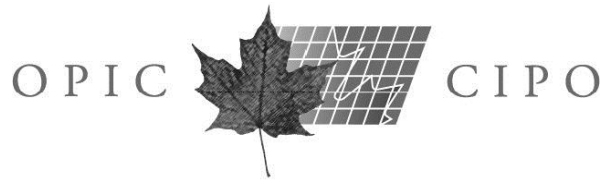


Translation



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

Reference: 2013 TMOB 9
Date of Decision: 15/01/2013

IN THE MATTER OF THE SECTION 45 PROCEEDINGS, undertaken at the request of Audet & Associés Avocats Inc. regarding Registration No. TMA684,327 of the SOUTIEN FAMILIAL CHEZ-SOI trade-mark and design in the name of Centre de Soutien su Réseau Familial.

[1] On December 10, 2010, at the request of Audet & Associés Avocats Inc. (the Requesting Party), the registrar sent the notice stipulated in Section 45 of the *Trade-marks Act*, RSQ 1985, c T-13 (the Act) to Centre de Soutien au Réseau Familial, (the Registered Owner) in order to prove use of the SOUTIEN FAMILIAL CHEZ-SOI trade-mark and design as presented below:



(the Mark)

in association with the assistance services for non-independent persons, specifically sitting, help with personal hygiene, help with meals, dressing, accompaniment to activities of daily living and social activities (Services).

[2] Section 45 of the Act requires the Registered Owner to show that it has used its trademark in Canada in association with each of the Wares and/or Services specified in the registration at any given time during the three years preceding the date of the notice or, if not, provide the date on which it was last used and the reason for its absence of use since this date. The relevant period in this case is therefore from December 10, 2007 to December 10, 2010 (the Relevant Period).

[3] The procedure pursuant to Section 45 is simple and expeditious, and serves to clear “deadwood” from the register. According, the threshold to establish use of the Mark, within the meaning of Section 4 of the Act, during the Relevant Period is not very high [see *Woods Canada Ltd v. Lang Michener* (1996), 71 CPR (3d) 477 (CF)]. There is no requirement to produce abundant evidence. However, any ambiguity in the evidence will be interpreted against the Registered Owner of the Mark.

[4] In reply to the notice, the Registered Owner submitted the affidavit of Suzanne Tardif, executive director of the Registered Owner. None of the parties produced written representations and a hearing was not held.

[5] In paragraph 4 of her affidavit, Ms. Tardif states that the Mark is still used in association with the Services. However, it requires more than a mere assertion to prove the use of a mark. It requires facts that are proven and which lead the registrar to conclude in the use of the Mark in Canada during the Relevant Period in association with each of the Services [see *Plough (Canada) Ltd v. Aerosol Fillers Inc* (1980) 53 CPR (4th) 62 (CAF)].

[6] In paragraph 5 of her affidavit, Ms. Tardif claims that the Mark was used in the Registered Owner’s monthly publication entitled *Le Courant*. She referred to specific issues and the pages on which the advertisement appeared. However, no copies of this publication were submitted in support of her affidavit.

[7] She goes on to describe the purpose of this publication and to whom it was distributed, and claims it has a circulation is 200-300 copies per month. Once again, no copies of this publication were submitted, even less so a copy of the advertisement to which Ms. Tardif refers.

[8] Ms. Tardif claims that the Mark is used in a flyer entitled "*Pour que la vie chez soi puisse continuer!*" used to promote the Services. She indicates to whom this flyer is distributed and states that approximately 1,600 copies of this flyer are distributed per year.

[9] However, as with the publication *Le Courant* in which the Mark is claimed to appear, no copies of this flyer were attached to Ms. Tardif's affidavit.

[10] Ms. Tardif concludes her affidavit in stating that the Registered Owner intends to maintain the use of the Mark, since it is known by clients regarding the Services that it offers.

[11] Unfortunately for the Registered Owner, the only evidence on file are the claims by Ms. Tardif regarding the use of the Mark in association with the Services in Canada during the Relevant Period. Although the threshold of proof may be minimal, it requires nonetheless more than mere assertions. Under the circumstances, the addition of supporting documents was essential. Without a copy of this publication or the flyer illustrating use the Mark in association with the Services, there is an absence of proof of use of the Mark in Canada within the meaning of subsection 4(2) of the Act during the Relevant Period.

[12] In exercising the authority delegated to me pursuant to the provisions of subsection 63(3) of the Act, the Registration No. TMA684,327 will be struck from the register, the whole in compliance with the provisions of Section 45 of the Act.

Jean Carrière
Member
Trade-marks Opposition Board
Canadian Intellectual Property Office

Traduction certifiée conforme
Alan Vickers