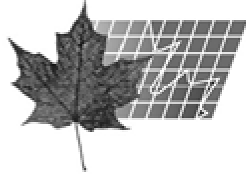

Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2024 TMOB 024

Date of decision: 2024-02-06

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

IN THE MATTER OF A SECTION 45 PROCEEDING

Requesting Party: Gowling WLG (Canada) LLP

Registered Owner: Larose et Fils Ltée

Registration: TMA845,354 for pro-nature (nature-pro)

FILE OVERVIEW

[1] On August 9, 2022, at the request of Gowling WLG (Canada) LLP (the Requesting Party), the Registrar sent the notice under section 45 of the *Trademarks Act,* RSC 1985, c T-13 (the Act) to Larose et Fils Ltée (the Owner), the owner of registration No. TMA845,354 for the trademark pro-nature (nature-pro) (the Mark).

[2] The Mark is registered in association with the following goods and services:

[TRANSLATION]

Goods
Green cleaning products namely degreasers, disinfectants, sanitizers, cleansers for the hands, cleansers for carpets, biotechnological products for floor care, odour control,

> treatment of piping drains, surface disinfection and carpet cleaning, garbage bags, toilet paper, hand drying papers, cloths and wet mops.
>
> Services
> Training programs, namely about more environmentally friendly cleaning methods using green cleaning products. Training program, namely about cleaning apparatus, namely about equipment for cleaning, namely carpet extractors, steam carpet cleaners, specialty vacuum cleaners, accessories and maintenance tools for such devices.

[3] The notice under section 45 of the Act requires the Owner to state, in respect of each of the goods and services specified in the registration, whether the Mark was used in Canada at any time during the three years preceding the date of the notice and, if not, the date on which the Mark was last used in this manner and the reason for its non-use since then.

[4] The relevant period here is from August 9, 2019 to August 9, 2022.

[5] The relevant definitions of "use" in the present case are 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.
>
> (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] It is generally accepted that the threshold for establishing use in a proceeding such as this is low [*Lang, Michener, Lawrence & Shaw v Woods Canada Ltd* (1996), 71 CPR (3d) 477 (FCTD)] and evidentiary overkill is not required [*Union Electric Supply Co v Canada (Registrar of Trade Marks)* (1982), 63 CPR (2d) 56 (FCTD)]. It is sufficient to establish *prima facie* use of the Mark under sections 4 and 45 of the Act [*1459243 Ontario Inc v Eva Gabor International, Ltd*, 2011 FC 18]. However, bare allegations of use are insufficient to do so [*Plough (Canada) Ltd v Aerosol Fillers Inc* (1980), 53 CPR (2d) 63 (FCA)]. In addition, the Owner bears the full burden of proof [*88766 Canada Inc v George Weston Ltd* (1987), 15 CPR (3d) 260 (FCTD)], and any ambiguity in the evidence must be interpreted against the Owner [*Plough*, supra].

[7] In response to the Registrar's notice, the Owner filed the sworn statement of Manon Larose, sworn on February 21, 2023. No exhibits are attached to this statement.

[8] Only the Owner filed written representations. No hearings were held.

PRELIMINARY REMARK – NO WRITTEN REPRESENTATIONS FROM THE REQUESTING PARTY

[9] The Owner believes that it is disconcerting and in bad faith that the Requesting Party abstains from filing written representations and appears to be using the section 45 proceeding for the sole purpose of harming the Owner.

[10] First, written representations are not required in this proceeding. Given its summary nature, the Requesting Party's motivations are also not considered when making a decision on the matter. Finally, it should be recalled that the Registrar may refuse to issue a notice under section 45 of the Act for a "good reason," but once the notice is issued, allegations such as those alleged against the Requesting Party are irrelevant.

EVIDENCE SUMMARY

[11] Ms. Larose describes herself as the sole administrator, president, and secretary of the Owner, a company that manufactures cleaning products and distributes chemicals and maintenance equipment [paras 1–2].

[12] Ms. Larose states that the Owner [TRANSLATION] "has been using ... the name 'Pro-nature' and a specific logo for products of its manufacture since 2010." She refers to product labels bearing the words "Pro-nature" as of September 2010, an advertisement announcing the introduction of these products at an exhibition in April 2010, as well as public archives of the Owner's website dating from 2013 [para 6].

[13] Ms. Larose states that on the date of her statement, the Owner [TRANSLATION] "continues to sell her products with the name 'Pro-nature'" [para 7].

[14] Ms. Larose also states that the Owner's current website has a page defining [TRANSLATION] "the use of the word 'Pro-nature' and its logo" [para 8]. Finally, she states

that the "'Pro-nature' name and Pro-Nature logo can be found on 92 items on her website" [para 9].

COMMENTS ON THE EVIDENCE

[15] With respect to the use of the Mark in association with the services, Ms. Larose makes no reference to the training services covered by the registration.

[16] With respect to the use of the Mark in association with the goods, as previously mentioned, no exhibits accompany Ms. Larose's statement. Although not necessarily fatal in itself, as Ms. Larose's assertions are vague and incomplete in my view, the content of her statement does not address this shortcoming. Specifically, Ms. Larose makes no reference to the relevant period and does not identify any specific good that was the subject of the wording in the registration, referring only generally to the Owner's goods.

[17] Furthermore, the statement does not include any evidence to show the Mark as registered. Ms. Larose does not reproduce any logo, illustration, screenshot or other extract in the body of her statement. In addition, she primarily refers to the "name" or "word" "Pro-nature," which raises the question of whether this is an acceptable variation of the Mark. That said, in the absence of any representations on this issue, I do not feel it is necessary to decide this issue, because in any event, no use has been established.

[18] With respect to Ms. Larose's references to the Owner's website, no corresponding content (either archived or current) is introduced into evidence as prescribed. It follows from this that the facts relating to it included in the Owner's written representations cannot be considered [*Ridout & Maybee LLP v Encore Marketing International, Inc* (2009), 72 CPR (4th) 204 (TMOB)].

[19] The Owner therefore did not demonstrate use of the Mark in association with the registered goods and services during the relevant period. It also did not provide any facts excusing non-use.

DECISION

[20] In light of the foregoing, in exercising the authority delegated to me under section 63(3) of the Act, the registration will be expunged.

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Iana Alexova
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

Certified translation
Daniel Lépine

Appearances and Agents of Record

No hearings were held.

AGENTS OF RECORD

For the Requesting Party: Alepin Gauthier Avocats Inc.

For the Owner: Gowling WLG (Canada) LLP