



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

**Citation: 2014 TMOB 65**  
**Date of Decision: 2014-03-20**

**IN THE MATTER OF A SECTION 45 PROCEEDING  
requested by Shapiro Cohen against registration  
No. TMA465,401 for the trade-mark SIGNATURE in the  
name of Sunwing Vacations Inc./Vacances Sunwing Inc.**

[1] At the request of Shapiro Cohen, the Registrar of Trade-marks issued a notice under section 45 of the *Trade-marks Act* RSC 1985, c T-13 (the Act) on November 7, 2011 to Sunwing Vacations Inc./Vacances Sunwing Inc. (the Owner), the registered owner of registration No. TMA465,401 for the trade-mark SIGNATURE (the Mark).

[2] The Mark is registered for use in association with the services “operation of a travel agency; travel and tour services”.

[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 November 7, 2008 and November 7, 2011.

[4] The relevant definition of “use” in association with services 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] It is well established that the purpose and scope of section 45 of the Act is to provide a simple, summary and expeditious procedure for removing “deadwood” from the register and, as such, the evidentiary threshold that the registered owner must meet is quite low [*Uvex Toko Canada Ltd v Performance Apparel Corp* (2004), 31 CPR (4th) 270 (FC)].

[6] In response to the Registrar’s notice, the Owner filed the affidavit of Anna Tarkowski, Director of Marketing of the Owner, sworn on May 31, 2012 in Toronto, Ontario. Only the Owner filed written representations; an oral hearing was not held.

[7] As a preliminary matter, Ms. Tarkowski attests that while the Mark was owned by the Owner throughout the relevant period, the Owner’s name changed more than once during the relevant period due to various corporate name changes and amalgamations. However, these name changes are not at issue in this proceeding.

[8] In her affidavit, Ms. Tarkowski states that the Owner is one of the largest tour operators in Canada and is registered with the Travel Industry Council of Ontario, which governs all travel agencies, travel retailers and travel wholesalers that operate in Ontario. She attests that, in association with the Mark, the Owner offers packaged vacations and tours to various destinations throughout Mexico, Central America and the Caribbean, with direct flights from 30 cities across Canada.

[9] More specifically, Ms. Tarkowski attests that the Owner arranged flight and hotel accommodations for customers in association with the Mark during the relevant period. She explains that the Owner performs its services in Canada through a website (the Website) associated with the domain names *signature.ca* and *signaturevacations.com*. She states that the Website had over 29,000,000 unique visitors during the relevant period. She also explains that customers can book vacation packages offered in association with the Mark through third parties such as Expedia and Travelocity. With respect to the Website, Ms. Tarkowski provides the following exhibits:

- Exhibit A consists of a printout of the homepage of the Website as it appeared on February 22, 2012. I note that the Mark is displayed on the Website as “Signature.ca” along with information relevant to vacation deals. Ms. Tarkowski confirms that the Mark

was displayed on the Website during the relevant period in a manner consistent with Exhibit A.

- Exhibits B and C consist of printouts of the homepage of the Website as it appeared on October 30, 2010 and February 10, 2009, respectively. Ms. Tarkowski states that she obtained these exhibits through the Internet Archive service, which is available from *www.archive.org*. I note that the Mark is displayed on the homepage in both exhibits. Again, Ms. Tarkowski confirms that the Mark displayed on the exhibits is consistent with the manner it was depicted on the Website during the relevant period.

[10] Ms. Tarkowski states that the revenue for the services offered by the Owner in association with the Mark during the relevant period exceeded \$800,000,000. She also attests that the Owner has spent a substantial amount of money on advertising the services provided in association with the Mark. Specifically, she states that the total advertising expenditures for newspaper and radio advertisements exceeded \$2,000,000 during the relevant period.

[11] In support, Ms. Tarkowski attaches Exhibits D through J to her affidavit. These exhibits consist of copies of advertisements that ran in the *Toronto Star* and *Vancouver Sun* during the relevant period. I note that, along with information regarding the services, the advertisements display the Mark.

[12] Ms. Tarkowski also provides copies of two brochure covers at Exhibits K and L. She attests that the cover pages are from a 2010-2011 brochure and a 2008-2009 brochure, respectively. I note that the cover pages display the Mark. She explains that the 2010-2011 brochure was distributed across Canada from approximately September 2010 to February 2011 and the 2008-2009 brochure was distributed across Canada from approximately September 2008 to February 2009.

[13] In view of all of the foregoing, I am satisfied that the Owner has demonstrated use of the Mark in association with the registered services during the relevant period within the meaning of sections 4 and 45 of the Act.

#### Disposition

[14] 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.

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