



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2025 TMOB 51

Date of Decision: 2025-03-04

IN THE MATTER OF SECTION 45 PROCEEDINGS

Requesting Party: Fasken Martineau DuMoulin LLP

Registered Owner: Zoe International Distributing Inc.

Registration: TMA1,071,936 for RAW

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. TMA1,071,936 for the trademark RAW (the Mark).

[2] The Mark is registered for use in association with the following goods listed by Nice Class (CI):

CI 34 (1) Hand held machines for rolling medicinal cannabis; rolling papers for medicinal cannabis; filter tips for use in roll-your-own medicinal cannabis cigarettes

CI 34 (2) Hand held machines for rolling legal recreational cannabis; rolling papers for legal recreational cannabis; filter tips for use in roll-your-own legal recreational cannabis cigarettes

(the Goods)

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

PROCEEDING

[4] At the request of Fasken Martineau DuMoulin LLP (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the Act on November 27, 2023, to Zoe International Distributing, Inc., the registered owner of the Mark (the Owner).

[5] The notice required the Owner to show whether the Mark was used in Canada in association with each of the Goods 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 such use since that date. In this case, the relevant period for showing use is from November 27, 2020 to November 27, 2023.

[6] The relevant definition of “use” in the present case is set out in section 4(1) 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.

[7] In response to the Registrar’s notice, the Owner furnished the affidavit of its Chief Executive Officer, Demetra Georganas, sworn on February 27, 2024, together with Exhibits A to D.

[8] Only the Owner submitted written representations; no oral hearing was held.

[9] I note that the same Requesting Party also initiated a section 45 proceeding against the Owner's registration No. TMA667,527 for the trademark RAW. Although similar evidence was furnished for both files, a separate decision will be issued with respect to that proceeding.

EVIDENCE AND ANALYSIS

[10] In her affidavit, Ms. Georganas states that the Owner is a Vancouver-based business operating under the name "HBI Canada". She explains that the Owner has been in the business of manufacturing and wholesale distribution of accessory products for the "roll your own" or "make your own" smoking markets for over two decades. The Owner sells products to retailers located in Canada, which in turn sell them to consumers online or in their stores across Canada [paras 2 and 4].

[11] Ms. Georganas asserts that the Owner extensively used the Mark in Canada during the relevant period in association with smoking accessory products [paras 8 and 20].

[12] As evidence of such use, Ms. Georganas states that the Owner publishes annual catalogs that showcase smoking accessory products bearing the Mark. She explains that Canadian retailers select products from these catalogs and place orders on the Owner's website at *hbicanada.com* (the Website) [paras 11-13]. In support, Ms. Georganas provides, as Exhibits A and B, the Owner's catalogs for 2021 and 2022. She attests that the products shown in the catalogs are representative of the goods sold in Canada during the relevant period [paras 9 to 11].

[13] The catalogs show products identified as "rollers" [Exhibits A and B, pages 74 and 75] and as "tips" [Exhibits A and B, pages 65 and 83], all bearing the Mark. The catalogs also show rolling papers with packaging that displays the Mark [Exhibits A and B, page 12].

[14] As evidence of transfers, Ms. Georganas provides, as Exhibit D, a sample of 19 representative invoices issued by the Owner to Canadian retailers and dated during the relevant period. Among other invoiced goods, the products shown in the catalogs are identified with the Mark in the invoices. For example, the rolling papers are identified as "RAW CLASSIC NATURAL UNREFINED PAPERS".

[15] Lastly, Ms. Georganas states that the Owner's "rollers" are handheld machines and that the "tips" are filter tips. She also states that the rollers, rolling papers and tips are used for rolling cannabis cigarettes for both medicinal and recreational purposes. She correlates the goods shown in the catalogs and listed in the invoices with each of the Goods [para 17].

The use of the Mark

[16] It is well established that 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. As such, the evidentiary threshold that the registered owner must meet is quite low [*Performance Apparel Corp v Uvex Toko Canada Ltd*, 2004 FC 448 at para 38].

[17] In the present case, I accept Ms. Georganas' statements that rolling papers, rollers and tips are used for rolling both recreational and medicinal cannabis cigarettes [see *Oyen Wiggs Green & Mutala LLP v Atari Interactive, Inc*, 2018 TMOB 79 at para 25 for the well established principle that an affiant's statements are to be accepted at face value and must be accorded substantial credibility in a section 45 proceeding]. I am therefore satisfied that the evidenced use of the Mark serve to maintain the registration with respect to each of the Goods.

[18] Thus, the evidenced catalogs show how the Mark was associated with the Goods during the relevant period, and the invoices show transfers of the

Goods within the Owner's normal course of trade in Canada during the same period.

[19] In view of the above, I am satisfied that the Owner has demonstrate use of the Mark in association with the Goods within the meaning of sections 4 and 45 of the Act.

DISPOSITION

[20] Accordingly, 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.

Maria Ledezma
Hearing Officer
Trademarks Opposition Board
Canadian Intellectual Property Office

Appearances and Agents of Record

HEARING DATE: No hearing held

AGENTS OF RECORD

For the Requesting Party: Fasken Martineau Dumoulin LLP

For the Registered Owner: DLA Piper (Canada) LLP