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| *Votre référence Your File*  06728926CA |
| *Notre référence Our File*  1889597 |
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| GOWLING WLG (CANADA) LLP  SUITE 2600, 160 ELGIN STREET  OTTAWA  ONTARIO K1P 1C3 | | |
| Attention: Eric Macramalla | | |
| RE: | Trade-mark: | L'ESPRIT DU CANADA |
|  | Applicant: | WestJet Airlines Ltd. |

This examiner's report concerns the above identified application. To avoid abandonment proceedings, a proper response must be received by this office by January 26, 2019. All correspondence respecting this application must indicate the file number.

Pursuant to the practice notice of November 9, 2016, please confirm that the goods and services emanate from Canada since research shows that Canada is a geographic name.

The Office considers goods to originate from a geographic location if they are manufactured, produced, grown, assembled, designed, provided or sold there and the services if performed provided or offered there.

If the goods and services do not emanate from Canada, then the trademark as a whole deceptively misdescribes the place of origin of the associated goods since the average Canadian consumer or dealer would be misled into the belief that the associated goods originate from Canada and therefore the trademark is unregistrable pursuant to paragraph 12(1)(b) of the Trade-marks Act.

In this respect, your attention is directed to Atlantic Promotions Inc. v. Registrar of Trade Marks (1984), 2 C.P.R. (3d) 183 at 197:

In my view a person of ordinary intelligence when faced with the word "Milan" would immediately understand that word to refer to the city. Hence Milan is a geographical name in that sense of it being the primary meaning of the word. There may be other connotations such as a personal forename or surname but such connotations pale into insignificance when contrasted with the geographical significance. It is simply overwhelming. The gist of the registrar's conclusion is in the words: Since (the) applicant has indicated that the wares are not made in Milan, but the trade- mark would indicate to the consumer that they are, the portion Milan is deceptively misdescriptive of the origin of the wares thus rendering the mark in its entirety unregistrable by reason of S.12(1)(b) of the Trade-marks Act. I do not attribute to that language a concession by the appellant (applicant) that the trade- mark was an indication to the consumer that the wares were made in Milan. Rather I understand it to be an affirmative statement by the registrar that, "but the trade-mark would indicate to the consumer that they are", i.e., made in Milan, Italy segregated in that clause is by the use of commas. It would appear that in reaching that conclusion the registrar applied the proper test in determining the question of fact that he was obliged to determine.

See also T.G. Bright & Co., Ltd. v. Registrar of Trade Marks (1985), 4 C.P.R. (3d) 64 and T. G. Bright & Co., Ltd. v. Institut National des Appellations d'Origine des Vins et Eaux-de-vie (1986), 9 C.P.R. (3d) 239.

In addition, in view of paragraph 37(1)(c) of the Trade-marks Act, your trademark does not appear to be entitled to registration.  Specifically, entitlement date of March 22, 2018 of your application is **later** than the entitlement date of June 20, 2017 of co-pending and confusing application no(s). 1843537 identified in the attached copy/copies. 

Any comments you may wish to submit will receive consideration.

A statement in more specific terms of the underlined services presently designated as “(5) providing information about hotels and temporary accommodations; travel agency services, namely, making reservations and bookings for hotels and temporary accommodations" is required. The services should be defined in ordinary commercial terms in compliance with the provisions of paragraph 30(a) of the *Trade-marks Act.*

For further guidance on redefining your goods and/or services, please see the Goods and Services Manual available on our website at “[www.cipo.ic.gc.ca/tm](http://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wr00002.html)”.

While not exhaustive, this searchable tool provides many examples of acceptable goods and services. It may also be used as a guide as to how specific the goods and services should be.

A revised application is required.

If the applicant has any specific questions in respect of this Office action, please contact the assigned examiner. Please note that for general inquiries, including assistance with filing of the revised application, queries about the status of an application or receipt of correspondence, you may contact our Client Service Centre toll free at 1-866-997-1936.

Yours truly,



Mathieu Nadeau

Examination Section

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