



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

**Citation: 2017 TMOB 68**  
**Date of Decision: 2017-06-14**

**IN THE MATTER OF A SECTION 45 PROCEEDING**

**Barrette Legal Inc.**

**Requesting Party**

**and**

**Biologische Heilmittel Heel GmbH**

**Registered Owner**

**TMA383,470 for TRAUMEEL**

**Registration**

[1] At the request of Barrette Legal 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 April 21, 2015, to Biologische Heilmittel Heel GmbH (the Owner), the registered owner of registration No. TMA383,470 for the trade-mark TRAUMEEL (the Mark).

[2] The Mark is registered for use in association with the following goods:

(1) Pharmaceutical preparation for the treatment of sprains, dislocations, contusions, effusions of blood and effusions into a joint, fractures, commotio cerebri, post-operative and post-traumatic oedemas and swelling of the soft tissues, inflammatory degenerative processes in organs and tissues, parodontitis, paradentosis and suppuration of the gingival pockets.

(2) Veterinary preparations, namely homeopathic drugs useful in animals to relieve muscle and joint pain and to relieve pain, inflammation and bruising associated with injuries such as sprains, dislocations, contusions; sanitary preparations for medical purposes namely, ointments for applying and massaging, soothing and refreshing irritated skin, the treatment of slow-healing, contused, lacerated and defective wounds, congelation, skin burns, inflammations of the skin, improvement of skin appearance and that gives skin smoothness, softness and feeling of comfort; food for babies; materials for

dressings, namely, plasters and bandages; material for stopping teeth; dental wax; preparations for destroying vermin; fungicides, herbicides; cardboard; printed matter, namely books, brochures; greeting cards, magazines, newspapers, post cards, journals, instructional manuals, newsletters, pamphlets, booklets; photographs; stationery, namely, binders, envelopes, folders, labels, invitations, note pads, pencils, erasers, paper; adhesives for stationery or household purposes; paint brushes; typewriters; instructional and teaching material (except apparatus) in the field of medicine and pharmaceuticals in the form of books, journals, video tapes, case studies, charts, on-line tutorials, interactive games or puzzles, photographs; printers' type; printing blocks.

[3] The Mark is also registered for use in association with the following services:

(1) Medical services namely the provision of homeopathic drugs, conducting courses for physicians and other persons interested in homeopathic drugs and their uses.

(2) Publishing a newsletter or other periodic informational publications namely brochures and magazines for educating subscribers about homeopathic drugs and their uses.

(3) Publishing a website about homeopathic drugs and their uses.

(4) Veterinary services.

[4] 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 goods and services specified in the registration at any time within the three-year period immediately preceding the date of the notice and, if not used, the date when the trade-mark was last used and the reason for the absence of use since that date. In this case, the relevant period for showing use is between April 21, 2012 and April 21, 2015.

[5] The relevant definitions of "use" are set out in sections 4(1) and 4(2) of the Act as follows:

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

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.

[6] It is well established that 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 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 goods and services specified in the registration during the relevant period [*John Labatt Ltd v Rainer Brewing Co et al* (1984), 80 CPR (2d) 228 (FCA)].

[7] In response to the Registrar's notice, the Owner furnished the affidavit of Frédéric Chaumet, sworn on July 10, 2015 in Baden-Baden, Germany. Neither party filed written representations; a hearing was not requested.

#### The Owner's Evidence

[8] In his affidavit, Mr. Chaumet states that he is the Head of Global Marketing for the Owner. He attests that the Owner has been selling pharmaceutical preparations and homeopathic drugs for the treatment of humans and animals under the Mark in Canada for over 20 years. He states that the Owner also sells "an assortment of non-medical products under the brand name". Mr. Chaumet indicates that such products are distributed in Canada through Heel Canada Inc.

[9] Mr. Chaumet attests that he "examined the accounting records of [the Owner] and Heel Canada Inc. with regards to years 2012-2014". Accordingly, he attaches to his affidavit, as Exhibit A, "a compilation of the annual sales figures relating to the above mentioned "Traumeel" products." He also attaches, as Exhibit B, "a representative sample of invoices from the years 2012-2014 relating to the above mentioned "Traumeel" products."

[10] Exhibit A consists of two tables showing quantities and dollar amounts of sales for TRAUMEEL "Tablets", "Ampoules", "Gel", "Ointments" and "Liquids" for 2012, 2013 and 2014. No specification of the goods is provided in the tables.

[11] Similarly, the 19 invoices at Exhibit B show sales of TRAUMEEL products to Canadian customers during the relevant period. However, the products are listed simply as, for example, “Traumeel S 100 Oint CA”, “TRAUMEEL S 30 LIQ CA” and “TRAUMEEL Topical Ointment”. Nevertheless, I note that some of the invoices are to veterinary services customers, including a sale of “TRAUMEEL VET 5 amp” to Port Perry Veterinary Services in Ontario during the relevant period.

[12] Attached as Exhibit C to Mr. Chaumet’s affidavit is “a representative sample of product packaging, advertisements and the like showing how we use the mark in commerce.” The exhibit includes eight representations of packaging for TRAUMEEL products. Some of the packaging indicates that the product is in the nature of a “Homeopathic preparation used to relieve muscle pain and inflammation associated with injuries (sprains, dislocations, contusions)”. The packaging for “50 g topical ointment” describes the product as a “homeopathic preparation used to relieve pain, inflammation and bruising associated with injuries such as sprains, dislocations, contusions; to relieve muscle and joint pain”. The packages include reference to Heel Canada Inc.

