



LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADEMARKS

Citation: 2021 TMOB 193

Date of Decision: 2021-08-30

IN THE MATTER OF A SECTION 45 PROCEEDING

Engineers Canada/Ingénieurs Canada Requesting Party

and

Ingenia Natural Products Inc., d.b.a. Registered Owner

ORIGANA

TMA950,219 for Ingenia Registration

[1] At the request of Engineers Canada/Ingénieurs Canada (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 January 30, 2020, to Ingenia Natural Products Inc., d.b.a. ORIGANA (the Owner), the registered owner of Registration No. TMA950,219 for the trademark Ingenia (the Mark).

[2] The Mark is registered for use in association with the following goods: “Product packaging, namely printed paper carton printed, books, business brochures, pamphlets, manuals, folders, flyers, posters, marketing and promotional materials, namely t-shirts, jackets, mugs, caps, key-chains, calendars, rubber wristbands, cellular cases, paper stationery, stationery, namely pen, pencils, ruler, staplers, staples, glue, scissors.”

[3] The notice required the Owner to show use of the Mark 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 January 30, 2017, to January 30, 2020.

[4] In response to the notice, the Owner furnished the affidavit of Dickens Ho Yan Cheung, sworn on February 28, 2020 (Cheung Affidavit #1). Both parties submitted written representations. No oral hearing was held.

[5] The relevant definition of use 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.

[6] As a preliminary matter, I note that the Owner filed an additional affidavit of Dickens Ho Yan Cheung on June 19, 2020 (Cheung Affidavit #2), after the Requesting Party had already submitted its written representations on April 28, 2020. In subsequent correspondence between the parties, the Registrar confirmed that any new evidence contained within or attached to Cheung Affidavit #2 could not be considered by the Registrar. The Owner then requested a retroactive extension of time to respond to the Registrar's notice and to file additional evidence, which was refused by the Registrar for failing to meet the test set out in section 47(2) of the Act.

[7] As a result, the only admissible evidence before me is Cheung Affidavit #1, which consists of a statement that the following products have been actively in use and they have been clearly identified with the Mark pursuant to section 4 of the Act: "product packaging, namely printed paper, printed cartons, books, business brochures, pamphlets, folders, flyers and posters." No exhibits were attached to Cheung Affidavit #1.

[8] In its written representations, the Requesting Party raises a number of issues with respect to Cheung Affidavit #1, noting that it contains only a bare assertion of use; that it does not provide any evidence of sales; that it does not provide evidence of the Mark appearing on the

goods themselves or on the packaging in which the goods are distributed; that it does not show notice of association between the Mark and the goods in any other manner at the time of transfer; that it does not describe the Owner's normal course of trade; and that it makes no reference to the relevant period.

[9] In response, the Owner provided written submissions on July 13, 2020. The Registrar placed these submissions on file but refused to make them of record as the Owner's deadline to file submissions had expired on June 28, 2020, and the Owner did not request an extension of time under section 47 of the Act.

[10] After reviewing all of the admissible evidence and submissions in this case, I concur with the Requesting Party that Cheung Affidavit #1 is insufficient to establish use of the Mark in association with any of the registered goods. As was the case in *Aerosol Fillers Inc v Plough (Can) Ltd* (1980), 53 CPR (2d) 62 (FCA), Cheung Affidavit #1 consists of a bare assertion that the Mark has been in use, with no factual evidence to corroborate the affiant's assertion. Such statements are not sufficient to demonstrate use in the context of section 45 proceedings.

[11] As a result, in the absence of evidence showing such use, I cannot conclude that the Owner has used the Mark in association with the registered goods within the meaning of sections 4 and 45 of the Act. Accordingly, pursuant to the authority delegated to me under section 63(3) of the Act, the registration will be expunged in compliance with the provisions of section 45 of the Act.

Bradley Au
Hearing Officer
Trademarks Opposition Board
Canadian Intellectual Property Office

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

HEARING DATE No oral hearing held

AGENTS OF RECORD

Malcolm William Bell (Kesman & Associates)

For the Registered Owner

Macera & Jarzyna LLP

For the Requesting Party