



LE REGISTRAIRE DES MARQUES DE COMMERCE  
THE REGISTRAR OF TRADEMARKS

**Citation: 2022 TMOB 178**

**Date of Decision: 2022-09-06**

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

**Life On Air, Inc.**

**Requesting Party**

**and**

**Strax GmbH**

**Registered Owner**

**TMA854,879 for HOUSEPARTY**

**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. TMA854,879 for the trademark HOUSEPARTY (the Mark).

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

(1) Computers, computer software namely software used on mobile phones, portable and handheld digital electronic devices, electronic notepads and MP3 players used for the purpose of controlling and synchronising with external media players, firmware and hardware; multimedia apparatus and instruments, namely docking stations with speakers for portable electronic devices namely, mobile phones, personal digital assistants (PDA), and MP3 players and parts and fittings therefore; hard drives; miniature hard disk drive

storage units; chargers for electric batteries for personal use; headphones, stereo headphones, in-ear headphones, audio speakers; audio speakers for home, monitor speakers, speakers for computers and parts and fittings therefore; compact disc players, digital versatile disc recorders and players, digital audio tape recorders and players; portable audio systems; radios; cameras; video cameras; portable and handheld digital electronic devices namely mobile phones, handheld computers, electronic notepads, MP3 players, personal digital assistants (PDA), all for recording, organizing, transmitting, manipulating, and reviewing text, data, audio and video files; MP3 players; docking stations for MP3 players; hand held computers, personal digital assistants, electronic organizers, electronic notepads and parts and fittings therefore; videophones, bags and cases adapted or shaped to contain MP3 players, hand held computers, personal digital assistants, electronic organizers and electronic notepads; bags and cases adapted or shaped to contain cameras and/or video cameras; cordless telephones; mobile telephones; parts for mobile telephones; mobile telephone covers; mobile telephone cases; mobile telephone cases made of leather or imitations of leather; mobile telephone covers made of cloth or textile materials; Software and transmitters used on mobile phones, portable and handheld digital electronic devices, electronic notepads and mp3 players for the purpose of controlling electronic devices namely, docking stations, televisions, DVD players, computers and gaming consoles.

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

#### THE PROCEEDING

[4] On June 4, 2020, at the request of Life On Air, Inc. (the Requesting Party), the Registrar of Trademarks issued a notice pursuant to section 45 of the Act to Strax GmbH (the Owner). The notice required the Owner to show whether the Mark was used 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 the Mark 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 June 4, 2017 and June 4, 2020 (the Relevant Period).

[5] 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.

[6] In response to the Registrar's notice, the Owner submitted the unsworn affidavit of Mr. Gudmundur Palmason, Managing Director for the Owner, on January 4, 2021.

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

#### THE OWNER'S EVIDENCE

[8] Mr. Palmason states that he has been employed by the Owner for 11 years and that he has access to "company records" and is familiar with the company's distribution processes and product sales, including in Canada [para 2]. He explains that the Owner, has its operational headquarters in Germany and sells "accessories and products used with consumer electronic and mobile devices", including audio-speakers [paras 1 and 3].

[9] According to Mr. Palmason, the Owner purchased the Mark from Gear4 HK Limited (GEAR4) on November 26, 2018 [para 5]. He goes on to state that GEAR4 sold personal speakers under the Mark prior to the assignment of the Mark to the Owner [para 6]. I note that Mr. Palmason does not make any statement in his affidavit about any product sale in association with the Mark by the Owner.

[10] Mr. Palmason attaches the following exhibits to his unsworn affidavit:

- Exhibit 1: An undated photograph that Mr. Palmason describes as the "rear view of a HOUSEPARTY speaker" [para 6]. The Mark is displayed on the depicted product.
- Exhibit 2: An undated webpage screenshot described by Mr. Palmason as "a screenshot showing HOUSEPARTY speakers by GEAR4 for sale on *amazon.ca*" [para 7]. The exhibited webpage from *amazon.ca* shows a "GEAR4 HouseParty Mini Portable Bluetooth Speaker". The webpage also indicates that the item is "currently unavailable – we don't know if or when this item will be back in stock".
- Exhibit 3: An undated webpage screenshot described by Mr. Palmason as "a screenshot showing HOUSEPARTY speakers by GEAR4 for sale on *walmart.ca*" [para 8]. The exhibited webpage from *walmart.ca* shows a "GEAR4 HouseParty Portable Docking

Speakers for MP3 Players”. The webpage also indicates “Price unavailable” and displays a “Not available” notice.

#### ANALYSIS AND REASONS FOR DECISION

[11] As a preliminary matter, I note that the affidavit filed by the Owner is unsworn. That being said, I do not need to determine whether I can refer to the evidence in general or the attached documents 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 Canada in association with the registered goods.

[12] 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].

[13] As argued by the Requesting Party, I agree that the evidence fails to show that there was any transfer of goods in association with the Mark in Canada during the Relevant Period. The broad statement that the previous owner sold “personal speakers” in association with the Mark [para 6] amounts to a bare statement of use because we do not know where, when or how many of these speakers were sold. Furthermore, the exhibited webpage screenshots indicate that the

“HOUSEPARTY speakers” are not available for sale. Lastly, there is no evidence of transfers for any other goods listed in the registration.

[14] Accordingly, I am not satisfied that the Owner has demonstrated use of the Mark in association with any of the registered goods in Canada within the meaning of sections 4 and 45 of the Act. Furthermore, there is no evidence of special circumstances excusing non-use of the Mark before me.

DISPOSITION

[15] In view of all 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.

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Martin Béliveau  
Chairperson  
Trademarks Opposition Board  
Canadian Intellectual Property Office

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

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**HEARING DATE**    No hearing held

**AGENTS OF RECORD**

Jensen IP

For the Registered Owner

Ridout & Maybee LLP

For the Requesting Party