

Section 45 Proceedings
Trade Mark: TITAN
Registration No.: TMA 170,149

On April 24, 1996, at the request of Conglom Inc., represented by the firm Robic, the Registrar forwarded a Section 45 Notice to Henkel Canada Limited, the registered owner of the above-referenced trade-mark registration. The trade-mark TITAN is registered for use in association with the following wares:

(1) Adhesives in the form of chemical compositions. (2) Wood coatings.

In response to the Section 45 Notice, the registrant furnished the affidavit of Cornelius Baarda, Corporate Controller and Secretary of the registrant company. The registrant alone filed brief written submissions in regard to the present proceedings. Neither party requested an oral hearing.

I note from the Registrar's records that Henkel Canada Limited was recorded as registered owner of the subject mark on April 4, 1996, with an effective date of June 30, 1995. Prior to that time, the registered owner of the trade-mark TITAN was LePage's Limited.

In his affidavit, Cornelius Baarda states that the registrant's predecessor-in-title, LePage's Limited, sold the registered wares to the wholesale and retail trades across Canada in association with the mark. To show how the mark was used, the affiant attaches as Exhibit A, representative product labels bearing the trade name Titan Canada, which according to the affiant is a registered trade name of Henkel Canada Limited. Mr. Baarda claims that the mark has also been used on invoices within the three year period prior to the date of the Section 45 Notice, and he attaches sample invoices as Exhibit B. He also attaches, as Exhibit C, a representative list of wholesalers and retailers who allegedly purchased the registrant's products for sale in Canada during the relevant period.

Having reviewed the evidence, I am satisfied that it shows use of the trade-mark TITAN in association with each of the registered wares, in compliance with the provisions of sections 4(1) and 45 of the *Trade-marks Act*, R.S.C. 1985, c.T-13 [hereinafter the *Act*]. Subsection 45(1) of the *Act* requires the registered owner to furnish evidence showing whether its trade-mark was in use in

Canada at any time during the three year period immediately preceding the date of the Notice. Subsection 4(1) of the *Act* provides that a trade-mark is deemed to be used in association with wares where there were transfers of the wares in the normal course of trade and the mark was associated with the wares at the time of transfer such that notice of the association was given to the transferee.

Concerning the type of wares sold, the affiant has attached (as Exhibit A) representative labels bearing the trade-mark TITAN. Some of the labels pertain to a product identified as “contact cement”, which product I am prepared to accept falls within the registered wares “adhesives in the form of chemical compositions.” In that regard, it is clear from the labels that the contact cement is an adhesive. Also, the labels indicate that the product contains volatile solvents as well as toluene, which is defined in *Webster’s Third New International Dictionary* as “a light mobile liquid aromatic hydrocarbon $C_6H_5CH_3$ that resembles benzene but is less volatile, less flammable, and less toxic ... and is chiefly used as a solvent ...” Thus, the registrant’s contact cement would seem to be an adhesive that is in the form of chemical compositions.

There are also several labels attached as Exhibit A that pertain to “wood stain”, which obviously falls within the registered wares “wood coatings”.

Concerning the requisite transfer of the registered wares, the affiant has provided (as Exhibit C) a representative list of wholesalers and retailers who allegedly purchased the registrant’s products in Canada. The invoices submitted in evidence (as Exhibit B) confirm that there were sales to such companies of TITAN contact cement and various types of TITAN wood stain by LePage, a division of the registrant company, as well as by the registrant’s predecessor-in-title, LePage’s Limited, between April 24, 1993 and April 24, 1996. I am therefore satisfied that there were transfers of the registered wares during the relevant period.

Concerning the requirement that the mark be associated with the wares at the time of transfer, the trade-mark TITAN appears on each of the labels for contact cement and wood stain attached as Exhibit A. The trade-mark also appears, together with a description of the various products, in the

body of the invoices submitted as Exhibit B. Consequently, I find the evidence shows that the mark was associated with the wares at the time of transfer.

On the basis of the evidence furnished, I conclude that there were transfers of the registered wares during the relevant period, and that the trade-mark TITAN was associated with the wares at the time of transfer. As the evidence shows use in compliance with ss. 4(1) and 45(1) of the *Act*, Registration No. TMA 170,149 ought to be maintained on the register.

Disposition:

In view of the foregoing, Registration No. TMA 170,149 will be maintained on the register.

DATED AT HULL, QUEBEC, THIS 15th DAY OF AUGUST 1997.

C.J. Campbell
Hearing Officer
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