

Federal Court



Cour fédérale

**Date: 20121212**

**Docket: T-1497-12**

**Citation: 2012 FC 1467**

**Toronto, Ontario, December 12, 2012**

**PRESENT: The Honourable Mr. Justice Hughes**

**BETWEEN:**

**HOMEAWAY.COM, INC.**

**Applicant**

**and**

**MARTIN HRDLICKA**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application brought under the provisions of section 57(1) of the *Trade-Marks Act*, RSC 1985, c. T-13 to expunge Canadian Trade-Mark Registration No. TMA770822. For the reasons that follow I am expunging that registration with costs to the Applicant on the basis set out herein.

**THE REGISTRATION AT ISSUE**

[2] Particulars of the registered trade-mark at issue are as follows:

Registration Number: TMA770822

Date of Registration: June 28, 2010  
Registered Owner: Martin Hrdlicka  
Trade-Mark: VRBO  
Services for which the mark is registered: Vacation real estate listing services

[3] The application for registration was filed on September 2, 2009. No use was claimed; the application was based on proposed use in Canada. The applicant for the trade-mark registration, Martin Hrdlicka, apparently filed a declaration as to use of the trade-mark in Canada on June 28, 2010 however the certified record provided by the Trade-marks Office shows only a blank declaration form. The parties speculated before me that a Declaration may have been filed electronically. This situation exposes a problem with the Trade-Marks Office records which should contain a full and accurate record as to everything that has been filed, electronically or not.

### **THE PARTIES**

[4] The Applicant HomeAway.com Inc. is a Delaware corporation which, effective December 31, 2010, merged with another Delaware corporation, VRBO.com, Inc. I am satisfied from reading the Dickey affidavit that the whole of the business and assets, including all trade-mark rights of VRBO.com, Inc., now are owned by HomeAway.com, Inc..

[5] The Respondent Martin Hrdlicka is an individual residing in Toronto, Ontario and is the person registered as owner of the trade-mark registration at issue. He represented himself in these proceedings.

**BASIS FOR THE APPLICATION TO EXPUNGE**

[6] The basis upon which the application to expunge the registration is set out in the Notice of Application and repeated at paragraph 2 of the Applicant's Memorandum as follows:

2. *The Applicant [hereinafter "HomeAway.com"] makes this application on the basis that TMA770822 is invalid and void for the following reasons:*
  - a. *Hrdlicka was not the person entitled to register the trade-mark VRBO when he filed the VRBO application based on proposed use, i.e. at the VRBO Application Filing Date, because HomeAway.com, whether by itself and/or its predecessors-in-title, substantially and continuously used a confusing and identical trade-mark VRBO for identical services, namely, vacation real estate listing services, in Canada, since at least as early as 26 March, 2003, that is, more than six years prior to the filing date of the proposed use VRBO application;*
  - b. *At the date of this application to the Court [hereinafter the "Court Application Filing Date"] the VRBO trade-mark was not distinctive of Hrdlicka and was not capable of being, or becoming, distinctive of Hrdlicka because at that date, and at all relevant times, the VRBO trade-mark has been and is distinctive of HomeAway.com and its predecessors-in-title; and,*
  - c. *The VRBO Registration was obtained on the basis of material false or fraudulent statements because Hrdlicka did not intend to use the VRBO trade-mark when he filed the VRBO application, and did not use the VRBO trade-mark before he registered it, but nevertheless filed a declaration of commencement of use of the trade-mark VRBO in order for the VRBO application to register.*

## **THE EVIDENCE**

[7] The Applicant filed the affidavit of Courtney Hicks Dickey, corporate counsel of the Applicant HomeAway.com, together with exhibits A to U, inclusive. The Applicant also filed a certified copy of the Trade-Mark Office file respecting the registration at issue.

[8] The Respondent Martin Hrdlicka filed two affidavits; both his own. One was affirmed September 7, 2012, and attached Exhibits A and B. The other was affirmed November 22, 2012 and attached Exhibits A through N.

[9] There was no cross-examination upon any affidavit.

## **USE**

[10] The resolution of this matter turns on a question of use, in this case of the initials VRBO as a trade-mark, for services described as vacation real estate listing services.

