



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

Citation: 2015 TMOB 221
Date of Decision: 2015-12-08
[UNREVISED ENGLISH
CERTIFIED TRANSLATION]

IN THE MATTER OF A SECTION 45 SUMMARY EXPUNGEMENT PROCEEDING

Joli-Cœur Lacasse, S.E.N.C.R.L.

Requesting Party

and

Denis Ouellette

Registered Owner

TMA355,748 for the ISOTHERM trade-
mark

Registration

[1] This decision relates to a summary expungement procedure brought against registration No. TMA355,748 for the ISOTHERM trade-mark.

[2] The products covered by the registration are [TRANSLATION] ‘weather-stripping, in particular, strips and sections intended to prevent air from circulating through cracks around doors, and/or windows, and/or any other opening’ (the Goods).

[3] For the following reasons, I conclude that the registration of the Mark must be maintained.

The proceeding

[4] On May 15, 2014, at the request of Joli-Cœur Lacasse S.E.N.C.R.L. (the Requesting Party), the Registrar sent the notice provided in section 45 of the *Trade-marks Act*, RSC 1985, c T-13 (the Act) to Denis Ouellette (the Registered Owner) concerning the registration of the Mark.

[5] Section 45 of the Act requires the Registered Owner to show that he has used the Mark in Canada in association with each of the Goods specified in the registration at any given time during the three years preceding the date of the notice, namely from May 15, 2011 to May 15, 2014 (the Relevant Period) or, if not, to provide the date on which it was last used.

[6] In reply to the notice, the Registered Owner submitted the affidavit of Denis Ouellette. Only the Registered Owner filed written representations. Neither party requested a hearing.

Preliminary comments

[7] I note that the exhibits attached to Mr. Ouellette's affidavit were not authenticated by the Commissioner for Oaths who took Mr. Ouellette's oath. However, in his affidavit, Mr. Ouellette clearly identifies each of the exhibits attached to his affidavit. Moreover, each of them is preceded by a backing clearly identifying the next exhibit. It has been mentioned on many occasions that, in the context of proceedings under section 45 of the Act, formal deficiencies are mere technical points that must be raised at the beginning [*Dasthe Morghab Co v Rex Inc* 2005 Carswell Nat 3758, 52 CPR (4th) 71 (TMOB)]. In any event, I find this deficiency does not affect the probative value of the evidence submitted.

[8] 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]. The issue is to establish a use of the Mark prima facie [see *1459243 Ontario Inc v Eva Gabor International, Ltd*, 2011 FC 18].

[9] A simple assertion of use of the Mark in association with the Goods is not sufficient to establish its use within the meaning of section 4(1) of the Act. There is no requirement to produce abundant evidence. However, any ambiguity in the evidence will be interpreted against the Registered Owner [see *Plough (Canada) Ltd v Aerosol Fillers Inc* (1980) 53 CPR (4th) 62 (FCA)].

The evidence

[10] Mr. Ouellette is the Registered Owner. He alleges he has used the Mark since 1989 and will continue to use it. He affirms that use of the Mark is at the core of his company's commercial activities. It is obvious that such assertions do not meet the requirements of section 45 and I will concentrate my summary of the evidence on the allegations contained in Mr. Ouellette's affidavit, which are corroborated in the documentary evidence.

[11] Mr. Ouellette affirms that on November 18, 1994, he obtained the registration of his sole proprietorship, doing business under the business name 'Les coupe-froid ISOTHERM ENR'. He filed an excerpt from the Quebec Enterprise Register proving that he does business under this business name. He explained that his business operates in the field of manufacturing weather-stripping for doors and windows and distribution of insulation products.

[12] To prove the use of the Mark, he filed two invoices, one dated February 1, 2012 and the other dated September 6, 2013, i.e. during the Relevant Period. I note the invoices are issued by Les coupe-froid ISOTHERM ENR, the Registered Owner's business name. Moreover, the 'description' part of the invoice of September 6, 2013 contains the mention 'coupe-froid isotherm, modèle 20783-2 brun, non-emballé' (Isotherm weather-stripping, model 20783-2 brown, unpackaged). This invoice bears the same date as the date appearing under the heading 'date expédiée' (date shipped). The delivery address indicated on the invoice is identical to that of the buyer.

Analysis of Evidence

[13] I note the absence of written representations and a request for a hearing on the part of the Requesting Party.

[14] In the circumstances, I find that the evidence submitted by the Registered Owner is sufficient to conclude the use of the Mark in association with the Goods during the Relevant Period. Indeed, the Mark appears on an invoice issued during Relevant Period, in the 'description' of the goods sold. Moreover, I can infer this invoice accompanied the goods sold at the time of their delivery, because the delivery date of these goods coincides with the date the

invoice was issued and the delivery address of the goods is the same as the buyer's address. Thus, during the transfer of ownership of the Goods, there was notice of association between the Mark and the Registered Owner [see *Literie Primo Inc/Primo Bedding Inc v Albums DF ltée/DF Albums Ltd* 2005 TMOB 40].

Disposal

[15] In exercising the authority delegated to me pursuant to the provisions of section 63(3) of the Act, registration LMC355,748 will be maintained in compliance with the provisions of section 45 of the Act.

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

Certified true translation
Arnold Bennett

**TRADE-MARKS OPPOSITION BOARD
CANADIAN INTELLECTUAL PROPERTY OFFICE
APPEARANCES AND AGENTS OF RECORD**

No hearing held

AGENT(S) OF RECORD

Joli-Cœur Lacasse

FOR THE REQUESTING
PARTY

Dunton Rainville

FOR THE REGISTERED
OWNER