



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2025 TMOB 18

Date of Decision: 2025-01-28

IN THE MATTER OF A SECTION 45 PROCEEDING

Requesting Party: Miltons IP/p.i.

Registered Owner: Shenzhen China Dragon Limited

Registration: TMA870,528 for ELITE

THE PROCEEDING

[1] At the request of Miltons IP/p.i. (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the Trademarks Act, RSC 1985, c T-13 (the Act) on May 21, 2023, to Shenzhen China Dragon Limited (the Owner). The section 45 notice required the Owner to show whether registration No. TMA870,528 for the trademark ELITE (the Mark) was used in Canada in association with each of the registered goods set out below (Goods) at any time within the three-year period before the notice's date (the Relevant Period):

(1) Building materials, namely, ceramic basins, exhaust fans, bicycle racks, electrical in-wall timers, kitchen countertops, light fixtures, kitchen and bathroom cabinets, toilets, toilet seats, bathtubs, shower stalls, kitchen and bathroom sinks.

[2] For the reasons that follow, the registration will be maintained.

ANALYSIS

[3] 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 [*Black & Decker Corp v Method Law Professional Corp*, 2016 FC 1109 at para 12]. 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. 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 at para 9].

[4] The Owner filed as its evidence the affidavit of Julia Zhang, the president of Elite Building Materials Inc., its licensee. Ms. Zhang’s evidence is that:

- The Owner has sold the Goods in Canada since 2005 in association with the Mark.
- The Goods are manufactured and packaged in boxes with the trademark ELITE by the Owner in China and sent to its licensee Elite Building Materials Inc. during the Relevant Period (para 9, Exhibit E).
- Invoices showing proof of sales to customers in Canada during or before the Relevant Period are provided. At para 12 of her affidavit, Ms. Zhang explains:

... During the Covid-19 pandemic, construction development slowed considerably, and some Goods were held in the warehouse for a significant period of time before being sold to end user customers.

[5] I find Ms. Zhang's evidence sufficient to show use of the Mark during the Relevant Period with each of the Goods. The law is clear that the use of a trademark at any point along the chain of distribution is sufficient to demonstrate use as defined in section 4 of the Act, and that such use will enure to the benefit of the owner provided that the chain of distribution begins with the trademark owner [*Manhattan Industries Inc v Princeton Manufacturing Ltd* (1971), 4 CPR (2d) 6 (FCTD)]. In this case, I find that the Goods were manufactured and packaged with the trademark ELITE by the Owner, were sold in bulk to the Owner's licensee, who then stored them in a warehouse and shipped them to customers over time as they were ordered. The Owner's evidence is that this was their normal course of trade.

[6] Accordingly, I am satisfied that the Owner has demonstrated use of the Mark with each of the Goods.

DISPOSITION

[7] 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.

Natalie de Paulsen
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

Appearances and Agents of Record

No hearing held.

AGENTS OF RECORD

For the Requesting Party: Miltons IP/p.i.

For the Registered Owner: PAULINE BOSMAN onbrand IP