



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

**Citation: 2014 TMOB 66**  
**Date of Decision: 2014-03-20**

**IN THE MATTER OF A SECTION 45 PROCEEDING  
requested by Shapiro Cohen against registration  
No. TMA590,557 for the trade-mark G II in the name of  
Ossur Canada Inc.**

[1] At the request of Shapiro Cohen, the Registrar of Trade-marks issued a notice under section 45 of the *Trade-marks Act* RSC 1985, c T-13 (the Act) on June 27, 2011 to Generation II Orthotics Inc., the registered owner at that time of registration No. TMA590,557 for the trade-mark G II (the Mark).

[2] The Mark is registered for use in association with the following wares: (1) Orthotics, namely knee braces; (2) Orthotics, namely elbow turnbuckles.

[3] Subsequent to the issuance of the notice, the Registrar was notified that, due to an amalgamation, Generation II Orthotics Inc. had changed its name to Ossur Canada Inc. (the Owner), effective January 2007. This change of name is not at issue in this proceeding.

[4] 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 June 27, 2008 and June 27, 2011.

[5] 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.

[6] 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)].

[7] In response to the Registrar’s notice, the Owner filed the affidavit of Tatjana Latinovic, Intellectual Property Manager of Össur hf, sworn on December 20, 2011. Only the Owner filed written representations; an oral hearing was not held.

[8] In her affidavit, Ms. Latinovic attests that the Owner, a wholly-owned subsidiary of Össur hf, has used the Mark in association with knee braces since at least as early as January 1997 in Canada. She explains that the Owner’s orthotic products are available through prescription and are fitted by medical professionals, such as rehabilitation doctors or Certified Prosthetists and Orthotists.

[9] At Exhibit A to her affidavit, Ms. Latinovic attaches photographs of two knee braces that she attests are illustrative of the Owner’s knee brace products during the relevant period. The Mark is prominently displayed on the knee braces.

[10] Ms. Latinovic further attests that the wholesale price of the Owner’s G II products range from \$75 to \$150, with annual revenues in association with the Mark ranging from approximately \$575,000 to \$945,000 during the relevant period in Canada. Attached as Exhibit B to Ms. Latinovic’s affidavit are copies of advertising and promotional materials that she attests are representative of those used by the Owner during the relevant period. I note that the Mark is referenced in the materials in relation to knee braces.

[11] In view of the foregoing, I am satisfied that the Owner has demonstrated use of the Mark in association with “Orthotics, namely knee braces” within the meaning of sections 4 and 45 of the Act.

[12] Ms. Latinovic does not assert use with respect to the remaining wares, “elbow turnbuckles”, and no evidence of use or of special circumstances excusing non-use of the Mark in association with these wares is before me. The registration will be amended accordingly.

Disposition

[13] 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 wares (2), “Orthotics, namely elbow turnbuckles”.

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