



Consommation  
et Corporations Canada

Consumer and  
Corporate Affairs Canada

Ottawa / Hull, Canada  
K1A0C9

MAY 15 1985

Hewson, Mathers & Associates,  
Suite 200,  
77 City Centre Drive,  
Mississauga, Ontario.  
L5B 1M5

*Votre référence* Your file

Opp 80161

*Notre référence* Our file

422,592

Messieurs,

Gentlemen,

Sujet:

PROCÉDURES SELON L'ARTICLE 44  
Enregistrement No. 232,413  
Marque de commerce: UNISONIC

Re: SECTION 44 PROCEEDINGS  
Registration No. 232,413  
Trade Mark: UNISONIC

Veillez trouver ci-joint la  
décision du Registraire au sujet de  
l'affaire précitée.

Please find herewith the  
Registrar's decision in the above  
matter.

Bien à vous,

Yours truly,

ORIGINAL SIGNED BY  
J. PAUL D'AOUST

J.P. D'Aoust  
pour le REGISTRAIRE DES MARQUES DE COMMERCE  
for REGISTRAR OF TRADE MARKS

/gmc

Canada

MAY 15 1985

Messrs. Smart & Biggar,  
P.O. Box 2991, Station D,  
Ottawa, Ontario.  
K1P 5Y6

*voire reference Your file*

7487-260  
*Noire reference  
Our file*

422,592

Gentlemen:

Re: SECTION 44 PROCEEDINGS  
Registration No. 232,473  
Trade Mark: UNISONIC

At the request of Messrs. Hewson, Mathers & Associates the Registrar of Trade Marks forwarded a section 44 notice to the North American Foreign Trading Corporation, the registrant of record of the trade mark UNISONIC, registration No. 232,473. The notice was dated April 27, 1983.

UNISONIC was registered March 23, 1979 for use in association with the following wares:

- (1) Calculators, radios and tape recording and playing apparatus.
- (2) Radios – namely, transistorized radios, AM radios, FM radios, AM/FM radios, shortwave radios, solid-state radios, table radios, radio phonographs; television receivers ; telephone receivers; dry cell batteries, portable transmitters and receivers, speakers, microphones, condensers , diodes, resistors, vacuum tubes, power tubes, volume controls , tuners, interphones, electric lighting fixtures and parts thereof, phonograph motors , transceivers; electric lamps – namely, flashlights; and battery lamps; cameras and binoculars ; tape recorder, tape players and tape playback apparatus ,

In response to the subject notice the registrant submitted the affidavit of Maurice Lowinger, President of the registrant, dated July 19, 1983. It is noted that the materials accompanying the affidavit were not certified as exhibits thereto. However, I have accepted the materials as part of the evidence in this proceeding.

A written submission dated April 23, 1984, was received from the requesting party. The registrant responded thereto by written submission dated July 19, 1984.

In his affidavit Mr. Lowinger states that since as early as 1974 and continuing up to the date of his affidavit, the registrant has used the UNISONIC trade mark in Canada in connection with the sale and shipment into Canada of goods identified in the subject trade mark registration. Mr. Lowinger asserts that the goods which are sold and shipped into Canada by the registrant have the UNISONIC trade mark applied thereto prior to shipment.

Canada

Accompanying the affidavit as Exhibits A through E are copies of invoices and shipping documentation relating to the sale of calculators to various entities in Ontario and Michigan. The registrant is identified as the vendor on Exhibit A, dated April 29, 1982, which evidences the sale of calculators to an entity located in Michigan. Exhibits C and D, which are dated subsequent to the date of the Section 44 notice also identify the registrant as the vendor. The vendor is not identified on Exhibit B. Exhibit E identifies the vendor as Unisonic Products Corp., which entity is neither the registrant nor a registered user of the subject trade mark. Mr. Lowinger asserts that these materials represent the shipment to Canada by the registrant of calculators bearing the UNISONIC trade mark.

Mr. Lowinger further alleges that other goods identified in the subject Trade mark registration and bearing the UNISONIC trade mark have also been shipped into Canada by the registrant during the year preceding, the date of his affidavit, namely July 19, 1983. However, the affiant does not specify which of the remaining registered wares were involved in such transactions.

