



LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADEMARKS

Citation: 2021 TMOB 253

Date of Decision: 2021-11-24

IN THE MATTER OF A SECTION 45 PROCEEDING

Langlois avocats, s.e.n.c.r.l.

Requesting Party

and

ENTREPRISE SLIK INC.

Registered Owner

**TMA924,688 for SLIK (majuscule –
barre a la base des lettres)**

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. TMA924,688 for the trademark “slik (majuscule- – barre a la base des lettres)” (the Mark), shown below:

The logo for SLIK is displayed in a stylized, metallic, 3D font. The letters are bold and have a slight shadow, giving them a three-dimensional appearance.

[2] The Mark is registered for use in association with the following goods and services:

Escalier et garde-corps sur mesure en différents métaux et béton, clôtures de verre, meubles d'intérieurs et meubles d'extérieur.

Goods (English translation): Custom-made staircases and guardrails made of various metals and concrete, fences made of glass, indoor and outdoor furniture.

Conception et création d'escalier et garde-corps sur mesure en différents métaux et béton, clôtures de verre, meubles d'intérieurs et meubles d'extérieur.

Services (English translation): Design and building of custom-made staircases and guardrails made of various metals and concrete, fences made of glass, indoor and outdoor furniture.

[3] At the request of Langlois avocats, s.e.n.c.r.l. (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the Act on February 4, 2020 to the registered owner of the Mark, ENTREPRISE SLIK INC. (the Owner).

[4] The notice required the Owner to show whether the Mark was used in Canada in association with each of the goods and services 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 February 4, 2017 to February 4, 2020.

[5] The relevant definitions of use are set out in section 4 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.

4(2) A trademark is deemed to be used in association with services if it is used or displayed in the performance or advertising of those services.

[6] It is well established that mere assertions of use are not sufficient to demonstrate use in the context of section 45 proceedings [*Plough (Canada) Ltd v Aerosol Fillers Inc* (1980), 53 CPR (2d) 62 (FCA)]. Although the threshold for establishing use in these proceedings is low [*Woods Canada Ltd v Lang Michener* (1996), 71 CPR (3d) 477 (FCTD)], and evidentiary overkill is not required [*Union Electric Supply Co Ltd v Registrar of Trade Marks* (1982), 63 CPR (2d) 56 (FCTD)], sufficient facts must still be provided to permit the Registrar to arrive at a conclusion of use of the trademark in association with each of the goods and services specified in the registration during the relevant period [*John Labatt Ltd v Rainier Brewing Co* (1984), 80 CPR (2d) 228 (FCA)].

[7] In response to the Registrar’s notice, the Owner furnished the affidavit of Simon Turenne, Vice-President of the Owner, sworn on August 19, 2020 in Montréal, Québec.

[8] Neither party submitted written representations and no oral hearing was held.

THE EVIDENCE

[9] In his affidavit, Mr. Turenne asserts that, during the relevant period, the Owner used the Mark in Canada in association with all of the registered goods and services. In this respect, he explains that the Owner designs, creates, manufactures and installs staircases and guardrails, glass fences, and indoor and outdoor furniture, to the specification of its clients. Such clients include real estate developers, interior designers, architects and general contractors, as well as individuals.

[10] Mr. Turenne provides details with respect to some of these projects, some of which are detailed below, stating that, during the relevant period, the Owner completed approximately 200 projects in Québec and in Ontario.

[11] In support, Mr. Turenne provided the following:

- Exhibit ST-1 consists of two product catalogues for staircases and guardrails, together with a portfolio showing examples of such goods installed in what appear to be residences. Mr. Turenne confirms the catalogues and portfolio are representative of those presented to customers during the relevant period. The Mark appears on the covers and back or last page of each catalogue and on the front page of the portfolio.
 - One of the catalogues, entitled “Catalogue LIMONS NOS STANDARDS STRINGERS OUR STANDARDS”, contains bilingual French/English text and displays a variety of products corresponding with the registered goods. On pages immediately after photographs of the products, “SPECIFICATIONS” and “OPTIONS” appear as headings. Examples of information under these headings are described below.

