

TRADUCTION/TRANSLATION

PROCEEDING UNDER SECTION 45

TRADE-MARK: DECOSTAR

REGISTRATION NO.: 478,180

On July 28, 2000, at the request of Les Promotions Atlantique Inc./Atlantic Promotions Inc., the Registrar issued the notice prescribed in section 45 of the *Trade-marks Act* to the registered owner of the above-captioned registration, Mr. Raymond Gorsy.

The DECOSTAR trade-mark is registered in association with the following wares and services:

Section 45 of the *Trade-marks Act* requires that the registered owner of the trade-mark indicate whether, with respect to each of the wares or services listed in the registration, the trade-mark was in use in Canada at any time during 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 response to the notice, the affidavit of Raymond Gorsy accompanied by exhibit “T” was supplied. Both parties filed written arguments. Only the registered owner was at the hearing.

Mr. Gorsy’s affidavit is reproduced below:

The applicant submits that the evidence supplied does not meet the requirements of section 45 of the Act, either in relation to a use of the mark during the reference period or in relation to a possible reason for non-use owing to special circumstances.

Having considered the evidence in the record, I reach the same conclusion as the applicant.

Concerning the exhibit "I", accompanying Mr. Gorsy's affidavit, which consists of a photocopy of a letter dated April 12, 1994, sent to Mr. Gorsy by the Bureau of Competition Policy of Industry Canada, this letter does not demonstrate in any way the use of the DECOSTAR mark in the way required by section 4 of the Act in association with each of the wares or services listed in the registration. Moreover, the letter is dated April 12, 1994, well before the relevant period.

Concerning the allegation of use in paragraph 3 of the affidavit, as the Federal Court ruled in *Plough Canada Ltd. v. Aerosol Fillers Inc.*, 45 C.P.R. (2d) 194 (FCTD) and 53 C.P.R. (2d) 62 (FCA), it is not sufficient to allege a use, it must be demonstrated; that is, sufficient facts must be described in regard to each of the wares and services for the Registrar to reach a conclusion as to whether the mark was used in Canada at some time during the relevant period and in a way that is consistent with section 4 of the Act. As no use under the *Trade-mark Act* has been demonstrated, I conclude that the registration of the trade-mark should be expunged.

Registration No. 478,180 will be expunged in accordance with the provisions of section 45(5) of the Act.

DATED AT GATINEAU, QUEBEC, THIS 17TH DAY OF OCTOBER 2002.

D Savard
Senior Hearing Officer
Section 45