



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

Citation: 2014 TMOB 10
Date of Decision: 2014-01-20

**IN THE MATTER OF A SECTION 45 PROCEEDING
requested by Norton Rose against registration
No. TMA686,581 for the trade-mark ARMADA in the
name of Sports Vision (International) Ltd.**

[1] At the request of Norton Rose (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 October 31, 2011 to Sports Vision (International) Ltd. (the Registrant), the registered owner of registration No. TMA686,581 for the trade-mark ARMADA (the Mark).

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

(1) Leather and imitations of leather, and goods made from these materials, namely luggage, handbags, belts, backpacks; hides; trunks and travelling bags; saddlery; luggage, cases, namely cases for sunglasses; suitcases, bags, namely handbags, shoulder bags, purses, sports bags, rucksacks, ski bags, surf bags.

(2) Clothing, namely sports clothing, t-shirts, sweatshirts, jumpers, cardigans, trousers, shorts, skirts, shirts, blouses, jackets, coats, anoraks; footwear, namely, boots, shoes, sandals, sports shoes, sports boots; headgear, namely caps, visors, headbands, bandanas; ski clothing; ski boots, ski gloves; clothing for water sports.

(3) Decorations for Christmas trees; ski equipment; skis; ski bindings; surf equipment; surf bindings; bags designed for skis or surf boards; wax for skis; ski edges; sole coverings for skis; ski poles; parts and fittings for ski and surf equipment.

[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 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 October 31, 2008 and October 11, 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] In response to the Registrar’s notice, the Registrant filed the affidavit of Seth R. Johnson, General Manager/Director of Legal Affairs of Armada Skis, Inc., sworn on May 29, 2012.

Neither party filed written representations; an oral hearing was not held.

[6] In his affidavit, Mr. Johnson attests that Armada Skis, Inc. is licensed to use the Mark by the Registrant and confirms that the Registrant retains control over the character and quality of goods associated with the Mark. Mr. Johnson explains that the Mark is used as a house brand by Armada Skis to identify a well-known line of ski and surf clothing, sports equipment and accessories. He attests that the Mark was used in association with all of the registered wares during the relevant period, stating that the Mark was displayed on the wares themselves. In support, he provides the following exhibits attached to the affidavit:

- Exhibit A consists of five sample Canadian product catalogues for the years 2007 to 2012, which Mr. Johnson attests contain examples of how the Mark was used in association with the wares during the relevant period. For example, he notes that the product catalogues contain images of skis where the Mark is clearly shown on the skis themselves. As noted by Mr. Johnson, the catalogues also contain images of various articles of clothing, sports equipment, luggage, bags and related accessories all prominently displaying the Mark on the products directly. Mr. Johnson remarks that the Exhibit A catalogues do not contain an exhaustive listing of all the products that Armada Skis sold in association with the Mark during the relevant period, but that it is a representative sample of the various categories of wares set out in the registration and sold in Canada during the relevant period.

- Exhibit B consists of over 40 photographs of various clothing items, accessories and sporting equipment, all of which display the Mark either directly on the products themselves or via hang tags and labels attached to the products. Mr. Johnson attests that the labels and hang tags are representative of those attached to the wares sold in Canada during the relevant period.
- Exhibit C consists of eight multi-page invoices, all dated within the relevant period, from Armada Skis to Fresh Sports Ltd, a sporting goods retailer located in Calgary, Alberta. Mr. Johnson attests that the invoices are representative of sales by Armada Skis during the relevant period and confirms that all of the goods itemized on the invoices prominently displayed the Mark as described above. As with Exhibits A and B, Mr. Johnson explains that the invoices are representative of the various individual items and product categories set out in the registration.

[7] As noted in *Saks & Co v Canada (Registrar of Trademarks)* (1989), 24 CPR (3d) 49 (FCTD), actually showing use for all the wares listed in a registration is not necessarily required when the affidavit clearly states that the trade-mark is used on all of the wares and that adequate examples of use from each category of wares is shown.

[8] Although not explicitly categorized as such in Mr. Johnson's affidavit, I find that the representative evidence is more than adequate to support a determination of use of the Mark in association with the following categories of wares: luggage and bags (being wares (1)); clothing, footwear and headgear (being wares (2)); and ski and surf equipment (being most of wares (3)).

[9] The one ware that does not clearly fall into any of these categories is "decorations for Christmas trees" from wares (3). Unlike the other wares listed in the registration, it is not apparent that such a product would naturally be a part of "a line of ski and surf clothing, sports equipment and accessories", and I am without the benefit of representations from the parties on this point.

[10] It is well established that mere assertions of use are not sufficient to demonstrate use in the context of section 45 proceedings [*Plough (Canada) Ltd v Aerosol Fillers Inc* (1980), 53 CPR (2d) 62 (FCA)]. Although evidentiary overkill is not required [*Union Electric Supply Co*

Ltd v Registrar of Trade Marks (1982), 63 CPR (2d) 56 (FCTD)], sufficient facts must still be provided to permit the Registrar to arrive at a conclusion of use of the trade-mark in association with each of the wares specified in the registration during the relevant period. Notwithstanding Mr. Johnson’s statement that the exhibited catalogues are not exhaustive of all of the wares sold in association with the Mark, his affidavit is silent on “decorations” and I cannot identify such a ware in any of the exhibits, including the exhibited invoices.

[11] As such, I am not satisfied that the Registrant has demonstrated use of the Mark in association with “decorations for Christmas trees” within the meaning of sections 4 and 45 of the Act. Furthermore, there is no evidence of special circumstances before me excusing such non-use.

Disposition

[12] 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 amended to delete “Decorations for Christmas trees” from the statement of wares.

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