



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

**Citation: 2014 TMOB 5**  
**Date of Decision: 2014-01-16**

**IN THE MATTER OF A SECTION 45 PROCEEDING  
requested by Miltons IP against registration  
No. TMA649,979 for the trade-mark CORE HEALTH in  
the name of The Enrich Corporation**

[1] At the request of Miltons IP (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 December 19, 2011 to The Enrich Corporation, the registered owner at that time of registration No. TMA649,979 for the trade-mark CORE HEALTH (the Mark). Subsequent to the issuance of the notice, the Registrar recorded the assignment of the Mark to Unicity Properties, Inc. (the Owner), discussed below.

[2] The Mark is registered for use in association with the wares “nutritional supplements in capsule form”.

[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 December 19, 2008 and December 19, 2011.

[4] The relevant definition of “use” is set out in section 4(1) 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.

[5] It is well established that the purpose and scope of section 45 of the Act is to provide a simple, summary and expeditious procedure for removing “deadwood” from the register and, as such, the evidentiary threshold that the registered owner must meet is quite low [*Uvex Toko Canada Ltd v Performance Apparel Corp* (2004), 31 CPR (4th) 270 (FC)].

[6] In response to the Registrar’s notice, the registered owner furnished the affidavit of Jerome Bichon, an attorney in charge of intellectual property with Unicity International, Inc., sworn on May 1, 2012. Neither party filed written representations, nor was an oral hearing held.

[7] Mr. Bichon attests that Unicity International is “a global leader in nutritional sciences and natural health products” and operates in Canada through its subsidiary Unicity Canada, Inc. Mr. Bichon explains that the Owner is a subsidiary of Unicity International and acquired the Mark from The Enrich Corporation on March 8, 2003.

#### Assignment of the Mark

[8] Attached as Exhibit B to Mr. Bichon’s affidavit is a copy of a signed and dated “Confirmatory Assignment” document concerning the assignment of the Mark from The Enrich Corporation to the Owner, which as noted on the document was effective from March 8, 2003, a date prior to the notice issued under section 45. The assignment was recorded on the registry on March 27, 2012.

[9] An assignment document signed and filed after its effective date, and after the issuance of a section 45 notice, has been considered acceptable by the Registrar, if the assignment is determined to be effective as of an earlier date and not simply retroactive in effect [see *Star-Kist Foods Inc v Canada (Registrar of Trade Marks)* (1988), 20 CPR (3d) 46 (FCA)]. In the present case, Mr. Bichon’s assertions at paragraphs 3 and 12 of his affidavit that the Owner acquired the Mark in 2003, together with the Registrar’s subsequent receipt and recordal of the “confirmatory” assignment document on March 27, 2012, leads me to conclude that the

assignment at issue occurred on March 8, 2003 but simply had not been recorded. As such, noting that the Requesting Party did not make any submissions to the contrary, I accept that the Owner was also the owner of the Mark during the relevant period for purposes of this proceeding.

#### Use of the Mark

[10] Mr. Bichon attests that the Mark was used during the relevant period by the Owner through its licensee, Unicity Canada, Inc., in association with various types of nutritional supplements. He confirms that the Owner “retained direct or indirect control of the character and quality” of the products sold in association with the Mark by its licensee in Canada. In particular, Mr. Bichon explains that the supplements were sold by Unicity Canada, in the normal course of trade, to authorized independent distributors located in Canada and were also available for purchase online at *www.unicity.net/canada* and through a toll-free telephone number. He attests that such sales conducted from January 2009 to December 2011 totaled \$23,362.32 amounting to 413 units. In support, Mr. Bichon provides the following exhibits:

- Exhibit C consists of six copies of labels that Mr. Bichon attests are representative of the type of labels used on the supplements sold in Canada by the licensee during the relevant period. I note that the Mark is prominently displayed on the labels and that the wares are described as vitamin and mineral supplements in capsule or “vegicap” form.
- Exhibit D consists of copies of 11 invoices from Unicity Canada, all dated within the relevant period. Although the customer information has been blacked out, Mr. Bichon attests that the invoices evidence sales to Unicity Canada’s authorized independent distributors located in Canada. The invoices include item descriptions for various “CORE HEALTH” or “Core Hlth” products that Mr. Bichon attests correspond with the registered wares.

[11] In further support, Mr. Bichon provides various product information sheets, catalogues, and price lists at Exhibit E, which he explains were available during the relevant period and used to promote the Owner’s CORE HEALTH nutritional supplements. I note that the Mark is

prominently displayed throughout these materials in association with various nutritional supplements, including supplements in capsule form.

[12] In view of the foregoing, I am satisfied that the Owner has demonstrated use of the Mark in association with “nutritional supplements in capsule form” during the relevant period within the meaning of sections 45 and 4(1) of the Act.

Disposition

[13] Accordingly, pursuant to the authority delegated to me under section 63(3) of the Act and in compliance with the provisions of section 45 of the Act the registration will be maintained.

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Andrew Bene  
Hearing Officer  
Trade-marks Opposition Board  
Canadian Intellectual Property Office