



LE REGISTRAIRE DES MARQUES DE COMMERCE  
THE REGISTRAR OF TRADEMARKS

**Citation: 2019 TMOB 126**  
**Date of Decision: 2019-11-26**

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

**CLARK WILSON LLP**

**Requesting Party**

**and**

**CASCADES HOLDING US INC.**

**Registered Owner**

**TMA481,524 for PRESTO-WIPES**

**Registration**

[1] At the request of Clark Wilson LLP (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 October 16, 2017 to Cascades Holding US Inc. (the Owner), the registered owner of registration No. TMA481,524 for the trademark PRESTO-WIPES (the Mark).

[2] The Mark is registered for use in association with the goods “disposable wiping cloths”.

[3] Section 45 of the Act requires the registered owner of the trademark to show whether the trademark 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 it was last in use and the reason for the absence of such use since that date. In this case, the relevant period for showing use is between October 16, 2014 and October 16, 2017.

[4] The relevant definition of “use” in association with goods is set out in section 4(1) of the Act:

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 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. While mere assertions of use are not sufficient to demonstrate use in the context of a section 45 proceeding [*Plough (Canada) Ltd v Aerosol Fillers Inc* (1980), 53 CPR (2d) 63 (FCA)], the threshold for establishing use in these proceedings is quite low [*Woods Canada Ltd v Lang Michener* (1996), 71 CPR (3d) 477 (FC)], and evidentiary overkill is not required [*Union Electric Supply Co v Canada (Registrar of Trade-marks)* (1982), 63 CPR (2d) 56 (FC)].

[6] In response to the Registrar’s notice, the Owner furnished the affidavit of David Pierro, sworn in Brown County Wisconsin, U.S.A. on November 15, 2017, together with Exhibits A-1 to A-4.

[7] Neither party filed written representations; an oral hearing was not requested.

#### THE OWNER’S EVIDENCE

[8] In the introductory paragraphs of his affidavit, Mr. Pierro identifies himself as being the “Vice President Sales, USA National & Corporate Accounts, Cascades PRO at Cascades Holding US Inc. since April 2014”. Mr. Pierro explains that, by reason of his title, duties and position within the organization of the Owner, he is “generally familiar with the Owner’s business, including its commercial activities in Canada and the circumstances surrounding [the present proceeding]”. As such, he states that the statements made in his affidavit are based on his personal knowledge or other records of the Owner, unless stated otherwise.

[9] Mr. Pierro states that well before and during the relevant period, the Owner used the Mark in the normal course of trade in Canada in association with the registered goods.

[10] With respect to sales, Mr. Pierro states that for each year from 2014 to 2017, the “value of transactions made in Canada by clients (in Canadian dollars), with respect to the [registered goods] for which the packaging displayed the Mark, have been at least \$100.”

[11] In support of the foregoing, Mr. Pierro attaches the following exhibits to his affidavit:

- Exhibit A-1 consists of four invoices evidencing sales to four different customers in Canada, during the relevant period. The invoices are issued by “Cascades Tissue Group a division of Cascades Canada ULC” and show sales of several goods, each identified with a product number and description. Underlined on these invoices are the product numbers F-32506, F-32509, F-32591 and F-35705, all containing “WI AIRLAID PW” in their product description, and sold in various quantities for a total price ranging between \$370 and \$9,360, plus tax. Mr. Pierro states that these invoices evidence sales by the Owner of the registered goods.
- Exhibit A-2 consists of two pictures, which Mr. Pierro states are “packaging containing the [registered goods] distributed under numbers F-32506, F-35709, F-32509, F-35705, during the Relevant Period.” He further states that “[t]hese samples packages typically illustrate the way the [registered goods] are sold by [the Owner] during the Relevant Period”. Both pictures are similar, each depicting a box and two packaged wipes. I note that a stylized version of the Mark is prominently displayed on the boxes and packages, as shown below:



I further note that the box on the first picture references the product numbers F-32506 and F-35709 and the box on the second picture references the product numbers F-32509 and F-35705.

