



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

**Citation: 2013 TMOB 13**  
**Date of Decision: 2013-01-18**

**IN THE MATTER OF A SECTION 45 PROCEEDING  
requested by Hat World Inc. against registration  
No. TMA688,442 for the trade-mark MINILIDS &  
Helmet Design in the name of Minilids Inc.**

[1] At the request of Hat World Inc. (the Requesting Party), the Registrar of Trade-marks issued a notice under section 45 of the *Trade-marks Act* RSC 1985, c T-13 (the Act) on June 23, 2011 to MINILIDS Inc. (the Registrant), the registered owner of registration No. TMA688,442 for the trade-mark MINILIDS & Helmet Design (the Mark), shown below:



[2] The Mark is registered for use in association with the following wares: miniature toy helmets (the Wares).

[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 wares and 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 June 23, 2008 and June 23, 2011 (the Relevant Period).

[4] The relevant definition of “use” in association with wares is set out in section 4(1) of the Act:

4(1) A trade-mark is deemed to be used in association with wares if, at the time of the transfer of the property in or possession of the wares, in the normal course of trade, it is marked on the wares themselves or on the packages in which they are distributed or it is in any other manner so associated with the wares that notice of the association is then given to the person to whom the property or possession is transferred.

[5] It is well established that mere assertions of use are not sufficient to demonstrate use in the context of section 45 proceedings [*Plough (Canada) Ltd v Aerosol Fillers Inc* (1980), 53 CPR (2d) 62 (FCA)]. Although the threshold for establishing use in these proceedings is quite low [*Woods Canada Ltd v Lang Michener* (1996), 71 CPR (3d) 477 (FCTD)], and evidentiary overkill is not required [*Union Electric Supply Co Ltd v Registrar of Trade Marks* (1982), 63 CPR (2d) 56 (FCTD)], sufficient facts must still be provided to permit the Registrar to arrive at a conclusion of use of the trade-mark in association with each of the wares specified in the registration during the relevant period.

[6] In response to the Registrar’s notice, the Registrant furnished the affidavit of Neil Finkelman, sworn on September 20, 2011 in Ottawa, Ontario. Both parties filed written representations; an oral hearing was not held.

[7] In his brief affidavit, Mr. Finkelman identifies himself as the accountant for the Registrant and he states that, in this position, he has access to the corporate files and records of the Registrant. He attests that he “searched corporate records for sales of the MINILIDS Helmet”, and he attaches, as Exhibits 1 and 2, two invoices “showing sales of the MINILIDS Helmet”.

[8] Both invoices show sales from the Registrant to companies located in Ontario during the Relevant Period. The Exhibit 1 invoice provides a product description that reads “English helmet – 41 red/black/white” and “French helmet – 7 red/black/white”. The Exhibit 2 invoice provides a

product description that reads “Mini helmets on a bungee style cord – 1500 English, 500 French”.

[9] Although it can be concluded that the invoices show sales of the Wares during the Relevant Period, I agree with the Requesting Party’s submissions that the invoices do not display the Mark, and that the Registrant fails to provide any evidence that shows how the Mark was associated with the Wares. No evidence is furnished that shows the Mark on the Wares or the packaging of the Wares, nor is there any evidence of how the Mark may otherwise have been associated with the Wares at the time of transfer.

[10] Furthermore, aside from the two invoices, Mr. Finkelman provides no description of the normal course of trade through which the Registrant sells the Wares.

[11] In view of the foregoing, I cannot conclude that the Registrant has demonstrated use of the Mark in association with the Wares within the meaning of sections 4 and 45 of the Act. Furthermore, the Registrant has provided no evidence of special circumstances excusing the absence of such use.

#### Disposition

[12] In view of the foregoing, pursuant to the authority delegated to me under section 63(3) of the Act, the registration will be expunged in compliance with the provisions of section 45 of the Act.

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Andrew Bene  
Hearing Officer  
Trade-marks Opposition Board  
Canadian Intellectual Property Office