



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

Reference: 2014 TMOB 83
Date of Decision: 2014-04-15
TRANSLATION

**IN THE MATTER OF AN OPPOSITION by Réseau
professionnel en rituels funéraires against application
No. TMA659,907 for the trade-mark SIGNATURE in the
name of Magnus Poirier Inc.**

[1] This decision relates to a summary expungement procedure brought against registration No. TMA659,907 for the trade-mark SIGNATURE (the Mark) in association with:

Cinerary, reliquies, coffins, funeral niches, crypts, monuments, thank-you cards, souvenir frames and bookmarks with photo of the deceased, video homage and lampions (the Wares); and

operation of funeral parlours, mortuary complexes, chapels, mausoleums and cemeteries, cremation services, funeral arrangement and pre-arrangement services, preparation of video homage services, estate assistance services, mourning monitoring services, international repatriation services or exhumation services and the sale of funeral products (the Services).

[2] The light of the evidence on file and for the reasons described below, I reach the conclusion that there is no evidence showing use of the Mark in Canada in association with the Wares within the meaning of section 4(1) of the *Trade-marks Act* RSC 1985, ch T-13 (the Act) during the Relevant Period (as defined below). In addition, I conclude that there is no evidence on file regarding use of the Mark in association with the following services: operation of funeral parlours, mortuary complexes, chapels, mausoleums, cremation services, international repatriation services, exhumation services. Lastly, there is no evidence of circumstances that could justify non-use of the Mark in association with the Wares and Services listed above.

The Procedure

[3] On October 21, 2011, at the request of Réseau professionnel en rituels funéraires (the Applicant), the Registrar sent the notice stipulated in section 45 of the Act to Magnus Poirier Inc. (the Registrant) enjoining the latter to prove use of the Mark.

[4] Section 45 of the Act requires the Registrant to show that it has used its Mark in Canada in association with each of the Services and Wares specified in the registration at any given time during the three years preceding the date of the notice or, if not, to provide the date on which it was last used and the reason for its absence of use since this date. The relevant period is therefore from October 21, 2008 to October 21, 2011 (the Relevant Period).

[5] The procedure pursuant to section 45 is simple and expeditious, and serves to clear “deadwood” from the register. Accordingly, the threshold to establish use of the Mark, within the meaning of Section 4 of the Act, during the Relevant Period is not very high [see *Uvex Toko Canada Ltd v. Performance Apparel Corp* (2004), 31 CPR (4th) 270 (CF 1st inst.)].

[6] A simple claim of use of the Mark in association with the Wares and Services is not sufficient to establish its use within the meaning of section 4 of the Act. There is no requirement to produce abundant evidence. However, any ambiguity in the evidence will be interpreted against the Registrant [see *Plough (Canada) Ltd v. Aerosol Fillers Inc* (1980) 53 CPR (4th) 62 (FCA)].

The evidence

[7] In reply to the notice, the Registrant submitted an affidavit by Ms. Isabelle Poirier, Vice-president Human Resources and Executive Secretary-Treasurer for the Registrant. The parties produced written representations. A hearing was not held.

[8] Before beginning analysis of this evidence, I must stress that the Registrant, in support of its written representations, appended an affidavit by Éric Mimeault. Further to the decision of the Registrar, dated January 23, 2013, this affidavit was excluded from the file. Furthermore, the Registrant objected to the presence of certain comments contained in the Applicant’s written

representations. Any comment not supported by the evidence on file will quite simply be ignored.

[9] Ms. Poirier first describes the various functions she has held since 1988 and which she currently holds with the Registrant. She explains that the Registrant offers a full range of funeral products and services. She claims that the Mark has been continuously used in association with each of the Services and each of the Wares throughout the Relevant Period. She says that the Wares and Services are offered to clients during meetings at the branch with one of the Registrant's consultants. This consultant would guide each client through the choices of Wares and Services, giving the latter various brochures or information kits relating to these Wares and Services.

[10] It goes without saying that these statements are insufficient to satisfy the requirements of section 45 of the Act. It is in light of the documentary evidence described above that the Registrar must determine whether there was in fact use of the Mark within the meaning of section 4 of the Act in association with the Wares and services during the Relevant Period.