[11] The concept of use is fundamental to trade-mark rights, whether or not that trade-mark is registered. In Fox on Trade-Marks, 2001, Carswell, Toronto, the authors state at paragraph 5.2(a):

*Use creates the right to a trade-mark, whether in Canada or a country of the Union, registration does not. With one important exception, registration merely serves to confirm the title which has already been established by use. In Partlo v Todd Ritchie C.J. succinctly explained this theory of confirmation of title by registration: "It is not the registration that makes the party proprietor of a trade mark; he must be proprietor before he can register."*

[12] Professor Vaver, in *“Intellectual Property Law*, 2d, Irwin Law, Toronto, writes at pages 471 to 472:

*Without “use” a trade-mark is nothing. It cannot be registered; if registered, it can be expunged. Anyone holding an unused mark probably cannot or does not want to invest in it, may just want to play dog in the manger and block competitors from using it, or may want to get into the business of selling marks, not goods or services. None of this is worth encouraging and the system treats him as an undesirable.*

[13] Use is defined for purposes of the *Trade-Marks Act*, in respect of services, in section 4(2):

*4(2) A trade-mark is deemed to be used in association with services if it is used or displayed in the performance or advertising of those services.*

[14] As will be discussed, the use of the trade-mark at issue, VRBO, is the offering vacation rental services and by advertising such services over the web. The trade-mark will appear on the screens of computer users in Canada and elsewhere. Given that HomeAway is a Delaware company, we may presume that the information is inputted through one or more computers in the United States. The computer screens display the information in Canada as well as elsewhere.

[15] There has been very little jurisprudence to date as to “use” by means of computer screen display.

[16] In *FileNET Corp v Canada (Registrar of Trade-Marks)*, 2001 FCT 865, aff'd 2002 FCA 418, Blais J (as he then was) wrote at paragraph 65:

65 *I believe that the fact, that the mark was advertised and accessed on the respondent's website prior to the public notice being given is sufficient to establish that the mark was adopted and used by the respondent. I do not believe that the official mark could only be considered adopted and used if the tax forms were effectively issued.*

[17] In a case dealing with disclosure of information for income tax purposes, which information resided in computers in the United States but was readily accessible for business purposes by a taxpayer in Canada, I wrote in *eBay Canada Limited v Canada (Minister of National Revenue)*, 2007 FC 930, at paragraph 17 that the modern approach in interpretation of statutes generally is to construe legislation reasonably, having regard to its object and purpose:

17 *The old maxim that taxing statutes are to be strictly construed must give way to the modern approach in interpretation of statutes generally which is to construe legislation reasonably, having regard to its object and purpose. To quote from Justice Dickson in Covert v. Nova Scotia (Minister of Finance), [1980] 2 S.C.R. 774 at 806 and 807:*

*In all Courts the appellants advanced a number of propositions regarding principles of statutory construction of fiscal legislation that require comment. It is said taxing statutes are to be strictly construed. The Court, it is contended, can only look to the express words of the statute and cannot explore and give effect to the intention or purpose of the Act. A passage from the judgment of Lord Halsbury in *Tennant v. Smith* [ [1892] A.C. 150. ], at p. 154, is cited. Then it is said there is no equity in the Crown's favour in a taxing statute. Reliance is placed on a passage from *Attorney-General v. The Earl of Selborne* [ [1902] 1 K.B. 388. ], in which Collins M.R. adopted this principle, at p. 396:*

*If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the*

*law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be.*

...

*Fiscal legislation does not stand in a category by itself. Persons whose conduct a statute seeks to regulate should know in advance what it is that the statute prescribes. A court should ask--what would the words of the statute be reasonably understood to mean by those governed by the statute? Unnatural or artificial constructions are to be avoided.*

*The correct approach, applicable to statutory construction generally, is to construe the legislation with reasonable regard to its object and purpose and to give it such interpretation as best ensures the attainment of such object and purpose. The primary object of a succession duty statute, such as the legislation under consideration, is to capture such amounts for the fiscal coffers as the words of the statutory net can catch. No legislative intention can be assumed other than to collect such tax as the statute imposes, no more and no less.*

[18] At paragraph 23, relying on a Supreme Court of Canada decision, I wrote that computer accessible information is “both here and there”:

