



LE REGISTRAIRE DES MARQUES DE COMMERCE  
THE REGISTRAR OF TRADEMARKS

**Citation: 2021 TMOB 44**

**Date of Decision: 2021-03-15**

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

**Mrs. Dan Yang-Hoffmann**

**Requesting Party**

**and**

**EPEC OY**

**Registered Owner**

**TMA489,748 for EPEC**

**Registration**

INTRODUCTION

[1] This is a decision involving a summary expungement proceeding under section 45 of the *Trademarks Act*, RSC 1985, c T-13 (the Act) with respect to registration No. TMA489,748 for the trademark EPEC (the Mark), currently owned by EPEC OY.

[2] All references are to the Act as amended June 17, 2019 (the Act), unless otherwise noted.

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

Modular, integrated electronic systems for measuring, controlling and monitoring functions in heavy duty and industrial machines, namely, hydraulic movements, steering, braking and power transmission (the goods).

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

## THE PROCEEDINGS

[5] At the request of Mrs. Dan Yang-Hoffmann (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the Act on October 15, 2018, to EPEC OY (the Owner), the registered owner of the Mark.

[6] The notice required the Owner to show whether the trademark has been used in Canada in association with 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 October 15, 2015 to October 15, 2018 (the Relevant Period).

[7] The relevant definition of use in the present case 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.

[8] 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. The evidence in a section 45 proceeding need not be perfect; indeed, a registered owner need only establish a *prima facie* case of use within the meaning of sections 4 and 45 of the Act [see *Diamant Elinor Inc v 88766 Canada Inc*, 2010 FC 1184]. This burden of proof is light; evidence must only supply facts from which a conclusion of use may follow as a logical inference [per *Diamant* at para 9].

[9] In response to the Registrar’s notice, the Owner furnished a Solemn Declaration of Arto Orava, Research Manager of EPEC OY, declared on May 10, 2019, together with Exhibits 1 to 7.

[10] No party submitted written representations and no oral hearing was held.

## THE EVIDENCE

[11] Mr. Orava explains that the Owner is a Finnish technology company, specializing in intelligent control and information systems that are used and have been used for decades with heavy machinery manufactured by others such as mining machines, excavators, wheel loaders.

[12] Mr. Orava states that the Owner has sold the goods in Canada in association with the Mark during the Relevant Period. He shows that throughout the Relevant Period, the Mark was displayed on the goods themselves, associated product packaging and on invoices.

[13] In support, Mr. Orava attaches the following relevant exhibits to his Declaration:

- Exhibits 2 and 3: copies of the EPEC product catalogue for 2018 and for 2015, 2016 and 2017 respectively, with descriptions and images of various goods displaying the Mark.
- Exhibit 4: a photo of a packaging box displaying the Mark.
- Exhibit 5: copies of invoices displaying the Mark issued by the Owner during the Relevant Period showing sales of multiple units to customers in Canada of the following EPEC goods: “2040 DISPLAY SANDVIK M1” and “4G UNIVERSAL MODULE SANDVIK M1.”

[14] In his declaration, Mr. Orava [para 26] states that “By reference to 2040, the invoices of Exhibit 5 identified the EPEC 2040 good that is shown on page 14 of the 2015 catalogue. Both invoices of October 9<sup>th</sup>, 2018 and August 30<sup>th</sup>, 2018 concern this specific good. Sandvik refers to the manufacturer of the machine with which the goods are to be used.”

[15] Mr. Orava [para 19] declares that the 2015 catalogue shows images of goods displaying the Mark, including the EPEC 2040 on page 14. While the product EPEC 2040 was not listed in the 2018 EPEC catalogue, Mr. Orava [para 18] explains that “Concerning these catalogues, it must be noted that these yearly catalogues do not necessarily include all active products.”

[16] Mr. Orava [para 21] also states that any of the goods sold in Canada during the Relevant Period were shipped to customers in packages displaying the Mark as shown in Exhibit 4.

## ANALYSIS AND REASONS FOR DECISION

[17] Given that no party has submitted written representations and based on the evidence described above, the only question left to determine is whether or not the evidence described above establishes that there has been use of the Mark in Canada during the Relevant Period in association with the goods within the meaning of section 4(1) of the Act.

[18] Given that the Owner has shown sales of its goods in Canada during the Relevant Period, and has shown that the Mark appeared on the goods themselves, associated packaging and invoices, as described above, I am satisfied that the Owner has shown use of the Mark in Canada within the meaning of sections 4 and 45 of the Act.

## DISPOSITION

[19] In view of the above, 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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Martin Béliveau  
Chairperson  
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**

ROBIC

For the Registered Owner

Mrs. Dan Yang-Hoffmann (Alpha-Yang Intellectual  
Property and Consultation Services)

For the Requesting Party