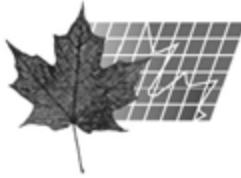


O P I C



C I P O

**LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADEMARKS**

Citation: 2022 TMOB 080

Date of Decision: 2022-04-26

IN THE MATTER OF A SECTION 45 PROCEEDING

The Toro Company

Requesting Party

and

Cadman Power Equipment Ltd.

Registered Owner

TMA821,071 for INFINITI DRIVE

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. TMA821,071 for the trademark INFINITI DRIVE (the Mark).

[2] The Mark is registered for use in association with the following goods: “Transmissions for irrigation water reels and irrigation hose reels” (the Goods).

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

THE PROCEEDING

[4] At the request of The Toro Company (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the Act on November 18, 2020, to Cadman Power Equipment Ltd. (the Owner), the registered owner of the Mark.

[5] The notice required the Owner to show whether the Mark was 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 November 18, 2017 to November 18, 2020.

[6] The relevant definition of use 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] In response to the Registrar's notice, the Owner furnished the affidavit of Craig Cadman, the Vice President of Operations of the Owner, sworn on February 18, 2021, together with Exhibits A to C.

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

EVIDENCE

[9] In his affidavit, Mr. Cadman explains that typically, the Owner sells the Goods to farmers for use in crop irrigation.

[10] Mr. Cadman attests that, during the relevant period, the Owner has "used the [Mark] in association with the Goods by means of attaching and displaying the [Mark] on the Goods when the Goods are sold to customers" [para 7].

[11] In support, the following exhibits are attached to Mr. Cadman's affidavit:

- Exhibit A consists of four photographs of the Owner’s products that Mr. Cadman identifies as “a C-1800 and a C-3250 model of the Goods” [para 5]. I note that each of the depicted products bear the Mark. Mr. Cadman further adds that “The [Mark] is affixed to all of the Goods, including to those listed in Exhibit ‘B’ by applying the decal shown in Exhibit ‘A’ in a similar position on the Goods” [para 5].
- Exhibit B consists of two invoices showing sales of two different models of irrigation products which Mr. Cadman identifies as “Irrigation Hose Reel Traveller[s]” [para 7]. Mr. Cadman confirms these invoices are “evidencing the sale of the Goods in Canada” [para 7]. I note that the invoices are dated within the relevant period, and were issued by the Owner to customers located in Canada.
- Exhibit C consists of excerpts from the Owner’s June 18, 2018 and March 18, 2019 Price Lists for its Hard Hose Travellers. Mr. Cadman explains that “All of [the Owner’s] C-Series hose reels, including the 3700S and the 3000XLB in Exhibit ‘B’, come equipped with [the Owner’s] ‘Infiniti Drive™ Transmission’ as a standard feature, as shown in [Exhibit C]” [para 8].

ANALYSIS AND REASONS FOR DECISION

[12] 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 and, 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].

[13] In the present case, Mr. Cadman provides photographs showing how the Mark appears on two models of the Owner’s products. While these particular photographs are undated, I accept that this evidenced display of the Mark constitutes how the Mark appeared on the invoiced products during the relevant period. This being so, given Mr. Cadman’s clear statement that the Mark is affixed to all of the Owner’s Goods, including the ones listed in the Exhibit B invoices, by applying the decal shown in the Exhibit A photographs in a similar position on the Goods [para 5].

[14] Furthermore, Mr. Cadman provides two representative invoices showing sales of “Irrigation Travellers” in Canada during the relevant period. While the invoices do not distinguish between “irrigation hose reels travellers” and “irrigation water reels travellers“, I note that Mr. Cadman confirms that the representative invoices for sales of “Irrigation Hose Reels Travellers” amounted to sales of the “Goods” [para 7]. I also note that the invoiced products were equipped with a transmission as a standard feature [para 8]. As such, I am satisfied that the invoiced products correspond to the registered goods.

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

DISPOSITION

[16] Pursuant to the authority delegated to me under section 63(3) of the Act and in compliance with section 45 of the Act, the registration will be maintained.

Yves Cozien Papa Tchoufou
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

Siskinds The Law Firm

For the Registered Owner

Fogler, Rubinoff LLP

For the Requesting Party