Also annexed to the affidavit are Exhibits F and G. Exhibit F is a folder entitled UNISONIC which contains various promotional literature. The promotional literature illustrates various wares including telephones, clock/radio telephones and a clock/radio telephone with cassette player. All of the promotional literature bears the UNISONIC trade mark as well as the name Unisonic Products Corp. and an address which is the same as that of the registrant. Exhibit G is a catalogue entitled UNISONIC. The catalogue also bears references to the entity Unisonic Products Corp. In addition, the catalogue contains illustrations and descriptions of various wares including calculators, cash registers, pens, watches, clock-radios, television/radio/cassette tape recorders, and computers. Mr. Lowinger asserts that the registrant shipped, within the year preceding the date of his affidavit, and continues to ship, such promotional materials and catalogues to prospective purchasers in Canada of goods sold by the registrant.

The submissions of the requesting party may be summarized as follows:

- a) That the evidence, specifically Exhibits E, F and G, indicate use, if any, of the subject trade mark by Unisonic Products Corp., which entity is not the registrant of the UNISONIC trade mark. Therefore, the trade mark is no longer distinctive of the owner and should be expunged.
- b) That use has not been shown with all of the registered wares as required by Section 44 and that the registration should be amended accordingly.
- c) That the evidence submitted is unclear and ambiguous.

I must agree with the requesting party that much of the evidence submitted demonstrates use of the UNISONIC trade mark by Unisonic Products Corp., which entity is neither the registrant nor a registered user of the subject trade mark. However, it is noted that a Section 44 proceeding is not the proper forum in which to challenge the distinctiveness of a trade mark. The issue of distinctiveness is properly raised in an application to the Federal Court pursuant to Sections 18 and 57. Section 44 requires the

registrant to submit evidence showing its use of the trade mark in Canada. If the registrant submits such evidence of use it is not relevant to the Section 44 proceeding that another unregistered entity may also be using the trade mark.

On the second point I must also agree with the requesting party that use of the subject trade mark has not been shown with all of the registered wares. It is not the function of the Registrar to guess with which of the registered wares a trade mark is used. While the registrant need not provide examples (labels, packaging, invoices, sale figures etc.) of all of the uses of the trade mark in question, the evidence submitted must contain a concise statement of the registered wares with which the trade mark was being used at the date of the notice.<sup>2</sup> This is especially important in a case, such as the present one, of a registration covering a lengthy list of wares. The evidence filed in the case at hand does not contain such a statement. The registrant fails to allege use of or to provide any evidence of its use of the subject trade mark in association with any of the registered wares other than calculators. Although Exhibits F and G depict numerous wares bearing the UNISONIC trade mark the materials contain no reference to the registrant. Nor does the registrant specifically allege use of the UNISONIC trade mark in association with any of the wares depicted in Exhibits F and G. The registrant did submit evidence, specifically Exhibit A, C and D, of its use of the trade mark in association with calculators. However, Exhibit A evidence the sale of calculators to an entity in Michigan; therefore, it is not evidence of use of the trade mark in Canada. Exhibits C and D evidence transactions in May and June 1983, whereas the Section 44 notice was issued April 27, 1983.

Finally, I also agree with the requesting party that the evidence submitted by the registrant is unclear and ambiguous. The registrant refers to use in connection with goods identified in the registration but does not stipulate which goods. (Emphasis added) In addition in its written submission the registrant again fails to clarify with which of the registered wares the trade mark was used. The registrant also fails to address the issue of the apparent use of the subject trade mark by Unisonic Products Corp., which entity is not a registered user of the trade mark.

In view of the above I have concluded that the trade mark UNISONIC was not in use in Canada by the registrant as of the date of the Section 44 notice in association with the registered wares. Accordingly, the subject trade mark ought to be expunged.

1. "Unregistered" meaning not registered as a registered user.
2. John Labatt Limited v. Rainier Brewing Company (1984) 80 C.P.R. (2d) 228 at page 235, 236. Decision rendered April 4, 1984.

Canada



Consommation  
et Corporations Canada

Consumer and  
Corporate Affairs Canada

Ottawa / Hull, Canada  
K1A0C9

*Volre reference Y oor file*

*Nolre reference Dur file*

- 4 -

The decision in the preceding paragraph shall be acted upon by the Registrar if no appeal is taken therefore within two months as provided under the provisions of Section 56 of the Trade Marks Act. If an appeal is taken, the Registrar shall act in accordance with the final judgement pronounced in such appeal.

Yours truly,

ORIGINAL SIGNED BY  
J. PAUL D'AOUST

J.P. D'Aoust  
Senior Hearing Officer  
For REGISTRAR OF TRADE MARKS

JPD:gmc

C.C.Hewson. Mathers & Associates,  
Suite 200,  
77 City Centre Drive  
Mississauga, Ontario  
L5B 1M5

ada

C  
an

(OPP 80161)

•  
•