

OPIC



CIPO

LE REGISTRAIRE DES MARQUES DE COMMERCE

THE REGISTRAR OF TRADE-MARKS

Citation: 2019 TMOB 45

Date of Decision: 2019-05-31

IN THE MATTER OF SECTION 45 PROCEEDINGS

Supreme Brands L.L.C.

Requesting Party

and

Joy Group OY

Registered Owner

TMA656,049 for TORSPO

Registrations

TMA707,775 for TORSPO and Design

[1] At the request of Supreme Brands L.L.C. (the Requesting Party), the Registrar of Trade-marks issued notices under section 45 of the *Trade-marks Act*, RSC 1985, c T-13 (the Act) on July 6, 2016 to Joy Group OY (the Owner), the registered owner of registrations No. TMA656,049 for the trade-mark TORSPO and No. TMA 707,775 for the trade-mark TORSPO and Design, reproduced below (TORSPO & Design) (collectively the Marks):



[2] The trade-mark TORSPO is registered for use in association with the following goods:

- (1) Hockey sticks.
- (2) Hockey stick replacement blades.
- (3) Athletic bags.

[3] The trade-mark TORSPO & Design consists of a hockey player stick figure design above the word TORSPO and is registered for use in association with the following goods:

Inline skating, ice hockey and ice skating equipment, namely, padded hockey pants, breezers, protective upper torso pads and guards, protective shoulder pads, elbow pads, shin pads and guards, forearm pads, neck pads, hockey gloves, inline skating protective gloves, goalie gloves, goalie pads, helmets, and protective face shields and guards, ice skates, inline skates, hockey skates, figure skates, hockey sticks, goalie hockey sticks, replacement blades for hockey sticks, hockey stick shafts, hockey and inline pucks and balls, mouth guards, neck guards, forearm slashguards, chest and arm guards, water bottles, protective cups and supporters, hockey and inline skating equipment bags, hockey garter belts, and hockey and inline clothing, namely, jerseys, shirts, pants, shorts and uniforms.

[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 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 the trade-mark was last so used and the reason for the absence of such use since that date. In this case, the relevant period for showing use is between July 6, 2013 and July 6, 2016.

[5] The relevant definition of “use” is set out in section 4(1) 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.

[6] 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 (TMOB) 62 (TMOB)]. Although the threshold for establishing use in section 45 proceedings is quite low [*Woods Canada Ltd v Lang Michener* (1996), 71 CPR (TMOB) 477 (FCTD)], and evidentiary overkill is not required [*Union Electric Supply Co Ltd v Canada*

(*Registrar of Trade Marks*) (1982), 63 CPR (TMOB) 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 specified in the registration during the relevant period [*John Labatt Ltd v Rainier Brewing Co* (1984), 80 CPR (TMOB) 228 (TMOB)].

[7] In response to each of the Registrar’s notices, the Owner furnished the declaration of its “owner”, the Managing Director and Chairman of the Board of Directors, Jussi Salonoja, declared on February 1, 2017, in Finland. Both parties filed written representations; a hearing was not held.

THE OWNER’S EVIDENCE

[8] In his declaration, Mr. Salonoja states that the Owner is a Finnish company engaged in private equity investments in various business sectors.

[9] With respect to the Mark, Mr. Salonoja states that, in the first half of 2012, he was approached regarding a possible investment in the Minnesotan company Torspo Hockey International, Inc. (THI), which owned TORSPO trade-marks in the United States, Canada, Russia, the European Union (EU), Switzerland and Norway. He explains that TORSPO is “an ice hockey brand originally from Finland, having had its heyday in the 70’s and 80’s”, although “[by the end of] the 90’s, its operations had practically ceased”. Mr. Salonoja states that it was obvious the investment “consisted of significant risk”, as THI’s business prospects were uncertain, but that he was nevertheless very interested in developing and exploiting this Finnish “legacy brand”.

