

SECTION 45 PROCEEDINGS
TRADE-MARK: THE SOURCE
REGISTRATION NO. 254,543

On June 18, 1990, at the request of Riches, McKenzie & Herbert, the Registrar forwarded a Section 45 notice to Source Telecomputing Corporation, the registered owner of the above-referenced trade-mark registration.

The trade-mark THE SOURCE was registered on January 2, 1981 for use in association with computer telephone access information services.

In response to the Registrar's notice, the registrant furnished the affidavit of Kent D. Stuckey. Both parties filed written submissions; no oral hearing was conducted.

In his affidavit, Mr. Stuckey states that his company sells computer telephone access information services to both businesses and individuals; the trade-mark THE SOURCE is used in association with these services by displaying it on the on-line screen which is viewed by subscribers. A copy of the on-line screen which Canadian subscribers currently see when they log on to THE SOURCE information service was submitted as Exhibit B. Mr. Stuckey further states that the trade-mark THE SOURCE has been used in Canada since before the Section 45 notice date and such use continues to date. As of June 1, 1990, affiant states that there were 255 Canadian subscribers utilizing THE SOURCE services.

In my opinion, the evidence filed clearly shows use of subject trade-mark in association with computer telephone access services as the trade-mark THE SOURCE is displayed in the performance of subject services as illustrated on the copy of the on-line screen submitted as Exhibit B. The mark is shown in the introduction to the services and also appears in three of the menu choices numbered 3, 4 and 10.

As to use at the material date, affiant states the materials attached as Exhibit B are representative of one way in which the trade-mark has been used in Canada since before June 18, 1990. The requesting party argues that the copy of the on-line screen is dated August 16, 1990, which is subsequent to the notice date and

therefore is irrelevant as evidence. The requesting party further submits that there is no evidence showing use of the trade-mark since before June 18, 1990 as claimed by registrant. I respectfully disagree with the requesting party.

Although the on-line screen copy is dated August 16, 1990, some of the content relates to use of THE SOURCE at dates prior to the issuance of the Section 45 notice. Specifically, the WELCOME mode reproduced in this copy refers to members having access to THE SOURCE computer services until August 1, 1989 at which time another information service would be combined therewith. Under the heading Choice 9:, August 1, 1989 is quoted as the effective date for new rates and terms for all members of THE SOURCE. Furthermore, the fact that as of June 1, 1990 there were 255 Canadian subscribers confirms that the services were being rendered in Canada at or immediately prior to the material date. In my opinion, the foregoing is sufficient to conclude that subject mark was in use at the material date pursuant to S. 4(2) of the Trade-marks Act.

The requesting party also argues that the affidavit was not filed by the registrant, but by the alleged present owner of the trade-mark, no recordal of a change having been made in the Trade-marks Office. In the case of a change of ownership the new owner must establish the date of said change by filing sufficient documents to allow the Registrar to conclude that the evidence in Section 45 proceedings is furnished by the registered owner, or a registered user, or persons entitled to recordal as such. (see Marcus carrying on business as Marcus & Associates v. Ouaker Oats Co. of Canada (1988) 20 C.P.R. (3d) 45). In the present instance, Source Telecomputing Corporation merged with CompuServe Corp. to form CompuServe Incorporated; this merger is dated December 18, 1989. The certificate of merger was filed in the Trade-marks Office and recorded on January 25, 1991; this evidence establishes that the owner of this trade-mark as of June 18, 1990 was in fact CompuServe Incorporated. Accordingly, the affidavit of Kent D. Stuckey as General Counsel of CompuServe Incorporated is considered to have been furnished by the registrant and any use shown therein is considered to be by the registrant.

While the requesting party may have preferred additional evidence from the registrant, I consider the evidence supplied to be sufficient to show use of the

trade-mark in association with the registered services. (see Aerosol Fillers Inc. v. Plough (Canada) Ltd., 53 C.P.R. (2d) 62 and Union Electric Supply Co. Ltd. v. Registrar of Trade-marks, 63 C.P.R. (2d) 56).

In view of the evidence filed in these proceedings, I have concluded that the trade-mark was in use at the material date in Canada in relation to the registered services and therefore, registration No. 254,543 ought to be maintained.

Registration No. 254,543 will be maintained in compliance with the provisions of S. 45(5) of the Trade-marks Act.

DATED AT HULL, QUEBEC,

THIS 30th DAY OF November . 1992.

{Mrs.) Denise Savard
Senior Hearing Officer
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