



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

**Citation: 2014 TMOB 57**  
**Date of Decision: 2014-03-14**

**IN THE MATTER OF A SECTION 45 PROCEEDING  
requested by Cruise Connections Canada against  
registration No. TMA660,957 for the trade-mark CME  
AT SEA in the name of Sea Courses Inc.**

[1] At the request of Cruise Connections Canada, the Registrar of Trade-marks issued a notice under section 45 of the *Trade-marks Act* RSC 1985, c T-13 (the Act) on March 13, 2012 to Sea Courses Inc. (the Owner), the registered owner of registration No. TMA660,957 for the trade-mark CME AT SEA (the Mark).

[2] The Mark is registered for use in association with the following services: “Travel agency services; organization of cruises featuring educational conferences for medical professionals; organization of educational conferences for medical professionals; conducting educational conferences for medical professionals”.

[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 March 13, 2009 and March 13, 2012.

[4] The 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 Dr. Martin Gerretsen, Director of Continuing Health Education of the Owner, sworn on June 4, 2012 in Vancouver, British Columbia. Only the Owner filed written representations; an oral hearing was not held.

#### Evidence of Use

[7] Dr. Gerretsen attests that the Owner is a registered travel agency in British Columbia that focuses on combining boat cruises with educational conferences for medical professionals. He attests that the first such “cruise/conference” organized by the Owner was a cruise from Vancouver, B.C. to Alaska and back in 1995. Since then, the owner has organized more than 200 cruises/conferences at a variety of locations around the world, and in recent years has averaged one cruise/conference every two to three weeks. He attests that, during the relevant period, the Owner organized 58 cruises/conferences, 12 of which departed from and/or returned to Canadian ports and which travelled at least in part in Canadian waters. Attached as Exhibit S to his affidavit is a photograph of a banner displayed at one of these cruises/conferences during the relevant period; the Mark appears prominently on the banner.

[8] Dr. Gerretsen attests that the Owner’s principal clients have been and remain medical professionals, and further that the Owner’s educational sessions have been on a wide variety of medical topics presented by experts in their particular field. He attests that the Owner is responsible for organizing and conducting these education sessions as well as for organizing the travel arrangements of its attendees. Of the more than 2750 attendees during the relevant period, Dr. Gerretsen estimates that at least 80% were Canadian.

[9] In his affidavit and through the attached exhibits, Dr. Gerretsen provides extensive evidence of use of the Mark during the relevant period in association with the advertising and performance of the registered services. With respect to the Owner's advertising, Dr. Gerretsen attaches to his affidavit numerous examples of advertising material distributed by the Owner to clients and potential clients in Canada during the relevant period. These include print advertisements appearing in Canadian medical publications (Exhibits A through G), faxes sent to Canadian physicians (Exhibit H), lists of upcoming cruises/conferences distributed by mail and e-mail (Exhibit I), brochures regarding particular cruises/conferences (Exhibit J) and electronic newsletters (Exhibit N). All of these materials reference the registered services in some fashion and display the Mark. He further attests that the Owner incurred expenses of more than \$167,000 during the relevant period in respect of advertising for its CME AT SEA cruises/conferences.

[10] Dr. Gerretsen also provides, at Exhibit L, printouts from the Owner's website, *seacourses.com*, which he attests is substantially identical to how the website appeared during the relevant period. I note that the Mark is displayed on the website in association with the Owner's cruise/conference services. Dr. Gerretsen also provides evidence in the form of printouts of the Owner's presence on Facebook (Exhibit M) and YouTube (Exhibit O) in association with the Mark during the relevant period.

[11] At Exhibits P, Q and R, Dr. Gerretsen provides copies of the materials representative of those distributed to attendees of the Owner's cruises/conferences during the relevant period. I note that the Mark is prominently displayed on the materials.

[12] Noting that the exact amount of revenue the Owner has generated in performing its services is "commercially-sensitive and confidential", Dr. Gerretsen simply states that the Owner has "generated revenues in the millions of dollars in performing the Services in association with the Mark during the [relevant period]."

[13] In view of the extensive evidence submitted, 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