

TRANSLATION/TRADUCTION



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

Citation: 2010 TMOB 118
Date of Decision: 2010-07-30

**IN THE MATTER OF A SECTION 45 PROCEEDING
requested by Bereskin & Parr against registration
No. TMA513,877 for the trade-mark FLEXI LAME
BLADE & Design in the name of Le Groupe Jean Coutu
(PJC) Inc.**

[1] On July 29, 2008, at the request of Bereskin & Parr (the Applicant), the Registrar forwarded a notice pursuant to section 45 of the *Trade-Marks Act*, R.S.C. 1985, c. T-13 (the Act) to Le Groupe Jean Coutu (PJC) Inc. (the Registered Owner), to establish the use of the FLEXI LAME BLADE & Design trade-mark (the Mark), certificate of registration TMA513,877, covering the following wares: razor blades (the Wares).

[2] Section 45 of the Act requires the registered owner of a trade-mark to show that it was in use in Canada in association with each of the wares and/or services specified in the registration at any time during the three-year period immediately preceding the date of the notice and, if not, to furnish the date when it was last so in use and the reason for the absence of such use since that date. Therefore, the relevant period in this case is from July 29, 2005, to July 29, 2008 (the Relevant Period).

[3] Case law tells us that there is no need to show use of the Mark by evidentiary overkill and that the purpose of section 45 proceedings is to remove the "deadwood" from the register [see *Plough (Canada) Ltd. v. Aerosol Fillers Inc.* (1980), 53 C.P.R. (2d) 62].

[4] In response to the notice, the Registered Owner of the Mark filed the affidavit of Guy Jinchereau together with Exhibits P1 and P-2. The Registered Owner filed written arguments, and neither of the parties requested a hearing.

[5] Mr. Jinchereau has held the position of Director, Private Label, with the Registered Owner since October 26, 2006. He explained that for almost 40 years, the Registered Owner has been operating a franchise network in the pharmaceutical and parapharmaceutical sectors. The Registered Owner sells in its franchises, among other things, several products under its private labels, including the Mark.

[6] Mr. Jinchereau stated that the Registered Owner had been using the Mark in association with the Wares in the normal course of its trade in Canada without interruption since its registration in August 1999. The Wares sold in association with the Mark are manufactured for the Registered Owner and sold by it in its franchises in Quebec, Ontario and New Brunswick.

[7] Mr. Jinchereau stated that the Registered Owner currently used, and had used without interruption since its date of registration, the Mark on the packaging of the Wares, and he filed a colour copy of such packaging (Exhibit P-1) on which the Mark appears.

[8] Mr. Jinchereau provided the number of units sold of the Wares for the periods from September 2005 to August 2006, September 2006 to August 2007 and September 2007 to August 2008, as well as the retail sales figures for each of those periods. Finally, he filed copies of invoices (Exhibit P-2) showing the sale of Wares bearing the Mark. These invoices were issued by the Registered Owner during the Relevant Period to clients in Canada. Mr. Jinchereau provided the code associated with the Wares so that they could be identified on the filed invoices. He stated that the Wares were sold in packaging identical to that attached to his affidavit.

[9] From this evidence I conclude that the Registered Owner has met its burden of establishing use of the Mark in Canada, within the meaning of subsection 4(1) of the Act, during the Relevant Period in association with the Wares.

[10] Pursuant to the authority delegated to me under subsection 63(3) of the Act, registration No. TMA513,877 shall be upheld pursuant to section 45 of the Act.

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

Certified true translation
Francie Gow, BCL, LLB