



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2025 TMOB 56

Date of Decision: 2025-03-04

IN THE MATTER OF A SECTION 45 PROCEEDING

Requesting Party: SCOGAL

Registered Owner: Covalon Technologies Ltd.

Registration: TMA722,192 for COLACTIVE

THE PROCEEDING

[1] At the request of SCOGAL (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 September 8, 2023, to Covalon Technologies Ltd. (the Owner). The section 45 notice required the Owner to show whether registration No. TMA722,192 for the trademark COLACTIVE (the Mark) was used in Canada in association with wound dressings, including collagen-based wound dressings at any time within the three-year period before the notice's date (the Relevant Period).

[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.

[4] The Owner filed as its evidence the affidavit of Valerio DiTizio, its Chief Scientific Officer. Mr. DiTizio's evidence includes the following:

- During the Relevant Period, the Owner sold 100 boxes of COLACTIVE brand collagen-based wound dressings in Canada (para 25).
- The COLACTIVE brand collagen-based wound dressings are only available with a medical doctor's prescription. The Owner wholesales the COLACTIVE brand collagen-based wound dressings to authorized healthcare providers and healthcare product distributors (para 13).
- The COLACTIVE brand collagen-based wound dressings are manufactured and packaged in pouches which are then packaged in boxes and shipped (para 15).
- Both the boxes and pouches sold during the Relevant Period featured the trademark COLACTIVE prominently (Exhibits 2-3). An invoice showing proof of sale to a customer in Canada during the Relevant Period is provided (Exhibit 4).

[5] In view of the foregoing, Mr. DiTizio's evidence is sufficient to show use of the Mark during the Relevant Period with wound dressings, including collagen-based wound dressings in the normal course of trade.

DISPOSITION

[6] 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: Fasken Martineau Dumoulin LLP

For the Registered Owner: McMillan LLP