

SECTION 45 PROCEEDINGS
TRADE-MARK: MULTIMAT
REGISTRATION NO.: 349,539

On July 27, 2000 at the request of Messrs. Riches, McKenzie & Herbert, the Registrar forwarded a Section 45 notice to Rematech Div. Bremo Inc., the registered owner of the above-referenced trade-mark registration.

The trade-mark MULTIMAT is registered for use in association with the following wares: Tapis en caoutchouc pour usages multiples et, notamment, pour arénas et étables.

Section 45 of the Trade-marks 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 wares and/or services listed on 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 use since that date.

In response to the notice, the affidavit of Alain Jolicoeur together with exhibits has been furnished. Each party filed a written argument. An oral hearing has not been requested in this case.

In his affidavit Mr. Jolicoeur states that since the date of registration of the trade-mark in December 1988, the registrant has used the trade-mark in the marketing and sale of its wares

namely the wares described in the registration and shown in the brochure attached to his affidavit. He submits that notice of the association between the trade-mark and the wares sold is given to the purchaser as clearly shown by the invoices attached to his affidavit.

The brochure clearly refers to the trade-mark MULTIMAT “a multi-purpose matting...” and at the back thereof the advantages of having a MULTIMAT mat are described. Further, several examples of different applications are provided, i.e. for arenas and sport installations, fairs, marinas and boats...”.

The invoices bear dates within the relevant period and show sales by the registrant of MULTIMAT mats.

The requesting party’s main arguments are as follows:

1. Mr Jolicoeur states himself to be the “mandataire dûment autorisé”. He does not in fact state that he is an employee of the registrant nor does he provide information which would enable the Registrar to conclude that he has any direct knowledge of the ordinary course of trade of the registrant’s business.
2. The evidence fails to establish use of the trade-mark in association with the wares specified in the registration and in the manner complying with Section 4(1) of the Act.

Concerning the first argument, Mr. Jolicoeur has identified himself to be “mandataire dûment autorisé de la compagnie Rematech Division Bremo Inc.”.

Although it would have been preferable if he had identified his position within the company,

without a clear indication to the contrary, I am not prepared to conclude that his statements constitutes hearsay and ought to be disregarded.

Concerning whether the evidence shows use in association with the wares as listed on the trade-mark registration, I am satisfied that it does. The registered wares are “rubber mats for various uses and, in particular, for use in arenas and stables”. The brochure submitted in evidence clearly advertises the registrant’s multi-purpose mat and clearly describes that it can be used for different purposes such as for arenas, fairs, etc. and the invoices clearly confirm that the registrant’s mats were sold during the relevant period.

The requesting party has argued that the evidence fails to show the manner the trade-mark was associated with the wares at the time of transfer of the wares in the normal course of trade and it argues that the fact that the trade-mark appears on the invoices is insufficient to provide the notice required under Section 4(1) of the Act as there is no clear evidence that the invoices accompanied the wares at the time of transfer of the wares. The requesting party relied on the case *Riches, McKenzie & Herbert v. Pepper King Ltd.*, 8 C.P.R. (4th) 471.

As properly argued by the registrant, the present case is distinguishable from the Pepper King case. Three invoices in the present case show “cash” sales. Therefore, I am prepared to infer that when the customer received the goods it would have been provided with the invoice so that the amount thereon could be paid.

Consequently, I am satisfied that the invoices would have accompanied the wares and would have constituted notice of association between the trade-mark and the wares in the manner required by Section 4(1) of the Trade-marks Act as the trade-mark is clearly identified in the body of the invoices with the product. (*Gordon A. MacEachern Ltd. v. National Rubber Co. Ltd.* 41 C.P.R. 159.)

In view of the above, I conclude that the trade-mark registration ought to be maintained.

Registration No. 349,539 will be maintained in compliance with the provisions of Section 45(5) of the Act.

DATED AT HULL, QUEBEC, THIS 28th DAY OF MARCH 2002.

D Savard
Senior Hearing Officer
Section 45 Division