[10] Mr. Salonoja proceeds to describe the Owner’s investment in THI and the events that ensued. The salient points of his account are as follows:

1. The Owner’s investment consisted of financing to THI against which the Owner was to receive an equity stake in THI.
2. The agreement between these two parties was entered into on May 18, 2012, and included an assignment to the Owner of “all intellectual property rights related to the TORSPO brand”, with a “buyback option” for THI once the financing would be repaid.

However, unbeknownst to the Owner, the intellectual property rights had previously been pledged in favour of two Minnesotan banks. These security interests were not recorded with any authority other than the Minnesota Secretary of State.

3. Under the agreement, THI was to be responsible for North American sales operations; however, sales “did not take off”.
4. The Owner and its subsidiary Torspo Finland Oy invested hundreds of thousands of dollars in loan financing, marketing and other costs, yet the Owner “had difficulty in getting answers as to where its financing was going”.
5. By the fall of 2012, the companies’ relationship “had gotten severed”.
6. On May 15, 2014, THI applied in court for bankruptcy protection, which “effectively put TORSPO-related operations on hold”. The Owner has asked the court to dismiss the application.
7. In connection with the bankruptcy proceeding, THI initiated a lawsuit against the Owner to have the intellectual property assignment deemed ineffective, but the lawsuit was dismissed on March 4, 2015.
8. In May 2015, the banks sold their security interests from THI to the Requesting Party, who then informed the Owner of an enforcement sale to be held on September 23, 2015.
9. The banks’ security interest has not been recorded with the Canadian Registrar of Trade-marks. According to Mr. Salonoja, “[v]irtually in all jurisdictions, the failure to record a security interest in respect of a trademark with the respective trademark authority results in the ineffectiveness of the security interest and/or in a subsequent *bona fide* purchaser receiving protection against [the] prior non-recorded security interests.” Accordingly, the Owner became the “rightful owner” of the Canadian registrations for the Marks, and was recorded as the registered owner in October 2015.
10. The Owner had sought a declaration from the United States District Court, District of Minnesota to prevent the enforcement sale of TORSPO trade-marks outside of the United States, but that request was rejected by the Court on May 16, 2016. The rejection was due

in part to the Requesting Party's "assertion that the Security Interests actually would not reach out to non-US trademarks".

11. As of the date of Mr. Salonoja's declaration, the Owner is the registered owner of the TORSPO trade-marks in in Canada, the EU, Russia and Switzerland, while the Requesting Party is the registered owner of the U.S. and Norwegian registrations. However, the Requesting Party is seeking summary expungement of the Canadian registrations and is appealing the decision of the EU Intellectual Property Office to maintain the EU trade mark in the Owner's name.

[11] With respect to use of the Marks in Canada, Mr. Salonoja states that the Owner has no access to THI's books to verify when the Marks were last used in this country and, owing to the parties' strained relationship, such information cannot be obtained from THI. Mr. Salonoja states that it is the Owner's "best understanding and guess" that the Marks were last used in Canada by THI "at least in 2011 or 2012".

[12] Mr. Salonoja states that the Owner itself has not used either of the Marks in Canada, having regard to the aforementioned disputes. He specifically states as follows:

The reason for the absence of use is the risk of proceeding with further financial and time investment in the TORSPO brand and business having regard to the contentious dispute over ownership. Also, the potential geographical split of ownership of the TORSPO trademarks worldwide, especially in North America, creates further complications in creating a meaningful business in the brand, the result of which is use of the TORSPO trademarks in Canada having been in standstill pending a final global resolution of the issues at hand.

[13] However, Mr. Salonoja also states that he is still "very much interested" in developing and exploiting the intellectual property rights to this "Finnish 'legacy brand' in ice hockey".

