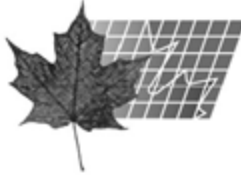


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LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADEMARKS

Citation: 2021 TMOB 124

Date of decision: 2021-06-16

[UNREVISED ENGLISH

CERTIFIED TRANSLATION]

**IN THE MATTER OF EXPUNGEMENT PROCEEDINGS
UNDER SECTION 45**

Pratiko Inc.

Requesting party

and

ERP Group Professional Products Ltd

Registered owner

LMC705,109 for PRACTIKA and design

Registration

INTRODUCTION

[1] This decision concerns a summary expungement proceeding initiated in respect of registration No. LMC705,109 for the trademark PRACTIKA and design. The Mark is registered for use in association with the goods set out in Schedule A.

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

THE PROCEEDING

[3] At the request of Pratico Inc. (the Requesting Party), the Registrar of Trademarks sent a notice under section 45 of the *Trademarks Act*, RSC 1985, c T-13 (the Act). The notice was sent to ERP Group Professional Products Ltd (the Owner) on October 15, 2018.

[4] This notice required the Owner to show whether the Mark 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 the Mark was last in use and the reason for the for its non-use since that date. In this case, the relevant period for showing use of the Mark is October 15, 2015 to October 15, 2018.

[5] The relevant definition of [translation] “use” in this 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.

[6] In response to the Registrar’s notice, the Owner furnished the statutory declaration of Michel Dignard, President of the Owner, affirmed on May 15, 2019.

[7] The parties did not file written representations, and no hearings were requested or held.

OVERVIEW OF THE EVIDENCE

[8] In his statement, Mr. Dignard explains that the Owner works in the specialty products for orthopedics and physical rehabilitation industry and that the Owner’s goods are sold in Canada, including government health centres, integrated university health and social services centres, orthopedic and rehabilitation professionals, orthopedic retailers, pharmacies, and individuals.

[9] Mr. Dignard states that the Owner’s goods can be purchased [translation] “on site or ordered online via [the Owner’s website], by telephone, fax or email.”

[10] According to Mr. Dignard, the Owner used the Mark during the relevant period in association with most of the goods covered by the registration. He also explains that the Owner's goods are sold in packages bearing the Mark. In support, Mr. Dignard attached copies of invoices, accompanied by photographs of the goods sold, in Schedule B of his statement. The Mark is on all packages of the goods shown in the photographs.

ANALYSIS AND REASONS FOR DECISION

[11] The Owner does not allege use in association with all goods. On the contrary, Mr. Dignard explained in his statement that the Mark was used in association with "most of the goods." In his statement, Mr. Dignard identifies the goods sold and the invoices in Schedule B that confirm the sale of each of them. These invoices show the sale of goods by the Owner to consumers in Canada during the relevant period.

[12] Since the Mark is clearly shown on the packages of the goods sold, I believe that the Owner has established the use of the Mark within the meaning of sections 4 and 45 in association with the goods identified by Mr. Dignard and listed in Schedule B.

[13] It remains to be seen whether this evidence establishes the use of the Mark in association with each of the goods covered by the registration. In my opinion, this is not the case. Of course, all the goods identified by Mr. Dignard are included in the statement of goods (with the exception of the [translation] "rehab pulley," which does not correspond to any registered goods).

[14] However, Mr. Dignard's statement does not refer to the following goods:

- orthopedic braces, namely cervical collars, lumbar supports, arm slings, epicondylitis supports, heel supports;
- toilet aid, namely support bars, raised seats, commodes, bathroom tissue clips;
- aids for communication and leisure, including: ... book holders;
- wheelchair accessories, including: ... ramps;
- bath aids, namely ... patient hoists for the bath, namely: elevating bath seats;

- tap turners, namely handle extension that makes handles easy to turn;
- inflatable balls;
- patient care articles, namely pillows; bed backrests, namely canvas mounted on a tilt-adjustable frame;
- lumbar cushions, bed tables, support handles, stools, footsteps;
- blanket supports, namely rigid rods to be placed under the mattress and bent back above the bed to support the sheets or blankets and keep their weight off the patient's feet;
- bed side-rails, namely safety bars for bedridden patients;
- articles for the transfer of patients, namely walking belts, swivel seat cushions, transfer boards, transfer disks;
- patient hoists for transferring, namely apparatus for raising patients;
- therapy apparatus, namely ... muscle stimulators;

(hereinafter, collectively, the Remaining Goods).

[15] Although evidentiary overkill is not required in summary expungement proceedings [see *Saks & Co v Canada (Registrar of Trademarks)* (1989), 24 CPR (3d) 49 (CFTD), *Ridout & Maybee LLP v Omega SA*, 2005 FCA 306 and *Gowling Lafleur Henderson LLP v Neutrogena Corp.* (2009), 74 CPR (4th) 153 (TMOB)], a registered owner is nevertheless required to provide sufficient facts to enable the Registrar to conclude that the trademark was used in association with each of the goods covered by the registration during the relevant period [*John Labatt Ltd v Rainier Brewing Co.* (1984), 80 CPR (2d) 228 (FCA)].

