



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2023 TMOB 008

Date of Decision: 2023-01-23

IN THE MATTER OF A SECTION 45 PROCEEDING

Requesting Party: The Wonderful Company LLC

Registered Owner: Fresh Trading Limited

Registration: TMA971,518 for CIRCLES DESIGN

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. TMA971,518 for the trademark CIRCLES DESIGN (the Mark), owned by Fresh Trading Limited (the Owner), shown below:



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

THE PROCEEDING

[3] At the request of The Wonderful Company LLC (the Requesting Party), the Registrar of Trademarks issued a notice to the Owner under section 45 of the Act on June 15, 2020.

[4] The notice required the Owner to show whether the Mark had been 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 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 June 15, 2017, to June 15, 2020.

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

Fruit flavoured non-alcoholic drinks; fruit juices; mineral waters; yogurt drinks; fruit drinks; non-alcoholic aerated beverages; syrups and powders for making beverages; beers.

[6] The relevant definition of use in the present case is set out in section 4 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] It is well established that 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)]. However, sufficient facts 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.

[8] In the absence of use, pursuant to section 45(3) of the Act, the registration is liable to be expunged, unless the absence of use is due to special circumstances.

[9] In response to the Registrar's notice, the Owner furnished three affidavits:

- the affidavit of James Davenport, a Director, Company Secretary, and Chief Operating Officer for the Owner, sworn on April 6, 2021 (the Davenport Affidavit);
- the affidavit of Conor Love, a Manager for Innocent Limited, a wholly owned subsidiary of the Owner, sworn on April 1, 2021 (the Love Affidavit); and
- the affidavit of Christina Canagasabay, an articling student employed by the Owner's agent of record, sworn on November 12, 2019.

[10] Both the Requesting Party and the Owner submitted written representations and were represented at an oral hearing.

THE EVIDENCE

The Davenport Affidavit

[11] Mr. Davenport states that the Owner is the parent holding company of the Innocent group of companies, including Innocent Limited (Innocent UK) and other subsidiaries and affiliates around the globe (collectively, the Innocent Group). He further states that he is a Director and Company Secretary for Innocent UK, and confirms that the Owner controls the character and quality of goods sold by the Innocent Group in association with its trademarks, including the Mark. He refers to Fresh Trading, Innocent UK, and Innocent Group collectively as the Company; further, he refers throughout his affidavit to the "Innocent Goods", defined as including fruit smoothies, dairy-free beverages, fruit juices, juice and vegetable "shots", sparkling fruit and water "bubbles" beverages", children's fruit products, and coconut water.

[12] Mr. Davenport states that the Mark has been used by the Company in association with the Innocent Goods for many years by means of a label that is printed on the packaging or affixed to such goods. As Exhibits D through K, he attaches a number of screenshots from the Company's website showing the Mark displayed on the packaging for smoothies, dairy-free products, juice products, vitamin-boosted products, juice shot products, bubbles products, children's drink products, and coconut water. He confirms that these images are representative of the way the Mark was displayed on the Innocent Goods during the relevant period.

[13] As Exhibits L, M, and N, Mr. Davenport attaches screenshots from *amazon.ca* showing a bubbles beverage product and two coconut water products being offered for sale; Mr. Davenport confirms that these screenshots are representative of the way in which the Innocent Goods were offered for sale in Canada during the relevant period. He further states that since 2019, “the Company has been actively engaged in efforts to enter the Canadian marketplace through brick-and-mortar retail channels”, as set out in the Love Affidavit.

The Love Affidavit

[14] Mr. Love confirms that since 2019, Innocent UK has been actively engaging in efforts to enter the Canadian marketplace through brick-and-mortar channels. He states that in 2019, Innocent UK began discussions with Coca-Cola Limited (CCL) to import Innocent-branded smoothies for sale in Canada, and that the goal was to have such smoothies available for sale in Canada by March 2020. In addition, he states that Innocent UK engaged a third-party business consultant to assess the juice market in Canada and provide recommendations regarding the best channels for a retail launch. However, this assessment was “suspended” on March 23, 2020, due to the COVID-19 pandemic.