[14] In this respect, Mr. Salonoja states that, in spite of the current situation, the Owner intends to start selling TORSPO products—primarily hockey sticks—in Canada by the end of August 2017. He states that the Owner is currently at the stage of product development to complete its stock, specifying that samples of new products have been manufactured and that "a plan on updated portfolio" exists. He states that any sales in Canada are planned to occur through

local distributors and an online store at *www.torspo.fi*, adding that negotiations regarding co-operation on distribution in Canada are “under way”.

[15] Mr. Salonoja names companies in Finland and Canada with which the Owner is co-operating on product development, along with “several Asian manufacturers”, and also names the two companies with which it is negotiating regarding distribution.

[16] Finally, attached to Mr. Salonoja’s declaration are five pages titled “Composite Sticks”. Each page describes a different model of hockey stick, and depicts a hockey stick branded with the TORSPO trade-mark on the shaft and a hockey player design resembling that in TORSPO & Design on the heel of the stick. The footer of each page indicates that these hockey sticks are the “2017 TORSPO Hockey Product Line”. However, these pages are presented after the apostille attached to the affidavit and Mr. Salonoja makes no reference to them. They are not endorsed by the notary receiving the declaration or otherwise identified as exhibits and they do not bear the initials that appear on the pages of the declaration preceding the signature page.

ADMISSIBILITY OF EVIDENCE

[17] With respect to the admissibility of the documents attached to the Salonoja declaration, it is well established that technical deficiencies in evidence should not prevent a party from successfully responding to a section 45 notice where the evidence provided could be sufficient to show use [see *Baume & Mercier SA v Brown* (1985), 4 CPR (TMOB) 96 (FCTD)]. For example, the Registrar has on occasion accepted exhibited evidence that is not properly endorsed, where the documents are clearly identified and explained in the body of the affidavit or statutory declaration [see, for example, *Borden & Elliot v Raphaël Inc* (2001), 16 CPR (TMOB) 96 (TMOB)]. In the present case, however, the Salonoja declaration makes no reference whatsoever to the attached documents.

[18] In its written representations, the Owner submits that “the probative value of the evidence outweighs any technical deficiencies in tendering it properly” and that, in a section 45 proceeding, the Registrar has “some discretion and flexibility” in regard to the admissibility of evidence and is “open to a more open liberal approach regarding the nature and form of evidence

required”—citing *Baume & Mercier, supra*, and *Barrigar & Oyen v Canada (Registrar of Trade Marks)* (1994), 54 CPR (TMOB) 509 (FCTD) in support.

[19] However, section 45 of the Act specifically requires that evidence be filed in the form of an affidavit or statutory declaration, and the fact that the documents in this case are neither referenced by the declarant nor identified as exhibits to the declaration amounts to more than a mere technical deficiency. [For similar conclusions, see *Bereskin & Parr v Teletronic Communications Ltd* (1997), 78 CPR (TMOB) 406 (TMOB); and *Smart & Biggar v Terfloth Trade Marks Ltd*, 2014 TMOB 158, 2014 CarswellNat 4069.]

[20] The cases cited by the Owner are distinguishable, in that neither case dealt with an attempt to submit evidence that does not appear to be part of an affidavit or statutory declaration as required by section 45.

[21] By contrast, for the reasons stated above, I find that the additional documents in this case have not been presented as part of an affidavit or statutory declaration. They are thus inadmissible, and will not be considered as evidence in this proceeding.

[22] In any event, even if I were to consider the attached documents to form part of the Salonoja declaration, they would not affect my decision in this case, for reasons that will be discussed below.

PRELIMINARY REMARKS REGARDING THE REGISTRAR’S JURISDICTION

[23] In its written representations, the Owner also submits that the present case “is not a matter which should be decided by way of a summary expungement proceeding under Section 45 of [the Act]”, because of the “convoluted and contentious nature of the dispute between the parties regarding ownership of the TORSPO marks and registrations in Canada”. The Owner submits that the Registrar does not have jurisdiction to decide the matter in dispute between the parties, which is “at essence” whether an entry on the register should be struck out on the ground that it does not accurately express or define the exiting rights of the person appearing to be the registered owner. The Owner submits that this “is not the situation envisioned by Section 45 as there is no public interest in expunging the TORSPO registrations having due regard for the facts of this case and to the ongoing interest of both parties in ownership of the marks in Canada”.

