)

**Respondent**  
(Opponent to  
registration of  
the Trademark  
REMITBEE)

## NOTICE OF APPLICATION

**TO THE RESPONDENT (Opponent) :**

**A PROCEEDING HAS BEEN COMMENCED** by the Appellant (Applicant as regards the REMITBEE trademark and this Application). The relief claimed by the Appellant/ Applicant appears on the following page.

**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 Appellant/Applicant requests that this application be heard at Calgary, Alberta, Canada.

**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.**

Dated at Calgary, Alberta this 11<sup>th</sup> day of December, 2023

Issued by: Registry Officer

Federal Court of Canada  
Calgary Local Office  
Canadian Occidental Tower  
635 Eighth Avenue S.W.  
3<sup>rd</sup> Floor  
Calgary, Alberta  
T2P 3M3

TO: **THE ADMINISTRATOR**  
Federal Court of Canada  
Calgary Local Office  
Canadian Occidental Tower  
635 Eighth Avenue S.W.  
3<sup>rd</sup> Floor  
Calgary, Alberta  
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AND TO: Bayo Odutola  
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**Solicitors for the Respondent**

AND TO: **Registrar of Trademarks**  
50 Victoria Street, Phase 1  
4<sup>th</sup> Floor  
Gatineau, Quebec  
K1A 0C9  
  
Tel: 819-953-4600  
Fax: 819-953-2476  
  
Attention: Opposition Proceedings

## **APPLICATION**

**THIS IS AN APPLICATION** to the Federal Court in accordance with s. 56(1) of the *Trademarks Act*, R.S.C. 1985, c. T-13, as am. (the “**Act**”) and Rule 300(d) of the *Federal Courts Rules* (SOR/98-106) (the “**Rules**”) appealing the decision of the Trade Mark Opposition Board (“TMOB”) for the Registrar of Trademarks, through TMOB Member Coleen Morrison (the “Registrar”) dated October 11, 2023 allowing the Respondent (Opponent)’s opposition to Appellant/Applicant’s trademark REMITBEE application no. 1,849,817 ( hereinafter the “**Decision**”).

### **THE APPLICANT / APPELLANT MAKES APPLICATION FOR AN ORDER:**

1. Granting this Appeal;
2. Setting aside the Decision of the Registrar as regards the ground of opposition that neither the Applicant/Appellant, nor the related entity Thamor Trading Corporation (“Thamor”), used the mark REMITBEE from April 15, 2015 up to the date of the Applicant(Appellant’s) filing of its application for REMITBEE on July 28, 2017 (the relevant for s. 30(b) basis of opposition), and further setting aside the holding that both at law and in fact that any use by Thamor of REMITBEE did not enure to the benefit of the Appellant/Applicant Remitbee Incorporated;
3. Directing the Registrar to allow Appellant/Applicant’s Canadian trademark application for REMITBEE for use in association with the below services to issue to registration;
4. Costs of this Appeal; and
5. Such further relief as to this Court deems just.

### **THE GROUNDS FOR THE APPLICATION ARE:**

6. On July 28, 2017 Remitbee Incorporated (the “Appellant/Applicant”) filed Canadian Trade-Mark Application No. 1,849,817 (“**the Application**”) seeking to register the trade-mark REMITBEE (the “REMITBEE Mark”) based on ACTUAL USE in Canada on services since at least as early as April 14, 2015 in Canada, in association with the following services (“**the Services**”) listed below:

| Services                                                                                                                                                                                                                                                   |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Class 42 -Software as a services (SAAS) provider in the field of online money transferring, namely, software as a service (SAAS) provider facilitating the electronic transfer of funds between individuals using mobile applications and via the Internet |

7. On February 26, 2019, the Respondent (Opponent) filed a Statement of Opposition

(hereinafter the “Statement of Opposition”) against the Application. The Respondent/Opponent based its opposition on grounds pursuant to section 30(b), section 30(i), and section 38(2)(d) of the Act<sup>1, 2</sup>.

8. In the Decision of the Trademark Opposition Board member Coleen Morrison (reported [2023 TMOB 174](#)) the following two ground(s) of opposition which were raised by the Opponent (both of which had to be established before the Opponent could succeed under s. 30(b) of the Act) were held to be successful :

(A) pursuant to sections 38(2)(a), the Application does not conform to s. 30(b) because the Applicant/Appellant has not used REMITBEE in Canada in association with the listed Services since the claimed date of April 14, 2015. Use, if any, has been by an unlicensed third party Thamor Trading Corporation (“Thamor”), and Remitbee Incorporated did not have commonality of directorship with Thamor and thus Remitbee Incorporated did not have control over Thamor’s use of REMITBEE<sup>3</sup>; and

(B) pursuant to section 38(2)(a), the Application does not conform to s. 30(b) in that the Applicant/Appellant itself had not used the REMITBEE mark in Canada in association with the applied-for services since the claimed date of April 14, 2015;<sup>4</sup>

*Re: Ground of Opposition (A)*

*(i) Control:*

9. As regards opposition ground (A) above, the TMOB member in reaching her decision correctly recognized and acknowledged that a corporate relationship in which the President or director of a related entity who also holds the role for another entity could result in an inference that the requisite control over use of the trademark exists<sup>5</sup>, and thus a controlled and permitted use of a trademark by one entity (ie. Thamor) may enure to the benefit of the other (ie. the Applicant/Appellant Remitbee Inc.)<sup>6</sup>
10. The Applicant argued that such a relationship of control by common directors over use by a permitted user (Thamor) exists, relying on statements contained in Mr.

