



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

**Citation: 2012 TMOB 74**  
**Date of Decision: 2012-04-27**

**IN THE MATTER OF A SECTION 45 PROCEEDING  
requested by Jedec Solid State Technology Association  
against registration No. TMA675,863 for the trade-mark  
MMC & Design in the name of Zhubai Gree Magneto-  
Electric Co., Ltd.**

[1] At the request of Jedec Solid State Technology Association (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 January 6, 2010 to Zhubai Gree Magneto-Electric Co., Ltd. (the Registrant), the registered owner of registration No. TMA675,863 for the trade-mark MMC & Design (the Mark), shown below:

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

Ink for photocopiers; toners for photocopiers, filled toner cartridges for printers, word processors and laser printers; ink for printers; diazo toners for photocopiers; personal stereo devices, namely MP3 players; personal stereo devices, namely MP4 players; computer memories, namely USB flash memory cards; blank integrated circuit cards, namely memory cards; computer peripherals; blank compact disks; blank floppy disks and blank optical disk.

[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 January 6, 2007 and January 6, 2010.

[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] 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 filed the affidavit of Zeng Zhixiong (the Affiant), General Manager of the Registrant, sworn on July 20, 2010. Only the Requesting Party filed written representations; an oral hearing was not held.

[7] The Affiant states that the Registrant is a Chinese company that sold its products bearing the Mark to customers in Canada during the Relevant Period through a distributor located in British Columbia. Specifically, the Affiant states that the Registrant sold the following five products: ink for photocopiers; toners for photocopiers, filled toner cartridges for printers, word processors and laser printers; ink for printers; diazo toners for photocopiers (the Wares).

[8] In support of this assertion of use, attached as Exhibits A through E of the affidavit are actual packaging or pictures of the packaging of each of the Wares sold in Canada during the Relevant Period. I note that the Mark appears prominently on the packaging of each product.

[9] As proof of sales during the Relevant Period, attached as Exhibit F are dozens of representative invoices, which the Affiant attests are randomly taken from the Relevant Period and confirm the sale of the Wares to Canadian customers. I note that some invoices refer to “MMC Packing” in the product description. In any event, attached as Exhibit I to the affidavit is a list of the product number codes used by the Registrant on its invoices and product brochures

to identify its products. I note that the product codes for the Wares correspond with the product codes appearing on the furnished invoices.

[10] Finally, in addition to further exhibits consisting of sample pamphlets and advertisements regarding the Wares displaying the Mark, attached as Exhibit G are representative copies of actual bills of lading from the Relevant Period, which the Affiant attests confirm delivery of the Wares to its Canadian distributor.

[11] Accordingly, in view of the foregoing, I am satisfied that there was use of the Mark in association with the Wares, as defined above, during the Relevant Period within the meaning of sections 4 and 45 of the Act.

[12] With respect to the remaining wares for which the Mark is registered, as the Requesting Party notes in its written representations, the evidence does not show or allege use of the Mark in association with those wares and no reasons are provided for the absence of such use.

#### Disposition

[13] In view of the foregoing, 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 the following wares:

personal stereo devices, namely MP3 players; personal stereo devices, namely MP4 players; computer memories, namely USB flash memory cards; blank integrated circuit cards, namely memory cards; computer peripherals; blank compact disks; blank floppy disks and blank optical disk.

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