[24] Indeed, section 45 is limited in scope: its purpose is to provide a simple and expeditious procedure for removing “deadwood” from the register. It has been established that section 45 proceedings are not intended to resolve disputes or to determine rights as between parties with competing commercial interests [see *Meredith & Finlayson v Canada (Registrar of Trade Marks)* (1991), 40 CPR (3d) 409 (FCA)]. A party seeking to expunge a trade-mark under section 45 is limited to arguments regarding use of the mark [see *United Grain Growers Ltd v Lang Michener*, 2001 FCA 66, 12 CPR (4th) 89 (FCA); and *Prince v Andrés Wines Ltd*, 2004 FC 812, 38 CPR (4th) 424].

[25] Accordingly, once a section 45 notice has issued, a requesting party’s motivation for requesting the section 45 notice is irrelevant. Therefore, the only matter to be resolved in the present proceeding is whether the furnished evidence is sufficient to maintain the registration.

PRELIMINARY REMARKS REGARDING FACTS NOT IN EVIDENCE

[26] I would also note at the outset that the Requesting Party’s written representations include submissions regarding its own research into the website referenced in Mr. Salonoja’s declaration. The facts alleged by the Requesting Party in this respect are not in evidence and these submissions will accordingly be disregarded.

ANALYSIS

[27] In the absence of evidence of use of the Mark, the issue is whether, pursuant to section 45(3) of the Act, special circumstances existed to excuse such non-use. The general rule is that absence of use should result in expungement, but there may be an exception where the absence of use is due to special circumstances [*Scott Paper Ltd v Smart & Biggar*, 2008 FCA 129, 65 CPR (4th) 303].

[28] To determine whether special circumstances have been demonstrated, the Registrar must first determine why the trade-mark was not used during the relevant period. Second, the Registrar must determine whether those reasons for non-use constitute special circumstances [*Registrar of Trade Marks v Harris Knitting Mills Ltd* (1985), 4 CPR (3d) 488 (FCA)]. Special

circumstances means circumstances or reasons that are unusual, uncommon, or exceptional [*John Labatt Ltd v Cotton Club Bottling Co* (1976), 25 CPR (2d) 115 (FCTD)].

[29] If the Registrar determines that the reasons for non-use constitute special circumstances, the Registrar must still decide whether such circumstances *excuse* the period of non-use. This determination involves the consideration of three criteria: (1) the length of time during which the trade-mark has not been in use; (2) whether the reasons for non-use were beyond the control of the registered owner; and (3) whether there exists a serious intention to shortly resume use [per *Harris Knitting Mills, supra*]. The intention to shortly resume use must be substantiated by “a sufficient factual basis” [*NTD Apparel Inc v Ryan*, 2003 FCT 780, 27 CPR (4th) 73 (FCTD) at paragraph 26].

[30] All three criteria are relevant, but satisfying the second criterion is essential for a finding of special circumstances excusing non-use [per *Scott Paper, supra*].

Do the reasons for non-use constitute special circumstances?

[31] I note at the outset that the reasons for non-use must apply to the entire relevant period [see *Oyen Wiggs Green & Mutala LLP v Rath*, 2010 TMOB 34, 82 CPR (4th) 77; and *PM-DSC Toronto Inc v PM-International AG*, 2013 TMOB 15, 110 CPR (4th) 378].

[32] In the present case, Mr. Salonoja states that it was THI’s application for bankruptcy protection on May 15, 2014, that “effectively put TORSPO-related operations on hold”. However, he does not explain why the Marks were not in use in Canada during the earlier portion of the relevant period, namely from July 6, 2013 to May 15, 2014.