<sup>1</sup> All references herein are to the [Act](#) as amended, which amendments which came into force June 17, 2019, with the exception of references to the grounds of opposition herein which refer to the [Act](#) before it was amended.

<sup>2</sup> *Remitly Inc. v. Remitbee Incorporated* [2023 TMOB 174](#), at para. [7], and [Statement of Opposition](#) dated Feb. 26, 2019

<sup>3</sup> [Statement of Opposition](#) dated Feb. 26, 2019

<sup>4</sup> [Statement of Opposition](#) dated Feb. 26, 2019, and *Remitly Inc. v. Remitbee Incorporated* [2023 TMOB 174](#) at para. [29] (last sentence), and para. [46]

<sup>5</sup> *Remitly Inc. v. Remitbee Incorporated* [2023 TMOB 174](#), at para. [40]

<sup>6</sup> *Remitly Inc. v. Remitbee Incorporated* [2023 TMOB 174](#), at para. [35] & [40]

Yoganathan's (second) affidavit sworn December 29, 2017 at para. 22<sup>7</sup>) where Mr. Yoganathan attests to being a director of the Applicant/Appellant Remitbee Inc. as well as Thamor<sup>8</sup>, and that use of REMITBEE since the claimed date of April 14, 2015<sup>9</sup> by Thamor was a controlled use, and that there was a license in place<sup>10</sup>.

11. However, the TMOB member held that Applicant had not provided sufficient evidence to establish that the President of the Applicant/Appellant (Mr. Yoganathan) also held a corporate position with Thamor that permitted his control of that company<sup>11</sup>.
12. In this regard the TMOB member noted that during cross-examination, Mr. Yoganathan on behalf of the Applicant/Appellant refused or objected to questions involving the executive composition of the Applicant and Thamor [see for example, Yoganathan Transcript Qs ...239 to 243, 246 to 256, 571 to 575, 587,588,592, 597], and that such were relevant questions and should have been answered<sup>12</sup>, further noting that such questions might have shed light on the issue of control over the quality or character of the Services yet the Applicant's agent (and at times Mr. Yoganathan himself) refused or objected to these questions<sup>13</sup>
13. The TMOB member found this evidence particularly relevant in light of the Opponent/Respondent's having filed contradicting evidence contained in the Allen Affidavit [ para, 8 thereof and Exhibit KA-3 thereto] that Mr. Yoganathan was **not** listed as a director of Thamor (over the period from incorporation of Remitbee up to March 27, 2017<sup>14</sup> (note however the actual material date for opposition based on non-compliance with s. 30(b) being up to the filing date of the REMITBEE application on July 28, 2017).
14. The TMOB member held that Mr. Yoganathan's refusal to answer questions regarding the Applicant's licensing arrangement with Thamor paired with Ms. Allen's evidence justified an adverse inference that the Applicant **did not** control the character or quality of the Services<sup>15</sup>.
15. The TMOB member therefore held that the Applicant/Appellant did not provide sufficient evidence to show that Mr. Yoganathan held a corporate position with Thamor

<sup>7</sup> *Remitly Inc. v. Remitbee Incorporated* [2023 TMOB 174](#) at para. 41 (first sentence)

<sup>8</sup> *Remitly Inc. v. Remitbee Incorporated* [2023 TMOB 174](#) at para. 41 (first sentence).

<sup>9</sup> *Ibid*

<sup>10</sup> Yoganathan affidavit, at para. 22

<sup>11</sup> *Remitly Inc. v. Remitbee Incorporated* [2023 TMOB 174](#), at para. 41 (2<sup>nd</sup> last line)

<sup>12</sup> *Remitly Inc. v. Remitbee Incorporated* [2023 TMOB 174](#), at para. 41 (mid-paragraph)

<sup>13</sup> *Remitly Inc. v. Remitbee Incorporated* [2023 TMOB 174](#), at para. 38 (mid-paragraph)

<sup>14</sup> *Remitly Inc. v. Remitbee Incorporated* [2023 TMOB 174](#), at para. 41 (mid-paragraph),

<sup>15</sup> *Remitly Inc. v. Remitbee Incorporated* [2023 TMOB 174](#), at para. 38 (last sentence)

that permitted his control of that company, and thus that any use of the mark REMITBEE by Thamor in association with the Services does not enure to the benefit of the Applicant (Appellant) by virtue of common ownership (sic control)<sup>16</sup>.

