



LE REGISTRAIRE DES MARQUES DE COMMERCE  
THE REGISTRAR OF TRADEMARKS

**Citation: 2019 TMOB 93**  
**Date of Decision: 2019-09-09**

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

**Robinson Sheppard Shapiro  
S.E.N.C.R.L./L.L.P.**

**Requesting Party**

**and**

**Getracan Inc.**

**Registered Owner**

**TMA325,731 for BLUEPRINT**

**Registration**

[1] At the request of Robinson Sheppard Shapiro S.E.N.C.R.L./L.L.P. (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the *Trademarks Act*, RSC 1985, c T-13 (the Act) on June 27, 2017 to Getracan Inc. (the Owner), the registered owner of registration No. TMA325,731 for the trademark BLUEPRINT (the Mark).

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

Men's shirts, sweaters, sweatshirts, T-shirts, pants, suits, jackets and underwear.

[3] The notice required the Owner to furnish evidence showing that the Mark was in use in Canada, in association with each of the goods specified in the registration, at any time between June 27, 2014 and June 27, 2017. If the Mark had not been so used, the Owner was required to furnish evidence providing the date when the Mark was last used and the reasons for the absence of use since that date.

[4] The relevant definition of use with respect to goods is set out in section 4(1) of the Act as follows:

4(1) A trademark 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.

[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 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 trademark 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 (2d) 228 (FCA)].

[6] In response to the Registrar's notice, the Owner furnished the affidavit of Earl Green, President of the Owner, sworn on January 16, 2018 in Montreal, Quebec.

[7] Only the Owner filed written representations. Neither party requested an oral hearing.

#### The Owner's Evidence

[8] In his affidavit, Mr. Green explains that the Owner has been in the business of importation, distribution and sale of clothing throughout North America since 1986.

[9] Mr. Green asserts that he has "personally witnessed the fact that the BLUEPRINT mark has been continuously used in association with men's shirts, sweater[s], sweatshirts, t-shirts, suits, jackets and underwear by [the Owner] since it purchased the trademark from Martin Raft on October 7, 1999" [para 7].

[10] Mr. Green further asserts that the "clothing sold by [the Owner] using the BLUEPRINT mark in particular, are manufactured in Bangladesh and ultimately shipped to the [the Owner]'s

customers” [para 6]. In support, attached as Exhibit B to his affidavit, are six purchase orders and one order confirmation of “BLUEPRINT trademarked goods”. The first five purchase orders are from the Owner to suppliers in Bangladesh for “MEN’S POLYESTER WOVEN WIND PANT” or “LADY’S POLYESTER WOVEN WIND PANT” and include instructions to affix the label described as “BLUE PRINT” to the ordered clothing. Two of these purchase orders are dated during the relevant period. The sixth purchase order, dated August 17, 2017, is from a Canadian retailer to the Owner for “MEN’S POLYESTER WOVEN WIND PANT”; I note that this purchase order and the corresponding order confirmation, dated August 18, 2017, are from shortly after the relevant period.

[11] With respect to the manner of display of the Mark, Mr. Green asserts that “the BLUEPRINT mark is attached in the form of a tag, label or product wrapper to the clothing products associated with this mark” [para 8]. He further states that the label, tag or product wrapper is on such clothing when displayed in retail clothing stores throughout Canada. He provides, as Exhibit C, images of tags and labels that clearly bear the Mark as registered and three photographs of clothing items bearing such labels. Although Mr. Green does not specifically correlate each photograph with a registered good, the first two photographs show the collar of some type of shirt and the last photograph is of a pair of pants.

[12] As evidence of sales, Mr. Green attests that “BLUEPRINT trademarked clothing products have been sold and are still sold in retail stores throughout Canada” [para 9]. He provides, as Exhibit D, numerous invoices, along with a selection of purchase orders and associated “sketches” of long-sleeve shirts. All the invoices are from the owner to Canadian retailers and are dated within the relevant period. The first invoice shows a bulk sale of three styles of “MENS 55% COTTON 45% POLYESTER WOVEN L/S SHIRT” and the other invoices show sales of “MEN’S POLYESTER WOVEN WIND PANT” or “LADY’S POLYESTER WOVEN WIND PANT”, with style numbers corresponding to those appearing on the purchase orders at Exhibit B.

[13] Although Mr. Green does not make any statements with respect to the purchase orders and shirt sketches, I note that they all reference the style numbers of the “MENS...WOVEN L/S SHIRT” listed on the first invoice. Furthermore, the shirt sketches display men’s long-

sleeve shirts and the purchase orders include a reference to the Mark as “BLUE PRINT”, next to the “Main Label” and “Care Label” fields.

### Analysis

[14] With respect to the registered goods “Men’s ... pants”, in contrast to the other registered goods, I note that Mr. Green does not reference “pants” in his assertion of use at paragraph 7 of his affidavit. However, as described above, since the Owner provided direct evidence with respect to men’s pants, this would appear to simply be an inadvertent omission. In any event, while the affidavit could have been clearer, it is well established that the evidence as a whole must be considered [*Kvas Miller Everitt v Compute (Bridgend) Limited* (2005), 47 CPR (4th) 209 (TMOB)]. In this case, the exhibited invoices show sales of pants in Canada during the relevant period and, when considered in conjunction with Mr. Green’s statements together with the exhibited photograph and purchase orders at Exhibit B, it is clear that such pants displayed the Mark at the time of transfer. Accordingly, in view of the evidence as a whole, I am satisfied that the evidence demonstrates use of the Mark in association with “Men’s ... pants” within the meaning of section 4 and 45 of the Act.

