

SECTION 45 PROCEEDINGS  
TRADE-MARK: AXOR & DESIGN  
REGISTRATION NO: TMA 513,827

On May 11, 2005, at the request of Mendelsohn LLP (the “requesting party”), the Registrar forwarded a notice under section 45 of the *Trade-marks Act* to Axor SNC di Policante Franco & C., the registered owner of the above referenced trade-mark (the “registrant”).

The trade-mark AXOR & DESIGN (shown below) is registered for use in association with the following wares:

Converters for the control and the regulation of the speed of electric motors; electrical and electronical equipment composed of electrical circuits to control electric motors and/or actuators with respect to industrial robots; electric drives, electric servomotors, position transducers.



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Section 45 of the *Trade-marks Act*, R.S.C. 1985, c. T-13, 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. In this case, the relevant period for showing use is any time between May 11, 2002 and May 11, 2005.

“Use” in association with wares is set out in subsection 4(1) of the *Trade-marks Act*:

A trade-mark is deemed to have been 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.

In response to the Registrar's notice, the affidavit of Franco Policante together with Exhibits was furnished. Neither the registered owner nor the requesting party submitted written arguments; an oral hearing was not held in this case.

The following Exhibits are attached to the affidavit:

- A) Catalogue pages printed between September 2002 and January 2005 bearing images of the registrant's wares;
- B) Copies of product descriptions from the registrant's website at [www.axorindustries.com](http://www.axorindustries.com);
- C) Copies of products available for sale in Canada from the registrant's Canadian distributor at [www.drivesystemsgroup.com](http://www.drivesystemsgroup.com);
- D) Photographs of the registrant's products as sold in Canada;
- E) Copies of invoices from the registrant to the Canadian distributor from November 2000 to June 2005;
- F) Copies of invoices from the Canadian distributor to the registrant for advertising of the products from April 2002 to August 2004.

As the relevant period is between May 11, 2002 and May 11, 2005, I have disregarded some invoices in Exhibit E dated outside of the relevant period. With respect to Exhibits B and C, I note that the date when these websites were accessed lie subsequent to the notice and will be disregarded as evidence of use; however, I do find the product descriptions therein useful in understanding the nature of the wares and in linking them to the wares in the registration since in some cases they are referred to in the affiant's exhibits in more technical terms than the broader descriptions that appear in the registration. On a fair reading of all of the material in the affidavit I find that the catalogue pages and photographs depict wares bearing the trade-mark in association with "convertors for the control and regulation of the speed of electric motors", "electric

drives” and “electrical and electronical equipment composed of electrical circuits to control electric motors and/or actuators with respect to industrial robots” (Exhibits A and D). Invoices (Exhibit E) confirm that each of these wares was sold during the relevant period, as the corresponding model numbers from the catalogue pages appear in the invoices. These wares shown in the catalogue pages and in the photographs are clearly marked with the subject trade-mark. Therefore, I conclude that the registrant has used the trade-mark AXOR & DESIGN in association with the aforementioned wares and they ought to be maintained on the trade-mark register.

From the descriptions of the wares in the catalogue, the registrant also appears to have sold “electric servomotors” and “position transducers” during the relevant period. The images of these wares in the catalogue pages do not appear marked with AXOR & DESIGN, however I am willing to infer that they were marked in a manner similar to the wares referred to in the preceding paragraph on the basis of Mr. Policante’s statement (paragraph 6) that asserts that each of his company’s products is identified with the subject trade-mark at the time of sale in the manner shown in the catalogue. The invoices in Exhibit E list corresponding model numbers that evidence sales of each of these wares during the relevant period. Consequently, I conclude AXOR & DESIGN was used in association with these wares during the relevant period. As a result, “electric servomotors” and “position transducers” should also be maintained on register.

For the foregoing reasons, I conclude that there has been use of the trade-mark for all of the registered wares within the meaning of sections 45 and 4(1) of the *Act*. Accordingly, TMA 513,827 for AXOR & DESIGN will be maintained on the Register in compliance with the provisions of subsection 45(5) of the *Trade-marks Act*, R.S.C. 1985, c. T-13.

DATED AT GATINEAU, QUEBEC, THIS 19th DAY OF DECEMBER 2007.

P. Heidi Sprung

Member, Trade-marks Opposition Board