*(ii) Use of REMITBEE by Thamor*

16. The TMOB member went on to hold that even if use of REMITBEE by Thamor had enured to the Applicant, the evidence before her did not support use of REMITBEE by Thamor.<sup>17</sup>

17. The grounds of error in reaching this finding are set out in the 'Grounds of Appeal' below.

*Re: Ground of Opposition (B)*

18. As noted above, the TMOB member concluded on the evidence before her that such was insufficient to establish the Applicant/Appellant itself had used the REMITBEE mark in Canada in association with the applied-for services since the claimed date of April 14, 2015;

19. The basis by which she so decided and her error in so deciding, is set out in the Grounds of Appeal, below.

**GROUND OF APPEAL**

**GROUND #1 - *The TMOB member made a Palpable & Overriding Error of fact in holding that the evidence fell short of establishing use of REMITBEE in Canada as of the date claimed in the Applicant's TM Application (at least as early as April 15, 2015) through to the date of filing the application on July 28, 2017 (the Material Date for opposition under s. 30(b) of the Act).***

*-Error in finding no use by Thamor*

20. The TMOB member erred in fact in concluding that even if use of REMITBEE by Thamor had enured to the Applicant, the evidence did not support that there was use of REMITBEE by Thamor as of the material date or otherwise<sup>18</sup>

21. Her conclusion in that regard is set out in paragraph [33]-[39] of the Decision, set out below, appeared to focus merely on **Exhibit PY-1** ( a flyer distributed in Canada bearing

<sup>16</sup> *Remitly Inc. v. Remitbee Incorporated* [2023 TMOB 174](#), at para. 41 (last sentence);

<sup>17</sup> *Remitly Inc. v. Remitbee Incorporated* [2023 TMOB 174](#) at para. 39;

<sup>18</sup> *Ibid*

the REMITBEE trademark advertising money transfer services being offered by Thamor):

[33] While much of the Applicant's evidence, discussed in greater detail below, associates the Mark with the Applicant, advertising in the form of a flyer at **Exhibit PY-1** describes the Services as "*Remitbee by Thamor*". At paragraph 12 of his affidavit, Mr. Yoganathan's states this flyer was distributed in Canada from around March 14, 2015, to around December 1, 2015. He alleges that the Services have therefore been offered since April 14, 2015....

[39] I note that even if use by Thamor had enured to the Applicant, the evidence does not support use by that entity (Thamor), since there is no evidence to whom the materials were distributed or who otherwise accessed this information. If materials bearing a mark are to constitute advertising, they must be distributed [*Cornerstone Securities Canada Inc v Canada (Registrar of Trade Marks)* (1994), 58 CPR (3d) 417 (FCTD) (*Cornerstone*)]. (underlining added) <sup>19</sup>.

26. The Appellant/Applicant will be tendering new evidence pursuant to s. 56(5) of the Act to further establish (permitted and controlled) use by Thamor of REMITBEE as of the material date.

- *Error in finding no use of REMITBEE by Appellant/Applicant or Thamor*

27. The TMOB member further erred later in her Decision at para. [42] +ff under the heading "*Was the mark Used on or before the Claimed Date of First Use?*" where she went on to review exhibits in Mr. Yoganathan's (second) affidavit, specifically documents in **Exhibit PY-2** and **Exhibit PY-3** to determine if they established use (albeit only from the context of whether the Appellant/Applicant Remitbee Incorporated, rather than Thamor on its behalf, was using REMITBEE as of the material date) :

Use by the Applicant

*Was the Mark Used on or Before the Claimed Date of First Use?*

[42] This ground also calls into question use of the Mark by the Applicant generally, rather than under license, by virtue of the inclusion in the pleading of "use, if any, which is denied...". I will therefore assess whether there was evidence of use of the Mark by the Applicant, aside from any use by Thamor, sufficient to support its claim to use since the material date of July 28, 2017.

<sup>19</sup> *Remitly Inc. v. Remitbee Incorporated* [2023 TMOB 174](#) at para. 33. 39

[43] Mr. Yoganathan relies on the following materials to support the Applicant's claim to use of the Mark:

...

- **Exhibit PY-2** includes the following documents which he states show the use of the Mark in association with the Services since at least as early as April 2015:
  - Copies of transaction records evidencing the Canadian sales of the Applicant's Services in relation to the Mark, the earliest dated April 29, 2015.
  - A report from [support@crashlytics.com](mailto:support@crashlytics.com) dated May 2, 2015, showing statistics of the usage of REMITBEE software as a service.
  - Website materials showing the REMITBEE app available for download through the iTunes store showing a last update of August 19, 2016; and
  - Website materials showing the REMITBEE app available for download through the Google Play store, dated September 15, 2017.
- **Exhibit PY-3** comprises the results of searches of the Applicant's website at [www.remitbee.com](http://www.remitbee.com) using the WayBack Machine, allegedly showing that the Services were used and provided on the website since at least as early as April 2015<sup>20</sup>.