[13] The last page of the exhibit appears to be an advertisement from the May 2014 issue of *Best Health* magazine, for a TRAUMEEL product in tablet and ointment form. Consistent with the aforementioned packaging, the advertisement indicates that the product is for “Relief from pain and inflammation in muscles and joints”.

[14] With respect to the Owner’s services, Mr. Chaumet simply states that the Owner also uses the Mark on services “such as providing homeopathic drugs, conducting courses about homeopathic drugs and their uses and services to veterinarians.” He goes on to state that the Owner also provides “information about homeopathic drugs, etc. under the brand name such as newsletters, brochures, websites, and the like.”

### Analysis

[15] First, with respect to the registered services, although Mr. Chaumet asserts use of the Mark, none of the exhibits demonstrate use of the Mark in association with such services. As can be seen in the summary of the evidence above, Mr. Chaumet merely asserts that the Mark was

used in the provision of services. However, he provides no evidence to show use, such as examples of the referenced newsletters or webpages displaying the Mark as registered. Furthermore, Mr. Chaumet makes no reference to such services being provided during the relevant period in Canada or otherwise.

[16] Accordingly, I am not satisfied that the Owner has demonstrated use of the Mark in association with the registered services within the meaning of sections 4 and 45 of the Act.

[17] With respect to the registered goods, I note that Mr. Chaumet does not explicitly correlate the exhibited invoices or packaging with any particular registered good. However, in view of the evidence as a whole, and in particular the descriptions from the exhibited packaging, I accept that the evidenced sales of various “Traumeel” tablets and ampoules correspond to goods (1), being “Pharmaceutical preparation for the treatment of [a variety of inflammatory conditions]”.

[18] Similarly, given the evidenced sales of TRAUMEEL “ointments” and the descriptions of the goods on the exhibited “ointment” packaging, I accept that the Owner has shown transfers of TRAUMEEL-branded “sanitary preparations for medical purposes namely, ointments [for the treatment of various skin injuries and conditions]”.

[19] Furthermore, I accept that the evidenced sales of TRAUMEEL-branded products to veterinary businesses correspond to the registered goods “Veterinary preparations, namely homeopathic drugs useful in animals to relieve muscle and joint pain and to relieve pain, inflammation and bruising associated with injuries such as sprains, dislocations, contusions”.

[20] With respect to the remaining registered goods in goods (2), the affidavit and accompanying exhibits are silent. Although Mr. Chaumet makes a vague reference to sales of “an assortment of non-medical products under the brand name”, he provides no evidence of transfers of such non-medical products in Canada during the relevant period or otherwise.

[21] In view of all of the foregoing, and in the absence of representations from either party, I am only satisfied that the Owner has demonstrated use of the Mark in association with goods (1) and “veterinary preparations...” and “sanitary preparations...” from goods (2) within the meaning of sections 4 and 45 of the Act. As there is no evidence of special circumstances excusing non-use of the Mark before me, the registration will be amended accordingly.

## Disposition

[22] 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 amended to delete the statement of services and the following from goods (2):

... food for babies; materials for dressings, namely, plasters and bandages; material for stopping teeth; dental wax; preparations for destroying vermin; fungicides, herbicides; cardboard; printed matter, namely books, brochures; greeting cards, magazines, newspapers, post cards, journals, instructional manuals, newsletters, pamphlets, booklets; photographs; stationery, namely, binders, envelopes, folders, labels, invitations, note pads, pencils, erasers, paper; adhesives for stationery or household purposes; paint brushes; typewriters; instructional and teaching material (except apparatus) in the field of medicine and pharmaceuticals in the form of books, journals, video tapes, case studies, charts, on-line tutorials, interactive games or puzzles, photographs; printers' type; printing blocks.

[23] The amended statement of goods will be as follows:

(1) Pharmaceutical preparation for the treatment of sprains, dislocations, contusions, effusions of blood and effusions into a joint, fractures, commotio cerebri, post-operative and post-traumatic oedemas and swelling of the soft tissues, inflammatory degenerative processes in organs and tissues, parodontitis, paradentosis and suppuration of the gingival pockets.

(2) Veterinary preparations, namely homeopathic drugs useful in animals to relieve muscle and joint pain and to relieve pain, inflammation and bruising associated with injuries such as sprains, dislocations, contusions; sanitary preparations for medical purposes namely, ointments for applying and massaging, soothing and refreshing irritated skin, the treatment of slow-healing, contused, lacerated and defective wounds, congelation, skin burns, inflammations of the skin, improvement of skin appearance and that gives skin smoothness, softness and feeling of comfort.

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

**TRADE-MARKS OPPOSITION BOARD  
CANADIAN INTELLECTUAL PROPERTY OFFICE  
APPEARANCES AND AGENTS OF RECORD**

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No Hearing Held

**AGENTS OF RECORD**

Nicola M. Hunt

For the Registered Owner

Barrette Legal Inc.

For the Requesting Party