- Various phrases including, “painted with powder coated finish”, “welded back finish plate” appear under the heading, SPECIFICATIONS.
 - Various phrases including, “laser cut riser”, “hex bolt head”, “countersunk screw”, “N.B. Other available colors according to the RAL color chart. Additional fees and 10 extra working days.”, appear under the heading, OPTIONS.
 - The second catalogue is entitled “Catalogue de produits Garde-corps” and contains what appear to be photographs of glass and metal guardrails.
- Exhibit ST-2 consists of what Mr. Turenne describes as extracts from the Owner’s Facebook page, from within the relevant period. Mr. Turenne states that the Facebook page is active and is used to publicize the Owner’s activities and keep in touch with its customers. There are six extracts provided, but only one clearly shows the Mark, within a photograph of a staircase.
 - An extract headed, “Entreprise Slik Inc. 3 avril 2019” is shown immediately above the photograph in that extract, together with the English-language statement, “Brainstorm session for compact and airy stairs in an architectural remodel. Nothing beats a 3D render to convey our design team’s vision. #designteam #architectural #remodel #3drender #stairs”
 - An extract dated 2 avril 2015 – prior to the relevant period – shows a portion of the Mark, within a photograph of what appears to be the underside of a staircase.
 - None of the remaining four extracts show the Mark and three of those extracts are dated outside of the relevant period.
- Exhibit ST-3 consists of an invoice, plans and photographs of a spiral staircase that Mr. Turenne identifies as having been installed by the Owner in Montréal in 2019. The Mark appears on the post of the guardrail in a photograph and on the plans.

- Exhibit ST-4 consists of an invoice dated March 2018, approval plans and photographs for a residential staircase. Mr. Turenne confirms that the staircase was installed in La Prairie, Québec in 2019. The Mark appears on the invoice and the plans.
- Exhibit ST-5 consists of photographs of handrails in packaging, that the Owner delivered to a site in La Prairie, Québec in 2018. The Mark appears on the packaging.
- Exhibit ST-6 consists of an invoice dated November 2018, an approval plan dated October 2018, an email and three photographs, for a staircase and guardrails that Mr. Turenne confirms were installed in La Prairie, Québec in 2018. The invoice bears the Owner's name. The approval plan bears the Mark. The email bears the word "SLIK". Two of the photographs show the Mark on a staircase.
- Exhibit ST-7 consists of documents for a two-phase project that Mr. Turenne confirms began in October 2019 and was completed after the relevant period, in August 2020, for the design and installation of a staircase in Montréal, namely:
 - An invoice dated March 2020, after the relevant period, which shows the Owner's name and down-payments dated September and October 2019.
 - The phased approval plans bearing the Mark, with the phase 1 plan dated October 2019 and the phase 2 plan dated February 10, 2020.
 - Emails exchanged between the client and the Owner from February 2020, after the relevant period, in respect of approval of the phase 2 plans, with one of the Owner's emails showing the Mark.
 - Photos of the completed project, including two that show the Mark inside the base of the staircase.
- Exhibit ST-8 consists of an invoice, email and plans with accompanying photographs, all related to a project that Mr. Turenne confirms was initiated during the relevant period for installation of stairs, railings and handrails in model homes. The invoice, email and plans

are dated February 25, 2020, after the relevant period. The Mark appears on the invoice, email and plans including on the pages of photographs accompanying the plans.

- Exhibit ST-9 consists of a portfolio showing photographs of existing glass fencing installations, together with three catalogues: one showing examples of glass enclosures; one showing products relating to glass fencing; and one showing components for glass fencing with price information redacted. The Mark appears on or throughout the portfolio and catalogues.

Mr. Turenne states that when a representative of the Owner meets with a client, the portfolio and catalogues are presented to the client to show existing projects and components of glass enclosures.

- Exhibit ST-10 consists of a photograph of a spigot for glass fencing. Mr. Turenne states that the Mark is engraved on the spigot and that such spigots bearing the Mark are used on some of the Owner's projects, but not all.
- Exhibit ST-11 consists of documents including an October 2017 invoice, plans and an email, that Mr. Turenne identifies as being for glass fences installed by the Owner in a residence in Blainville, Québec in 2018. The Mark appears on the invoice, the plans and the email.
- Exhibit ST-14 consists of an invoice dated March 2018 bearing the Owner's name as well as a manufacturing plan and photographs for a glass table that Mr. Turenne describes as designed for a customer in Québec City and sold in March 2018. The Mark appears on the plans.
- Exhibit ST-17 consists of photographs and an invoice dated July 2017 for an outdoor counter that Mr. Turenne describes as designed for a customer in St-Lambert, Québec and sold in July 2017. In one of the photographs, the Mark can be seen on the edge of the counter.