[33] The only indication Mr. Salonoja provides in this respect is his statement that North American sales “did not take off”. However, he does not say why. He notes that the Owner had difficulty getting information from THI, but draws no connection between the communication issue and THI’s sales or branding activity. Furthermore, although he references THI’s option to buy the Marks back once financing is repaid, he does not explain whether anything in the Owner’s agreement with THI prevented the Owner from taking additional measures to exploit the Marks in the meantime.

[34] Notably, Mr. Salonoja also does not specify to what extent THI's North American marketing efforts included Canada, beyond providing the Owner's "best understanding and guess" that the Marks were last used in this country "at least in 2011 or 2012".

[35] In the absence of further details, it is difficult to conclude whether use of the Marks ceased because of poor sales owing to unfavourable market conditions or because of factors in the Owner's business and marketing strategies with THI.

[36] In any event, it is well established that, generally, neither unfavourable economic conditions nor the voluntary business decisions of a trade-mark owner are the sort of uncommon, unusual or exceptional reasons for non-use that constitutes special circumstances [see *Harris Knitting Mills, supra*; *Lander Co Canada Ltd v Alex E Macrae & Co* (1993), 46 CPR (3d) 417 (FCTD); and *Cotton Club, supra*].

[37] With respect to the period between May 15, 2014 and the end of the relevant period on July 6, 2016, Mr. Salonoja identifies the reason for the absence of use of the Marks as "the risk of proceeding with further financial and time investment in the TORSPO brand and business having regard to the contentious dispute over ownership".

[38] He also states that "the potential geographical split of ownership of the TORSPO trademarks worldwide, especially in North America, creates further complications in creating a meaningful business in the brand, the result of which is use of the TORSPO trademarks in Canada having been in standstill pending a final global resolution of the issues at hand".

[39] However, if the Owner chose to refrain from using the Marks pending the final outcome of the dispute between it and the Requesting Party over ownership of the Marks worldwide, then, absent further details, such a decision can only be considered a voluntary decision of the Owner.

[40] In this respect, the Federal Court has held that certain circumstances, such as a recession, while out of anyone's control, are nevertheless unexceptional [*Lander, supra*]. Similarly, the Federal Court has held that a trade-mark dispute is not necessarily an exceptional occurrence in business [see *Jose Cuervo SA de CV v Bacardi & Company Limited*, 2009 FC 1166, 78 CPR (4th) 451, aff'd 2010 FCA 248, 102 CPR (4th) 332; *Karoun Dairies Inc v Karoun Dairies SAL*, 2013 TMOB 228, 117 CPR (4th) 30].

[41] The Owner submits that the facts of the present case “extend far beyond the situation where a Registered Owner is simply ‘waiting out litigation’ as argued by the Requesting Party”. In the Owner’s submission, the contentious nature of the interactions between the Owner and the Requesting Party (and the Requesting Party’s predecessor) in the years leading up to and including the relevant period constitute “peculiar or abnormal circumstances” resulting in “serious inconvenience” to the Owner should it continue to use the Marks. The Owner cites *Cotton Club, supra*, in support of its position.

[42] However, although the failure of the relationship between the Owner and THI is unfortunate, Mr. Salonoja provides no indication that the circumstances surrounding it were unusual, uncommon or exceptional for a company engaged in private equity investments in various business sectors. Nor is there any indication that the subsequent enforcement of security interests was in any way unusual, uncommon or exceptional.

[43] I would also note that, in *Cotton Club*, the Court’s reference to “peculiar or abnormal circumstances” is made in the course of quoting the English case *Aktiebolaget Manus v R J Fullwood & Bland, Ltd* (1948), 66 RPC 71, where the Court of Appeal considered “the compelling circumstances of the second World War, and particularly of war-time legislation ... which made the import of [the owner’s] machines practically impossible”. There is no evidence of comparably peculiar or abnormal circumstances in the present case.