[15] Mr. Love states that in October 2019, CCL reached out to Farm Boy Company Inc. (Farm Boy), a grocery store chain with over thirty locations, to ascertain whether Farm Boy was interested in becoming a distributor for Innocent smoothies in Canada during a trial launch. He states that CCL and Farm Boy reached an agreement for the trial of Innocent Smoothies on or around December 2019. Between late 2019 and March 2020, there were internal discussions between CCL and Innocent UK regarding the labeling, production, and shipment of the smoothies to Canada. As Exhibits B and C, he attaches copies of bilingual labels for smoothies displaying the Mark created for the Canadian marketplace. He states that these efforts also included legal reviews, arranging for shipping, addressing tariff and customs issues, and the creation of internal financial documentation. By mid-March, he states that Innocent UK, CCL, and Farm Boy were “on track” to have the smoothies in Farm Boy stores sometime in May 2020.

[16] However, on March 23, 2020, the government in the United Kingdom issued an indeterminate stay-at-home order in response to the pandemic, which lasted for nearly three months and “had a profound impact on Innocent’s business operations and, in particular, our efforts to expand the Innocent brand to new markets” such that Innocent UK was unable to produce and ship products to Canada. He states that Innocent UK informed CCL of this development; as Exhibit D, he attaches a copy of an email from a representative of CCL to Farm Boy dated March 25, 2020, and advising Farm Boy that “Due to the COVID 19 virus, [Innocent] will not be able to produce and ship the product to Canada as previously planned”.

[17] Mr. Love states that “Innocent UK resumed its efforts to enter the Canadian marketplace through brick-and-mortar retail channels in July 2020, when I reached out to an independently owned café in Alberta to gauge whether they would be interested in selling Innocent branded smoothies”. Innocent UK then agreed to start a trial launch of smoothies in October 2020, with 20 to 30 smoothies to be delivered to the café each month. However, Mr. Love states that due to further lockdowns, Innocent UK was again unable to produce or ship products to Canada until 2021.

[18] Finally, Mr. Love states that in general, Innocent UK first enters new markets by offering smoothies and juices, and that while the pandemic delayed its plans for Canada, “we will resume our efforts to sell Innocent branded smoothies and juices in Canada through brick-and-mortar retail channels as soon as possible, with the goal of introducing and selling the full range of Innocent Goods in Canada.”

The Canagasabey Affidavit

[19] Ms. Canagasabey states that on or about September 25, 2019, at the request of Nathan Piché, a lawyer employed at the Owner’s agent of record, she purchased a can of the Innocent Bubbles beverage product via *amazon.ca*. As Exhibits A through F3, she attaches screenshots from *amazon.ca* showing the product as it appeared on that page, the confirmation of purchase on that page, a purchase order confirmation and shipment notification sent to her personal email address, and photographs of the packaging and product. The packaging shows that the product was sent from the United

Kingdom. I note that the can displays the Mark and was offered for sale on *amazon.ca* for \$14.29 CAD.

REASONS FOR DECISION

[20] The Requesting Party raises a number of issues with respect to the Owner's evidence. In particular, the Requesting Party submits that there is no evidence of use by the Owner; that there is no evidence relating to a number of the registered goods including "yogurt drinks, syrups and powders for making beverages, and beers"; that the sale referenced in the Canagasabay Affidavit is not a sale in the normal course of trade; and that the Owner has not established special circumstances excusing non-use. Each submission will be considered in turn.

Preliminary Issue: Hearsay

[21] The Requesting Party submits that the paragraphs in the Davenport Affidavit relating to *amazon.ca* and the email from CCL to Farm Boy attached as Exhibit D to the Love Affidavit are inadmissible hearsay as there is no evidence that they meet the test of necessity and reliability.

[22] However, I agree with the Owner that the rules for hearsay are relaxed in a section 45 proceeding and that concerns regarding evidence should go to weight rather than admissibility [see *FCA US LLC v Pentastar Transportation Ltd*, 2019 FC 745 at para 49; and *Rogers Media Inc v La Cornue*, 2019 TMOB 63 at para 28].

