



# Canadian Intellectual Property Office

## THE REGISTRAR OF TRADEMARKS

**Citation:** 2023 TMOB 043

**Date of Decision:** 2023-03-09

## IN THE MATTER OF A SECTION 45 PROCEEDING

**Requesting Party:** Marks & Clerk Canada

**Registered Owner:** Metro Jet Wash Corporation

**Registration:** TMA797,241 for METRO JET VAC MJV 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. TMA797,241 for the trademark METRO JET VAC MJV Design (the Mark) as shown below:



[2] The Mark is registered for use in association with the following services: industrial, commercial and residential catch basin, sump pump and drain cleaning services.

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

### **THE PROCEEDING**

[4] At the request of Marks & Clerk Canada (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the Act on March 11, 2021 to the registered owner of the Mark, Metro Jet Wash Corporation (the Owner).

[5] The notice required the Owner to show whether the Mark was used in Canada in association with each of the services listed 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 March 11, 2018 to March 11, 2021 (the Relevant Period). In the absence of use, the registration is liable to be expunged, unless the absence of use is due to special circumstances.

[6] The relevant definition of use in the present case is set out in section 4(2) of the Act as follows:

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.

[7] In response to the Registrar's notice, the Owner furnished the Affidavit of Brian De Carli, the Vice President of the Owner, sworn on August 17, 2021, together with Exhibits A to I.

[8] Neither party submitted written representations. While both parties attended a hearing, which was held in conjunction with section 45 proceedings in relation to registration Nos. TMA797,234 and TMA797,235, the Requesting Party only made submissions with respect to TMA797,235. Separate decisions will issue in each proceeding.

## **THE EVIDENCE**

[9] Mr. De Carli describes the Owner as a property maintenance company and an industry leader in waste equipment cleaning and in drain cleaning and flushing, catch basin cleaning, sump pit cleaning and drain camera inspections in industrial, residential and commercial buildings. He asserts that the Mark has been in continuous use by the Owner in Canada in association with the services listed in the registration since 2009.

[10] Mr. De Carli states that the Owner is equipped with a fleet of eight vacuum trucks, as well drain cameras, mechanical snakes, jetters and a mini vac trailer, to service driveways and yard drains, sump pits, above and underground parking lots and residential, high-rise, municipal, commercial and industrial properties and warehouses.

[11] Mr. De Carli states that the Mark has been displayed on the Owner's trucks since 2009. As Exhibit A, he provides photographs of two trucks which display the Mark along with contact information for the Owner, including a telephone number with a 416 area code. On the side of one of the trucks is a reference to drain flushing, catch basin cleaning, water jetting and sewage waste.

[12] Mr. De Carli states that the Mark is displayed on signage at the Owner's head office in Toronto, Ontario and provides, as Exhibit B, a Google Maps image which shows the Mark on signage and which he confirms accurately depicts the signage as it has appeared since 2009.

[13] Mr. De Carli states that the Owner has a mini vac trailer which can be towed behind a small vehicle to access very low clearance underground garages. As Exhibit C, Mr. De Carli provides a photograph of the mini vac trailer which displays the Mark. He confirms that all of the Owner's equipment consistently displayed the Mark since 2009.

[14] Mr. De Carli states that the Mark has been displayed on the Owner's websites at *www.metrojetwash.ca* and *www.metrojetvac.ca* since 2009 and he provides, as Exhibit D, a print out from *www.metrojetvac.ca* which displays the Mark and describes the Owner's catch basin, sump pump and drain cleaning services.

[15] Mr. De Carli states that the Owner had sales of the services offered by the Owner in association with the Mark of over \$3,000,000 during the Relevant Period.

[16] Mr. De Carli also states that the Owner spent approximately \$85,000 during the Relevant Period on advertising for the services offered in association with the Mark. In support, he provides the following material:

- Exhibit E – a sample of a promotional item displaying the Mark distributed at golf tournaments sponsored by the Owner in September 2019, including the London Property Management Association tournament and the Alternatives tournament. Reference to drain flushing and catch base cleaning is visible on the item.
- Exhibit F – samples of print advertisements in the Greater Toronto Apartment Association Source Directory, Real Estate Management Industry News and Condo Business which Mr. De Carli states are representative of advertisements in use in the Relevant Period and which depict the Mark. One of the advertisements specifically references the services listed in the registration.
- Exhibit G – a photograph of a trade show display used at the Owner's booth at the Condo Conference held in October 2019 in Toronto which displays the Mark.
- Exhibit H – screen shots from a promotional video which displays the Mark. The video was posted on YouTube in November 2020 and the Owner sent links to the video to customers and displayed it at trade shows in 2020.
- Exhibit I – a sample of a “mail chimp” advertisement distributed to customers and potential customers attending the 2020 Buildings Week event which displays the Mark.

### **ANALYSIS AND REASONS FOR DECISION**

[17] 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, the Owner need only establish a *prima facie* case of use within the meaning of sections 4 and 45 of the Act This burden

of proof is light; evidence must only supply facts from which a conclusion of use may follow as a logical inference [*Diamant Elinor Inc v 88766 Canada Inc*, 2010 FC 1184].

[18] Based on the evidence as set forth above, I am satisfied that the Owner displayed the Mark in the advertisement and performance of services offered in Canada during the Relevant Period, which services correlate to the services listed in the registration.

[19] Accordingly, I conclude that the Owner has shown use of the Mark in association with the services listed in the registration within the meaning of sections 4(2) and 45 of the Act.

**DISPOSITION**

[20] 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.

---

Robert A. MacDonald  
Member  
Trademarks Opposition Board  
Canadian Intellectual Property Office

# Appearances and Agents of Record

**HEARING DATE:** 2023-02-15

## **APPEARANCES**

**For the Requesting Party:** Michael O'Neill

**For the Registered Owner:** David Reive

## **AGENTS OF RECORD**

**For the Requesting Party:** Marks & Clerk

**For the Registered Owner:** Miller Thomson LLP