



LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADEMARKS

Citation: 2022 TMOB 024

Date of Decision: 2022-02-16

IN THE MATTER OF A SECTION 45 PROCEEDING

**Norton Rose Fulbright Canada
LLP/S.E.N.C.R.L., S.R.L.**

Requesting Party

and

Guangxi Golden Throat Co., LTD.

Registered Owner

TMA671,716 for GOLDEN DESIGN

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. TMA671,716 for the trademark GOLDEN DESIGN (the Mark), shown below:

The word "Golden" is written in a large, black, stylized cursive font. The letters are thick and have a slightly irregular, hand-drawn appearance.

[2] The Mark consists of the word Golden in black stylized font.

[3] For the reasons that follow, I conclude that the registration ought to be expunged.

THE PROCEEDING

[4] At the request of Norton Rose Fulbright Canada LLP/S.E.N.C.R.L., S.R.L. (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the Act on April 17, 2018, to Guangxi Golden Throat Co., LTD. (the Owner), the registered owner of the Mark.

[5] The Mark is registered for use in association with the following goods:

(1) Medicines for human uses and Chinese patent medicines, namely, throat lozenges; medicated lozenges, injections, extracts and pills, all used for wetting throat and relieving pain; analgesics; anti-infectives; anti-inflammatory; antibiotics; antivirals; antidepressants; antiparasitics; antiseptics; candy for medical purposes, namely, medical candy for wetting throat and relieving pain; chewing gum for medical purposes, namely, chewing gum for improving dental health; food for babies; herbal tea; dietetic substances adapted for medical purposes, namely, vitamins, ginseng for medicinal use and royal jelly for human consumption; air deodorizers; veterinary vaccines for bovines and horses; pesticides; bacteriostats for dental use; sanitary towels; medical dressings; sugar; candy; coffee; tea; cocoa; rice; tapioca; sago; coffee substitutes; chocolates; flour; noodles; bread; biscuits; cakes; pastry; frozen confections; popcorn; ices; ice cream; dietetic substances adapted for non-medical purposes, namely, honey and molasses; treacle; maltose; yeast; baking powder; salt; gourmet powder; curry powder; mustard; pepper; vinegar; soy sauces; soya flour; sesame paste; spices; essences for foodstuffs (except etheric essences and essential oils), namely, vanilla and mint.

[6] The notice required the Owner to show whether the trademark was used in Canada, in association with each of 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 between April 17, 2015, and April 17, 2018.

[7] 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.

[8] 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] and “evidentiary overkill” is not required [see *Union Electric Supply Co v Canada (Registrar of Trade Marks)* (1982), 63 CPR (2d) 56 (FCTD)].

[9] In response to the Registrar’s notice, the Owner furnished a document titled “AFFIDAVIT” (the Affidavit Document) signed by Jiang Peizhen, with Exhibits A-1 to A-7. While the Affidavit Document is signed by Ms. Peizhen, the jurat itself is left blank as the date and location where it was signed. What apparently consists of a certification page is attached to the Affidavit Document. This certification page, dated November 1, 2018, attests that Ms. Peizhen’s signature is genuine and contains the signature of Sun Jia; this signature is described as an “authorized signature”, without identifying the signatory’s capacity or whether this person is authorized to administer oaths.

[10] Only the Requesting Party submitted written representations, and no hearing was held.

ADMISSIBILITY OF THE AFFIDAVIT DOCUMENT

[11] The Requesting Party submits that the Affidavit Document is not an affidavit or a statutory declaration in accordance with section 45(1) of the Act because no oath or solemn declaration was made by Ms. Peizhen, therefore, the document should be disregarded.

[12] I would first note that the Act and the *Trademarks Regulations* are silent as to the form of affidavits and statutory declarations to be filed before the Registrar. Accordingly, the Registrar generally accepts affidavits sworn in foreign jurisdictions as long as that jurisdiction’s requirements are met [see *Dubuc v Montana* (1991), 38 CPR (3d) 88 (TMOB)]. Furthermore, especially in the context of section 45 proceedings—which are intended to be summary and expeditious—the Registrar has frequently considered certain deficiencies in affidavits and statutory declarations to be mere technicalities [see *Brouillette, Kosie v Luxo Laboratories Ltd* (1997), 80 CPR (3d) 312 (TMOB); *88766 Canada Inc v Tootsie Roll Industries Inc* (2006), 56 CPR (4th) 76 (TMOB); *Borden & Elliot v Raphaël Inc* (2001), 16 CPR (4th) 96 (TMOB)].

[13] In this case, however, I agree with the Requesting Party and find that the deficiencies in the Affidavit Document are beyond mere technicalities.

[14] Although section 45 proceedings are simple and administrative in nature, the evidence must nevertheless be filed in the form of an affidavit or statutory declaration. In the present case, although the Affidavit Document is titled an affidavit, it was not sworn before an individual authorized to administer oaths.

[15] While Ms. Peizhen states that she “solemnly declare[s]” at the beginning of the Affidavit Document, there is no jurat or other indication that the document was in fact solemnly declared in front of a notary public, commissioner of oaths or similar authority in the jurisdiction where it was signed to make it a proper affidavit or statutory declaration. All that appears at the bottom of the Affidavit Document is the signature of Ms. Peizhen. Even though there is a certificate that confirms that the signature is genuine, it is not possible to ascertain that Ms. Peizhen’s statements were in fact made under oath and sworn to before an individual authorized to administer an oath.

[16] Since the Affidavit Document cannot be considered a valid affidavit or statutory declaration, the Owner failed to furnish the required evidence. This results in an expungement of the Mark [see *Industria de Diseno Textil, SA v FFAUF SA*, 2015 TMOB 4; *Sim & McBurney v Granini France (une société par actions simplifiée)*, 2021 TMOB 37].

DISPOSITION

[17] Accordingly, pursuant to the authority delegated to me under section 63(3) of the Act, registration No. TMA671,716 will be expunged in accordance with the provisions of section 45 of the Act.

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

ROBIC

For the Registered Owner

Norton Rose Fulbright Canada LLP/S.E.N.C.R.L.,
S.R.L.

For the Requesting Party