[11] Ms. Poirier submitted a brochure (Exhibit 1) given to the Registrant's clients during the Relevant Period which displays 'Signature Magnus Poirier.' The services mentioned are: 'mourning monitoring service, video-homage, monument engraving, thank-you cards, anniversary notice, estate assistance, cemetery services and other(s)' (services offered).

[12] Ms. Poirier submitted an excerpt from the order book and after-sales ledger (Exhibit 2) which display 'Signature Magnus Poirier,' a copy of which was given to the Registrant's clients during the normal course of its business activities during the Relevant Period. It contains a list of services offered, all preceded by a box to be checkmarked.

[13] Exhibit 3 submitted in support of Ms. Poirier's affidavit is an example of a client service monitoring sheet displaying the Mark on which we find the services offered as well as the mention 'monument.' Ms. Poirier states that this sheet was used by the Registrant in the normal course of its commercial activities during the Relevant Period.

[14] Lastly, Ms. Poirier attached to her affidavit a copy of an e-mail (Exhibit 4) dated September 28, 2012 to bring into evidence the foot of the e-mail page bearing the mention

‘Signature Magnus Poirier’ incorporated into every e-mail sent to any person, including every client of the Registrant, by each of the Registrant’s consultants during the normal course of its commercial activities during the Relevant Period.

Examination of the issues in dispute

[15] I must stress that the Registrant's written representations contain no specific comments concerning use of the Mark except to say that it had been used in association with the Services and Wares in light of the evidence submitted to the file.

[16] As mentioned by the Applicant, section 4(1) of the Act requires that use of the Mark in association with each of the Wares must occur at the time of transfer of ownership or possession of the Wares, in being affixed directly to the Wares or their packets, contents or packaging. However, it is necessary to add that use can also occur by any other means related to the Wares to such point that notice of association is then given to the person to whom ownership or possession is transferred.

[17] The evidence submitted and described above makes no mention of sale of the Wares. There is no evidence of transfer of ownership of each of the Wares during the Relevant Period and there is no evidence of illustration of the Mark affixed directly to the Wares, their contents or their packaging. There is indeed reference to ‘monument’ in Exhibit 3 of Ms. Poirier’s affidavit (client service monitoring sheet), but this reference on one specimen of this document is insufficient to show use of the Mark in association with this type of wares within the meaning of section 4(1) of the Act. Even in considering Ms. Poirier’s claim to the effect that this type of document was used by the Registrant during the normal course of its business during the Relevant Period, this in no way proves that there had in fact been the sale or transfer of ownership of a monument in association with the Mark during the Relevant Period or that notice of association had been given to the person to whom ownership or possession of a monument had been transferred.

[18] Ms. Poirier mentions no circumstances, within the meaning of section 45(3) of the Act that could have been able to justify non-use of the Mark in association with the Wares during the

Relevant Period. Registration certificate TMA659907 should therefore be amended to expunge the Wares.

[19] In regard to the Services, the Applicant raises the following points:

- 1) If there had been use of a trade-mark in association with services, it was not the Mark, but rather SIGNATURE MAGNUS POIRIER. There would therefore have been no evidence of use of the Mark within the meaning of section 4(2) of the Act in association with the Services;
- 2) The exhibits submitted are undated and blank or, if dated, they bear a date after the Relevant Period.
- 3) The exhibits submitted are internal documents;
- 4) There is no evidence of use of the Mark in association with the following services: operation of funeral parlours, mortuary complexes, chapels, mausoleums and cemeteries, cremation services, international repatriation services, exhumation services and sale of funeral products.

[20] I will analyze each of these arguments in reverse order.

[21] I fully agree with the Applicant. Even in considering that the evidence submitted constitutes use of the Mark during the Relevant Period, there is no mention in the said documents submitted of the operation of funeral parlours, mortuary complexes, chapels, mausoleums, cremation services, international repatriation services or exhumation services in association with the Mark during the Relevant Period. I will address the sale of funeral products later.

[22] The Registrant provided no explanation within the meaning of section 45(3) of the Act regarding the absence of evidence of use of the Mark in Canada in association with these services during the Relevant Period. The registration certificate No. TMA659,907 will be amended accordingly.

