



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

Citation: 2014 TMOB 31
Date of Decision: 2014-02-14

**IN THE MATTER OF SECTION 45 PROCEEDINGS
requested by Shapiro Cohen against registration
Nos. TMA333,860 and TMA396,053 for the trade-marks
E-ZEEWRAP and ENVIROLL SYSTEM E-ZEEWRAP
1000 Design in the name of Jim Scharf Holdings Ltd.**

[1] At the request of Shapiro Cohen, the Registrar of Trade-marks issued notices under section 45 of the *Trade-marks Act* RSC 1985, c T-13 (the Act) on February 14, 2012 to Jim Scharf Holdings Ltd. (the Registrant), the registered owner of registration Nos. TMA333,860 and TMA396,053 for the trade-marks E-ZEEWRAP and ENVIROLL SYSTEM E-ZEEWRAP 1000 Design. The latter mark is shown below:



[2] Registration No. TMA333,860 for the word mark is registered in association with the wares “plastic film wrap dispensers”.

[3] Registration No. TMA396,053 for the design mark is registered in association with the wares “dispensers of plastic wrap, aluminum foil and wax paper, including the plastic food film wrap, aluminum foil and wax paper refills for the said dispenser”.

[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 in both cases is between February 14, 2009 and February 14, 2012.

[5] The relevant definition of “use” is set out in section 4(1) of the Act as follows:

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] In response to the Registrar’s notices, the Registrant filed affidavits of Bruna Scharf, Chief Financial Officer of the Registrant, both sworn on May 7, 2012. Neither party filed written representations; an oral hearing was not held.

[7] In her affidavits, Ms. Scharf states that the Registrant’s E-ZEEWRAP plastic wrap dispensers and refills are sold, and were sold during the relevant period, online through the Registrant’s website (*www.ezeewrap.com*) and through major retailers.

[8] In support of her assertion of use with respect to the word mark, Ms. Scharf provides pictures of the Registrant’s plastic wrap dispensers displaying “E-ZEEWRAP” (Exhibits A, B, B1 and C) and representative invoices from the relevant period to Canadian customers showing sales of the dispensers (Exhibits B2, B3 and B4). As further corroboration, Ms. Scharf attaches printouts from the Registrant’s website (Exhibits A3, A4 and A5) and two retailer flyers (Exhibits D2 and D3), showing the E-ZEEWRAP dispensers available for sale during the relevant period.

[9] In view of the foregoing, I am satisfied that the Registrant has demonstrated use of the word mark in association with “plastic film wrap dispensers”.

[10] With respect to the design mark, Ms. Scharf provides similar evidence, namely pictures of the Registrant’s plastic wrap dispensers and refills displaying the design mark (Exhibits A,

A1, B, C) and representative invoices from the relevant period to Canadian customers showing sales of both dispensers and refills (Exhibit B1). Ms. Scharf also attaches printouts from the Registrant's website (Exhibits A2, A3, A4) and copies of the same two retailer flyers (Exhibits D1 and D2) showing the Registrant's plastic wrap dispensers and refills available for sale during the relevant period with the design mark prominently displayed on the packaging.

[11] However, with respect to the "aluminum foil and wax paper" portions of the statement of wares, Ms. Scharf's assertion of use in paragraph 2 of her affidavit is limited to "dispensers of plastic wrap, including the plastic food film wrap, for the said dispenser". Indeed, only plastic wrap dispensers and plastic wrap refills are depicted and referenced throughout the exhibits. As the Registrant submitted no evidence of special circumstances excusing non-use of the design mark in association with aluminum foil and wax paper dispensers and refills thereof, the registration for the design mark will be amended accordingly.

Disposition

[12] Accordingly, pursuant to the authority delegated to me under section 63(3) of the Act and in compliance with section 45 of the Act, registration No. TMA333,860 will be maintained.

[13] Pursuant to the authority delegated to me under section 63(3) of the Act and in compliance with section 45 of the Act, registration No. TMA396,053 will be amended to delete both instances of "aluminum foil and wax paper". The revised statement of wares will be as follows: "Dispensers of plastic wrap, including the plastic food film wrap refills for the said dispenser".

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