

SECTION 45 PROCEEDINGS  
TRADE-MARK: CHIC  
REGISTRATION NO. TMA297,727

On October 13, 2005, at the request of Heenan Blaikie LLP, the Registrar issued the notice prescribed by section 45 of the *Trade-marks Act*, R.S.C. 1985, c. T-13 (the “Act”) to Groupe International Travelway Inc./Travelway Group International Inc., the registered owner of registration No. TMA297,727 for the trade-mark CHIC. CHIC is registered in association with the following wares: luggage, sport bags, totes, travel accessories namely toiletry bags, shoe bags, shirt bags, travel bags for clothing, portfolios, brief cases, garment bags; facial tissues made of paper products.

Section 45 requires the registered owner of a trade-mark to indicate whether the mark has been used in Canada in association with each of the wares and services listed in the registration at any time during the three years preceding the date of the notice, in this case between October 13, 2002 and October 13, 2005. If the mark has not been used during that time period then the registered owner is required to indicate the date on which it was last used and the reason why it has not been used since that date.

What qualifies as use of a trade-mark is defined in s. 4 of the Act, which is reproduced below:

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.
- (2) A trade-mark is deemed to be used in association with services if it is used or displayed in the performance or advertising of those services.
- (3) A trade-mark that is marked in Canada on wares or on the packages in which they are contained is, when the wares are exported from Canada, deemed to be used in Canada in association with those wares.

In response to the s. 45 notice, the registered owner filed the affidavit of its Secretary-Treasurer, Gerry Shadeed. Only the registered owner filed a written argument. An oral hearing was not requested.

Mr. Shadeed informs us that the registered owner imports various merchandise into Canada and distributes such merchandise under various brand names and trade-marks to retailers throughout Canada. In particular, he attests that use of CHIC in Canada in association with the general class of wares comprising luggage, sport bags, totes, travel accessories namely toiletry bags, shoe bags, shirt bags, travel bags for clothing, portfolios, brief cases, and garment bags (the “Wares”) commenced since at least as early as October 1984. He then provides the following exhibits, all of which relate to the period between October 13, 2002 and October 13, 2005:

- photographs showing CHIC on a metal plate that is affixed to luggage, travel bags for clothing, totes and travel accessories namely toiletry bags;
- photographs showing CHIC embossed into the material of a portfolio, brief case, and sport bag;
- hang tags displaying CHIC, which were attached to the Wares;
- invoices that identify the wares as CHIC wares in the body of the invoices.

Mr. Shadeed also provides the total volume and value of CHIC Wares sold in Canada during each of the three material years.

Based on the foregoing, I am satisfied that the mark CHIC was in use in Canada in the normal course of trade in association with each of the Wares during the relevant time period. The Wares will therefore be maintained in the registration.

However, Mr. Shadeed has attested that the registered owner has not used CHIC in association with facial tissues made of paper products and the registered owner has consented to the removal of such wares from the registration.

Accordingly, registration TMA297,727 will be amended to remove “facial tissues made of paper

products” from the statement of wares, in accordance with the provisions of s. 45(5) of the Act.

DATED AT TORONTO, ONTARIO THIS 17th DAY OF OCTOBER 2007.

Jill W. Bradbury  
Member  
Trade-marks Opposition Board