[23] The Applicant claims that the majority of exhibits submitted are internal documents and cannot therefore support the Registrant's claim to the effect that it would have used the Mark during the Relevant Period in association with the Services within the meaning of section 4(2) of the Act.

[24] I do not subscribe to this argument. First, Exhibit 1 is a brochure. Ms. Poirier states that it had been given to the Registrant's clients during the Relevant Period. As for Exhibits 2 and 3 (excerpt from the order book and after-sales ledger and client services monitoring sheet), Ms. Poirier states that a copy of these documents had been given to the Registrant's clients during the Relevant Period. It remains to be determined whether these documents establish use of the Mark during the Relevant Period in association with some of the Services.

[25] The Applicant pleads that exhibits 2 and 3 are undated. I will address this aspect last. Regarding exhibit 4 (e-mail footer), it cannot support Ms. Poirier's claims to the effect that the footer on the e-mail pages sent by the Registrant's consultants during the Relevant Period, since the e-mail submitted as an example is dated September 28, 2012, i.e. after the Relevant Period. In any event, there is no reference in Exhibit 4 to the Services. I cannot therefore take this exhibit into consideration or any claims referring to it in determining whether the Registrant had met its burden of proving use of the Mark in Canada in association with certain services during the Relevant Period.

[26] The brochure Exhibit 1 is the only advertising brochure listing certain services. This exhibit would be sufficient to prove use of a trade-mark in association with services within the meaning of section 4(2) of the Act. However, is this use of the Mark? The Applicant maintains that the mark being displayed is SIGNATURE MAGNUS POIRIER and not the Mark. I must stress that I subscribe to the Applicant's argument to the effect that the mention 'mc' below the word 'Signature' should have been added. There is no evidence on this point and the Applicant's argument is based on unproven insinuations and claims. I have to recall that the procedure under section 45 is intended to be 'summary' and 'administrative.'

[27] The word 'Signature' appears on a single line in blue with the mention 'mc' below it and 'Magnus Poirier' appears on another line in gold. In applying the principles stated in *Registrar of Trade-marks v. Compagnie L'informatique CII Honeywell Bull, Société Anonyme et al* (1985), 4

CPR (3d) 523 (FCA) to the facts described above, I conclude that Exhibit 1 constitutes evidence of use of the Mark and not another mark. However, the services identified on this exhibit are the services offered. Which of these services are covered by registration No. TMA659,907?

[28] Exhibit 1 refers to ‘mourning monitoring service, homage-video preparation service, estate assistance service and cemetery services.’ These services are clearly identified in the Services. I consider the thank-you and anniversary notice services as being funeral products. Accordingly, the brochure Exhibit 1 promotes the sale of funeral products.

[29] There remain therefore only exhibits 2 and 3. I do not find these documents to be evidence of use of the Mark within the meaning of section 4(2) of the Act. In fact, these are neither brochures nor advertising pamphlets. At most, they could constitute a statement that certain services have been provided by the Registrant. However, these documents are blank. They are undated and none of the boxes vis-à-vis the services identified on the documents has been checkmarked. The Registrant claims that it had proceeded thus in order to protect the confidentiality of its clients’ names. However, it would have been easy for the Registrant to redact information that it deemed confidential. Accordingly, it would have been able to demonstrate that the services identified on these documents had been provided on the date indicated on the latter. Accordingly, these documents are of no use for the Registrant's case.

[30] As I mentioned at the beginning, I am fully aware that the Registrant does not have to submit an overabundance of evidence. However, as succinct as it may be, it must respect the requirements of section 4(2) of the Act (in regard to the Services) which is far from being the case in this file.

Disposal

[31] Accordingly, in exercising the authority delegated to me pursuant to the provisions of section 63(3) of the Act, the registration TMA659,907 will therefore be amended to expunge the Wares and for the statement of services to read as follows:

Operation of cemeteries, preparation of video homage service, estate assistance service, mourning monitoring services and sale of funeral products.

the whole pursuant to the provisions of section 45 of the Act.

Jean Carrière
Member
Trade-marks Opposition Board
Canadian Intellectual Property Office

Traduction certifiée conforme

Alan Vickers