- Exhibit A-3 consists of a web page printout from *www.amazon.com* featuring packaged wipes for sale as shown at Exhibit A-2 and described as “CSD32509-Cascades Tissue Group Presto-Wipes Airlaid Wipers”. Mr. Pierro states that “[a]lthough this web page has been printed recently, it typically represents the way the [registered goods] were advertised during the Relevant Period.”

- Exhibit A-4 consists of two catalogues dated March 2014 and February 2015, for wipers, napkins, wet wipes and dispensing systems, that Mr. Pierro states are distributed throughout Canada. I note that both catalogues are by “Cascades Tissue Group – IFC Disposables, Inc.”, which is identified in the second exhibited catalogue as “a division of [the Owner]”, and display the packaged wipes as shown at Exhibits A-2 and A-3 described as the “Presto-Wipes<sup>®</sup> Airlaid”. I further note that this item is available in different sizes, weights and quantities, which correspond to different product numbers, including 32506, 32509, 35705 and 35709.

#### ANALYSIS AND REASONS FOR DECISION

[12] At the outset, I note that the Owner’s exhibits are not endorsed by the commissioner before whom Mr. Pierro’s affidavit was sworn but are clearly referenced in the text of the affidavit. It has been established that technical deficiencies in evidence should not stop a party from successfully responding to a section 45 notice where the evidence provided could be sufficient to show use [*Baume & Mercier SA v Brown* (1985), 4 CPR (3d) 96 (FC)]. For example, the Registrar has accepted exhibited evidence that was not properly endorsed where the exhibited evidence was clearly identified and explained in the body of the affidavit [see *Borden & Elliot c Raphaël Inc* (2001), 16 CPR (4th) 96 (TMOB)]. As this is the case with the exhibits here, I find that the entirety of Mr. Pierro’s affidavit is admissible as evidence for the purposes of this proceeding.

[13] Furthermore, although the trademark shown on the evidenced packaged wipes and boxes does not appear as registered, in applying the principles as set out in *Canada (Registrar of Trade Marks) v Cie internationale pour l’informatique CII Honeywell Bull, SA* (1985), 4 CPR (3d) 523 (FCA) and *Promafil Canada Ltée v Munsingwear Inc* (1992), 44 CPR (3d) 59 (FCA), I am satisfied that the dominant feature of the Mark, being the words PRESTO and WIPES, are retained in the trademark displayed. Indeed, I consider the stylized form of the letter “O”, the addition of this letter into a shape arguably evoking a wiping cloth and the omission of the hyphen to be minor deviations from the Mark as registered. In this regard, it is well established that a registration for a word mark can be supported by use of that mark in a stylized form [see *Stikeman, Elliott v Wm Wrigley Jr Co* (2001), 14 CPR (4th) 393 (TMOB)]. As such, I am

satisfied that any evidenced use of the trademark as reproduced above constitutes use of the Mark as registered.

[14] Lastly, with respect to the exhibited invoices, although Mr. Pierro does not explicitly provide an explanation as to the relationship between “Cascades Tissue Group a division of Cascades Canada ULC” and the Owner, he does provide a clear sworn statement that these invoices evidence sales by the Owner of the registered goods. Therefore, when the evidence is considered as a whole and in the absence of any representations whatsoever from the Requesting Party, I find it reasonable to infer that “Cascades Tissue Group a division of Cascades Canada ULC” was acting on the Owner’s behalf, as its agent or wholesale distributor in Canada. Absent evidence to the contrary, Mr. Pierro’s sworn statements are to be accepted at face value, and statements in an affidavit must be accorded substantial credibility in a section 45 proceeding [see by analogy *Oyen Wiggs Green & Mutala LLP v Atari Interactive, Inc*, 2018 TMOB 79 at para 25].

[15] In view of all the foregoing, I accept that the Owner has demonstrated use of the Mark in association with “disposable wiping cloths” in compliance with sections 4 and 45 of the Act.

#### DISPOSITION

[16] Accordingly, pursuant to the authority delegated to me under 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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Annie Robitaille  
Member  
Trademarks Opposition Board  
Canadian Intellectual Property Office

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

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No Hearing Held

**AGENTS OF RECORD**

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For the Registered Owner

Clark Wilson LLP

For the Requesting Party