



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

**Citation: 2013 TMOB 141
Date of Decision: 2013-08-30**

**IN THE MATTER OF A SECTION 45 PROCEEDING
requested by Sim & McBurney against registration
No. TMA140,681 for the trade-mark GLAMOUR Design
in the name of Garbo Group Inc.**

[1] At the request of Sim & McBurney (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 September 20, 2011 to Garbo Group Inc. (the Registrant), the registered owner of registration No. TMA140,681 for the trade-mark GLAMOUR Design (the Mark) shown below:



[2] On December 6, 2011, the Registrant amended the registration to delete some of the wares. As a result, the Mark is currently registered for use in association with the following: “Costume jewellery of all descriptions, including stone sets, metals and pearls” (the Wares).

[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 September 20, 2008 and September 20, 2011.

[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] 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 furnished the affidavit of Gary Grundman, President of the Registrant, sworn on April 17, 2012. The Registrant filed written representations; both parties participated in an oral hearing.

[7] Based on Mr. Grundman’s affidavit, it would appear that the Registrant is a wholesaler of jewellery whose customers include large retail department stores. Mr. Grundman attests that the Registrant receives customer purchase orders for its wares electronically; these orders are then sent to the Registrant’s warehouse for processing, which includes the picking, packing and shipping of the Wares to the customer.

[8] Mr. Grundman attests that the “approximate dollar value of sales in Canada of wares used in association with the [Mark] from years 2008 to 2010...are in excess of \$590,000.00.” At the oral hearing, the Requesting Party submitted that the affidavit is ambiguous as to whether these sales figures related solely to the Wares as registered, due to the fact that Mr. Grundman uses the word “wares” rather than the defined term “the Wares” as used elsewhere in the affidavit.

[9] Even if I were to accept the Requesting Party’s submission, I do not consider the dollar value of sales attested to by Mr. Grundman to be determinative in this case. Rather, the Registrant otherwise provides sufficient evidence of relevant sales in the normal course of trade

during the relevant period. In particular, attached to Mr. Grundman's affidavit are the following exhibits:

- Exhibit A consists of copies of what Mr. Grundman calls "program master file listings" dated December 31, 2008, December 31, 2009 and December 31, 2010 which show the Registrant's units sold on a year-to-date basis. Mr. Grundman attests that all of the units referred to in this exhibit are for the Wares bearing the Mark in Canada.
- Exhibits B, C, and D consist of "picking slips" and associated customer purchase order worksheets dated November 18, 2008, September 18, 2009 and April 14, 2010. Mr. Grundman attests that these are representative documents relating solely to the Wares bearing the Mark in Canada within the relevant period.
- Exhibit E consists of two invoices, which Mr. Grundman attests are representative with respect to Wares bearing the Mark in Canada during the relevant period. I note that each of the invoices are for customers in Canada.
- Exhibit F consists of samples of hang tags and labels, which Mr. Grundman attests were attached to the Wares sold in Canada during the relevant period. I note the hang tags and labels bear the Mark as registered.

[10] At the oral hearing, the Requesting Party submitted that Exhibit F fails to "show" use of the Mark with any particular ware as the hang tags filed in the exhibit do not have any jewelry attached. However, in his affidavit Mr. Grundman clearly attests that the hang tags and labels are representative of those attached to the Wares sold by the Registrant during the relevant period. In my view, given the nature of the Wares and the exhibited tags and labels, this is sufficient to "show" how the Mark was displayed in association with the Wares during the relevant period.

[11] In view of the foregoing, I am satisfied that the Registrant has demonstrated use of the Mark in association with the Wares as registered within the meaning of sections 4 and 45 of the Act.

Disposition

[12] Pursuant to the authority delegated to me under section 63(3) of the Act, the registration will be maintained in compliance with the provisions of section 45 of the Act.

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