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LE REGISTRAIRE DES MARQUES DE COMMERCE  
THE REGISTRAR OF TRADEMARKS

**Citation: 2021 TMOB 119**  
**Date of Decision: 2021-06-14**

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

**Borden Ladner Gervais LLP**

**Requesting Party**

**and**

**Samsonite IP Holdings S.à.r.l.**

**Registered Owner**

**TMA729,678 for SAMMIES**

**Registration**

[1] On December 19, 2017, at the request of Borden Ladner Gervais 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) to Samsonite IP Holdings S.à.r.l. (the Owner), the registered owner of Registration No. TMA729,678 for the trademark SAMMIES (the Mark). The Mark is registered for use in association with the following goods: “Umbrella, rain ponchos and rain boots”.

[2] The notice required the Owner to show use of the Mark in Canada in association with each of the registered goods 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 December 19, 2014 to December 19, 2017.

[3] The relevant definition of use in this case is set out in section 4(1) of the Act as follows:

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.

[4] In the absence of use, the Mark is liable to be expunged unless the absence of use is due to special circumstances that excuse the absence of use [section 45(3) of the Act].

[5] In response to the Registrar's notice, the Owner furnished the affidavit of Richard Andrew Lamb, a director of the Owner, sworn on July 19, 2018. Only the Requesting Party submitted written representations, and only the Requesting Party requested and attended an oral hearing. The hearing was held jointly with respect to the summary expungement proceeding for Registration No. TMA418,575 (SAMMIES), for which a separate decision will issue.

[6] In his affidavit, Mr. Lamb states that the registered goods have been and continue to be widely sold in Canada (paras 2 and 3). He provides bundles of pages from *Amazon.ca* (Exhibit A), *eBay.ca* (Exhibit B), and Kijiji (Exhibit C). The Mark appears in the product descriptions of some of the items shown, which are described as backpacks, school bags, travel bags, duffelbags, and carry-on luggage.

[7] However, Mr. Lamb does not provide any evidence of display of the Mark in association with the registered goods in this case, nor does he provide any evidence of sales or transfer of such umbrella, rain poncho or rain boot goods. As a result, I am not satisfied that the Owner has demonstrated use of the Mark in association with any of the registered goods within the meaning of sections 4 and 45 of the Act, and the Owner has not provided any special circumstances excusing non-use of the Mark.

[8] Accordingly, 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 registration will be expunged.

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Bradley Au  
Hearing Officer  
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** 2021-06-14

**APPEARANCES**

No one appearing

For the Registered Owner

Peter Cooke

For the Requesting Party

**AGENTS OF RECORD**

Smart & Biggar LLP

For the Registered Owner

Borden Ladner Gervais LLP

For the Requesting Party