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LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADEMARKS

Citation: 2021 TMOB 192

Date of Decision: 2021-08-30

IN THE MATTER OF A SECTION 45 PROCEEDING

David Michaels, J.D.

Requesting Party

and

Cellex-C International Inc.

Registered Owner

TMA475,626 for CELLEX-C

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. TMA475,626 for the trademark CELLEX-C (the Mark).

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

PROCEEDING

[3] At the request of David Michaels, J.D. (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the Act on October 31, 2018, to International Cellex-C Inc. (the Owner), the registered owner of the Mark.

[4] The Mark is registered for use in association with “over the counter preparations for topical application to the skin for the care thereof”.

[5] The notice required the Owner to show whether the trademark has been used in Canada, in association with 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 October 31, 2015, to October 31, 2018.

[6] 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.

[7] 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. As such, the evidentiary threshold that the registered owner must meet is quite low [*Performance Apparel Corp v Uvex Toko Canada Ltd*, 2004 FC 448 at para 68] and “evidentiary overkill” is not required [see *Union Electric Supply Co v Canada (Registrar of Trade Marks)* (1982), 63 CPR (2d) 56 (FCTD) at para 3].

[8] In response to the Registrar’s notice, the Owner furnished the affidavit of Sanjeev Narayan, sworn on May 1, 2019.

[9] Neither party submitted written representations. No oral hearing was held.

EVIDENCE AND ANALYSIS

[10] Mr. Narayan is the Chief Financial Officer of the Owner, a manufacturer of cosmeceutical and cosmetic products, headquartered in Toronto.

[11] Mr. Narayan states that the Owner sells the registered goods directly to consumers in its store and website and also to distributors and resellers.

[12] During the relevant period, Mr. Narayan states that the Owner sold at least 150 000 units of the registered goods bearing the Mark in Canada every year.

[13] In support, the following relevant exhibits are attached to Mr. Narayan's affidavit:

- Exhibit 3 consists of representative images of the goods, displaying the Mark on their packaging. Mr. Narayan states that these images are representative of how the Mark appeared on the goods sold in Canada during the relevant period.
- Exhibit 6 consists of representative invoices issued by the Owner to consumers in different provinces of Canada purchasing different goods such as "Skin Hydration Complex", "G. L. A. X Moist" and "G. L. A. Eye Balm" that Mr. Narayan listed as registered goods sold by the Owner. These invoices are dated during the relevant period.
- Exhibit 7 to 9 consists of representative invoices issued by the Owner to distributors and resellers in Ontario and British Columbia purchasing different goods such as "Cellex-C High Potency Serum – 1 oz", "Advanced-C Serum – 1 oz" and "Betaplex Fresh Completion Mist -7.5 ml" that Mr. Narayan listed as registered goods sold by the Owner. These invoices are dated during the relevant period.

[14] I am satisfied that the Owner has shown use of the Mark in association with the registered goods, given the invoices, dated within the relevant period, showing sales of the registered goods in Canada, as stated by Mr. Narayan, and the images demonstrating how the Mark was displayed on such goods during the relevant period.

DISPOSITION

[15] 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 maintained.

Ann-Laure Brouillette
Hearing Officer
Trademarks Opposition Board
Canadian Intellectual Property Office

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

HEARING DATE No Hearing Held

AGENTS OF RECORD

All the trademark agents at McMillan LLP

For the Registered Owner

David Michaels, J.D.

For the Requesting Party