

SECTION 45 PROCEEDINGS
TRADE-MARK: LUXMAN
REGISTRATION NO.: TMA 167,137

On March 12, 2002, at the request of Automobility Distribution Inc., the Registrar forwarded a Section 45 notice to Lux Kabushiki Kaisha, [now e-Lux Kabushiki Kaisha (e-Lux Corporation)], the registered owner of the above-referenced trade-mark registration.

The trade-mark LUXMAN is registered for use in association with the following wares: “Electric machinery and apparatus and other goods which fall in this class namely record players, tape recorders, pick up cartridge arm, phono-motors, hi fidelity output transformers, power transformers, modulation transformers, input transformers, A.F. choke coils, B. type A.F. choke coils, nickel core A.F. transformers, rotary switches, toggle switches, moulded tube sockets, moulded rotary switches, moulded knobs, stereo amplifier, stereo pre-amplifier, stereo tuner, channel selector, speaker system and parts therefor.

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. The relevant period in this case is anytime between March 12, 1999 and March 12, 2002.

In response to the notice, the affidavit of Masahiro Funayama together with exhibits has been furnished. Neither party filed a written argument. An oral hearing has not been requested in this case.

Mr. Funayama states that the registrant is a manufacturer of audio amplifiers and other audio equipment. He indicates that the trade-mark is in use and was in use during the relevant period in association with each of the registered wares. As Exhibit “A”, he provides a photograph of a typical amplifier showing the trade-mark; as Exhibit “B” he

encloses a photograph of a typical compact disc player showing the trade-mark LUXMAN; as Exhibit "C" he provides photographs of typical switching boxes associated with the trade-mark; as Exhibit "D" is a photograph of a typical "AC power tap". As Exhibit "E", he provides a brochure which displays, describes, promotes and advertises the LUXMAN line of audio products. He states that the registrant through its distributor has distributed this brochure in Canada to customers and potential customers during the three-year period preceding the date of his affidavit (i.e. October 10, 2002). As Exhibit "F" he provides four typical invoices bearing dates during the relevant period and he states that they relate to audio products identified by the trade-mark LUXMAN.

Having considered the evidence, I find it is sufficient to permit me to conclude that the trade-mark has been used in Canada in association with the registered wares during the relevant period. Mr. Funayama has described the registrant's normal course of trade with respect to the wares and has provided examples of the manner the trade-mark is associated with the wares at the time of their transfer in the normal course of trade. Further, he has provided typical invoices in support of his statement that sales of the wares were made in Canada during the relevant period.

As the use shown by the evidence is use complying with subsection 4(1) and Section 45 of the Act, I conclude that the trade-mark registration ought to be maintained.

Registration No. TMA 167,137 will be maintained in compliance with the provisions of Section 45(5) of the Trade-marks Act.

DATED AT GATINEAU, QUEBEC, THIS 21ST DAY OF OCTOBER 2004.

D. Savard
Senior Hearing Officer
Section 45 Division