*23 The issue as to the reach of section 231.2 when information, though stored electronically outside Canada, is available to and used by those in Canada, must be approached from the point of view of the realities of today's world. Such information cannot truly be said to "reside" only in one place or be "owned" by only one person. The reality is that the information is readily and instantaneously available to those within the group of eBay entities in a variety of places. It is irrelevant where the electronically-stored information is located or who as among those entities, if any, by agreement or otherwise asserts "ownership" of the information. It is "both here and there" to use the words of Justice Binnie in Society of Composers, Authors and Music Publishers of Canada v. Canadian Ass'n of Internet Providers, [2004] 2 S.C.R. 427 at paragraph 59. It is instructive to review his reasons, for the Court, at paragraphs 57 to 63 in dealing with whether jurisdiction may be exercised in Canada respecting certain Internet communications, including an*

*important reference to Libman v. The Queen, [1985] 2 S.C.R. 178 and the concept of a "real and substantial link".*

*57 The applicability of our Copyright Act to communications that have international participants will depend on whether there is a sufficient connection between this country and the communication in question for Canada to apply its law consistent with the "principles of order and fairness ... that ensure security of [cross-border] transactions with justice"; see Morguard Investments, [1990] 3 S.C.R. 1077, supra, at p. 1097; see also Unifund Assurance Co. v. Insurance Corp. of British Columbia, [2003] 2 S.C.R. 63, 2003 SCC 40, at para. 56; Sullivan and Driedger [page455] on the Construction of Statutes (4th ed. 2002), at pp. 601-2.*

*58 Helpful guidance on the jurisdictional point is offered by La Forest J. in Libman v. The Queen, [1985] 2 S.C.R. 178. That case involved a fraudulent stock scheme. U.S. purchasers were solicited by telephone from Toronto, and their investment monies (which the Toronto accused caused to be routed through Central America) wound up in Canada. The accused contended that the crime, if any, had occurred in the United States, but La Forest J. took the view that "[t]his kind of thinking has, perhaps not altogether fairly, given rise to the reproach that a lawyer is a person who can look at a thing connected with another as not being so connected. For everyone knows that the transaction in the present case is both here and there" (p. 208 (emphasis added)). Speaking for the Court, he stated the relevant territorial principle as follows (at pp. 212-13):*

*I might summarize my approach to the limits of territoriality in this way. As I see it, all that is necessary to make an offence subject to the jurisdiction of our courts is that a significant portion of the activities constituting that offence took place in Canada. As it is put by modern academics, it is sufficient that there be a "real and substantial link" between an offence and this country ... . [Emphasis added.]*

*59 So also, in my view, a telecommunication from a foreign state to Canada, or a telecommunication from Canada to a foreign state, "is both here and there". Receipt may be no less "significant" a connecting factor than the point of origin (not to mention the physical location of the host server, which*

*may be in a third country). To the same effect, see Canada (Human Rights Commission) v. Canadian Liberty Net, [1998] 1 S.C.R. 626, at para. 52; Kitakufe v. Oloya, [1998] O.J. No. 2537 (QL) (Gen. Div.). In the factual situation at issue in Citron v. Zundel, supra, for example, the fact that the host server was located in California was scarcely conclusive in a situation where both the content provider (Zundel) and a major part of his target audience were located in Canada. The Zundel case was [page456] decided on grounds related to the provisions of the Canadian Human Rights Act, but for present purposes the object lesson of those facts is nevertheless instructive.*

*60 The "real and substantial connection" test was adopted and developed by this Court in Morguard Investments, supra, at pp. 1108-9; Hunt v. T&N plc, [1993] 4 S.C.R. 289, at pp. 325-26 and 328; and Tolofson, [1994] 3 S.C.R. 1022, supra, at p. 1049. The test has been reaffirmed and applied more recently in cases such as Holt Cargo Systems Inc. v. ABC Containerline N.V. (Trustees of), [2001] 3 S.C.R. 907, 2001 SCC 90, at para. 71; Spar Aerospace Ltd. v. American Mobile Satellite Corp., [2002] 4 S.C.R. 205, 2002 SCC 78; Unifund, supra, at para. 54; and Beals v. Saldanha, [2003] 3 S.C.R. 416, 2003 SCC 72. From the outset, the real and substantial connection test has been viewed as an appropriate way to "prevent overreaching ... and [to restrict] the exercise of jurisdiction over extraterritorial and transnational transactions" (La Forest J. in Tolofson, supra, at p. 1049). The test reflects the underlying reality of "the territorial limits of law under the international legal order" and respect for the legitimate actions of other states inherent in the principle of international comity (Tolofson, at p. 1047). A real and substantial connection to Canada is sufficient to support the application of our Copyright Act to international Internet transmissions in a way that will accord with international comity and be consistent with the objectives of order and fairness.*

