



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

Citation: 2013 TMOB 167
Date of Decision: 2013-10-03

**IN THE MATTER OF A SECTION 45 PROCEEDING
requested by Borden Ladner Gervais LLP against
registration No. TMA477,720 for the trade-mark ANGEL
WING in the name of Covidien AG**

[1] At the request of Borden Ladner Gervais LLP (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 May 25, 2011 to Covidien AG (the Registrant), the registered owner of registration No. TMA477,720 for the trade-mark ANGEL WING (the Mark).

[2] The Mark is registered for use in association with the following wares:

Medical and surgical apparatus namely disposable medical needle and catheter placement guides; blood infusion units, the chief components of which are needles, syringes and tubing; and blood drawing and collection units, the chief components of which are needles, syringes and tubing.

[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 May 25, 2008 and May 25, 2011.

[4] The relevant definition of “use” with respect to wares 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 Registrant furnished the affidavit of Michelle Glauser, Director of the Registrant, sworn on August 23, 2011. Only the Registrant filed written representations; no oral hearing was held.

[7] Based on Ms. Glauser’s affidavit and accompanying exhibits, it would appear that the Registrant is a Switzerland-based manufacturer and distributor of medical and surgical products. Ms. Glauser attests that, during the relevant period, the Registrant’s products were sold to Canadian customers directly by the Registrant through its website, *www.covidien.com*, and indirectly through its North American licensee, Tyco Healthcare Group LP.

[8] Ms. Glauser states that the Registrant’s products sold in Canada included a line of ANGEL WING medical and surgical devices encompassing the wares as registered. According to Ms. Glauser, the Mark “appears on labels placed on the bags and boxes and/or other packaging for the ANGEL WING medical/surgical devices.” She also states that the Mark appeared on marketing materials, brochures, and instructions that were included with the ANGEL WING products sold in Canada during the relevant period. In support of her assertion of use with respect to all of the wares as registered, Ms. Glauser furnishes the following exhibits:

- Exhibit A consists of four photographs of product labels that Ms. Glauser attests are representative of how the Mark was displayed on labels affixed to bags and boxes of ANGEL WING products sold in Canada during the relevant period. I note that the labels include product information corresponding to the registered wares and that the Mark appears prominently on the labels.

- Exhibit B consists of copies of the aforementioned marketing brochures and instructions included with shipments of the wares. The Mark appears prominently throughout the materials.
- Exhibit C consists of printouts from the Registrant’s website, which Ms. Glauser attests “are representative of how the ANGEL WING products have been displayed and sold online through the website worldwide and in Canada since at least 2009”. As mentioned above, Ms. Glauser attests that Canadian customers could order the wares from the website directly, and I note that the Mark is displayed in association with a variety of medical devices, including the registered wares, on the web pages provided.
- Exhibit D consists of copies of four representative invoices dating from the relevant period, which Ms. Glauser attests show sales of its ANGEL WING products by the Registrant, through its North American licensee and Canadian distributor, to various Canadian health care facilities.

[9] In addition, although it would appear that the Registrant’s ANGEL WING line includes products other than the registered wares, Ms. Glauser attests to sales of ANGEL WING “medical and surgical apparatus” in fiscal year 2009 in excess of CDN\$147,000. In any event, in view of the evidence described above, I am satisfied that the Registrant has demonstrated use of the Mark in association with all of the wares as registered within the meaning of sections 4 and 45 of the Act.

[10] 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.

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