



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2025 TMOB 26

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: TMA829470 for ALLY Logo

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. TMA829470 for the trademark ALLY Logo (the Mark). The Mark is shown below and includes the following colour claim:

Colour is claimed as a feature of the trade-mark ... The color purple is claimed as a feature of the mark. The mark consists of a stylized letter 'a' followed by the letters 'lly' all in purple.

[2] The Mark is registered in association with the following services:
“Banking and financing services; financing of 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] 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.

[6] 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).

[7] An oral hearing was not requested and neither party submitted timely written representations. Per the Registrar’s August 20, 2024 letter, the Owner’s request for a retroactive extension of time to file and serve its written representations was refused, and such representations were not made of record in this proceeding.

THE OWNER’S EVIDENCE AND ANALYSIS

[8] 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” [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].

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

[10] With respect to “banking and financing services”, Mr. Rinaldo details various ways its customers could access the Owner’s banking and financing services from Canada during the relevant period [paras 10 to 15]. For example, customers located in Canada could access their accounts and the Owner’s services generally through the ALLY website, *ally.com*, which prominently displayed the Mark [para 12, Exhibit D]. In this respect, Mr. Rinaldo confirms that the Owner’s website enjoyed a high volume of internet traffic from Canada during the relevant period [paras 16 and 17].

[11] During the relevant period, the Owner’s bank account customers were also issued debit banking cards, which could be used in Canada for various transactions [para 14]. Attached as Exhibit C to the affidavit is a photograph of a representative debit card, which I note prominently displays the Mark.

[12] With respect to “financing of vehicles”, Mr. Rinaldo explains that the Owner has a division that specializes in “financing, insurance, and extended warranty plans for new and used vehicles” [para 18]. He confirms that customers can apply for financing through the Owner’s ALLY website, and can then manage the loan or lease account, including the making of payments, through the website or the Owner’s ALLY mobile application [para 19]. Again, Mr. Rinaldo confirms that significant numbers of customers accessed their ALLY vehicle loan or lease accounts through the ALLY website using Canadian IP addresses during the relevant period [para 20]. Again, I note that the Mark is prominently displayed at the top of each of the exhibited webpages, including those advertising the Owner’s vehicle financing services [Exhibit B].

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

[14] Although Mr. Rinaldo details many other aspects of the Owner’s services generally and how they are available to Canadians specifically, given the foregoing conclusion and the absence of representations from either party, it is not necessary to address such evidence in any detail.

DISPOSITION

[15] 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