

TRADUCTION/TRANSLATION

PROCEEDING UNDER SECTION 45
TRADE-MARK: ARMOURLITE
REGISTRATION NO.: 367,516

On July 17, 2001, at the request of Messrs. Riches, McKenzie & Herbert, the Registrar issued the notice prescribed in section 45 of the *Trade-marks Act* to Sediver Société Européenne d'Isolateurs en Verre et Composite (sometimes carrying on business under the name of SEDIVER), the registered owner of the above-captioned registration.

The ARMOURLITE trade-mark is registered in association with the following wares:

High-tension composite insulators.

Section 45 of the *Trade-marks Act* requires that the registered owner of the trade-mark indicate whether, with respect to each of the wares or services listed in the registration, the trade-mark was in use in Canada at any time during 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 response to the notice, the affidavit of Giulio Rocchetti was filed. Only the registered owner filed a written argument. A hearing was not requested in this proceeding.

In his affidavit, Mr. Rocchetti states that he is the Commercial and Marketing Director of the owner company. He defines the owner's principal activity as being the production and marketing throughout the world of tempered glass insulators to be used in the field of electricity. He submits that between July 17, 1998 and July 17, 2001, the owner used the mark to identify the products sold in Canada. He states that the owner has a number of subsidiaries worldwide, one of them being Sediver Canada Inc., which distributes the ARMOURLITE products in Canada.

As item GR-1, he filed an explanatory brochure presenting the range of products manufactured and distributed by the owner in Canada as elsewhere. The ARMOURLITE composite insulators are described at pages 28 and 29 of this brochure. For illustrative purposes he filed two copies of invoices issued by the Canadian distributor concerning the sale of the registration wares, copies of explanation sheets accompanying submissions, and copies of purchase orders.

In my opinion, the evidence as a whole is sufficient to enable me to conclude that the trade-mark has been used in Canada in association with the wares described in the registration during the relevant period. The invoices filed by way of illustration confirm that there were some sales of the wares during the relevant period in the owner's normal course of trade. I also conclude that at the time of transfer of the ware, notice of association between the mark and the ware was given to the purchaser in accordance with the provisions of section 4(1) of the Act. In this regard, I am satisfied that the mark is drawn to the attention of the purchaser by the explanatory sheet accompanying the submission to the purchaser which the purchaser would have had in its possession at the time of transfer of the ware. Since the purchase of the ware is based on a

submission by the owner, I think it is reasonable to infer that at the time of receipt of the wares the purchaser will check the explanation sheet accompanying the submission to ensure that the ware received is consistent with the ware described on the explanation sheet.

In view of the foregoing, I conclude that the registration of the mark should be maintained given that the demonstrated use is consistent with the requirements of the Act.

Registration No. 367,516 will be maintained in accordance with the provisions of section 45(5) of the Act.

DATED AT GATINEAU, QUEBEC, THIS 11TH DAY OF JUNE 2003.

D Savard
Senior Hearing Officer
Section 45