[15] With respect to “Men’s shirts”, although Mr. Green’s affidavit includes two photographs of shirt collars bearing the BLUEPRINT label, it is not clear whether these shirts are long or short sleeve. However, the exhibits to Mr. Green’s affidavit include “sketches” of long-sleeve shirts with style numbers corresponding to those in the first exhibited invoice and purchase orders which refer to the Mark. As such, I accept that this evidence shows transfers in Canada during the relevant period of “Men’s shirts” in the form of long-sleeve shirts, bearing the Mark. Accordingly, I am satisfied that the evidence demonstrates use of the Mark in association with “Men’s shirts” within the meaning of sections 4 and 45 of the Act.

[16] With respect to the remaining goods, I note that the Owner furnished no direct evidence such as photographs or invoices relating to such goods. However, in its written representations, the Owner submits that Mr. Green made sworn statements of use in association with each registered good and that all the goods in the registration fall into one general category, namely “clothing”. In this respect, the Owner argues that “it has submitted purchase orders and invoices providing use for certain wares, which are legitimate[ly] representative of all the wares

claimed in the registration, from which the Registrar can infer that all the clothing products bearing the BLUEPRINT mark, have been used”. In support, the Owner cites *Ridout & Maybee LLP v Omega SA* (2004), 39 CPR (4th) 261 (FC); *Gowling Lafleur Henderson LLP v Neutrogena Corporation* (2009), 74 CPR (4th) 153 (TMOB); and *Cohen v JMAX Global Distributors Inc*, 2011 TMOB 36.

[17] Indeed, in certain circumstances, due to the summary nature of section 45 proceedings, representative evidence and clear sworn statements can suffice to demonstrate use. This principle is appropriately applied to cases where there is a long list of goods and where the statement of goods is organized such that demonstration of use for a number of goods within a category can be sufficient to show use for the entire category.

[18] However, the application of this principle does not simply depend on the number of goods in question or how the goods are categorized; rather, what is determinative is whether sufficient evidence is provided to permit the Registrar to form an opinion or logically infer use with respect to each of the registered goods within the meaning of sections 4 and 45 of the Act [*Guido Berlucchi & C Srl v Brouillette Kosie Prince* (2007), 56 CPR (4th) 401 (FC) at para 18].

[19] In the present case, as noted above, Mr. Green asserts that he has “personally witnessed the fact that the BLUEPRINT mark has been *continuously* used in association with men’s shirts, sweater, sweatshirts, t-shirts, suits, jackets and underwear by [the Owner] since it purchased the trademark ... *on October 7, 1999*” [para 7, emphasis added].

[20] First, it is not clear that “continuously ... since ... 1999” necessarily corresponds to the relevant period for each such good. Second, there is no further mention of goods other than “pants” and “shirts” in the affidavit or accompanying exhibits, nor any indication that the evidence provided is representative of the remaining goods. Instead, Mr. Green only generally refers to the “BLUEPRINT trademark goods”, “clothing products associated with this mark” and “BLUEPRINT trademark clothing” when describing the exhibits. Despite furnishing numerous invoices demonstrating sales and transfers of BLUEPRINT “pants” and “shirts”, the Owner furnished no invoices with respect to the remaining goods and Mr. Green makes no clear statement that transfers of such goods occurred during the relevant period.

[21] Therefore, with respect to the remaining goods, Mr. Green's aforementioned statement amounts to a mere assertion of use. Additionally, given that the list of registered goods in this case is relatively short, it would not have been an unreasonable burden for the Owner to have furnished direct or documentary proof with respect to each of the registered goods. In view of the numerous invoices showing transfers of BLUEPRINT pants and long-sleeve shirts, if the Owner had actually used the Mark in association with the remaining clothing goods during the relevant period, it is not clear why it did not furnish, for example, corresponding invoices for such goods.

[22] Consequently, even if I was prepared to infer that the Mark would have been displayed in the same manner as that depicted for the Owner's pants and long-sleeve shirts, I am not prepared to conclude, from the limited information provided in the affidavit, that the remaining goods were sold or otherwise transferred in Canada during the relevant period. As such, I am not satisfied that the Owner has demonstrated use of the Mark with respect to the remaining goods within the meaning of sections 4 and 45 of the Act. As there is no evidence of special circumstances excusing such non-use before me, the registration will be amended accordingly.

#### Disposition

[23] Accordingly, pursuant to the authority delegated to me under section 63(3) of the Act and in compliance with section 45 of the Act, the registration will be amended to delete "...sweaters, sweatshirts, T-shirts, ... suits, jackets and underwear" from the statement of goods.

[24] The amended statement of goods will be as follows: Men's shirts and pants.

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Andrew Bene  
Member  
Trademarks Opposition Board  
Canadian Intellectual Property Office

**TRADEMARKS OPPOSITION BOARD  
CANADIAN INTELLECTUAL PROPERTY OFFICE  
APPEARANCES AND AGENTS OF RECORD**

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**HEARING DATE:** No hearing held

**AGENTS OF RECORD**

Sari E. Moscovitz

For the Registered Owner

Robinson Sheppard Shapiro S.E.N.C.R.L./L.L.P.

For the Requesting Party