28. Although correctly listing Applicant/Appellant's above evidence at least as regards Exhibits PY-2 and PY-3 and the documentary contents of such exhibits, the TMOB member as is evident from her Decision and as more fully explained below failed to understand and fully appreciate the significance of certain documents contained in Exhibits PY-2 & PY-3 as well a relevant portion of the YouTube video <https://www.youtube.com/watch?v=PJf-ZFkZ6MU> in evidence<sup>21</sup> appearing 47 seconds into such video (which video the TMOB member did not even comment on in her Decision and appears to have been overlooked) which caused her to palpably err and wrongfully conclude that Applicant/Appellant's evidence fell short of proving there was use of the REMITBEE mark in Canada as of the material date (at least as early as April 14, 2015 to the date of filing date of the Application July 28, 2017)<sup>22</sup>.

<sup>20</sup> *Remitly Inc. v. Remitbee Incorporated* [2023 TMOB 174](#) at para. 42, 43

<sup>21</sup> Yoganathan affidavit, at para. 10 where URL videolink <https://www.youtube.com/watch?v=PJf-ZFkZ6MU> is provided.

<sup>22</sup> Decision, at para. 41 (last sentence) and para. 39

29. The key portion of her Decision where TMOB member Morrison analyzes Exhibits PY-2 & PY-3 appears in paragraphs 44-46, below, where the TMOB member adopted the same conclusion as to alleged deficiencies in Appellant/Applicant's evidence in relation to Exhibit PY-2 and Exhibit PY-3 as reached by a sister TMOB Board member Cindy Folz in an earlier opposition proceeding ([2022TMOB 126](#))<sup>23</sup> where these same exhibits had been introduced for purposes of likewise establishing use of REMITBEE in Canada:

[44] The Registrar, in the previous proceeding, highlighted a number of issues with this evidence. More particularly, at paragraphs 43 to 50 of the *Remitbee* decision, my fellow Board Member Ms. Folz found as follows in respect of this evidence:

...

- While statements as to use of the Mark since at least as early as April 2015 are found in the affidavit, the materials in Exhibit PY-2 do not substantiate use as of the claimed date of first use. For example, the materials corresponding to the iTunes app shows it was last updated August 19, 2016, and the evidence itself is dated September 15, 2017. The Google play app materials are similarly dated September 15, 2017 (ie after the material date under s. 30 of the Act, namely the date of July 28, 2017). (underlining added)
- Evidence relating to the Applicant's website at Exhibit PY-3 might show the site existed, however the Applicant failed to provide information as to whether Canadians had accessed the site on or before the material date. The same is true of the report taken from [crashlytics.com](#), currently at Exhibit PY-2. ( underlining added)
- In respect of the [crashlytics.com](#) report (part of Exhibit PY-2) , purportedly showing the number of active users of the Services and sessions of use, Mr. Yoganathan does not link such use to what customers saw when they accessed the site on or before April 14, 2015 ( underlining added)

30. The adoption of TMOB Cindy Folz' conclusions in relation to PY-2 and PY-3 was, in addition to TMOB Member Morrison further noting that the transaction information at Exhibit PY-2 "did not (at least by itself) include information as to the manner of use of the REMITBEE mark when consumers accessed the site as to the manner of use of the Mark when consumers accessed the Services" the basis for TMOB member Morrison concluding that Applicant's evidence at least in respect of PY-2 and PY-3 fell short of establishing that either Thamor or the Applicant /Appellant had offered Services in

<sup>23</sup> *Remitbee Incorporated v. Remitly, Inc.* 1,749,276 for REMITLY, [2022TMOB 126](#) at para.'s 43-50

relation to the REMITBEE mark as of the claimed date of first use, as may be seen from the immediately following passages from her Decision :

[45] I would additionally note that the transaction information at Exhibit PY-2 does not include information as to the manner of use of the Mark when consumers accessed the Services. I see no reason to find otherwise than my fellow Board member did and conclude that this evidence falls short of establishing that the Applicant offered its Services in Canada as of the claimed date of first use. (underlining added)

[46] Consequently, I conclude that in respect of this ground of opposition the Opponent has met its initial burden and the Applicant has not filed sufficient evidence to meet its legal burden of proving use, either by itself or through another properly licensed entity, on or before the material date. This section 30(b) ground therefore succeeds. (underlining added)

31. Contrary to the above findings, the Appellant/Applicant's tendered evidence in Exhibits PY-2 and PY3 and also in Applicant's YouTube video <https://www.youtube.com/watch?v=PJf-ZFkZ6MU> tendered in evidence (which the TMOB member does not mention or discuss in her Decision), properly interpreted and understood, **clearly provide and establish :**

