



LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADEMARKS

Citation: 2022 TMOB 187

Date of Decision: 2022-09-27

IN THE MATTER OF A SECTION 45 PROCEEDING

88766 Canada inc.

Requesting Party

and

Geotech Ltd.

Registered Owner

TMA879,927 for AIRMT

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. TMA879,927 for the trademark AIRMT (the Mark).

[2] The Mark is registered for use in association with conducting geophysical surveys (the Services).

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

THE PROCEEDING

[4] On April 7, 2021, at the request of 88766 Canada inc. (the Requesting Party), the Registrar of Trademarks issued a notice pursuant to section 45 of the Act to Geotech Ltd. (the Owner). The notice required the Owner to show whether the Mark was used in Canada in association with the 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 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 April 7, 2018 and April 7, 2021 (the Relevant Period).

[5] The definition of use with respect to services is set out in section 4(2) of the Act as follows:

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] In response to the Registrar's notice, the Owner submitted the affidavit of Mr. Paolo Berardelli, Vice President of the Owner, sworn on November 1, 2021.

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

THE EVIDENCE

[8] While Mr. Berardelli's affidavit is brief, it does contain a statement that during the Relevant Period the Owner advertised and promoted the Services in association with the Mark and that the Owner was willing and able to provide the Services [para 3].

[9] Mr. Berardelli states that in excess of 20 copies of a brochure (the Brochure) were distributed to potential customers [para 5] at each of eight Canadian-based trade shows in the field of mineral exploration, all of which took place during the Relevant Period [para 4].

[10] The Brochure [Exhibit 1] displays the Mark, including twice in conjunction with a TM symbol, and describes the features and benefits of the AIRMT airborne magnetic tensor system,

including that it measures magnetic fields. The Brochure lists an “Americas” website address of *www.geotech.ca* and an e-mail address of *sales@geotech.ca*. The Brochure also lists nine offices, including one in Canada.

ANALYSIS AND REASONS FOR DECISION

[11] While the threshold for establishing use in the context of section 45 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 Canada (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 the services specified in the registration during the relevant period [*John Labatt Ltd v Rainier Brewing Co* (1984), 80 CPR (2d) 228 (FCA)].

[12] In assessing the evidence, I have kept in mind that evidence in a section 45 proceeding must be considered as a whole, and focusing on individual pieces of evidence in isolation is not the proper approach [see *Kvas Miller Everitt v Compute (Bridgend) Limited* (2005), 47 CPR (4th) 209 (TMOB); and *Fraser Milner Casgrain LLP v Canadian Distribution Channel Inc* (2009), 78 CPR (4th) 278 (TMOB) at para 10]. As well, reasonable inferences can be made from the evidence provided [see *Eclipse International Fashions Canada Inc v Shapiro Cohen*, 2005 FCA 64 at para 7]. Further, absent evidence to the contrary, an affiant’s statements are to be accepted at face value and must be accorded substantial credibility in a section 45 proceeding [*Oyen Wiggs Green & Mutala LLP v Atari Interactive Inc*, 2018 TMOB 79 at para 25].

[13] The Brochure advertises and promotes a geophysical survey system used to take magnetic field readings. The Mark is displayed multiple times in the Brochure, including twice in conjunction with a TM symbol, and the Brochure was distributed to customers during the Relevant Period at various trade shows in Canada [para 4]. However, in the absence of actual performance of the Services, the evidence must show not only that the Services had been advertised but also that the owner was willing and able to perform the Services in Canada during the Relevant Period [*Wenward (Canada) Ltd v Dynaturf Co* (1976), 28 CPR (2d) 20 (TMOB)].

The distribution in Canada of the Brochure for the purposes of promoting the Services of the Owner and the presence of an office in Canada [Exhibit 1] provide support for Mr. Berardelli's sworn statement that the Services were advertised and promoted and also available to be provided in Canada [para 3]. I therefore find that the Owner was willing and able to perform the Services in Canada during the Relevant Period and conclude that the Mark has been used pursuant to section 4(2) of the Act.

DISPOSITION

[14] 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.

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

Ridout & Maybee LLP

For the Registered Owner

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For the Requesting Party