

SECTION 45 PROCEEDINGS
TRADE-MARK: DEXLON
REGISTRATION NO. TMA 154,512

On September 14, 1989, at the request of Marks & Clerk acting on behalf of The Dexter Corporation, the Registrar forwarded a Section 45 notice to American Seating Company, the registered owner of the above-referenced trade-mark registration.

The trade-mark DEXLON was registered on December 8, 1967 for use in association with the wares "chair seats and backs molded of plastic material".

In reply to the Registrar's notice the registrant furnished the affidavit of Albert H. Meyer. Only the requesting party submitted a written submission; there was no oral hearing.

The affidavit filed is in my view ambiguous. It does not contain a clear assertion of use of the trade-mark DEXLON in association with the registered wares "chair seats and backs molded of plastic material". Furthermore, it does not contain any information as to the registrant's normal course of trade in association with the wares.

What Mr. Meyer states is that American Seating still uses the mark in Canada as a trade name for its plastic parts to its stadium chairs; that the "product which DEXLON is used on has been shipped into Canada as evidenced by Exhibit B". Exhibit B is an invoice of the registrant dated December 22, 1986 (almost three years preceding the date of the Section 45 notice) which makes reference to "10,925 # 306 Stadium Chairs, to be manufactured in Canada". Without further details such an invoice cannot be considered evidence of a sale of the registered wares by the registrant, and furthermore, it does not show any use of the trade-mark as defined in Section 4(1) of the Act in association with the registered wares.

Mr. Meyer then states that "DEXLON plastic is an integral part of the American Seating's stadium chairs as evidenced by Exhibit C, a copy of specifications". The specifications are for Stadium Chairs, Model 406 (which is not the model referred to in the invoice of December 22, 1986). From the specifications submitted as Exhibit C it would appear that the trade-mark DEXLON identifies the

plastic material to be used in the construction of the "backs" .and "seats" as opposed to the finished products covered by the registration.

Mr. Meyer concludes by stating that "American Seating continues to promote its products which include DEXLON" and "American Seating still uses DEXLON as a trade-mark for its plastic components to its stadium products".

Having reviewed the evidence filed in this case, I find myself in complete agreement with the requesting party that the evidence as filed is clearly deficient in that it does not show use of the trade-mark at the material date in association with the registered wares in the manner prescribed by Section 4(1) of the Act.

Therefore, I can only conclude that the trade-mark was not in use in Canada in association with the registered wares at the material date. Consequently, its registration ought to be expunged.

Registration No. 154,512 will be expunged in compliance with the provisions of Section 45(5) of the Trade-marks Act.

DATED AT HULL, QUEBEC, THIS *29th* DAY OF May 1992.

(Mrs.) Denise Savard
Senior Hearing Officer
Section 45