[16] Given the absence of such facts, the evidence before me is insufficient to establish the use of the Mark in association with the Remaining Goods, and since I have no evidence of special circumstances excusing non-use, the registration will be amended accordingly.

DECISION

[17] In view of the foregoing, pursuant to the authority delegated to me under section 63(3) of the Act, the registration will be amended pursuant to section 45 of the Act to delete the Remaining Goods.

[18] Therefore, the statement of goods will read as follows:

(1) Specialty products for orthopedics and physical rehabilitation, in particular mobility aids, namely canes, crutches, four-legged canes, folding walkers, walkers with wheels; accessories for walkers, namely casters, skis, end caps, baskets, pouches; eating aids, namely orthopedic spoons, orthopedic knives, orthopedic forks, orthopedic plates, orthopedic glasses and orthopedic cups; personal hygiene aids, namely head washers, long-handled brushes, urinals, nail clippers, bath mitts; aids for communication and leisure, namely magnifying glasses, pens, pen holding aids, card holders; wheelchair accessories, namely shelves, cushions, elbow rests; dressing aids, namely stocking pullers, buttoners, elastic laces, shoe horns; leg lifters, namely strap designed to raise a paralyzed leg; bath aids, namely bath seats, shower seats, transfer seats, bath boards; bath mats, long-handled brushes and combs, non-slip strips, hand-held showers, support handles; home aids, namely non-slip materials, namely placemats and rollers made of plastic or rubber; cutting boards, jar openers; handle turners, namely handle extension that makes handles easy to turn; key turners, namely handle extension screwed onto a key that makes it easy to use; hand extenders, namely grabbers for reaching objects without extending the arm; exercise equipment, namely pedal exercisers, namely pedal exercisers for the arms or legs; exercise dough, namely kneading dough of various consistencies for strengthening the hand; latex exercise bands and tubes, weights, discs; balance boards, namely boards for balancing exercises; therapy apparatus, namely transcutaneous electrical nerve stimulator (TENS), electrodes, hot and cold envelopes, cervical traction apparatus, namely devices comprising pulleys and water bag designed to apply cervical traction; paraffin

Eve Heafey
Hearing Officer

Trademarks Opposition Board
Canadian Intellectual Property Office

Certified translation
Daniel Lepine

SCHEDULE A

(1) Specialty products for orthopedics and physical rehabilitation, in particular mobility aids, namely canes, crutches, four-legged canes, folding walkers, walkers with wheels; accessories for walkers, namely casters, skis, end caps, baskets, pouches; orthopedic braces, namely cervical collars, lumbar supports, arm slings, epicondylitis supports, heel supports; eating aids, namely orthopedic spoons, orthopedic knives, orthopedic forks, orthopedic plates, orthopedic glasses and orthopedic cups; toilet aid, namely support bars, raised seats, commodes, bathroom tissue clips; personal hygiene aids, namely head washers, long-handled brushes, urinals, nail clippers, bath mitts; aids for communication and leisure, namely magnifying glasses, pens, pen holding aids, book holders, card holders; wheelchair accessories, namely shelves, cushions, ramps, elbow rests; dressing aids, namely stocking pullers, buttoners, elastic laces, shoe horns; leg lifters, namely strap designed to raise a paralyzed leg; bath aids, namely bath seats, shower seats, transfer seats, bath boards; patient hoists for the bath, namely elevating bath seats; bath mats, long-handled brushes and combs, non-slip strips, hand-held showers, support handles; home aids, namely non-slip materials, namely placemats and rollers made of plastic or rubber; cutting boards, jar openers; handle turners, namely handle extension that makes handles easy to turn; tap turners, namely handle extension that makes it easy to turn taps; key turners, namely handle extension screwed onto a key that makes it easy to use; hand extenders, namely grabbers for reaching objects without extending the arm; exercise equipment, namely pedal exercisers, namely pedal exercisers for the arms or legs; exercise dough, namely kneading dough of various consistencies for strengthening the hand; latex exercise bands and tubes, weights, inflatable balls, discs; balance boards, namely boards for balancing exercises; patient care articles, namely pillows, bed backrests, namely canvas mounted on a tilt-adjustable frame; lumbar cushions, bed tables, support handles, stools, footstools; blanket supports, namely rigid rods to be placed under the mattress and bent back above the bed to support the sheets or blankets and keep their weight off the patient's feet; bed side-rails, namely safety bars for bedridden patients; articles for the transfer of patients, namely walking belts, swivel seat cushions, transfer boards, transfer disks; patient hoists for transferring, namely apparatus for raising patients; therapy apparatus, namely transcutaneous electrical nerve stimulator (TENS), muscle stimulators, electrodes, hot and cold envelopes, cervical traction apparatus, namely devices comprising pulleys and water bag designed to apply cervical traction; paraffin

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

HEARING DATE No hearing held

AGENTS OF RECORD

ID Marque / Trademark

For the Registered Owner

No agent appointed

For the Requesting Party