



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2023 TMOB 035

Date of Decision: 2023-02-24

IN THE MATTER OF A SECTION 45 PROCEEDING

Requesting Party: Engineers Canada/Ingénieurs Canada

Registered Owner: Trico Products Corporation

Registration: TMA846,959 for ENGINEERED BY TRICO

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. TMA846,959, for the trademark ENGINEERED BY TRICO (the Mark).

[2] The Mark is registered for use in association with windshield wiper blades for vehicles.

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

THE PROCEEDING

[4] On December 6, 2021, at the request of Engineers Canada/Ingénieurs Canada, the Registrar of Trademarks issued a notice under section 45 of the Act to Trico Products Corporation (the Owner).

[5] The notice required the Owner to show whether the Mark was used in Canada in association with windshield wiper blades for vehicles 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 use since that date. In this case, the relevant period for showing use is between December 6, 2018 and December 6, 2021 (the Relevant Period).

[6] 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.

[7] In response to the Registrar’s notice, the Owner submitted the affidavit of Matthew E. Liebson, General Counsel of the Owner, declared on June 22, 2022.

[8] Neither party submitted written representations. No hearing was held.

THE OWNER’S EVIDENCE

[9] Mr. Liebson explains that the Owner is a designer and manufacturer of windshield wiper blades [para 3]. He also provides a breakdown of annual sales in Canada for the registered good from 2018 to 2021, ranging from \$299,000 to \$326,000 [para 16].

[10] Mr. Liebson provides the following relevant exhibits:

- Exhibit B: invoices from the Relevant Period, showing sales of “XC13F, XC15F, XC16F, XQ13, XQ15...” from the Owner to customers in Canada.

Mr. Liebson explains that the products identified on the invoices with the prefix “XC” and “XQ” are for windshield wiper blades for vehicle that bears the Mark on their packaging [para 11].

- Exhibit C: photographs of windshield wiper blade packaging bearing the Mark. Mr. Liebson states that these photographs are representative of how the Mark was displayed on products sold in Canada during the Relevant Period [para 14].

ANALYSIS AND REASONS FOR DECISION

[11] 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. The evidence in a section 45 proceeding need not be perfect; indeed, a registered owner need only establish a *prima facie* case of use within the meaning of sections 4 and 45 of the Act [see *Diamant Elinor Inc v 88766 Canada Inc*, 2010 FC 1184]. This burden of proof is light; evidence must only supply facts from which a conclusion of use may follow as a logical inference [see *Diamant* at para 9].

Use of the Mark

[12] The evidence shows that windshield wiper blades manufactured by the Owner were sold in Canada during the Relevant Period [para 11 and Exhibit B] in packages on which the Mark was displayed [para 14 and Exhibit C]. Consequently, I am satisfied that the Owner has shown use of the Mark in Canada within the meaning of sections 4 and 45 of the Act.

DISPOSITION

[13] 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 maintained.

Martin Béliveau
Chairperson
Trademarks Opposition Board
Canadian Intellectual Property Office

Appearances and Agents of Record

HEARING DATE: No hearing held

AGENTS OF RECORD

For the Requesting Party: Macera & Jarzyna LLP

For the Registered Owner: Gowling WLG (Canada) LLP