*61 In terms of the Internet, relevant connecting factors would include the situs of the content provider, the host server, the intermediaries and the end user. The weight to be given to any particular factor will vary with the circumstances and the nature of the dispute.*

*62 Canada clearly has a significant interest in the flow of information in and out of the country. Canada regulates the*

*reception of broadcasting signals in Canada wherever originated; see Bell ExpressVu Limited Partnership v. Rex, [2002] 2 S.C.R. 559, 2002 SCC 42. Our courts and tribunals regularly take jurisdiction in matters of civil liability arising out of foreign transmissions which are received and [page457] have their impact here; see WIC Premium Television Ltd. v. General Instrument Corp. (2000), 8 C.P.R. (4th) 1 (Alta. C.A.); Re World Stock Exchange (2000), 9 A.S.C.S. 658.*

*63 Generally speaking, this Court has recognized, as a sufficient "connection" for taking jurisdiction, situations where Canada is the country of transmission (Libman, supra) or the country of reception (Liberty Net, supra). This jurisdictional posture is consistent with international copyright practice.*

[19] The Federal Court of Appeal, in reasons cited as 2008 FCA 348, agreed. At paragraphs 50 to 52, Linden J.A., for the Court, wrote:

*50 Counsel concedes that the information identifying PowerSellers registered as having an address in Canada would be located in Canada if the appellants had downloaded it to their computers. In my view, it is formalistic in the extreme for the appellants to say that, until this simple operation is performed, the information which they lawfully retrieve in Canada from the servers, and read on their computer screens in Canada, is not located in Canada.*

*51 I would only add that, although Justice Hughes does not frame his reasons by reference to the statutory definition of "foreign-based information" in subsection 231.6(1), he clearly meant that the information in question could be "located" at places other than the site of the servers where it is stored. For example, he stated ( 2007 FC 930 at para. 23) that information stored electronically outside Canada "cannot truly be said to 'reside' only in one place", and (supra at para. 25) the information required by the Minister "is not foreign but within Canada" for present purposes.*

*52 Having concluded that information in electronic form stored on servers outside Canada is in law capable of being located in Canada for the purpose of section 231.6, I now consider whether Justice*

*Hughes's application of the law to the particular facts of this case was vitiated by palpable and overriding error. In my view, it was not. In finding that the information in question was located in Canada within the meaning of section 231.6, Justice Hughes properly took into consideration the fact that eBay US and eBay International had granted the appellants access to information about Canadian PowerSellers for the purpose of their business, and that they indeed used it for this purpose. The facts support the following conclusion by Justice Hughes (supra at para. 25):*

*For perhaps corporate efficiency the information is stored elsewhere, but its purpose is in respect of Canadian business. The information is not foreign but within Canada for the purposes of section 231.2 of the Income Tax Act.*

[20] While not a perfect analogy, the *eBay* case serves to demonstrate that legislation must be interpreted in a manner consistent with modern day realities and that computer information which is stored in one country can be said to exist in another; in this case, Canada.

[21] In *Hayes v Sim & McBurney*, 2010 FC 924, Justice Boivin acknowledged that use on a website would constitute good use of a trade-mark. He wrote at paragraph 26:

*26 In the case at bar, the nature of the appellant's business is to provide electronic information concerning travel and travel destinations, the rental and sale of vacation properties and publication in those fields distributed over computer networks, wireless networks and global communication networks. The exhibits attached to Mr. Hayes' affidavit clearly demonstrate that he is the administrator of the website WHERE2GO2.COM [see Exhibit 1] and that this website has been used continuously since September 18, 1999 up until today, therefore including the relevant period. Mr. Hayes provided screen shots of the website at various time periods over the period in question through an internet site, archive.org, which holds records of how the website looked at the date indicated [see Exhibit 2]. It is also clear from the evidence that a number of the property listings and vacation deals are from the relevant time period.*

[22] I find, therefore, that a trade-mark which appears on a computer screen website in Canada, regardless where the information may have originated from or be stored, constitutes for *Trade-Marks Act* purposes, use and advertising in Canada.

