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

**Citation: 2018 TMOB 164**

**Date of Decision: 2018-12-27**

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

**MLT Aikins LLP**

**Requesting Party**

**and**

**Travelbrands Inc.**

**Registered Owner**

**TMA661,604 for GET AWAY, YOUR  
WAY**

**Registration**

[1] This is a decision involving a summary expungement proceeding with respect to registration No. TMA661,604 for the trade-mark GET AWAY, YOUR WAY (the Mark), owned by Travelbrands Inc.

[2] The Mark is currently registered in association with the following services:

Travel agency services, namely, making reservations and bookings for transportation, travel, excursion and cruises and making reservations and bookings for temporary lodging, restaurants and meals; tour services, namely, tour conducting or escorting services and tour guide services.

[3] For the reasons that follow, I conclude that the registration ought to be maintained.

THE PROCEEDINGS

[4] On April 28, 2017, the Registrar of Trade-marks sent a notice under section 45 of the *Trade-marks Act*, RSC 1985, c T-13 (the Act) to Travelbrands Inc. (the Owner). The notice was sent at the request of MLT Aikins LLP (the Requesting Party).

[5] The notice required the Owner to furnish evidence showing that it had used the Mark in Canada, at any time between April 28, 2014 and April 28, 2017, in association with each of the services specified in the registration. If the Mark had not been so used, the Owner was required to furnish evidence providing the date when the Mark was last in use and the reasons for the absence of use since that date.

[6] The relevant definition of use is set out in section 4(2) of the Act as follows:

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.

[7] It is well established that the purpose and scope of section 45 of the Act is to provide a simple, summary, and expeditious procedure for removing “deadwood” from the register and, as such, the evidentiary threshold that the registered owner must meet is quite low [*Uvex Toko Canada Ltd v Performance Apparel Corp*, 2004 FC 448, 31 CPR (4th) 270]. While “evidentiary overkill” is not required [see *Union Electric Supply Co v Canada (Registrar of Trade Marks)* (1982), 63 CPR (2d) 56 (FCTD) at para 3], sufficient facts must nevertheless be provided to allow the Registrar to conclude that the trade-mark was used in association with each of the registered services.

[8] In response to the Registrar’s notice, the Owner furnished the affidavit of Sam Youssef, the Director of Integrated Marketing of the Owner, sworn November 24, 2017, together with Exhibits A and B.

[9] The parties neither filed written representations nor requested an oral hearing in the matter.

## THE EVIDENCE

[10] Mr. Youssef states that the Owner provides travel agency services, travel packages and tour packages to Canadians. The group of companies (the Group), he explains, which includes the Owner among others. He attests that the trade-marks owned by the companies of the Group are cross-licensed to one another such that each company of the Group can use all of the trade-marks owned collectively by the Group.

[11] With respect to use of the Mark in Canada, Mr. Youssef provides as Exhibits A and B to his affidavit respectively, copies of the Owner's USA 2016 and Europe 2017 travel brochures. He states that 60,000 copies of the USA 2016 brochure and 40,000 copies of the Europe 2017 brochure were printed and then distributed to travel agents in Canada, including approximately 63 travel agencies operated by the Group. He states that the brochures were presented to prospective customers to solicit bookings and that many such solicitations resulted in reservations made by the agents for the travel packages described in the brochures. The Mark clearly appears in the brochures, including on their front covers. The brochures feature travel packages which include bookings for flights, hotels, tours, excursions, cruises, and restaurants.

[12] The USA 2016 brochure appears to be from "Holiday House", which is stated in the brochure to be a wholly-owned division of the Owner, while the Europe 2017 brochure refers directly to the Owner. The USA 2016 brochure indicates that, to make a booking, you can "simply call or visit your travel agent and they will contact Holiday House for reservations." The Europe 2017 brochure similarly states, "simply call or visit your travel agent and they will contact TravelBrands for reservations."

## ANALYSIS AND REASONS FOR DECISION

[13] It is well established that the interpretation of "performance of services in Canada" for the purposes of section 4(2) is quite broad. As long as the services "are performed without the Canadian customer having to leave Canada", and the trade-mark is used in association with the services, that is sufficient to demonstrate "use" (*Saks & Co v Canada (Registrar of Trade Marks)* (1989), 24 CPR (3d) 49 (FCTD; see also *Bedwell v Mayflower* (1999), 2 CPR (4th) 543, and; *Société Nationale des Chemins de Fer Français SNCF v Venice Simplon-Orient-Express, Inc*

(2000), 9 CPR (4th) 443 (FCTD) aff'g 64 CPR (3d) 87). However, there has to be “performance” of the services in Canada or at the very least the services have to be available to be performed in Canada; advertising in Canada alone is insufficient to demonstrate use. Use of a trade-mark on advertising in Canada of services only available in the United States does not satisfy the provisions of section 4(2) [*Porter v Don the Beachcomber* (1966), 48 CPR 280 (Ex Ct)]. Where the trade-mark owner is offering and prepared to perform the services in Canada, use of the trade-mark on advertising of those services meets the requirements of section 4(2) [see *Wenward (Canada) Ltd v Dynaturf Co* (1976), 28 CPR (2d) 20].

[14] Additionally, while the word “services” is not defined in the Act, services are generally granted a generous or broad interpretation [*Aird & Berlis v Virgin Enterprises Ltd* (2009), 78 CPR (4th) 306 (TMOB)], and include those services which may be considered “incidental” or “ancillary” [*Kraft Ltd v Registrar of Trade Marks* (1984), 1 CPR (3d) 457 (FCTD)].

[15] In the present case, it is clear from the evidence that a consumer is able to book and arrange all of the services specified in the registration through travel agencies in Canada without having to leave Canada. Furthermore, the Mark clearly appears on the brochures which were distributed to a substantial number of travel agencies in Canada during the relevant period, advertising what I consider to include all of the Owner’s registered services. The travel agencies in this case act as intermediaries along the chain of transactions between the Owner, which includes its wholly-owned division Holiday House, and the ultimate consumer [*Venice Simplon-Orient-Express, supra*].

[16] Having regard to the aforementioned, I accept that the Owner has shown use of the Mark in association with each of the registered services in the manner required by sections 4(2) and 45 of the Act.

DISPOSITION

[17] Accordingly, pursuant to the authority delegated to me under section 63(3) of the Act, the registration will be maintained in compliance with the provisions of section 45 of the Act.

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Kathryn Barnett  
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**

Ridout & Maybee LLP

FOR THE REGISTERED OWNER

MLT Aikins LLP

FOR THE REQUESTING PARTY