[44] In light of the foregoing, I cannot conclude that the reasons for non-use of the Marks in the present case amount to special circumstances.

Would the circumstances excuse non-use?

[45] Furthermore, even if I were to accept that the Owner’s reasons for non-use could be considered “unusual, uncommon, or exceptional” circumstances, I am not satisfied that they *excuse* the period of non-use in present case. In this respect, I am not satisfied that the Owner has satisfied the criteria set out in *Harris Knitting Mills*.

The length of non-use

[46] Mr. Salonoja states that the Owner has no access to THI's books to verify when the Marks were last used in Canada.

[47] When a date of last use is not provided or is unclear, the date of registration or, if the trade-mark has subsequently been assigned, the date of assignment to the current owner will generally be used [see *Cassels Brock & Blackwell LLP v Montorsi Francesco E Figli – SpA*, 2004 FC 753, 35 CPR (4th) 35; and *Arrowhead Spring Water Ltd v Arrowhead Water Corp* (1993), 47 CPR (3d) 217 (FCTD)].

[48] In the present case, the Marks were registered in 2006 and 2008 respectively. The assignment to the Owner was recorded on October 16, 2015, recognizing June 13, 2012 as the date of the change in ownership. Accordingly, for the purposes of the present analysis, I consider the period of non-use to run from the Owner's acquisition of the Marks in 2012. This date is consistent with the Owner's "best understanding and guess" that the Marks were last used in Canada at least in 2011 or 2012, and results in a period of non-use of approximately four years.

Were the reasons for non-use beyond the owner's control?

[49] As noted above, the lack of use of the Marks in Canada in the present case appears to be due to voluntary business decisions.

[50] With respect to the portion of the relevant period pre-dating THI's bankruptcy, as noted above, the lack of detail furnished by the Owner makes it difficult to determine whether use of the Marks ceased because of poor sales owing to unfavourable market conditions or because of factors in the Owner's business and marketing strategies with THI.

[51] However, even allegations with respect to market conditions are necessarily tied, at least in part, to the business decisions and marketing efforts of the trade-mark owner.

[52] In this case, Mr. Salonoja mentions that the Owner had "difficulty in getting answers as to where its financing was going". However, he provides no information regarding the Owner's business strategy in light of the difficult working relationship with THI. It is therefore not clear

to what extent use of the Marks may have been limited by market conditions as opposed to the Owner's voluntary business decisions. Indeed, the decision to invest in a foreign company with "uncertain" business prospects would appear to be a voluntary assumption of risk on the Owner's part.

[53] With respect to the latter half of the relevant period, the Owner submits that, in "such a contentious environment", with the threat of further litigation should the Owner use the TORSPO marks in Canada without confirmation of ownership, a "cautious and judicious" approach to the resumption of use is "more than merited".

[54] However, in *Jose Cuervo, supra*, while acknowledging that the threat of impending trade-mark litigation might reasonably excuse a short period of non-use, the Court ultimately upheld the Registrar's decision that to "wait out the litigation" was a voluntary and deliberate choice.

[55] In the present case, Mr. Salonoja admits that the banks' security interests in the Marks should be largely ineffective against the Owner's trade-mark rights in virtually all jurisdictions. He states that the possibility of ownership being divided among jurisdictions complicates the creation of "a meaningful business" in the TORSPO brand, but provides no information as to any specific difficulties preventing the Owner's use of the Marks in Canada.

[56] Whereas a decision not to invest further time and money in a trade-mark whose ownership is in dispute may be wise from a business perspective, for the purposes of the present analysis, it constitutes a voluntary decision on the part of the Owner, rather than a factor outside the Owner's control. Indeed, as alluded to by the Requesting Party, the fact that the Owner eventually took steps to resume use of the Marks before a global resolution of the ownership issues tends to suggest that the "contentious environment" and threat of litigation did not actually prevent the Owner from using the Marks.