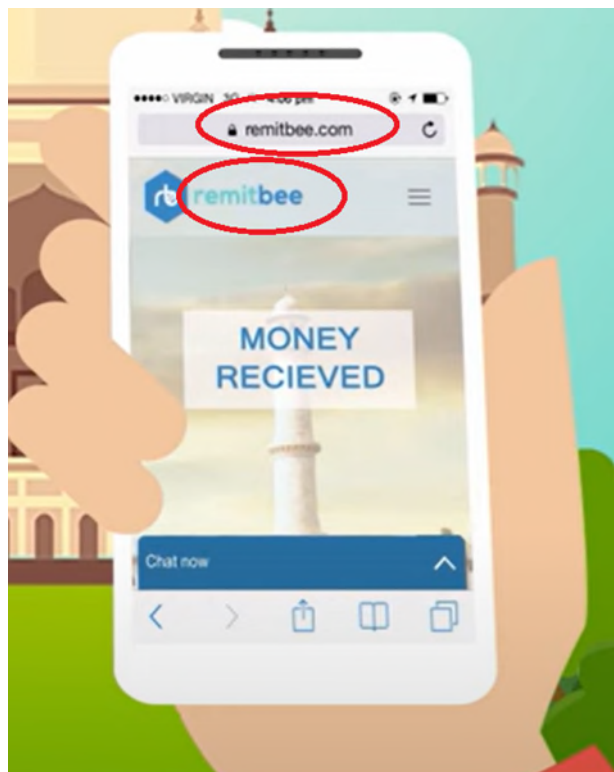
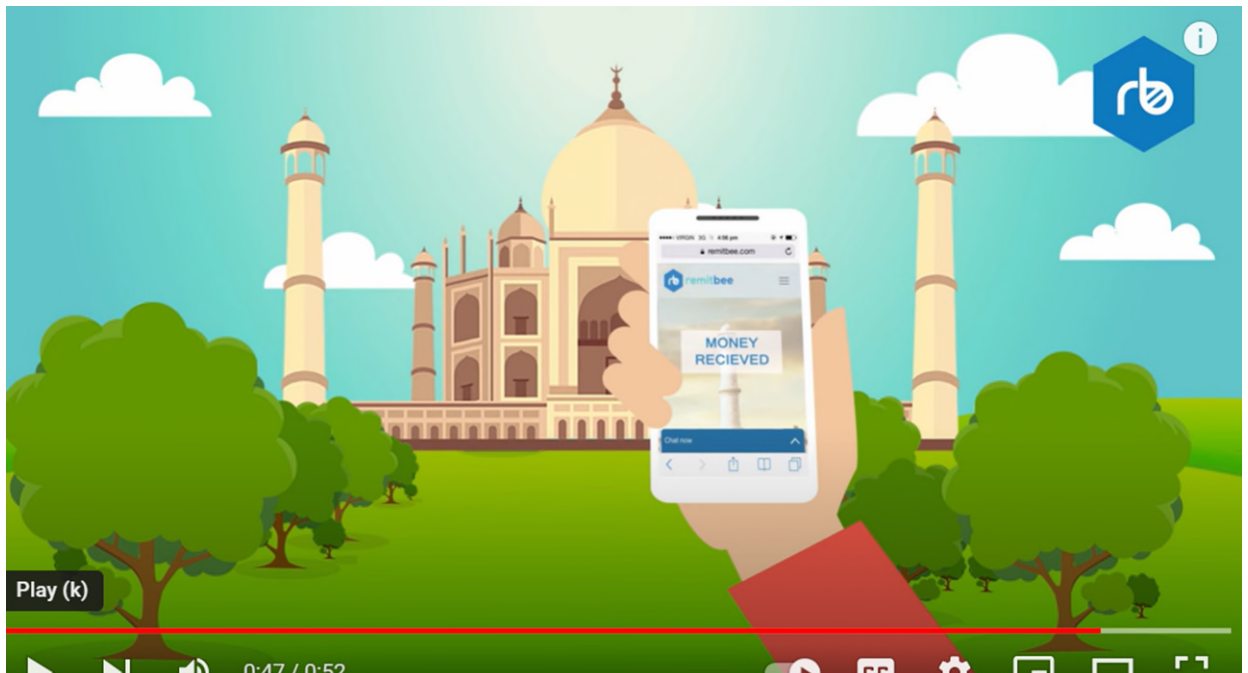
- use as of the claimed date of first use (April, 2015) and to at least September 30, 2015;
- information as to whether Canadians had accessed the site on or before the material date., and specifically provide evidence of the manner of use of the REMITBEE mark when consumers accessed the site or the REMITBEE app on or about the date of first claimed use; and
- not only link to, but actually provides evidence of, use of what customers saw (ie the REMITBEE mark when they accessed the REMITBEE website or the REMITBEE app as of the Material Date.

and thus palpable and overriding error on the part of the TMOB member in failing to find that sufficient evidence had been tendered to establish use of the REMITBEE mark as of the Material Date.

32. That such err of the TMOB member is an overriding error is due the fact that alleged non-use by the material date is the entire basis of opposition by the Opponent under s. 30(b) .