ANALYSIS

[12] With respect to the registered “design and building” services, as noted above, Mr. Turenne states that the Owner designs, creates, manufactures and installs staircases and guardrails, glass fences, and indoor and outdoor furniture, to the specification of its clients.

[13] Additionally, Mr. Turenne states that catalogues and portfolios, bearing the Mark, were given to clients to assist in the design and planning of projects corresponding with the registered services. Mr. Turenne further states that, during the relevant period, the Mark appeared on approval plans, which were validated by clients.

[14] At a minimum, I accept that the Owner advertised all of the registered services in association with the Mark during the relevant period in Canada. Furthermore, in view of Mr. Turenne’s statements and supporting exhibits, I am satisfied that the Owner has demonstrated that it did and/or could perform the registered services in Canada during the relevant period.

[15] Indeed, as stated by Mr. Turenne, the Owner completed approximately 200 projects in Québec and Ontario during the relevant period.

[16] In view of all of the foregoing, I am satisfied that the Owner has demonstrated use of the Mark in association with all of the registered services within the meaning of sections 4 and 45 of the Act.

[17] With respect to the registered goods “custom-made staircases and guardrails made of various metals and concrete”, as noted above, Mr. Turenne explains that plans bearing the Mark were used during the design and manufacture of such goods.

[18] In particular, in view of the evidence of plans and invoices for specific projects in Québec as described by Mr. Turenne, I accept that custom-made staircases and custom-made guardrails were manufactured by the Owner in Canada during the relevant period. The evidenced photographs of custom-made staircases and guardrails show that the Mark was displayed on such goods directly or on their packaging at the time of transfer.

[19] While the evidence could have been more direct with respect to "...made of various metals and concrete", I note reference to both in the portfolios and catalogues. Furthermore, given the nature of these products, it is reasonable to infer that the design and building of such goods would necessitate the use of metals and concrete.

[20] In view of the foregoing, I am satisfied that the Owner has demonstrated use of the Mark in association with the registered goods, "Escalier et garde-corps sur mesure en différents métaux et béton" within the meaning of sections 4 and 45 of the Act.

[21] With respect to "fences made of glass", as noted above, Mr. Turenne identifies an exhibited October 2017 invoice, plans and an email as being for glass fences installed by the Owner in a residence in Blainville, Québec in 2018. The Mark appears on the invoice, the plans and the email. As shown in one of the exhibited photographs, the Mark also appears engraved on a spigot for glass fencing; Mr. Turenne states that such spigots are used on some of the Owner's projects.

[22] In view of the foregoing, I am satisfied that the Owner has demonstrated use of the Mark in association with the registered goods "clôtures de verre" within the meaning of sections 4 and 45 of the Act.

[23] With respect to outdoor furniture, Mr. Turenne identifies exhibited photographs and an invoice dated July 2017 as being for an outdoor counter, designed for a customer in St-Lambert, Québec and sold in July 2017. In one of the photographs, the Mark is visible on the edge of the counter.

[24] In view of the foregoing, I am satisfied that the Owner has demonstrated use of the Mark in association with the registered goods, "meubles d'extérieur" within the meaning of sections 4 and 45 of the Act.

[25] Finally, with respect to indoor furniture, Mr. Turenne identifies an exhibited invoice dated March 2018, as well as a manufacturing plan and photographs, as being for a glass table designed for a customer in Québec City and sold in March 2018. In contrast to the other

registered goods, there is no evidence that the Mark appeared on these goods themselves or their packaging. However, the Mark appears on the associated plans.

[26] In view of Mr. Turenne's statements regarding the approval of plans by the Owner's clients, I consider display of the Mark on such plans as constituting use "in any other manner" such that notice of the association is given within the meaning of section 4(1) of the Act.

[27] In view of the foregoing, I am satisfied that the Owner has demonstrated use of the Mark in association with "meubles d'interieurs" within the meaning of sections 4 and 45 of the Act.

[28] In summary, I am satisfied that the Owner has shown use of the Mark in association with all of the registered goods and services within the meaning of sections 4 and 45 of the Act.

DISPOSITION

[29] 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.

Tracey Mosley
Member
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

Therrien Couture Joli-Coeur S.E.N.C.R.L.

For the Registered Owner

Langlois avocats, s.e.n.c.r.l.

For the Requesting Party