



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

Citation: 2014 TMOB 81
Date of Decision: 2014-04-14

**IN THE MATTER OF A SECTION 45 PROCEEDING
requested by Coastal Trademark Services against
registration No. TMA722,724 for the trade-mark
CHAPMAN'S in the name of Edward Chapman Ladies'
Shop Limited**

[1] At the request of Coastal Trademark Services (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 April 19, 2012 to the Edward Chapman Ladies' Shop Limited, (the Registrant), the registered owner of registration No. TMA722,724 for the trade-mark CHAPMAN'S (the Mark).

[2] The Mark is registered for use in association with the services "retail sale of ladies' clothing and accessories". Pursuant to sections 12(2) and 32 of the Act, the registration is restricted to the province of British Columbia.

[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 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 April 19, 2009 and April 19, 2012.

[4] The relevant definition of "use" is set out in section 4(2) of the Act:

4(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.

[5] In view of the restriction to the registration, the Registrant must demonstrate use of the Mark in the province of British Columbia.

[6] In response to the Registrar's notice, the Registrant furnished the affidavit of John Rea, President of the Registrant, sworn on June 28, 2012. Both parties filed written representations and attended an oral hearing.

Preliminary Issues

[7] The Requesting Party raised two preliminary issues. The first issue is that Mr. Rea identifies the registered owner as "Edward Chapman's Ladies Shops Ltd" in paragraph 1 of his affidavit, without explaining the relationship between this entity and the Registrant.

[8] However, the Registrant submits that the discrepancies are in the nature of a typographical error and that no separate entity was intended to be identified.

[9] I agree that, when the evidence is viewed as a whole, this would appear to be the case. Indeed, the Registrant is correctly identified as "Edward Chapman Ladies' Shop Limited" in the style of cause at the top of Mr. Rea's affidavit. References to the Registrant in Exhibits A and B also make it clear that the affidavit is with respect to use of the Mark by the Registrant as opposed to some other similarly-named entity. In this regard, it is well established that technical deficiencies should not be a bar to a successful response to a section 45 notice where there is sufficient evidence to conclude the trade-mark was in use [see *Baume & Mercier SA v Brown carrying on business as Circle Import* (1985), 4 CPR (3d) 96 (FCTD) and *Bereskin & Parr v 3056678 Canada Inc* (2004), 34 CPR (4th) 566 (TMOB)].

[10] The second issue raised by the Requesting Party is that Mr. Rea does not indicate how he has personal knowledge of the facts he attests to in his affidavit; therefore, the Requesting Party submits that the affidavit must be considered inadmissible.

[11] However, the Registrant submits that affidavits are regularly provided by senior officials in section 45 proceedings, and notes that Mr. Rea identifies himself as the President of the

Registrant [citing *Smart & Biggar v Jarawan* (2006), 52 CPR (4th) 26 (FCTD); and *A & A Jewellers Ltd v Messrs Malcolm Johnston & Associates* (2000), 8 CPR (4th) 56 (FCTD)].

[12] I agree with the Registrant that due to the responsibilities associated with Mr. Rea's position as President, it can reasonably be inferred that he would "have personal knowledge of the matters herein deposed" as he attests in paragraph 1 of his affidavit. This is consistent with the purpose and scope of section 45 of the Act, which is to provide a simple, summary and expeditious procedure for removing "deadwood" from the register [*Uvex Toko Canada Ltd v Performance Apparel Corp* (2004), 31 CPR (4th) 270 (FC)].

Evidence of use

[13] In his affidavit, Mr. Rea attests that the Registrant is a ladies clothing and accessories retail chain, which operated in five locations throughout the Greater Vancouver area during the relevant period. In support of his assertion of use of the Mark during the relevant period, Mr. Rea provides the exhibits described below.

[14] Exhibit C consists of two photographs that Mr. Rea attests were taken at the Registrant's Oakridge Centre retail location in Vancouver. Mr. Rea explains that the first photograph depicts the signage displayed at this location "until at least the end of September 2009", while both photographs display images of the goods available for sale in the store. I note in the first photograph that the Mark is displayed above the cash register area with the words "LADIES SHOP" in smaller lettering beneath the Mark. Both photographs also depict various types of ladies clothing, handbags and accessories available for sale.

[15] Exhibit D consists of copies of six sales receipts that Mr. Rea attests are representative of the sales receipts issued by the Registrant to customers at the Oakridge Centre store during the relevant period. The sales receipts detail item descriptions for various types of ladies clothing and accessories sold and are dated during the relevant period. The name of the Registrant appears at the top of the sales receipts.

[16] In its representations, the Requesting Party submits that as the Mark is not displayed on the sales receipts, the sales receipts do not demonstrate use of the Mark. While it is true that the

sales receipts do not display the Mark, I am satisfied that they are representative of sales made at the Oakridge location and corroborate the Registrant having performed the retail services as registered in British Columbia during the relevant period.

[17] Exhibit E consists of three photographs taken after the relevant period, displaying the signage at the Registrant's South Surrey retail location. Mr. Rea explains that the Registrant re-used the signage from the Oakridge Centre location after it was removed during renovations in September 2009. Mr. Rea explains that the sign was relocated to the South Surrey location on April 26, 2012.

[18] The Requesting Party notes that the signage at the South Surrey location was installed after the relevant period and further submits that Mr. Rea's claim that the Registrant intended to install the signage from Oakridge at the South Surrey location prior to the issuance of the section 45 notice was not demonstrated. As discussed below, given the display of the signage at the Oakridge Centre location during the relevant period, issues regarding the signage at the South Surrey location are moot.

[19] In this respect, the Requesting Party submits that the photograph depicting the signage at Exhibit C is undated and the image of the signage is not clear. It submits that only the letters C, H, A and P are clearly displayed, and that it is not possible to accurately discern the remaining letters.

[20] Although the photograph at Exhibit C is not the best quality, I am satisfied that the signage reads CHAPMAN'S and appears in the Oakridge Centre store above the cash register. Any uncertainty as to the wording on the sign is clarified by the photographs at Exhibit E which, as attested to by Mr. Rea, show the same signage albeit in a different location and after the relevant period. As such, based on the photograph at Exhibit C and Mr. Rea's statements in his affidavit, I am satisfied that the Registrant was offering the retail services as registered in association with the Mark during the relevant period.

[21] In view of the foregoing, I am satisfied that the Registrant has demonstrated use of the Mark in association with the registered services in British Columbia during the relevant period within the meaning of sections 4(2) and 45 of the Act.

Disposition

[22] Accordingly, pursuant to the authority delegated to me under section 63(3) of the Act and in compliance with the provisions of section 45 of the Act the registration will be maintained.

Andrew Bene
Hearing Officer
Trade-marks Opposition Board
Canadian Intellectual Property Office