33. That such error is a palpable error is for at least the following two (2) reasons.

34. Firstly, with reference to the YouTube whose URL <https://www.youtube.com/watch?v=PJf-ZFkZ6MU> was provided in Mr. Yoganathan's (second) affidavit before the TMOB member which video was posted December 11, 2015 and is thus clear evidence as of what was transpiring as of that time ( 7+ years ago). Such video at the 0:47 second mark clearly shows, as reproduced below, the SAAS money transfer Services being provided via the site [www.remitbee.com](http://www.remitbee.com) to users, and importantly shows when users access the website the fact that the REMITBEE trademark is displayed to the user:



35. Accordingly, such evidence combined with the evidence of actual concluded transactions by customers having been carried out (ie. an actual money receipt date) as early as April 29, 2015 to September 30, 2015 contained as part of Exhibit PY-2 ( two sample documented transactions being shown below☺

| TRANSACTION INFORMATION |                 |                |                      |
|-------------------------|-----------------|----------------|----------------------|
| Transaction ID:         | 290415723525699 | Receipt Date:  | Apr 29, 2015 7:23 PM |
| Amount Sending:         | 879.12 CAD      | Exchange Rate: | 113.75               |
| Amount Receiving:       | 100000.00 LKR   | Commission:    | 8.99                 |
| Wallet Balance:         | 0.00 CAD        |                |                      |
| Total Payment:          | 888.11 CAD      |                |                      |

| CUSTOMER INFORMATION |                                                    |
|----------------------|----------------------------------------------------|
| Name:                | Ilavalagan Kanagendiram                            |
| Phone:               | 6479656766                                         |
| Occupation:          | N/A                                                |
| Address:             | 203-151, Hughson St S<br>Hamilton<br>ON<br>L8N 3Y4 |
| Account Number:      | 091112804152117                                    |
| DOB:                 |                                                    |

| ID INFORMATION |                 |                      |                |
|----------------|-----------------|----------------------|----------------|
| ID Type:       | License         | Issue Place:         | ontario        |
| ID Number:     | k03783590731214 | Transaction Purpose: | Family Expense |

| RECEIPT INFORMATION |                                                        |               |                  |
|---------------------|--------------------------------------------------------|---------------|------------------|
| Name:               | Kanagendiram Vijiyaluxmy                               | Recipient ID: | R112212804158104 |
| Payment Method:     | Bank Deposit                                           | Phone:        | 773916834        |
| Bank Name:          | Commercial Bank PLC (7056)                             | Account No.   | 8155016328       |
| Branch Name:        | Kilinochchi (155)                                      |               |                  |
| Recipient Address:  | 46, kanagapuram, kilinochchi<br>north<br>, kilinochchi |               |                  |

| INTERAC ONLINE INFORMATION |                 |                      |          |
|----------------------------|-----------------|----------------------|----------|
| Issuer Name:               | Scotiabank      | Issuer Confirmation: | 11998283 |
| Invoice:                   | RB-290415190202 |                      |          |

| NOTES |  |
|-------|--|
|-------|--|

Thank You For Your Business

| TRANSACTION INFORMATION |                   |                |                      |
|-------------------------|-------------------|----------------|----------------------|
| Transaction ID:         | 290415833523255   | Receipt Date:  | Apr 29, 2015 8:33 PM |
| Amount Sending:         | 980.00 CAD        | Exchange Rate: | 113.75               |
| Amount Receiving:       | 111475.00 LKR     | Commission:    | 8.99                 |
| Wallet Balance:         | 0.00 CAD          |                |                      |
| <b>Total Payment:</b>   | <b>988.99 CAD</b> |                |                      |

| CUSTOMER INFORMATION |                                                  |
|----------------------|--------------------------------------------------|
| Name:                | Sanker Shivanathan                               |
| Phone:               | 4168904241                                       |
| Occupation:          | N/A                                              |
| Address:             | 7448 Village Walk<br>Mississauga<br>ON<br>L5W1V7 |
| Account Number:      | 191912904157055                                  |
| DOB:                 |                                                  |

| ID INFORMATION       |                 |
|----------------------|-----------------|
| ID Type:             | License         |
| ID Number:           | S35366910720909 |
| Issue Place:         | on              |
| Transaction Purpose: | Family Expense  |

| RECEIPT INFORMATION |                                               |
|---------------------|-----------------------------------------------|
| Name:               | Sanker Shivanathan                            |
| Payment Method:     | Delivery                                      |
| Recipient ID:       | R191912904151340                              |
| Phone:              | 0779442133                                    |
| Recipient Address:  | 73/7 Temple Road, Colombo 05<br><br>, Colombo |

| INTERAC ONLINE INFORMATION |                 |
|----------------------------|-----------------|
| Issuer Name:               | RBC Royal Bank  |
| Invoice:                   | RB-290415203151 |
| Issuer Confirmation:       | 3029            |

