



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

Citation: 2013 TMOB 94
Date of Decision: 2013-05-17

**IN THE MATTER OF A SECTION 45 PROCEEDING
requested by Ferstman Law Office against registration
No. TMA700,047 for the trade-mark SACRIFICE in the
name of YM Inc. (Sales)**

[1] At the request of Ferstman Law Office (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 16, 2011 to Latitude Men’s Wear Ltd., the registered owner at that time of registration No. TMA700,047 for the trade-mark SACRIFICE (the Mark).

[2] The section 45 notice required the registered owner to furnish evidence showing that it had used the Mark in Canada in association with the wares specified in the registration within the time period between May 16, 2008 and May 16, 2011.

[3] The wares specified in the registration are “Clothing namely jackets, pants, dresses, shirts, sweaters, t-shirts; and bags, namely briefcases, handbags and backpacks”.

[4] The relevant definition of “use” in association with 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] Subsequent to issuance of the notice, the Registrar was notified that, by virtue of an amalgamation, Latitude Men's Wear Ltd. had changed its name to YM Inc. (Sales) (the Registrant), effective January 2011. This change is not at issue in the current proceeding.

[6] In response to the notice, the Registrant furnished the affidavit of Eric Grundy, CEO of the Registrant, sworn on December 15, 2011. Both parties filed written representations; an oral hearing was not held.

[7] In his affidavit, Mr. Grundy attests that during the relevant period, the Registrant sold SACRIFICE clothing products directly to Canadian customers by way of at least six retail stores operated by the Registrant located across Canada.

[8] Regarding the wares as registered, he attests that the Registrant sold jackets, pants, shirts, sweaters, and t-shirts in association with the Mark. In support, Mr. Grundy provides samples of clothing labels and hang tags as well as a transaction log of clothing sales showing significant sales in Canada during the relevant period with respect to the aforementioned wares. The labels and hang-tags clearly display the Mark and are sworn to have been affixed to the clothing products when sold.

[9] With respect to the remaining wares, namely "dresses" and "bags, namely briefcases, handbags and backpacks", as noted by the Requesting Party and acknowledged by the Registrant in their respective written representations, Mr. Grundy makes no assertion and furnishes no evidence of use of the Mark in association with such wares.

[10] In view of the foregoing, I am satisfied that the Registrant has shown use of the Mark in association with "clothing namely jackets, pants, ... shirts, sweaters, t-shirts" within the meaning of sections 4 and 45 of the Act; however, use of the Mark has not been shown for the remaining wares and there is no evidence before me of special circumstances excusing the absence of use.

Disposition

[11] Consequently, pursuant to the authority delegated to me under section 63(3) of the Act and in compliance with section 45 of the Act, the registration will be amended to delete "dresses" and "bags, namely briefcases, handbags and backpacks".

[12] The amended statement of wares will be as follows: “Clothing namely jackets, pants, shirts, sweaters, t-shirts”.

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