**EVIDENCE AS TO USE AND MAKING KNOWN IN CANADA BY THE APPLICANT**

[23] The Applicant is HomeAway.com, Inc., a Delaware corporation. As I have stated, I am satisfied, based on the affidavit evidence of Dickey - particularly paragraphs 2 and 5, and Exhibit A - that HomeAway is the successor to the whole of the business and assets, including trade-mark rights, of VRBO.com, Inc.; also a Delaware corporation. Therefore, I am satisfied that the previous use of the trade-mark VRBO by VRBO.com, Inc. accrues to the benefit of HomeAway. I will refer to use by either of them simply as use by HomeAway.

[24] The business in which HomeAway is engaged is that of advertising, on its website, homes, apartments and the like owned by third persons who wish to rent them out to others, such as vacationers. The trade-mark VRBO appears prominently on the screen when the website is accessed. In a sense it is offering the same services as the Classifieds section of a newspaper, only on the web.

[25] Owners of premises such as homes and apartments suitable for short-term vacation use contract with HomeAway to display the features of their premises on the website provided by HomeAway, for a fee. The display is arranged according to a predetermined format. The website is located at [www.vrbo.com](http://www.vrbo.com) and is owned and hosted by HomeAway. Any person interested in renting vacation premises may visit the website and, by following the links provided, locate the country and

the community in which the person is interested. For instance, “Canada” may be entered, followed by “Niagara-on-the-Lake” or “Montreal”, wherein available rental premises are displayed. If interested, a person may contact the owner whose address is provided and make arrangements to occupy the premises for an agreed period of time.

[26] The evidence is that HomeAway commenced this business in 1996. It has secured domain names such as vrbocanada.com and canadavrbo.com in 2003. By entering those domain names in a computer, the user will be directed to HomeAway’s website, where the trade-mark VRBO is displayed. An article appearing in the Toronto Star in 2012, Exhibit L to the Dickey affidavit, describes the website as one of the ten best travel websites for 2012 and tells the reader that VRBO stands for “vacation rental by owner”.

[27] However, it is most important to know what use was made by HomeAway in Canada of the trade-mark prior to the date when the Respondent Hrdlicka filed an application to register the trade-mark VRBO in his name. That date is September 2, 2009.

[28] I am satisfied, based on the affidavit of Dickey that, prior to September 2, 2009 HomeAway was advertising to and contracting with Canadians to display their premises on the VRBO website, and was displaying those Canadian premises on its website. That website displayed the trade-mark VRBO to Canadians, as well as persons of every other country who wished to visit the website.

[29] I am satisfied, therefore, that prior to September 2, 2009 HomeAway was using the trade-mark VRBO by means of advertising and use on its website in association with vacation real estate listing services.

[30] As to “making known” of the trade-mark VRBO in Canada, the provisions of the *Trade-Marks Act* are, to say the least, arcane and badly in need of updating. Section 5(b) (i) and (ii) of that *Act* requires that the services be advertised in “any *printed publication* circulated in Canada” or “*radio broadcasts* ordinarily received in Canada”. While the “use” of the trade-mark by means of the internet websites has been established, this use is by neither a printed publication nor a radio broadcast. In the circumstances of this case, “making known” has not been established but use has therefore “making known” is irrelevant. At the hearing Counsel for HomeAway abandoned this point.

[31] I also find that the trade-mark VRBO is now distinctive, and was since before September 2, 2009, of HomeAway. It is an invented mark, not a common word or name. There is no evidence that any other person (I will discuss Hrdlicka shortly) has used that mark in Canada or elsewhere in respect of any wares or services, let alone vacation real estate listing services.

