



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

Citation: 2014 TMOB 84
Date of Decision: 2014-04-17

**IN THE MATTER OF A SECTION 45 PROCEEDING
requested by Christopher Kingsley and Jason Kingsley
doing business in partnership against registration
No. TMA355,386 for the trade-mark A.D. 2000 & Design
in the name of CLG Consultants en Informatique Inc.**

[1] At the request of Christopher Kingsley and Jason Kingsley doing business in partnership (the Requesting Party), the Registrar of Trade-marks issued a notice under section 45 of the *Trade-marks Act* RSC 1985, c T-13 (the Act) on December 10, 2012 to CLG Consultants en Informatique Inc. (the Registrant), the registered owner of registration No. TMA355,386 for the trade-mark A.D. 2000 & Design (the Mark), shown below:



[2] The Mark is registered for use in association with the wares “logiciels” [*translation: software*] (the Wares).

[3] 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 and services 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 is between December 10, 2009 and December 10, 2012.

[4] For the purposes of this decision, the relevant definition of use is set out in section 4(1) of the Act:

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.

[5] It is well established that mere assertions of use are not sufficient to demonstrate use in the context of a section 45 proceeding [*Plough (Canada) Ltd v Aerosol Fillers Inc* (1980), 53 CPR (2d) 62 (FCA)]. Although the threshold for establishing use in these proceedings is quite low [*Woods Canada Ltd v Lang Michener et al* (1996), 71 CPR (3d) 477 (FCTD)], and evidentiary overkill is not required [*Union Electric Supply Co v Registrar of Trade Marks* (1982), 63 CPR (2d) 56 (FCTD)], sufficient facts must still be provided to permit the Registrar to arrive at a conclusion of use of the trade-mark in association with each of the wares or services specified in the registration during the relevant period.

[6] In response to the Registrar's notice, the Registrant filed a letter dated January 29, 2013 from Colette Tellier, the President of the Registrant, which was signed by a commissioner of oaths. The letter attaches a selection of documents.

[7] I note that the attached documents have not been specifically identified as exhibits and are not accompanied by jurats. In proceedings before the Registrar, the absence of proper jurats in association with exhibits will not necessarily be fatal, particularly in cases where the objection is raised at such a late stage that the party which submitted the evidence has little or no opportunity to correct the deficiency. The Requesting Party has not even raised the issue in the present case. Under the circumstances, I consider that the failure to include jurats in association with the exhibits to Ms. Tellier's letter amounts to a mere technical deficiency. Based on the foregoing, I am willing to accept Ms. Tellier's sworn letter and accompanying exhibits as an affidavit which satisfies the requirements of section 45(2) of the Act.

[8] Both parties filed written representations but a hearing was not held.

Has the Registrant evidenced use of the Mark during the relevant period?

[9] In her affidavit, Ms. Tellier makes the sworn statement that the Registrant calls its specialised software for dentists “AD2000”. She also states that the Registrant has hundreds of customers for this software. She does not, however, provide any details as to the Registrant’s normal course of trade, or how the Mark is associated with the Wares or any reference to sales of the Wares during the relevant period.

[10] Ms. Tellier attaches a selection of documents to her affidavit. For the reasons that follow, I find that none of them are sufficient to establish use of the Mark in the normal course of trade in association with the Wares during the relevant period.

[11] Ms. Tellier makes reference to the Registrant’s website *www.ad2000.info*. However, she does not provide any materials printed from this website, or any information as to how or if the Mark is displayed on the website.

[12] Ms. Tellier attaches sample copies of the Registrant’s stationery (blank envelope, order form and invoice sheet). While these documents feature the Mark, Ms. Tellier does not provide any information to create a link between these documents and the Wares.

[13] Ms. Tellier also attaches to her affidavit a copy of an email to the Registrant from a third party. Firstly I note that the email, being from a third party, is inadmissible hearsay. In any event, there is no reference in the email to a sale of the Registrant’s software, or more importantly any information as to how the Mark was linked to the Wares at the time of transfer. Furthermore, the Mark is not even found in the email.

[14] Ms. Tellier also attaches to her affidavit two invoices from dental organizations that contracted the Registrant to act as an exhibitor at two dental conferences. As with the email, these invoices, being from third parties, are inadmissible hearsay. In any event, the invoices make no reference to sales of the Wares, provide no information as to the manner in which the Mark is associated with the Wares at the time of transfer, and finally the Mark is not found in the invoices. Rather, there is merely a reference to “AD2000” as referring to the Registrant’s corporate name.

[15] As a result, I find that there is no evidence which demonstrates use of the Mark in association with the Wares in the normal course of trade during the relevant period. Furthermore, the Registrant has failed to provide any reasons justifying the non-use during the relevant period.

Disposition

[16] In view of the foregoing, pursuant to the authority delegated to me under section 63(3) of the Act, the registration will be expunged in compliance with the provisions of section 45 of the Act.

Andrea Flewelling
Member
Trade-marks Opposition Board
Canadian Intellectual Property Office