

SECTION 45 PROCEEDINGS
TRADE-MARK: R.V. SUPERSTORE
REGISTRATION NO.: TMA 391,493

On April 9, 1997 at the request of Gowling, Strathy & Henderson, the Registrar forwarded a Section 45 notice to Peden Recreation Vehicle Ltd., the registered owner of the above-referenced trade-mark registration.

The trade-mark R.V. SUPERSTORE is registered for use in association with the following services: operation of a retail business dealing in recreational vehicles and parts and accessories therefor.

In response to the Registrar's notice, a statutory declaration and an affidavit of Gary John Peden have been furnished. Neither party filed a written argument and an oral hearing was not requested.

Having considered the evidence furnished, I conclude that it shows use of R.V. SUPERSTORE in Canada as a trade-mark in association with the registered services during the relevant period, namely between April 9, 1994 and April 9, 1997.

Mr. Peden's declaration does not show use of the registered trade-mark. However, his affidavit does. Mr. Peden is the President of the registrant and he attests that it has used R.V. SUPERSTORE in association with the operation of a business dealing in recreational vehicles and parts and accessories therefor and to advertise and promote its business of selling recreational vehicles since 1987. He attaches as exhibits to his affidavit a photograph of signage that has been displayed outside his business since 1991, an excerpt from a newspaper dated April 29, 1992, and a copy of "Peden R.V. News" dated February 12, 1997.

The 1992 newspaper cannot show use of the mark between the relevant dates, i.e. between April 9, 1994 and April 9, 1997.

The signage (as best as I can tell from the photograph provided) reads, on the left hand side, PEDEN R.V. in smaller letters on the first line in one colour, SUPER in larger letters on the second line in a second colour, and STORE in letters the same size as SUPER on the third line in a third colour. On the right hand side, the signage displays the outline of a R.V. vehicle with the word PEDEN superimposed in the top half in large letters and the words R.V. SUPER STORE superimposed below in smaller letters. The left hand side of the sign does not show use of the registered trade-mark as the presentation of the words associates R.V. more with Peden than with SUPER STORE. The right hand side of the sign arguably is use of the registered mark as R.V. SUPER STORE is presented altogether on its own line. Of course, the registered mark is R.V. SUPERSTORE, not R.V. SUPER STORE, but the difference between the two is negligible. As the mark in use is not substantially different from the registered mark and

the deviation is not such as to deceive or injure the public, I conclude that use of R.V. SUPER STORE constitutes use of R.V. SUPERSTORE [Nightingale Interloc Ltd. v. Prodesign Ltd. (1984), 2 C.P.R. (3d) 535 (T.M.O.B.)].

The February 12, 1997 newsletter shows use of PEDEN R.V. SUPERSTORE. As these words are all in the same type and letter size and appear on a single line, I do not find that such is use of R.V. SUPERSTORE simpliciter, even though (appears at the end of the line.

Bearing in mind that the requesting party has chosen not to file written arguments in these proceedings and that the intent and purpose of Section 45 is to remove deadwood from the Register, I conclude that the right-hand side of the signage shows use of the trade-mark in association with the registered services by the registered owner during the relevant time period. The trade-mark registration ought therefore to be maintained.

Registration No. TMA 391,493 will be maintained in compliance with the requirements of Subsection 45(5) of the Trade-marks Act.

DATED AT TORONTO, ONTARIO THIS 4th DAY OF FEBRUARY, 1999.

Jill W. Bradbury
Hearing Officer