



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

**Citation: 2012 TMOB 144**  
**Date of Decision: 2012-08-02**

**IN THE MATTER OF A SECTION 45 PROCEEDING  
requested by Imagine Intellectual Property Law against  
registration No. TMA369,514 for the trade-mark  
ALARMFORCE & Design in the name of Alarmforce  
Industries Inc.**

[1] At the request of Imagine Intellectual Property Law (the Requesting Party), the Registrar of Trade-marks issued a notice under section 45 of the *Trade-marks Act* RSC 1985, c T-13 (the Act) on July 7, 2010 to Alarmforce Industries Inc. (the Registrant), the registered owner of registration No. TMA369,514 for the trade-mark ALARMFORCE & Design (the Mark), shown below:



[2] The Mark is registered for use in association with “security and fire detection monitoring and alarms systems for residential and commercial properties” (the Wares) and “installation of security and fire detection systems for residential and commercial properties” (the Services).

[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 July 7, 2007 and July 7, 2010.

[4] The definition of “use” is set out in section 4 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.

(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.

(3) A trade-mark that is marked in Canada on wares or on the packages in which they are contained is, when the wares are exported from Canada, deemed to be used in Canada in association with those wares.

[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 affidavit of Adam Matlin, Vice-President of the Registrant, sworn on October 7, 2010. Both parties filed written representations; an oral hearing was not held.

[7] In his affidavit, Mr. Matlin attests that the Registrant has been in the business of manufacturing, installation and monitoring of security and fire detection monitoring and alarm systems for residential and commercial properties since 1988. He explains that the Registrant’s customers are charged a monthly fee and that, with minor exceptions, the Registrant provides and installs the equipment for its customers. Such equipment includes the following: a keypad, control unit, motion sensors, interior sirens and door/window sensors. Mr. Matlin explains that additional equipment for its systems is available, such as smoke detectors (used for fire detection), carbon monoxide detectors and panic buttons.

[8] Attached as Exhibit A to Mr. Matlin's affidavit is an actual keypad, as provided by the Registrant in its installations since September 2008. I note that the Mark is displayed prominently in the upper right front corner of the keypad. At the time of installation, Mr. Matlin attests that customers are also provided a user guide (attached as Exhibit B) and decals (attached as Exhibit C), both of which display the Mark.

[9] Attached as Exhibits D and E are copies of sample agreements with commercial and residential customers in Canada during the Relevant Period. Although the Mark is not displayed on the agreements, the agreements demonstrate actual sales of the Wares and performance of the Services by the Registrant and I note that some of the exhibited agreements include installation of smoke detectors. In any event, Mr. Matlin attests to approximately 50,000 new installations and total revenues of approximately \$100,000,000 during the Relevant Period.

[10] With respect to the Services, Mr. Matlin also provides evidence of advertisement of the Mark, including display on the Registrant's website and on billboards. Attached as Exhibit G is a copy of the homepage from the Registrant's website, *www.alarmforce.com*, as it appeared on April 10, 2008, obtained from the Internet Archive Wayback Machine, *www.archive.org*. Information regarding the Services appears on the webpage and Mr. Matlin attests that the exhibit accurately represents how the Mark appeared on the Registrant's website during the Relevant Period.

[11] Finally, Exhibits J and K are pictures of billboards advertising "Home Alarms" in association with the Mark, which Mr. Matlin attests have been visible from Highways 401 and 400 in Ontario since June 2008.

#### Requesting Party Submissions

[12] In its written arguments, the Requesting Party requests deletion of "...and fire detection monitoring" from the statement of Wares and the deletion of the entire statement of Services from the registration.

[13] With respect to the Wares, the Requesting Party submits that the Registrant has failed to provide any evidence that the Mark appears on or is displayed specifically in association with

smoke detectors, *i.e.*, the “fire detection monitoring” component of the Wares. As noted by the Registrant, however, the statement of Wares does not refer to “smoke detectors” but rather “fire detection and alarms *systems*”. In view of Mr. Matlin’s statements regarding the installation of smoke detectors in some cases as part of such systems, the Mark appearing on the Exhibit A keypad is sufficient to associate the Mark with the whole of the Wares as registered.

[14] In any event, I find there is sufficient notice of association of the Mark with the “fire detection monitoring and alarms systems” by virtue of the above-mentioned installation guides and decals that were given to customers at the time of installation during the Relevant Period.

[15] With respect to the Services, the Requesting Party cites *Royal Bank v Registrar of Trademarks* (1995), 63 CPR (3d) 322 (FCTD) and *Renaud Cointreau & Cie v Cordon Bleu International Ltd*, 2000 CarswellNat 2137 (FCTD) for the proposition that to satisfy the meaning of “use” in the context of the Act, there must be payment or exchange for the wares or services in question. However, the Requesting Party notes that Exhibit G, for example, indicates that the Registrant’s installation services are provided “free of charge”.

[16] As the Registrant properly notes, however, the decisions cited by the Requesting party are inapplicable to this proceeding, as they deal with “use” with respect to wares pursuant to section 4(1) of the Act in the context of the “normal course of trade”, rather than the broader section 4(2) with respect to services. As noted in *War Amputations of Canada v Faber-Castell Canada Inc* (1992), 41 CPR (3d) 557 at 562 (TMOB), a service does not need to be performed for money in order for it to be within the scope of section 4(2) of the Act; it is sufficient that the public receives a benefit from the service. In any event, Mr. Matlin attests that customers are charged a monthly fee and I note that the exhibited agreements indicate terms of 36 months. As such, for purposes of section 4 of the Act, the Services are provided in exchange for the customer’s term commitment and monthly fees pursuant to the agreement.

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

#### Disposition

[18] 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.

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