



LE REGISTRAIRE DES MARQUES DE COMMERCE  
THE REGISTRAR OF TRADEMARKS

**Citation: 2021 TMOB 293**

**Date of Decision: 2021-12-24**

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

**Heirlume Legal**

**Requesting Party**

**and**

**Kobina Acquah**

**Registered Owner**

**TMA849,072 for LIMELIGHT**

**Registration**

[1] At the request of Heirlume Legal (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 October 9, 2020 to Kobina Acquah (the Owner), the registered owner of registration No. TMA849,072 for the trademark LIMELIGHT (the Mark).

[2] The Mark is registered for use in association with “T-shirts-, Shirts, Sweatsirts [*sic*]”.

[3] Section 45 of the Act requires the registered owner of the trademark to show whether the trademark 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 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 between October 9, 2017 and October 9, 2020.

[4] The relevant definition of use for goods 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.

[5] In response to the Registrar's notice, the Owner filed the affidavit of Kobina Acquah, the Owner in her own name, sworn in by a commissioner taking affidavits in the province of Ontario.

[6] No party submitted written representations; no oral hearing was held.

#### THE OWNER'S EVIDENCE

[7] The body of the affidavit is relatively brief and is reproduced in its entirety below:

I, Kobina Acquah CEO of Limelight, of the city of Toronto of Canada of (name).  
SWEAR (or AFFIRM) THAT: The information provided is true, and that the trademark is still in use by Kobina Acquah

Dear CIPO,

My name is Kobina Acquah, I am the registered owner of the trademark (1477366 RT00) it has come to my attention that the opposing party (Heirlume Legal) has made claims of the inactive use of my trademark: I Kobina Acquah will prove otherwise. I will be providing some documents to prove that this trademark is still in use by me.

I am submitting a response to the opposing party "Heirlume Legals" accusation of inactivity with regards to the trademark

The documents I will be providing are:

- 1.) Tax Information
- 2.) Receipts/Orders
- 3.) Active Social Media – Instagram (LMLT Apparel)
- 4.) Website (www.lmltapparel.com)
- 5.) Website (annual subscription)
- 6.) Marketing equipment purchases

Based on the documents/information I have provided it should suffice as irrefutable evidence that this trademark is still in use by Kobina Acquah.

Sincerely,

Kobina Acquah

Sworn (or affirmed) before me at the (City, Town, etc.) of (name) in the (County, Regional Municipality, etc.) of (name) on (date).

[Signed by the affiant and Nellie Walker, “Commissioner of Taking Affidavits”, LUSC #14118.]

[9] The Owner filed its affidavit together with three unnotarized documents:

- GST/HST NETFILE confirmation for the period of January 1, 2019 to December 31, 2019 for a business named “Asamoah Acquah” with “Sales and other revenue” in the amount of \$540.
- An invoice issued by “T-SHIRTGUYS” addressed to Kobina Acquah for various products identified as “Gildan Unisex Heavy Cotton” and “Gildan Ultra Cotton” of various colors and sizes. The Mark is not displayed on this invoice.
- An untitled document containing a table listing four items, namely *Collection Bk.1, Collection Bk.2, Limelight Banner, and Show & Tell Catalogue* with additional information such as dates, quantities, prices, shipping methods and tracking numbers. The relevance of the items described in the document is unexplained in the affidavit and is at best unclear.

#### ANALYSIS AND REASONS

[8] As a preliminary matter, I noticed several deficiencies in the evidence filed by the Owner including: the jurat is incomplete as the date and location where the affidavit was signed are left blank; the affidavit is otherwise undated; while Ms. Acquah refers to six documents in her affidavit, only three were filed and may not correspond to those referred to in the body of the affidavit; and the attached documents are not notarized and not identified with cover pages or otherwise.

[9] That being said, I do not need to determine whether I can refer to the evidence in general or the attached documents in particular to dispose of this proceeding. For the reasons hereinafter

set forth, I conclude that – even if I were to consider the affidavit and documents as admissible evidence – the Owner would not have discharged its burden to prove use of the Mark in association with the registered goods.

[10] In coming to that conclusion, I am mindful of the well-established principle that bare statements that a trademark is in 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)]. In addition, 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)], some evidence of transfer in the normal course of trade in Canada 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 specified in the registration during the relevant period [*John Labatt Ltd v Rainier Brewing Co* (1984), 80 CPR (2d) 228 (FCA)]. Such evidence can be in the form of documentation like invoices, sales reports, but can also be through clear sworn statements regarding volumes of sales, dollar value of sales, or equivalent factual particulars [see, for example, *1471706 Ontario Inc v Momo Design srl*, 2014 TMOB 79].

[11] In her affidavit, Ms. Acquah states that “*The information provided is true, and that the trademark is still in use by Kobina Acquah*” and that “*I will be providing some documents to prove that this trademark is still in use by me.*” Those simple and mere statements are insufficient to demonstrate that the trademark was used in association with each of the registered goods in Canada during the relevant period [per *Plough*].

[12] As for references to specific registered goods sold in association with the Mark, I note that there is no mention of T-shirts, Shirts, or Sweatshirts in the affidavit or in the attached documents, and the Mark is only mentioned once in relation to a *Limelight Banner*.

[13] Without explanations as to the relevance of documents filed by the Owner, and in the absence of any factual particulars regarding the use of the Mark alleged by Ms. Acquah, there is no reasonable inference that can be made from the affidavit or attached documents to establish a *prima facie* case of use of the Mark in association with the goods specified in the registration

[*John Labatt Ltd v Rainier Brewing Co* (1984), 80 CPR (2d) 228 (FCA); see also *Diamant Elinor Inc v 88766 Canada Inc*, 2010 FC 1184].

[14] Accordingly, I am not satisfied that the Owner has demonstrated use of the Mark as registered in association with any of the registered goods in Canada within the meaning of sections 4 and 45 of the Act.

[15] Furthermore, there is no evidence of special circumstances excusing non-use of the Mark before me.

#### DISPOSITION

[16] In view of all of the foregoing, 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.

---

Martin Béliveau  
Chairperson  
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**

No agent of record

For the Registered Owner

Heirlume Inc.

For the Requesting Party