

SECTION 45 PROCEEDINGS  
TRADE-MARK: HOMESTYLES  
REGISTRATION NO.: 432,142

On January 6, 2004 at the request of Hudson's Bay Company, the Registrar forwarded the notice prescribed under Section 45 of the Trade-marks Act to Sklar-Peppler Furniture Corporation, the registered owner of the above-referenced trade-mark registration.

The trade-mark HOMESTYLES is registered for use in association with the following wares:

“household furniture namely sofas, loveseats, sleeper sofas and chairs”.

Section 45 of the Trade-marks 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 and/or services listed on 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 use since that date. The relevant period in this case is any time between January 6, 2001 and January 6, 2004.

In response to the notice, the affidavit of Gerry Modjeski together with exhibits has been furnished. The registrant alone filed a written argument. An oral hearing has not been held in this case.

Mr. Modjeski is Executive Vice President, Sales and Marketing with Sklar-Peppler Furniture

Corporation (hereinafter “Sklar-Peppler”). He indicates that Sklar-Peppler is Canada’s leading manufacturer of upholstered residential furniture, that it manufactures a wide range of household furniture including sofas, loveseats, sleeper sofas and chairs, which are purchased by hundred of retailers across Canada for resale to the general consuming public.

He specifies that during the relevant period the registered owner has made extensive use throughout Canada of the trade-mark HOMESTYLES in connection with the registered wares. As Exhibit he provides representative leaflets and product literature used by the registered owner during the relevant period, all of which display the trade-mark HOMESTYLES.

He explains that HOMESTYLES is and has been used by the registered owner (before, during and after the relevant period) in connection with the registered owner’s customized furniture. He confirms that the materials marked Exhibit A to his affidavit have been used during the relevant period. In this regard, he states that at the retailers the materials are prominently displayed and used at the time the consumer places an order and purchases the furniture. He adds that the registered owner has sold a highly significant volume of such HOMESTYLES wares throughout Canada during the relevant period.

In my view, although the evidence furnished is not overwhelming, it contains sufficient facts to permit me to conclude that sales of the registered wares in the registrant’s normal course of trade were made in Canada during the relevant period.

The issue is whether the evidence shows that the trade-mark was linked to the wares in a manner satisfying the requirements of s-s. 4(1) of the Act.

The affidavit of Mr. Modjeski establishes that the trade-mark appears on leaflets and product literature prominently displayed at retailers and used at the time that consumers place an order and purchase the wares. I note that the materials in question refer to the trade-mark and to style numbers for the furniture. Considering that the furniture associated with the trade-mark is “customized furniture” I am prepared to conclude, based on the particular facts of this case, that the leaflets and product literature bearing the trade-mark which are used by the consumers when placing an order and purchasing the wares would provide the required notice of association between the trade-mark and the wares to the purchaser. In my view, as there would most likely be an agreement in place between the purchaser and the seller of the wares at the time of purchase of the wares, I accept that at that time some property rights in the furniture would be transferred to the purchaser of the wares. Thus, I accept that the use shown meets the requirement of s-s. 4(1) of the Act.

As I have concluded that the evidence shows that the trade-mark was in use in Canada in association with the registered wares during the relevant period, I conclude that the trade-mark registration ought to be maintained.

Registration No. 432,142 will be maintained in compliance with the provisions of Section 45(5)  
of the Act.

DATED AT GATINEAU, QUEBEC, THIS 15TH DAY OF MARCH 2007.

D. Savard  
Senior Hearing Officer  
Section 45 Division