



# Canadian Intellectual Property Office

## **THE REGISTRAR OF TRADEMARKS**

**Citation:** 2025 TMOB 29

**Date of Decision:** 2025-02-13

## **IN THE MATTER OF A SECTION 45 PROCEEDING**

**Requesting Party:** Fasken Martineau Dumoulin S.E.N.C.R.L., s.r.l.

**Registered Owner:** Ally Financial Inc.

**Registration:** TMA1023777 for ALLY

## **INTRODUCTION**

[1] At the request of Fasken Martineau Dumoulin S.E.N.C.R.L., s.r.l. (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 October 20, 2023, to Ally Financial Inc. (the Owner), the registered owner of registration No. TMA1023777 for the trademark ALLY (the Mark).

[2] The Mark is registered in association with the following services: "Auctions on the global computer network for used motor land vehicles".

[3] The notice required the Owner to show whether the Mark was used in Canada in association with the services 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 use since that date. In this case, the relevant period for showing use is October 20, 2020 to October 20, 2023.

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

4(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.

[5] With respect to services, the display of a trademark on advertising is sufficient to meet the requirements of section 4(2) of the Act when the trademark owner is offering and prepared to perform those services in Canada [*Wenward (Canada) Ltd v Dynaturf Co* (1976), 28 CPR (2d) 20 (TMOB)].

[6] 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.

[7] In response to the Registrar's notice, the Owner furnished the affidavit of Pat Rinaldo, sworn on March 20, 2024 in Detroit, Michigan (the Rinaldo Affidavit).

[8] An oral hearing was not requested and neither party submitted written representations.

#### **THE OWNER'S EVIDENCE AND ANALYSIS**

[9] Mr. Rinaldo is the Chief Information Officer of the Owner [para 1]. He explains that the Owner is a "financial services company that offers banking services, credit and debit card services, consumer and vehicle loans, mortgages and investment advisory services", and that it is "one of the largest car finance companies in the United States", which also offers "vehicle auction services" [para 5]. Although the Owner's head office is

located in Detroit, Michigan [para 3], Mr. Rinaldo explains that the Owner is an e-services institution, meaning it operates “exclusively in the digital and online realm”, offering its services “online, via a downloadable software application, and by telephone” [para 9].

[10] Even though some aspects of the Owner’s services are offered only in the United States [paras 13 and 19], Mr. Rinaldo asserts use of its ALLY trademarks in association with the offering and provision of the Owner’s services, including in Canada, “for many years” [para 6]. In particular, as described below, he explains how the Owner advertised, offered and performed the registered “auctions” services in association with the Mark in Canada during the relevant period.

[11] In this respect, Mr. Rinaldo describes how car dealerships can use the Owner’s online SmartAuction platform to list, view and make offers to purchase vehicles [paras 25 to 27, Exhibits E and F]. He evidences the Owner’s attendance at two trade conferences in Canada during the relevant period, where the Owner’s SmartAuction services were promoted to Canadian car dealerships and material was distributed to promote the Owner’s “ALLY vehicle auction services” [paras 30 to 33, Exhibits H to J]. Along with the SmartAuction branding, I note that the exhibited promotional materials clearly display the Mark. Furthermore, Mr. Rinaldo confirms that, by the end of the relevant period, the Owner had approved 64 Canadian-based vehicle dealerships for access to the SmartAuction platform and services.

[12] In the absence of written representations, although the Rinaldo Affidavit does not evidence any particular “auctions” *per se*, at a minimum, I accept that the evidence shows that, during the relevant period, the Owner advertised the registered “auctions” services in association with the

Mark, and was offering and able to perform such services in Canada [per *Wenward*, above].

[13] Accordingly, I am satisfied that the Owner has demonstrated use of the Mark in association with the registered services within the meaning of sections 4 and 45 of the Act.

**DISPOSITION**

[14] In view of all of the foregoing, 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.

Andrew Bene  
Member  
Trademarks Opposition Board  
Canadian Intellectual Property Office

# Appearances and Agents of Record

**HEARING DATE:** No hearing requested

## **AGENTS OF RECORD**

**For the Requesting Party:** Fasken Martineau Dumoulin LLP

**For the Registered Owner:** Jensen IP