



LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADE-MARKS

Citation: 2013 TMOB 42
Date of Decision: 2013-03-04

**IN THE MATTER OF A SECTION 45 PROCEEDING
requested by Stikeman Elliot LLP against registration
No. TMA550,017 for the trade-mark POM'ABC in the
name of VTech Electronics Limited**

[1] At the request of Stikeman Elliot LLP, the Registrar of Trade-marks issued a notice under section 45 of the *Trade-marks Act* RSC 1985, c T-13 (the Act) on January 6th, 2011 to VTech Electronics Limited (the Registrant), the registered owner of registration No. TMA550,017 for the trade-mark POM'ABC (the Mark).

[2] The Mark is registered for use in association with “electronic teaching games for children and children’s multiple activity toys” (the Wares).

[3] Section 45 of the Act requires the registered owner of the trade-mark to show whether the trade-mark has been used in Canada in association with each of the wares and services specified in the registration at any time within the three year period immediately preceding the date of the notice and, if not, the date when it was last in use and the reason for the absence of such use since that date. In this case, the relevant period for showing use is between January 6, 2008 and January 6, 2011 (the Relevant Period).

[4] The relevant definition of “use” in association with wares is set out in section 4(1) of the Act:

4(1) A trade-mark is deemed to be used in association with wares if, at the time of the transfer of the property in or possession of the wares, in the normal course of

trade, it is marked on the wares themselves or on the packages in which they are distributed or it is in any other manner so associated with the wares that notice of the association is then given to the person to whom the property or possession is transferred.

[5] It is well established that the purpose and scope of section 45 of the Act is to provide a simple, summary and expeditious procedure for removing “deadwood” from the register and, as such, the evidentiary threshold that the registered owner must meet is quite low [*Uvex Toko Canada Ltd v Performance Apparel Corp* (2004), 31 CPR (4th) 270 (FC)].

[6] In response to the Registrar’s notice, the Registrant filed the affidavits of King Fai Pang, President of the Registrant and of Gordon Chow, President of VTech Technologies Canada (VTech Canada), both sworn on June 3, 2011. Only the Registrant filed written representations; an oral hearing was not held.

[7] In his affidavit, Mr. Pang states that the Registrant sold during the Relevant Period and continues to sell the Wares in association with the Mark in Canada through its distributor VTech Canada. He explains that VTech Canada distributes two versions of the Wares in Canada: the French language version in association with the Mark and the English language version in association with the trade-mark ALPHABET APPLE.

[8] In support of his assertion of use with respect to the Mark, Mr. Pang attaches as Exhibit A to his affidavit several representative invoices dated within the Relevant Period from the Registrant to VTech Canada showing shipment of the Wares from Hong Kong to Richmond, British Columbia. I note that, among other items, the invoices show listings for “POM’ABC (Fr-Can)”.

[9] Mr. Chow, in his affidavit, confirms that VTech Canada distributes two versions of the Wares in Canada on behalf of the Registrant. In support, Mr. Chow provides the following exhibits:

- **Exhibit A** consists of two photographs of the Wares in its packaging which Mr. Chow attests were sold and distributed by VTech Canada to retail stores in Canada during the Relevant Period. I note that the Mark is prominently displayed on the packaging along with information indicating the educational nature of the product (such as “Découvre: Les

letters, leur son et l'ordre alphabétique” and “Les chiffres et l'heure”) and the appropriate target age (“3-6 ans”).

- **Exhibit B** consists of a screen shot of VTech Canada’s website, copyrighted 2009, which Mr. Chow attests shows the POM’ABC version of the Wares available for sale during the Relevant Period.
- **Exhibit C** consists of the same invoices from the Registrant to VTech Canada as appeared at Exhibit A of Mr. Pang’s affidavit.
- **Exhibit D** consists of invoices showing sales of the Wares from VTech Canada to Canadian retailers during the Relevant Period. Mr. Chow explains that although the invoices describe item “No. 80101005” as either POM’ABC or ALPHABET APPLE FRENCH, the product packaging bears the Mark as registered, with a different item number representing the Registrant’s English ALPHABET APPLE version of the Wares.

[10] In view of the foregoing, I am satisfied that the Registrant has demonstrated use of the Mark in association with the Wares during the Relevant Period within the meaning of sections 4 and 45 of the Act.

Disposition

[11] Accordingly, pursuant to the authority delegated to me under section 63(3) of the Act and in compliance with the provisions of section 45 of the Act, the registration will be maintained.

Andrew Bene
Hearing Officer
Trade-marks Opposition Board
Canadian Intellectual Property Office