| NOTES |
|-------|
|       |

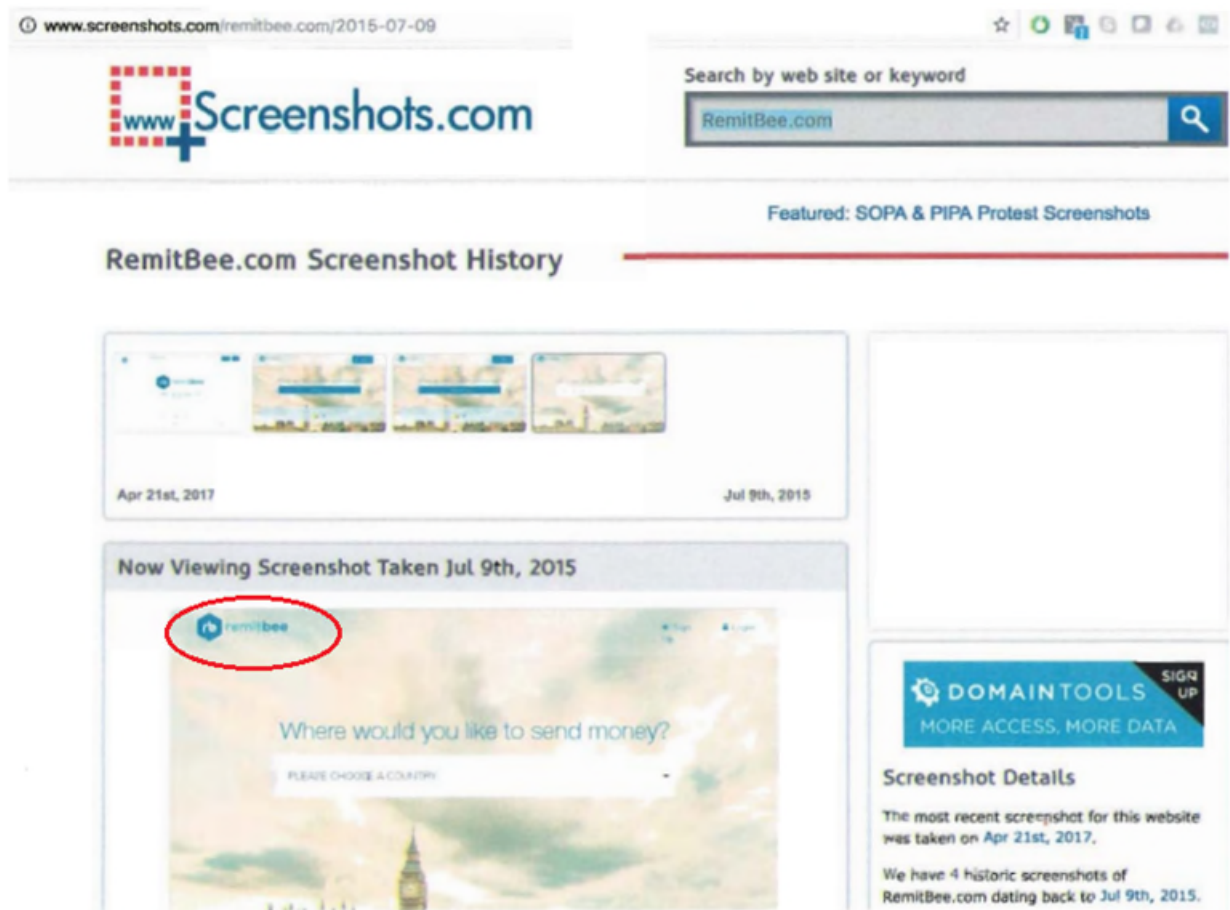
clearly establishes use in the period April 29, 2015 to September 30, 2015 of the REMITBEE mark in association with money transfer services.

36. Thus even though the above physical transaction records forming part of Exhibit PY-2 showing use by customers at least as early as April, 2015 may not themselves, in isolation, establish display of the REMITBEE mark to a client at the time of provision of such services, further evidence of the fact that the software on the [www.remitbee.com](http://www.remitbee.com) website which the URL utilizes the REMITBEE mark and that the money transfer software when such site is accessed and when the software is utilized physically displays the REMITBEE mark, COMBINED WITH the tendered actual transaction records evidencing customers in Canada that actually utilized the money transfer software as of the material date,

conclusively and incontrovertibly establishes use of the REMITBEE mark to these members of the Canadian public when providing such money transfer services as of the material date.

37. Secondly, the TMOB member's criticism relating to Exhibit PY-3 showing a screen shot of the [www.remitbee.com](http://www.remitbee.com) website, namely that such "*[e]vidence relating to the Applicant's website at Exhibit PY-3 might show the site existed, however the Applicant failed to provide information as to whether Canadians had accessed the site on or before the material date*" is clearly wrong, particularly when such evidence CONSIDERED TOGETHER WITH THE TRANSACTION RECORDS OF EXHIBIT PY-2 clearly establishes that Canadian residents identified in Exhibit PY-2 had accessed the website displaying the REMITBEE mark.