Use By The Owner

[23] The Requesting Party submits that use of a trademark in association with goods sold by a distributor is not use of the trademark by the distributor, but rather is use of the trademark that accrues to the benefit of the entity that is the source of the product, citing *Manhattan Industries Inc v Princeton Mfg Ltd* (1971), 4 CPR (2d) 6 at 16-17 (FCTD) [*Manhattan Industries*], and *Havana House Cigar & Tobacco Merchants Ltd v Skyway Cigar Store*, 1998 CanLII 7773 (FCTD) at para 60. As such, given that the Owner is a holding company, the Requesting Party submits that any use by Innocent UK would not enure to the Owner as it is not the source of the product.

[24] However, I agree with the Owner that given the nature and purpose of section 45 of the Act, it is proper to presume that a registered owner is the “source” of the goods in question, unless the evidence indicates otherwise, such as in the case of a licensee [see *Marks & Clerk v Tritap Food Broker*, 2017 TMOB 35 and *Gowling Lafleur Henderson LLP v Henry Company, LLC*, 2017 TMOB 51]. In this case, Mr. Davenport clearly states that the Owner “is responsible for overseeing the use, maintenance, management, protection and development of all intellectual property within the Innocent group of companies on a global basis”. Furthermore, Mr. Love states that the Owner, through its subsidiaries, “manages and controls [...] developing, marketing, manufacturing and distributing ‘innocent’ branded beverages” including the “Innocent Goods”.

[25] Accordingly, given that the Davenport and Love Affidavits clearly attest to the manner and means by which the Owner exercises control over the character and quality of its goods, I am satisfied that any evidenced use of the Mark in association with those goods by Innocent UK or the Innocent Group would enure to the Owner [see *Empresa Cubana Del Tobacco Trading v Shapiro Cohen*, 2011 FC 102 at para 84].

Transfers in the Normal Course of Trade

[26] The Requesting Party submits that the sale referenced in the Canagasabey Affidavit is not a transfer in the normal course of trade as set out in section 4(1) of the Act. In this respect, the Requesting Party notes that there is no other evidence of sales of the Owner’s goods through *amazon.ca* or otherwise; that the price paid by Ms. Canagasabey for a single 330mL can was “exorbitantly high”; that the purchase was made at the direction of a lawyer employed by the Owner’s agent of record; and that the purchase was made shortly before the date at which the Mark would be susceptible to a section 45 notice. As such, the Requesting Party submits that this sale was contrived by the Owner and not a sale in the normal course of trade.

[27] The Owner submits that this sale followed the pattern of the normal course of trade described by Mr. Davenport in his discussion of online sales by the Owner, and therefore constitutes *prima facie* use of the Mark in association with the registered

goods “non-alcoholic aerated beverages”. Accordingly, the Owner submits that there is “no basis for finding that Ms. Canagasabey’s purchase was somehow contrived or not in the normal course of trade”. In support, the Owner cites *Guido Berlucci & C Srl v Brouillette Kosie Prince*, 2007 FC 245 (*Guido Berlucci*) at paras 17-18 for the proposition that only *prima facie* evidence of use is required in a section 45 proceeding, and that “evidence of a single sale, whether wholesale or retail, in the normal course of trade, can suffice so long as it follows the pattern of a genuine commercial transaction and is not seen as being deliberately manufactured or contrived to protect the registration of the trade-mark at issue”.

[28] I note that neither Mr. Davenport nor Ms. Canagasabey clearly explains the Owner’s relationship with JMO Online UK (Jalpur Millers), the entity listed as the seller on the *amazon.ca* screenshots attached to the Canagasabey Affidavit, aside from Mr. Davenport’s general reference to “third-party distributors” in his affidavit. In any event, while I understand the Owner’s argument that Mr. Davenport described the pattern of the Owner’s normal course of trade with respect to online sales, and that the sale evidenced in the Canagasabey Affidavit followed this pattern, the fact remains that this is a sale that was directed by a lawyer at the firm representing the Owner, and the Owner filed no other evidence demonstrating online sales following this pattern. While evidence of a single sale *can* be sufficient to establish use for the purposes of section 45 expungement proceedings, it is only so long as it follows the pattern of a genuine commercial transaction and is not seen as deliberately manufactured or contrived to protect the registration [*Philip Morris Inc v Imperial Tobacco Ltd* (1987), 13 CPR (3d) 289 (FCTD) (*Philip Morris*) at para 12]. As expressed by the Federal Court in *Guido Berlucci*, a registered owner who chooses to provide evidence of a single sale is “playing with fire in the sense that he must provide sufficient information about the context of the sale to avoid creating doubts in the mind of the Registrar or the Court that could be construed against him” [*Guido Berlucci* at para 20].