[57] As for the product launch being worldwide in scope, the Registrar has previously characterized the prioritization of a global marketing strategy as a deliberate decision *not* beyond the trade-mark owner's control [see, for example, *Math v Mainse*, 2015 TMOB 32, CarswellNat 1385; and *167081 Canada Inc v Guess? Inc* (2009), 77 CPR (4th) 291 (TMOB)].

[58] Indeed, the Owner furnished no evidence to demonstrate the need for a global marketing strategy or the lack of choice in deciding not to pursue individual markets. Mr. Salonoja does not disclose any difficulties encountered in marketing TORSPO Goods exclusively in Canada or discuss any steps taken to resolve such difficulties.

[59] Again, whereas the pursuit of a global marketing strategy may be a sound business choice, it appears to have been a voluntary decision on the Owner's part, rather than an element outside the Owner's control.

[60] In view of the foregoing, I am not satisfied that the reasons for non-use in this case were beyond the Owner's control.

Was there a serious intention to shortly resume use?

[61] Finally, Mr. Salonoja makes some general statements regarding the Owner's steps to resume use of the Marks in Canada. In this respect, he states that the Owner is at the product development stage—with samples having been manufactured and an updated portfolio planned—and that negotiations regarding distribution are “under way”. He names certain companies with which the Owner is cooperating in these respects, and he provides “by the end of August 2017” as the intended date to start selling “TORSPO products, primarily hockey sticks” in Canada.

[62] However, Mr. Salonoja's statements are, for them most part, vague and unsubstantiated. For example, although he asserts an intention to start selling “TORSPO products” by the end of August 2017, he does not specify which of the two Marks will be used, nor which Goods, other than hockey sticks, are to be launched within this timeframe. Moreover, he does not reveal the status of the negotiations regarding distribution, or the steps being taken to move them forward, to substantiate the seriousness of the Owner's intention to use the Marks by the stated date.

[63] In its written representations, the Owner submits that it has demonstrated “a genuine intention to resume use of the marks in Canada as soon as is feasible” and that the registrations should not be expunged in view of the Owner's “consistent and earnest” intention to use and develop the TORSPO brand in Canada, from the Owner's initial investment in 2012 to the present day.

[64] However, I note that Mr. Salonoja provides no indication that the Owner attempted to resume use of the Marks prior to receiving the section 45 notice. On the contrary, it would appear from Mr. Salonoja's statements that the Owner's intention during the relevant period was to keep use of the Marks on hold "pending a final global resolution of the issues at hand", rather than to resume use of the Marks shortly.

[65] In any event, even a realized intention to resume use of a trade-mark shortly after the end of the relevant period is, in and of itself, insufficient to excuse a period of non-use. As stated by the Federal Court of Appeal, "plans for future use do not explain the period of non-use" [*Scott Paper, supra*, at para 28].

[66] Accordingly, even if I were to accept the documents attached to the Salonoja declaration as evidence in support of the planned date of resumed use of the Marks—and setting aside the issue of deviation between the trade-marks on the depicted hockey sticks and the TORSPO & Design trade-mark as registered—such evidence would not suffice to justify the absence of use in the present case.

[67] In view of the foregoing, even if I were to conclude that the reasons for non-use submitted by the Owner constitute special circumstances, I would not be satisfied that those circumstances excuse the period of non-use.

DISPOSITION

[68] In the circumstances, I am not satisfied that the Owner has demonstrated special circumstances excusing non-use of the Marks in Canada during the relevant period within the meaning of section 45(3) of the Act.

[69] In view of all the foregoing, 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 registrations will be expunged.

Oksana Osadchuk
Member
Trade-marks Opposition Board
Canadian Intellectual Property Office

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

No Hearing Held

AGENTS OF RECORD

Kirby Eades Gale Baker

FOR THE REGISTERED OWNER

Moffat & Co.

FOR THE REQUESTING PARTY