

SECTION 45 PROCEEDINGS
TRADE-MARK: RELAY STATION TRUCK STOPS
REGISTRATION NO.: 271,545

On October 19, 2000, at the request of Messrs. Ridout & Maybee, the Registrar forwarded a Section 45 notice to 420123 Ontario Limited doing business as Beamsville Relay Station, the registered owner of the above-referenced trade-mark registration.

The trade-mark RELAY STATION TRUCK STOPS is registered for use in association with the following services: operation of a fuel station and restaurant.

Section 45 of the Trade-marks 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/or services listed on 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 use since that date.

In response to the notice, the affidavit of Susia Wang with exhibits has been furnished. The registrant alone filed a written argument. An oral hearing has not been requested in this case.

In her affidavit, Ms. Wang indicates that the registrant was and is using the trade-mark in association with the services. She has provided a copy of a promotional flyer used by the registrant during 1997 to promote the services at its location in Beamsville, Ontario and copies of

receipts for the sale of gas, diesel fuel and propane from the fuel station located at Beamsville, Ontario and receipts for the sale of sandwiches and other items from the restaurant located at Beamsville, Ontario.

One issue in this case is whether the trade-mark used and/or displayed in the advertising or performance of the services is the registered trade-mark RELAY STATION TRUCK STOPS.

Exhibits A and C, the receipts for gas etc, bear the trade-marks RELAY, BEAMSVILLE RELAY STATION and RELAY TRUCK CENTRE. Exhibit B, the signage over the fuel pumps and the restaurant bear the trade-mark RELAY. Exhibit D bears the trade-mark RELAY TRUCK STOP. Exhibit F bears the trade-mark BEAMSVILLE RELAY STATION and also refers to the trade-marks RELAY TRUCKSTOP and RELAY. None of the above-referenced exhibits bear the trade-mark as registered and none of the trade-marks shown to be in use by those exhibits constitute use of the registered trade-mark. The trade-mark as registered comprises four words namely RELAY, STATION, TRUCK and STOPS. In my view, as each element forms a main and essential component of the whole, each element must be present in order for me to find use of the registered trade-mark. As all of the marks shown to be in use by Exhibits A, B, C, D and F all omit one or several of the words forming the registered trade-mark, I conclude that none of those exhibits show use of the registered trade-mark.

In their written arguments, the registrant's agents submit that Exhibit E bears the trade-mark as registered. Exhibit E is reproduced below for convenience:

The trade-mark appears as follows: BEAMSVILLE RELAY STATION TRUCKSTOP. The fact that “TRUCKSTOP” appears as one word and in the singular form is considered a minor variation and, consequently, is of no consequence. However, the same cannot be said regarding the addition of the word “BEAMSVILLE” in front of the words “RELAY STATION TRUCKSTOP”. I am of the view that the public would probably perceive it as forming part of the trade-mark used as all of the words appear in the same script and are of the same size. The

words “RELAY STATION TRUCKSTOP” do not stand out from the additional matter, namely the word BEAMSVILLE.

In their written arguments, the registrant’s agents argue that the word BEAMSVILLE appears in front of the mark to indicate the location for which the promotional flyer was produced. They submit it is not being used as part of the mark. Even were I to conclude that this was the case (which I do not), I would have to conclude that the evidence is unclear as to when the flyer in question was circulated. Ms. Wang merely stated that it was in use by the registrant during 1997. She failed to specify when in 1997 it was circulated. Considering that the relevant period in this case started October 12, 1997, if the flyer had been in circulation between October 19, 1997 and December 31, 1997, Ms. Wang could have clearly stated so. As she chose to be vague on the matter and as there is no clear evidence that it was circulated in October, November and/or December 1997, I would have concluded that the ambiguity ought to be resolved against the registrant. (see *Plough Canada Ltd. v. Aerosol Fillers Inc.*, 45 C.P.R. (2d) 194 (FCTD) and 53 C.P.R. (2d) 62 (FCA).

As the evidence furnished fails to show use of the “registered trade-mark” during the relevant period, I conclude that the trade-mark registration ought to be expunged.

Registration No. 271,545 will be expunged in compliance with the provisions of Section 45(5) of the Act.

DATED AT GATINEAU, QUEBEC, THIS 29th DAY OF OCTOBER 2002.

D Savard
Senior Hearing Officer
Section 45 Division