

SECTION 45 PROCEEDINGS
TRADE-MARK: SNOW KING & DESIGN
REGISTRATION NO.: 459,714

On November 4, 1999, at the request of the Canadian Council of Professional Engineers, the Registrar forwarded a Section 45 notice to Tecumseh Products Company, the registered owner of the above-referenced trade-mark registration.

The trade-mark SNOW KING & DESIGN (shown below) is registered for use in association with the following wares: gasoline engines for snow throwers.



In response to the notice, the affidavit of Bruce B. Karr together with exhibits has been furnished. Each party filed a written argument. An oral hearing has not been requested.

In his affidavit, Mr. Karr states that he is Director of Marketing for the Engine and Transmission Group of Tecumseh Products Company. He mentions that he is very familiar with the sales of snowblower engines manufactured by his company that are sold into Canada installed on snowblowers. As Exhibit A he provides a photograph illustrating a SEARS CANADA snowblower model having an engine manufactured and sold by the registrant and shipped into Canada within the last three years, which photograph shows a label bearing the trade-mark affixed to the snowblower engine.

As Exhibit B, is another photograph of a SEARS CANADA snowblower sold within the last three years and bearing a different "SNOW KING WINTER ENGINEERED" label on the engine, which engine was manufactured and sold by the registrant. Exhibit C are the labels shown in the photographs. He then specifies that within the last three years, over 25,000 engines have been shipped into Canada bearing the trade-mark.

One argument raised by the requesting party is that the affidavit is inadmissible in view of the failure to include the date of execution and the date of commission. However, as stated in several Section 45 decisions, the Registrar is prepared to overlook these type of minor deficiencies in a Section 45 proceeding. Accordingly, I conclude that the affidavit is admissible in this case.

Concerning the use shown by the evidence, I agree with the registrant that the evidence shows in a simple, straightforward fashion use of the trade-mark.

Mr. Karr has indicated that over 25,000 engines were shipped into Canada bearing the trade-mark during the relevant period. It is true that he does not clearly state that the engines were shipped on their own, however, upon a fair reading of the affidavit this would appear to be the case.

Even if this was not the case, the evidence shows that the trade-mark is affixed to the engine of the snowblower consequently, the use shown is use with the registered wares namely “engines for snow throwers” whether the engines were shipped on their own or as part of snowblowers.

As stated in *United Grain Growers Limited v. Lang Michener, Federal Court of Appeal* decision dated February 20, 2001, Docket No. A-356-00, once it is determined that the trade-mark appears in association with the registered wares at the time of transfer of the registered wares in the normal course of trade, this satisfies the provisions of Section 4(1) and Section 45 of the Act.

I do agree that the black label submitted as part of Exhibit C bears a trade-mark that differs from the registered trade-mark. However, the red label, the second label of Exhibit C, clearly bears the trade-mark as registered. As Mr. Karr has shown such label to be in use during the relevant period (see paragraph 4 of the affidavit), then I am prepared to infer that a portion of the 25,000 engines shipped into Canada during the relevant period would have had affixed to them the red label bearing the trade-mark as registered.

As for the requesting party’s argument directed to the term “snowblowers”, I accept the registrant’s argument that “snowblowers” would fall under the category “snow throwers”.

Consequently, I am satisfied that the engines sold were “engines for snow throwers”.

In view of the above, I conclude that the trade-mark registration ought to be maintained.

Registration No. 459,714 will be maintained in compliance with the provisions of Section 45(5) of the Act.

DATED AT HULL, QUEBEC, THIS 17th DAY OF MAY 2001.

D Savard
Senior Hearing Officer
Section 45 Division