[29] In this case, given that the sale was made at the instruction of a lawyer at the firm representing the Owner, it is difficult to conclude that it was made for any reason other than for the purposes of protecting the registration. As such, I do not consider it to

be a “genuine commercial transaction” as contemplated in *Philip Morris*, even if it may otherwise follow the pattern described by Mr. Davenport. There is nothing in evidence to demonstrate that the Owner otherwise sold any goods in this manner during the relevant period, and it is not sufficient that the goods were merely offered for sale during the relevant period [see, for example, *Molson Cos v Halter* (1976), 28 CPR (2d) 158 (FCTD)]. In this respect, I agree with the Requesting Party that the present case can be distinguished from *M Capewell & Associates Inc v Bollinger Industries, Inc*, 2022 TMOB 223, cited by the Owner in support of its position, in which the registered owner’s evidence included not only screenshots showing the availability of goods online through websites such as *amazon.ca*, but also included an “Order Register” showing sales figures for such goods. Unlike the present case, there was nothing to suggest that the sales shown in the order register in that case were not in the normal course of trade.

[30] In view of the foregoing, I am not satisfied that the Owner has demonstrated use of the Mark in association with any of the registered goods within the meaning of sections 4 and 45 of the Act.

Special Circumstances

[31] Accordingly, the issue is whether, pursuant to section 45(3) of the Act, special circumstances existed to excuse the absence of use. The general rule is that absence of use will be penalized by expungement, but there may be an exception where the absence of use is excusable due to special circumstances [*Smart & Biggar v Scott Paper Ltd*, 2008 FCA 129 (*Scott Paper*)].

[32] To determine whether special circumstances have been established, the Registrar must first determine, in light of the evidence, why in fact the trademark was not used during the relevant period. Second, the Registrar must determine whether these reasons for non-use constitute special circumstances [per *Registrar of Trade Marks v Harris Knitting Mills Ltd* (1985), 4 CPR (3d) 488 (FCA) (*Harris Knitting*)]. The Federal Court has held that special circumstances mean circumstances or reasons that are “unusual, uncommon, or exceptional” [*John Labatt Ltd v Cotton Club Bottling Co* (1976), 25 CPR (2d) 115 (FCTD) at para 29].

[33] If the Registrar determines that the reasons for non-use constitute special circumstances, the Registrar must still decide whether such special circumstances excuse the period of non-use. This involves the consideration of three criteria: (i) the length of time during which the trademark has not been in use; (ii) whether the reasons for non-use were beyond the control of the registered owner; and (iii) whether there exists a serious intention to shortly resume use [*Harris Knitting*]. All three criteria are relevant, but satisfying the second criterion is essential for a finding of special circumstances excusing non-use [*Scott Paper*].

[34] The Owner submits that the pandemic is a special circumstance given that it was disruptive to business on a global scale and directly prevented the Owner from selling its goods through brick-and-mortar retail channels in Canada. The Owner notes that the Registrar has found that “unexpected forces of nature” can contribute to a finding of special circumstances, citing *McCain Foods Ltd v Chef America Inc* (1996), 71 CPR (3d) 103 (TMOB) (*McCain*), involving an earthquake. Further, the Owner submits that the period of non-use should be calculated from the date of registration, May 23, 2017, and that the three-year period of non-use is relatively short. Finally, with respect to goods other than smoothies, the Owner submits that the Registrar has previously recognized the difficulties inherent to the establishment of a full line of goods and found this to be a special circumstance that can excuse an absence of use for a reasonable period of time [citing *Dubuc v Montana* (1991), 38 CPR (3d) 88 (TMOB) at paras 95-96].

