

PROCEEDING UNDER SECTION 45
TRADE-MARK: BÉBÉ CONFORT
REGISTRATION NO.: 407,888

On March 17, 2000, at the request of Messrs. McFadden Fincham, the Registrar issued the notice prescribed in section 45 of the *Trade-marks Act* to Produits Bébé Confort Inc., the registered owner of the above-mentioned registration.

The trade-mark BÉBÉ CONFORT is registered in association with the following wares:

Items and accessories for children and infants, in particular strollers, carriages, playpens and portable cribs, car seats, high chairs, seats, walkers, bathtubs, change tables and pads, beds, night lights, air and bath thermometers, bottles, nipples, pacifiers, bib clips, bottle brushes, bottle warmers, bottle sterilizers and holders; dishware, in particular cups, trays, plates, bowls, spoons, forks; grooming items, in particular nail clippers, sponges, scissors, brushes, combs, baby wipes, toothbrushes, umbilical strips and nets, pots, potty seats, safety pins, hygiene and toiletry kits; toys, in particular rattles, teething rings, plush animals; safety items and accessories, in particular door, knob and drawer locks, outlet covers, safety and walking straps, blanket clips, bed straps, mosquito netting, hot water bottles, thermometers.

Section 45 of the *Trade-marks Act* requires the registered owner of the trade-mark to indicate whether the trade-mark was used in Canada in association with each of the wares or services specified in the registration at any time in the three-year period immediately preceding the date of the notice and, if not, the date when it was last so in use and the reason for the absence of such use since that date.

In response to the notice, an affidavit from Karen Abaziou (and supporting documents) was furnished. Each party produced a written argument and was represented at the hearing.

In her affidavit, Karen Abaziou stated that all wares sold by the trade-mark holder bear the trade-marks BÉBÉ CONFORT and BÉBÉ CONFORT & Dessin. She identified each of the wares specified in the registration and stated that the BÉBÉ CONFORT trade-mark has been used in Canada continuously and without interruption since at least as early as November 1980 in association with each of the wares specified in the registration.

She attached Exhibit KA-1, sample labels representative of the type of labels affixed to the wares sold by the trade-mark holder during the relevant period. She added as Exhibit KA-2 price lists from 1994 to 1999 bearing the trade-mark. She attached as Exhibit KA-3 copies of invoices for certain wares sold in Canada in association with the trade-mark. She stated the trade-mark holder's approximate sales in Canada, including the sale of wares and advertising expenditures for the years 1997, 1998 and 1999. She produced as Exhibit KA-4 three advertisements referring to some of the trade-mark holder's wares.

At the hearing, the person representing the requesting party stated that the only argument it had concerning the evidence was that use was not demonstrated in association with each of the wares specified in the registration. The representative conceded that the registration could be maintained for change table pads, night lights, sponges, and hygiene and toiletry kits, those being the wares identified on pages 6 and 7 of the trade-mark holder's written arguments.

Having considered the evidence and the arguments of the parties, I agree with the requesting party that the evidence is insufficient to show use of the trade-mark in association with each of

the wares specified in the registration. Given that the applicant conceded that the evidence was sufficient regarding the wares “change table pads, night lights, sponges, and hygiene and toiletry kits”, I am prepared to maintain the registration for those wares.

Regarding the other wares specified in the registration, I am of the opinion that the evidence is ambiguous and that the mere statement that the trade-mark has been used continuously and without interruption in association with each of the wares since at least as early as November 1980 is insufficient to permit me to conclude that there were sales of each of the wares specified in the registration during the relevant period. In that connection, I note that the price lists for 1994 to 1999 do not include most of the wares covered by the registration. Similarly, most of the invoices show sales of wares that are not covered by the registration. Therefore, I find it is questionable whether each of the wares was sold during the relevant period. Because Ms. Abaziou did not clearly indicate that there were sales of each of the wares specified in the registration, and because the evidence is ambiguous on that point, I find that the evidence is insufficient to permit me to conclude that there was use of the trade-mark in association with wares other than “change table pads, night lights, sponges, and hygiene and toiletry kits” during the relevant period.

In view of the evidence furnished, I find that the registration should be amended so that the statement of wares reads:

articles et accessoires pour enfants et nouveau-nés nommément matelas à langer, veilleuses, articles d’hygiène et de toilette nommément éponges, troussees pour articles et accessoires d’hygiène et de toilette.

In support thereof, I rely on the case *John Labatt Ltd. v. Rainier Brewing Co.*, 80 C.P.R. (2d) 228 (FCA).

Registration No. 407,888 will be amended accordingly, pursuant to subsection 45(5) of the Act.

DATED AT GATINEAU, QUEBEC, THIS 15TH DAY OF JANUARY 2004.

D. Savard
Senior Hearing Officer
Section 45