

SECTION 45 PROCEEDINGS  
TRADE-MARK: REED & BARTON  
REGISTRATION NO.: 276,010

On December 23, 1999, at the request of Reeds Jewelers of Niagara Falls, Inc., the Registrar forwarded a Section 45 notice to Reed and Barton Corporation, the registered owner of the above-referenced trade-mark registration.

The trade-mark REED & BARTON is registered for use in association with the following wares:

- (1) Silverware - namely, plated and sterling hollow-ware and flatware.
- (2) Jewelry - namely, pendants, bracelets, stick pins, ornamental pins, and earrings, made of precious metal.

In response to the notice, the affidavit of Alan D. Buff together with exhibits has been furnished. Each party filed a written argument. An oral hearing has not been requested in this case.

In his affidavit, Mr. Buff states that the registrant has been selling “silverware namely plated and sterling holloware and flatware” in Canada since as early as 1900. He specifies that for the most part it sells its silverware to a Canadian distributor, “Morton-Parker Limited” who then wholesales and retails same throughout Canada. The registrant also sells its silverware directly to a few Canadian accounts, including hotels and restaurants. He indicates that at the time of sale all of the registrant’s silverware carries labelling or packaging on which the trade-mark REED & BARTON is prominently displayed. As Exhibit A he attaches a representative piece of promotional material used to promote the registrant’s silverware and specimens of labelling and packaging for the registrant’s silverware. He states that the silverware products of the registrant sold during the relevant three-year period included sterling silver flatware, silverplated flatware, sterling silver and silverplated holloware and giftware, sterling and silverplated children’s giftware, and sterling and silverplated Christmas ornaments. He provides annual sales figures for each of the years 1995 through 1999. As Exhibit B he encloses copies of representative invoices.

Concerning the wares jewellery namely “pendants, bracelets, stick pens, ornamental pins, and earrings, made of precious metal”, he states that the trade-mark was not in use in association with such wares during the relevant period but that the registrant has not abandoned the trade-mark in respect of those wares and expects to again use the trade-mark in association with jewellery in the near future. He then states that in his view silverware and jewellery are closely related and he believes the use shown with silverware is sufficient to warrant a decision to maintain the wares jewellery.

The only argument raised by the requesting party is that the evidence fails to show use with each of the registered wares in particular in association with “jewellery namely pendants, bracelets, sticks pins, ornamental pins, and earrings, made of precious metal”.

I totally agree with the requesting party that such wares ought to be deleted from the trade-mark registration. Mr. Buff has clearly alleged that during the relevant period the trade-mark had not been used in association with such wares, and no special circumstances have been provided to excuse the absence of use. However, the evidence clearly shows use of the trade-mark in Canada in association with the wares “silverware namely plated and sterling hollow-ware and flatware” during the relevant period.

The registrant has commented that silverware and jewellery are closely related, however I am of the view that this is insufficient for the wares “jewellery” to be maintained. It is clear from the jurisprudence that in order for the wares “jewellery namely pendants, bracelets, stick pins, ornamental pins, and earrings, made of precious metal” to be maintained, the registrant had to show use of the trade-mark during the relevant period in association with the specific items listed “namely pendants, bracelets, sticks pins, ornamental pins and earrings”. As it has failed to do so, and as it has clearly conceded that the trade-mark was not in use with such wares, such wares will be deleted from the trade-mark registration. In support thereof I rely on the case *John Labatt Ltd. v. Rainier Brewing Co.*, 80 C.P.R. (2d) 188, and the case *Sharp Kabushiki Kaisha v. 88766 Canada Inc.*, 72 C.P.R. (3d) 195.

In view of the above, I conclude that the trade-mark registration ought to be amended so that the statement of wares will read “silverware namely plated and sterling hollow-ware and flatware”.

Registration No. 276,010 will be amended accordingly in compliance with the provisions of Section 45(5) of the Act.

DATED AT HULL, QUEBEC, THIS 17<sup>th</sup> DAY OF MAY 2001.

D Savard  
Senior Hearing Officer  
Section 45 Division