[35] The Requesting Party notes that the Love Affidavit refers to efforts commencing in October 2019 for a “trial” of Innocent smoothies at Farm Boy, and to efforts commencing in July 2020 for a trial launch of Innocent smoothies at a café in Alberta, neither of which came to fruition due to pandemic-related restrictions. The Requesting Party notes that these efforts relate exclusively to smoothies, and submits that the Owner’s affidavit is silent on efforts prior to October 2019 to enter the Canadian market. In this respect, the Requesting Party cites *Oyen Wiggs Green & Mutala LLP v Rath* (2010), 82 CPR (4th) 77 (TMOB) (*Rath*) at para 12 for the proposition that special circumstances excusing non-use must apply to the entire relevant period.

[36] Regarding the Owner's submission that the COVID-19 pandemic is a special circumstance excusing non-use, I acknowledge that the pandemic has been a uniquely disruptive event for businesses in Canada and around the world. Because of its scope and magnitude, it is a circumstance with no clear parallel in prior jurisprudence; accordingly, when assessing whether non-use of a trademark will be excused for reasons relating to the pandemic, it is necessary to consider the unique realities of the pandemic.

[37] Still, while the pandemic may be an "uncommon, unusual or exceptional" circumstance, it will not automatically excuse non-use of a trademark. It is still necessary to demonstrate that non-use of a trademark is excused because of special circumstances within the framework set out by the Federal Court in *Harris Knitting*. Thus, where an owner submits that the pandemic amounts to special circumstances excusing non-use of its trademark, that owner must first show that non-use of a trademark is *in fact* due to the pandemic; in other words, it must provide sufficient evidence demonstrating that if not for the pandemic, it would have used the trademark. Then, if an owner can show that the pandemic was the reason for non-use, the owner must still satisfy the Registrar that such non-use is excusable considering the length of time of non-use, whether such non-use was in fact beyond the owner's control, and whether a resumption of use is imminent [see *Harris Knitting*]. As the second factor will be essential for a finding of special circumstances excusing non-use, it will be incumbent on an owner to provide concrete evidence demonstrating that pandemic-related non-use, and non-use for any other reasons, were in fact beyond the owner's control. In other words, it is not sufficient for an owner to refer to the pandemic generally without providing sufficient details regarding its impact on the owner's operations.

[38] As of the date of this decision, while there have been several cases in which the Registrar has considered arguments that non-use of a trademark ought to be excused due to the special circumstance of the pandemic, the Owner has directed me to no cases where such arguments have succeeded. I note that in some cases, the Registrar found that the pandemic was not the cause or primary reason for non-use [*BenefitHub, Inc v Frontline Centre Inc*, 2021 TMOB 233; *Smart & Biggar LLP v Keith Dykes dba*

Happy Campers Tent Trailer Rentals, 2022 TMOB 69; and *Cory Adam Schneider v Lot Boy Interactive Inc*, 2022 TMOB 106]; in one case, the Registrar did not need to consider pandemic-related arguments as other special circumstances were found to excuse non-use [*Life Maid Right - 2799232 Ontario Inc v Maid Right, LLC*, 2022 TMOB 104]; and in two cases, the Registrar followed the *Rath* line of cases in finding that the pandemic could not constitute special circumstances excusing non-use as it only applied to a few months at the end of the relevant period [*Stewart McKelvey v Brookfield Residential (Alberta) LP*, 2022 TMOB 176 (*Brookfield*); *Norton Rose Fulbright Canada LLP/SENCRL, srl v Mama Shelter*, 2022 TMOB 229 (*Mama Shelter*)].

[39] In this case, while the Requesting Party cites *Rath* for the principle that special circumstances must apply to the entire relevant period, the Owner submits that this principle is presented without legal support in *Rath* and is not mentioned in leading cases on special circumstances such as *Scott Paper*. Further, the Owner submits that the principle has not been cited by the Court and runs contrary to other decisions by the Board, including *McCain*. As such, the Owner submits that *Rath* is an outlier and should not be followed in this case. Instead, the Owner submits that it is the *McCain* case that should be followed, which the Owner cites for the proposition that an unexpected force of nature can constitute special circumstances excusing non-use even if that event only encompasses a brief time during the relevant period.