38. Specifically, and contrary to the assertion of the TMOB member as referenced in her Decision, the tendered evidence in Exhibit PY-3 *inter alia* contained a screenshot of the appearance of Remittbee's webwise located at the URL "Remitbee.com", as shown below:



39. As may be clearly seen, such screenshot of the Appellant's website at the material date for s. 30(b) opposition (ie. as of the date of filing the Mark, namely July 28, 2017) shows that Applicant's website not only contained the Applicant's trademark REMITBEE in the

URL, but further displayed the Appellant/Applicant's trademark REMITBEE (circled in red, above).

40. Again, such evidence, **combined with** transaction receipts forming part of Exhibit PY-2 establishing customers accessed the URL [www.remitbee.com](http://www.remitbee.com) and performed the documented transactions, together conclusively establishes use of REMITBEE in the performance of money transfer services in Canada as of the material date.

41. In any event, the additional evidence to be filed in these proceedings pursuant to Rule 56(5) will be more than adequate to establish use of REMITBEE in Canada as of the material date for purposes of s. 30(b) of the Act.

**GROUND #2 - *Notwithstanding the use of REMITBEE by the Appellant/Applicant, the TMOB member further erred in fact in concluding lack of control by Remitbee Incorporated over Thamor's use of REMITBEE, in light of new evidence being tendered on this application under to s. 56(5) of the Act***

42. Where new or additional evidence presented on the appeal would have materially affected the Registrar's findings of fact, the Federal Court must consider the matter *de novo* and come to its own conclusion as to the correctness of the Registrar's decision<sup>24</sup>.

22. New relevant evidence is being filed by the Appellant/Applicant pursuant to s. 56(5) of the Act, to establish:

(i) new evidence on the issue of de facto and de jure commonality of management of both Remitbee Incorporated and Thamor at all material times, and direct control by Remitbee Incorporated directors over Thamor's use of the REMITBEE trademark (evidence on this key issue expressly accepted as "relevant" on this key issue by the TMOB member in her Decision)<sup>25</sup>; and

(ii) significant additional evidence of Thamor's (permitted) use of REMITBEE not only over the period April 14, 2015 to September 30, 2015 as provided to the TMOB member, but rather **over 4300** individual separate users in Canada having consummated **over 34,000** separate transfers of money for the period of the material date, namely from the date of incorporation of Applicant in April, 2015 **up to March 27, 2017** (the

<sup>24</sup> Molson Breweries, A Partnership v John Labatt Ltd, 2000 CarswellNat 178, at para 29, 5 CPR (4th) 180 (FC)

<sup>25</sup> Remitly Inc. v. Remitbee Incorporated 2202 TMOB 174, at para. 41 (mid paragraph);

date of filing of the REMITBEE application being July 28, 2017 and thus within the Material Date), along with evidence establishing such members of the Canadian public when doing so necessarily had to do either one of three things, namely:

- (a) access the [www.remitbee.com](http://www.remitbee.com) website not only bearing the REMITBEE trademark in the URL but further such website actually displaying the REMITBEE trademark ; or
  - (b) locate and download the Applicant/Appellant's REMITBEE™ software bearing the REMITBEE trademark; or
  - (c) physically attend Thamor's office, where the money transfer software and services in association with the trademark REMITBEE™ were prominently displayed;  
before being able to carry out a money transfer transaction; and
- (iii) new evidence as to significant use by Remitbee Incorporated and/or Thamor within the material period of April 15, 2015 to the date of filing of its application July 28, 2017 (not just to September 30, 2015), namely over 2,100 separate customers consummating over 27,000 money transfers within the period April 14, 2015 to March 27, 2017);

43. Accordingly, in view of such "to-be-tendered" evidence, by virtue of such control by Remitbee Incorporated any and all such use by Thamor enures to the benefit of the Applicant /Appellant Remitbee Incorporated and thus each of the Opponent/Respondent's ground of opposition (A) and (B) above relying on s. 30(b) and alleging statements by the Applicant as to use of REMITBEE since at least April 14, 2015 must be rejected as contrary to the evidence and the Decision must be overturned.

**THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:**

- 44. All materials before the Registrar("Opposition Board Member") in reaching the Decision;
- 45. New and additional supporting affidavit(s) and accompanying exhibits, to be filed by and on behalf of the Applicant/ Appellant pursuant to section 56(5) of the *Trade-Marks Act* and Rule 306 of the *Federal Courts Rules*;
- 46. Such other affidavit and other material as counsel shall advise and this Honourable Court shall permit.

## **REQUISITION**

47. The Applicant requests the Registrar of Trademarks and the Trademarks Opposition Board to send a certified copy of the following material that is not in the possession of the Applicant/Appellant but is in the possession of the Registrar and the Board, to the Applicant/Appellant and to the Federal Court Registry, namely:

(i) the file history of Canadian trademark application no. 1,749,276 for the trademark REMITBEE, including the Opposition proceedings.

DATED at Calgary, Alberta this 11<sup>th</sup> day of December, 2023



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