



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

**Citation: 2014 TMOB 54**  
**Date of Decision: 2014-03-12**

**IN THE MATTER OF A SECTION 45 PROCEEDING  
requested by Andrews Robichaud against registration No.  
TMA614,727 for the trade-mark LA SOLUTION ALTO  
in the name of Solutions Alto Inc.**

[1] At the request of Andrews Robichaud (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 February 2, 2012 to the registered owner Solutions Alto Inc. (the Registrant) of registration No. TMA614,727 for the trade-mark LA SOLUTION ALTO.

[2] The Mark is registered in association with the following wares and services:

**Wares:** *Matériel d'enseignement sous forme papier, notamment livres et manuels, matériel d'enseignement sous forme électronique, notamment livres, manuels et modules en ligne.*

**Services :** *Services personnalisés d'évaluation, d'élaboration de plans de développement et de formation sur internet et sur les lieux du travail offerts aux personnes occupant des postes de supervision, de coordination ou de gestion au sein d'une entreprise ou d'une organisation, services de formation de formateurs au sein de l'entreprise ou organisation concernée, opération d'un portail Internet, organisation et tenue de conférences, cours, ateliers et séminaires dans le domaine de la formation en entreprise.*

(the Wares and 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 February 2, 2009 and February 2, 2012.

[4] For the purposes of this decision, the relevant definitions of “use” are set out in sections 4(1) and (2) 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.

[5] It is well established that mere assertions of use are not sufficient to demonstrate use in the context of a section 45 proceeding [*Plough (Canada) Ltd v Aerosol Fillers Inc* (1980), 53 CPR (2d) 62 (FCA)]. Although the threshold for establishing use in these proceedings is quite low [*Woods Canada Ltd v Lang Michener et al* (1996), 71 CPR (3d) 477 (FCTD)], and evidentiary overkill is not required [*Union Electric Supply Co v Registrar of Trade Marks* (1982), 63 CPR (2d) 56 (FCTD)], sufficient facts must still be provided to permit the Registrar to arrive at a conclusion of use of the trade-mark in association with each of the wares or services specified in the registration during the relevant period.

[6] In response to the Registrar’s notice, the Registrant filed an affidavit of Alain Cléroux, a manager and director for the Registrant. Only the Requesting Party filed a written argument; an oral hearing was not held.

[7] In its written argument, the Requesting Party submits that none of the exhibits to the affidavit of Mr. Cleroux show use of the Mark as registered. Rather, the words “La Solution Alto” appear only once in the evidence and it is in the form of a copyright notice. As submitted by the Requesting Party, a copyright notice is used to identify the legal owner of a copyrighted work. As a result, at most this display of the words “La Solution Alto” would be considered trade-name use.

[8] Based on the foregoing, I agree with the Requesting Party's submissions and find that the Registrant has failed to evidence use of the Mark in association with the Wares and Services in Canada in the normal course of trade during the Relevant Period.

Disposition

[9] In view of the foregoing, pursuant to the authority delegated to me under section 63(3) of the Act, the registration will be expunged in compliance with the provisions of section 45 of the Act.

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Andrea Flewelling  
Member  
Trade-marks Opposition Board  
Canadian Intellectual Property Office