

Terry Price

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**Bell Mobility Inc.**

**And**

**Validas LLC**

## Court Level

This is a trademark case, handled by the Trademark Opposition Board- Canadian Intellectual Property Office. It was heard by Trademarks Board Opposition member, Annie Robataille.

## Parties Suing/Being Sued

The applicant is Validas LLC, their trademark application is being opposed by the opposition party, Bell Mobility Inc.

## Facts in Dispute

- Validas filed their application for MYPEEPS on March 21, 2012. Because it was advertised for opposition purposes, Bell Mobility Inc opposed it's use the following year on February 6, 2013

- Validas had affidavit provided by President and Co-founder, Todd Dunphy
- Bell Mobility Inc. Opposes Validas LLC's registration of MYPEEPS
- Bell Mobility Inc had an affidavit from Andrw Bridge, manager director of Virgin Mobile Canada which is a division of Bell Mobility
- The main fact in dispute brought forward by the opposition is whether the applicant has used the software in Canada since the date of its first use in the application
- -The application can be downloaded in Canada but it's use in Canada is in question

## Issues

Validas applied for registration of the trademark on two basis:

1.They used the mark in Canada as early as February 23,2011 which is associated with the goods and services of mobile phone software technology allowing users to minimize their phone charges by updating their frequent caller list automatically. In regard to services, the software analyzes the users phone with a data analysis service which minimizes cost of their phone service and allows parental control of calls.

2.Validas had use and registration of the trademark in the United States.

Bell stated that Validas never used the software on the date stated in the application, therefore going against the Trademark Act where use of trademark must be continuous. Andrew Bridge provided that while

the software can be used in Canada, it only analyzes data from American carriers. Bridge also stated that when he visited the Validas website through the Canadian app store, it lead him to the site [www.savelovegive.com](http://www.savelovegive.com), which had no reference or use of MYPEEPS. Todd Dunphy posed that Canadians living along the border of America have access to American carrier services, therefor allowing them use of the software. He also provided a receipt dated February 23,2011 from Terry Goldsworthy of Cambridge, Ontario. This shows that the application was indeed in use in Canada, which proves that Validas was in line with the Trademarks Act. Dunphy reacted to Bridge's testimony by stating that Bridge assumed that just because a carrier was located in the states, did not mean that those cell phone waves could not travel to Canada because they knew no international boundaries. Bell opposed the receipt as evidence because the buyer was a contractor of Validas. This seems like the sale was made specifically to allow for use of the trademark. Also, the sale was made through the third party, Apple Canada Inc which they claimed as inadmissible hearsay. Bell also showed that Validas has no registered place of business in Canada, which they claim shows Validas only provides services and markets to an Americans and not Canadians, again, going against the Trademark Act. It was found that any Candian using the software in Canada would be subject to long distance charges, therefore negating the use of the application itself. Validas countered by stating that Terry Goldsworthy did not have a fiducary, or trustee, relation with Validas, which made the transaction a legitimate use of the application. They also stated that the software is not directly related to domestic wireless services but rather mobile phone data analysis services. While they did not deny that users of the app need to be US carrier subscribers, they posed the fact that Canadian's often travel to the US and can use the application to call people in both the US and Canada. Further, they went on to say

that because the software was available on the Canadian app store, this showed that it was in fact advertised to a Canadian market.

## Date of Decision

The decision was made on February 28, 2017.

## Decision

The decision made was split between favor of Bell with regards to services and favor of Validas with regards to goods.

Validas was able to provide proof of sales in Canada which was not a passive activity. They have advertised their goods and services in Canada.

Bell was able to show that Validas was not performing services associated with MYPEEPS and were not meeting the legal onus show it had in fact been used in Canada since the date they claimed.