### **EVIDENCE AS TO USE BY THE RESPONDENT**

[32] Other than the declaration of use presumably filed by Hrdlicka with the Trade-Marks Office, there is no evidence that he had ever used the trade-mark VRBO in Canada, or anywhere, in association with vacation real estate listing services or any other services prior to November 2012. There are exhibited to Hrdlicka’s second affidavit some screen-shots of a website service

advertising vacation rentals in Canada. These are dated November 2012, and are far too late in time to affect any issue before me. I suspect that they were prepared for the purpose of the hearing before me.

[33] The screenshot, Exhibit A to Hrdlicka's September 7, 2012 affidavit, which is said to be a screenshot of one of his first real estate websites in August 2009, nowhere shows use of VRBO as a trade-mark or otherwise.

[34] E-mail communications, as exhibited to the Hrdlicka and Dickey affidavits, sent by Hrdlicka to HomeAway, speak of future or intended use of the trade-mark VRBO by Hrdlicka, not actual use. His email of July 5, 2010 (after the trade-mark was registered) found at Exhibit Q to the Dickey affidavit, says, "If I post my VRBO website (emphasis added)". His letter of July 7, 2010, also at Exhibit Q, says, "I *was planning* to post my own vacation rental website named "VRBO" (emphasis added).

[35] At paragraph 2 of his September 7, 2012 affidavit, Hrdlicka states that:

*At the time of applying for the VRBO trademark I was aware of the website www.vrbo.com, but I was under the impression that in order for HomeAway.com, Inc...to use the VRBO name in Canada, there must be some kind of physical origin to that use...*

[36] It is clear and I so find, that Hrdlicka has never used VRBO as a trade-mark in Canada until November 2012, and that, at the time that he applied to register that trade-mark in Canada, he was aware of at least some manner of use of that trade-mark by HomeAway.

[37] The correspondence by e-mail and otherwise, not only that found at Exhibit Q to the Dickey affidavit, but also attached to the two affidavits of Hrdlicka, show that Hrdlicka was endeavouring to sell his registration to HomeAway for a large sum of money and/or for employment or royalties. I find that Hrdlicka, in filing the application for registration, had no *bona fide* intent of using it in a legitimate commercial way in Canada. His intent was to extort money or other consideration from HomeAway. Such activity should not be condoned or encouraged.

### CONCLUSIONS

[38] I therefore find that:

1. The trade-marks of both parties are not just confusing, they are identical and the services are identical.
2. HomeAway has used the trade-mark VRBO in Canada for the services of vacation real estate listing services since before the application to register the trade-mark at issue based on proposed use was filed, and that such use was continuous. Therefore, having regard to subsection 16(3) (a) of the *Trade-Marks Act*, Hrdlicka was not the person entitled to register the trade-mark.
3. Since before the application to register the trade-mark at issue was filed based on proposed use, the trade-mark VRBO was and continues to be distinctive in Canada of the vacation real estate listing services of HomeAway and of no other person,

particularly not of Hrdlicka. Therefore the registration is invalid having regard to subsection 18(1) (b) of the *Trade-marks Act*.

4. Hrdlicka filed the application to register the trade-mark and secured the registration for improper purposes and did not act *bona fide* or in good faith. I will provide cost consequences.

[39] As a result, I will order that the registration be expunged and that the Applicant be awarded its costs of this application at the upper level of Column V, together with reasonable disbursements including travel from Ottawa to Toronto for the Hearing.

**JUDGMENT**

**FOR THE REASONS PROVIDED:**

**THIS COURT'S JUDGMENT is that:**

1. The application is allowed;
2. Canadian Trade-Mark Registration TMA770822 shall be struck out from the Trade-marks register; and
3. The Applicant is entitled to its costs, to be paid by the Respondent at the upper level of Column V together with reasonable expenses including travel from Ottawa to the Court in Toronto for the Hearing.

“Roger T. Hughes”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1497-12

**STYLE OF CAUSE:** HOMEAWAY.COM, INC. v MARTIN HRDLICKA

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** December 11, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** HUGHES J.

**DATED:** December 12, 2012

**APPEARANCES:**

Lynn Cassan

FOR THE APPLICANT

Martin Hrdlicka

THE RESPONDENT  
(ON HIS OWN BEHALF)

**SOLICITORS OF RECORD:**

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FOR THE APPLICANT

Martin Hrdlicka

THE RESPONDENT  
(ON HIS OWN BEHALF)