[40] However, I do not agree with the Owner that the *McCain* case stands for such a proposition. Instead, the Registrar found as follows:

It seems to me that the relatively short late summer/fall “window” time considered preferable by the registrant for the introduction of the products into the Canadian market, the changes required with respect to some of the flavors of the products, the inordinate demand for the product in the United States, the time and money involved concerning the construction of its new plant in Kentucky to meet the increased demand for its products, the January 1994 major earthquake which caused severe damages and which resulted in production and supply/demand problems for Chef America Inc., the above, en masse, created, in my view, circumstances outside the control of the registrant preventing the registrant from having launched its marks in Canada. [at para 17]

[41] In other words, the earthquake at issue in *McCain* was only one of many reasons which, when taken together, amounted to special circumstances. Given that at least

some of these factors were present for the entire relevant period in *McCain*, there is no conflict between that case and *Rath*. Indeed, *McCain* is entirely consistent with the principle that for special circumstances to excuse non-use, an owner must provide evidence of reasons (whether individual or cumulative) that prevented it from using a trademark for the entire relevant period.

[42] Consistent with this principle, I note that in the *Brookfield* and *Mama Shelter* cases, the registered owners had failed to establish that non-use of their respective trademarks during the pre-pandemic portion of the relevant period was the result of anything other than voluntary business decisions, which do not amount to special circumstances. In other words, those registered owners had not established that the pandemic was actually the reason for non-use during the relevant period.

[43] Thus, while it is possible to envision a scenario in which an owner diligently prepares to begin or resume use of a trademark throughout the relevant period, only to have such *bona fide* efforts thwarted by pandemic restrictions occurring late in the relevant period, such a scenario must be substantiated by clear evidence demonstrating that non-use of the trademark throughout the relevant period was in fact beyond the owner's control. Such evidence was not provided in the *Brookfield* or *Mama Shelter* cases, and it has not been provided in the present case either.

[44] In this respect, the Owner's evidence is that it began actively engaging in efforts to enter the Canadian marketplace through brick-and-mortar retail channels at some unspecified time in 2019, more than halfway through the relevant period. The Owner provides a more specific date of October 2019 for the beginning of negotiations between CCL and Farm Boy for a trial launch of the Owner's smoothies. As noted by the Requesting Party, the result is that the Owner's evidence is silent on its activities for at least the first half, if not the first three quarters, of the relevant period. While it may be that the three-year period specified in section 45(1) of the Act is consistent with the apparent legislative intent that, generally, there is a maximum start-up time of three years for a registrant to commence serious commercial use in Canada, in this case, there is simply no evidence that the Owner was making any such start-up efforts prior to

2019. In the absence of any such concrete details, it could very well be that the delay in commencing use was simply the result of voluntary business decisions by the Owner, which do not amount to special circumstances. For example, I note that the Love Affidavit appears to indicate that the Owner has generally made the decision to enter new markets with a focus on its smoothies and beverage products. At a minimum, this is a voluntary business decision to prioritize some of the registered goods over others.

[45] In other words, the Owner's evidence has not demonstrated that the pandemic was in fact the reason for non-use during the relevant period, or that it made diligent efforts throughout the whole of the relevant period such that use of the Mark would have commenced during the relevant period if not for the pandemic. Instead, the Owner's evidence suggests that it only began to make efforts to commence use of the Mark in the latter part of the relevant period. As such, this is not a case like *McCain* in which the owner provided detailed evidence of proactive and diligent efforts throughout the entire relevant period to begin use of its trademark, and that such efforts were frustrated by the cumulative impact of factors beyond its control throughout the relevant period. While the Owner has shown some evidence of continuing intention to use the Mark, such intention is not sufficient on its own to excuse non-use [*Scott Paper* at para 28].

[46] In view of the foregoing, I am not satisfied that the Owner has established that there were special circumstances excusing non-use with respect to any of the registered goods within the meaning of section 45(3) of the Act.

DISPOSITION

[47] Accordingly, 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.

G.M. Melchin
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

Appearances and Agents of Record

HEARING DATE: 2022-12-02

APPEARANCES

For the Requesting Party: Kevin Graham

For the Registered Owner: Nathan Piché

AGENTS OF RECORD

For the Requesting Party: Stikeman Elliott S.E.N.C.R.L., SRL/LLP

For the Registered Owner: Gowling WLG (Canada) LLP