



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2025 TMOB 38

Date of Decision: 2025-02-28

IN THE MATTER OF A SECTION 45 PROCEEDING

Requesting Party: Eckowood Hardwood Floors Inc.

Registered Owner: Hardwoods Specialty Products LP

Registration: TMA708,092 for ECHO WOOD

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. TMA708,092 for the trademark ECHO WOOD (the Mark), owned by Hardwoods Specialty Products LP (the Owner).

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

THE RECORD

[3] At the request of Eckowood Hardwood Floors Inc. (the Requesting Party), the Registrar of Trademarks issued a notice to the Owner under section 45 of the Act on November 27, 2023. The notice required the Owner to show whether the Mark had

been used in Canada in association with the goods 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 November 27, 2020, to November 27, 2023.

[4] The Mark is registered for use in association with the goods “Engineered or reconstituted wood veneer and solid lumber.”

[5] The relevant definition of “use” in the present case is 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.

[6] It is well accepted that the threshold for establishing use in these proceedings is low [*Woods Canada Ltd v Lang Michener* (1996), 71 CPR (3d) 477 (FCTD)], and evidentiary overkill is not required [*Union Electric Supply Co Ltd v Registrar of Trade Marks* (1982), 63 CPR (2d) 56 (FCTD)]. However, sufficient facts must still be provided to permit the Registrar to arrive at a conclusion of use of the trademark in association with the goods specified in the registration during the relevant period.

[7] In response to the Registrar’s notice, the Owner furnished the affidavit of Gordon Clough, the Director of Marketing for the Owner, sworn on April 24, 2024. Only the Owner filed written representations; no oral hearing was held.

EVIDENCE

[8] Mr. Clough explains that the Owner is a British Columbia-based specialty distributor of architectural design materials and building products. He states that as part of its business, the Owner sells, distributes and promotes a line of wood veneers in association with the Mark. He states that the sales in Canada during the relevant period

of such products were in excess of \$7 million, representing in excess of 3 million square foot units.

[9] Among the exhibits attached to Mr. Clough's affidavit are the following:

- Exhibit C: photographs of packaging displaying the Mark. Mr. Clough explains that these images are representative of how the Mark was displayed on the packaging of the registered goods when they were sold and shipped to Canadian customers throughout the relevant period.
- Exhibit D: a copy of a product brochure for the Owner's Echo Wood goods containing details about such goods. Mr. Clough confirms that this brochure was last updated during the relevant period and was accessible through the Owner's website during the relevant period.
- Exhibit E: two invoices showing sales of "Echo Wood" products to Canadian purchasers during the relevant period. Mr. Clough confirms that these represent sales of the registered goods; while he notes that the invoices did not accompany the goods at the time of transfer, he confirms that such goods would have been shipped in packaging displaying the Mark as shown in Exhibit C.
- Exhibit F: three bills of lading showing sales of the Owner's goods to Canadian customers during the relevant period. While the Mark does not appear on these documents, Mr. Clough confirms that these reflect sales of the registered goods, as indicated by the "EW" initials in the product lines of the documents.

ANALYSIS

[10] Based on the evidence noted above, I am satisfied that the Owner has demonstrated use of the Mark in association with the registered goods within the meaning of sections 4 and 45 of the Act. In this respect, in view of Mr. Clough's sworn statements and the information provided in the exhibited brochure, I am satisfied that the goods referenced in the Exhibit E invoices amount to the goods as registered. I am also satisfied that any sales reflected in these invoices would amount to sales in the

normal course of trade, based on Mr. Clough's description of the Owner's business. As these invoices show that the Owner sold its goods in Canada during the relevant period, and as Mr. Clough has confirmed that such goods would have displayed the Mark on their packaging as shown in Exhibit C, I am satisfied that the Owner has shown use of the Mark within the meaning of the Act.

DISPOSITION

[11] For the reasons set out above, 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.

G.M. Melchin
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

Appearances and Agents of Record

HEARING DATE: No hearing held

AGENTS OF RECORD

For the Requesting Party: Lei Zhou (Witmart Inc)

For the Registered Owner: Osler, Hoskin & Harcourt LLP