



## Canadian Intellectual Property Office

### THE REGISTRAR OF TRADEMARKS

**Citation:** 2025 TMOB 106

**Date of Decision:** 2025-05-12

### IN THE MATTER OF A SECTION 45 PROCEEDING

**Requesting Party:** NU TEKSTIL VE KONFEKSIYON URUNLERI SANAYI VE  
TICARET ANONIM SIRKETI

**Registered Owner:** Bragel International Inc.

**Registration:** TMA1,089,214 for nu & Design

### 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. TMA1,089,214 for the trademark nu & Design (the Mark), owned by Bragel International Inc. (the Owner) and shown below:



[2] The Mark is registered for use in association with the following goods (listed with their assigned Nice Classes):

- CI 3 (1) Beauty care cosmetics; cosmetic kits; cosmetic hair care preparations; cosmetic skin care preparations; cosmetics and make-up; cosmetics for children; cosmetics for animals; essential oils for cosmetic purposes; sun care preparations for cosmetic purposes; skin care cosmetics; skin cleansing creams; facial moisturizers; cosmetic creams, milks, lotions, gels and powders for the face, hands and body; cosmetic facial toners; beauty masks; body scrubs for cosmetic purposes; body and beauty care cosmetics; bath oils and bath salts; body deodorants; deodorants for pets; scented room sprays; liquid perfumes; breath fresheners; dental bleaching gel; depilatory preparations and substances; cosmetic nail care preparations.
- CI 25 (2) Ladies' underwear; women's lingerie; foundation girdles; brassieres; strapless brassieres; foundation corsets; sleeping garments; corselets; foundation corsets; slips [underclothing]; briefs; underwear; girdles; nightgowns; hosiery; panties; one piece combinations of a girdle and brassiere; cosmetic pads for insertion in bras; adhesive bras; breast enhancer pads as parts of clothing; silicone breast enhancer pads as parts of clothing.

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

### **PROCEEDING**

[4] At the request of NU TEKSTIL VE KONFEKSIYON URUNLERI SANAYI VE TICARET ANONIM SIRKETI (the Requesting Party), the Registrar of Trademarks issued a notice to the Owner under section 45 of the Act on February 28, 2024.

[5] 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 February 28, 2021, to February 28, 2024.

[6] The relevant definitions of “use” in the present case are 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] 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]. The evidence need only establish a *prima facie* case of use within the meaning of sections 4 and 45 of the Act, by supplying facts from which a conclusion of use may follow as a logical inference [see *Diamant Elinor Inc v 88766 Canada Inc*, 2010 FC 1184 at paras 2, 9, 11].

[8] Where a registered owner does not show use of the trademark, the registration is liable to be expunged or amended pursuant to section 45(3) of the Act, unless the absence of use was due to special circumstances that excuse it.

[9] In response to the Registrar’s notice, the Owner furnished the affidavit of Dennis Chen, the Brand Manager at the Owner, sworn on July 24, 2024. All exhibits referenced in his affidavit are individually identified by tab number and marked collectively as Exhibit A.

[10] Only the Requesting Party filed written representations. No hearing was held.

## **EVIDENCE**

[11] Mr. Chen explains that the Owner, an American corporation based in California, was formed in 1989 after its creation of a silicone gel product, called the "Breast Enhancer". Since then, the Owner "has expanded into selling other women's goods, including the NuBra® line of products which incorporates" the Mark [para 2].

[12] Mr. Chen further explains that the NuBra® line of products is sold in Canada via NuBra Canada Inc. (NuBra), the Owner's licensee. Mr. Chen states that at all times the Owner maintains and has maintained control over the character and quality of the goods sold by NuBra, including those associated with the Mark [paras 3-4].

[13] Mr. Chen introduces the evidence of use of the Mark in Canada during the relevant period, starting with the following statement:

10. As discussed in greater detail below, the Mark was used and displayed by [the Owner] in association with "Ladies' underwear... women's lingerie; brassieres; strapless brassieres; adhesive bras..." (the "Goods").

[14] Mr. Chen goes on to provide evidence with respect to the display of the Mark on packaging for the Goods and the sale of the Goods in the Owner's normal course of trade during the relevant period.

[15] More particularly, Mr. Chen attaches photographs of packaging in which the Goods are sold and shipped to Canadian customers [Tab 2 in Exhibit A]. According to Mr. Chen's statements, these photographs are representative of packaging during the relevant period and show packaging for the following products: the Feather-Lite Bra, the Nu Wash Bra Cleanser, and the Nubra Travel Case [para 12]. Mr. Chen states that the Feather-Lite Bra is an adhesive, strapless, padded bra provided in several styles [para 13].

[16] Regarding the course of trade, Mr. Chen explains that the Goods are manufactured by the Owner and shipped to NuBra for sale in Canada “both through NuBra’s distribution and wholesale channels, and directly from NuBra to retail customers” [para 15]. Mr. Chen provides the following documentary evidence:

- Representative examples of Packing Lists dated during the relevant period and showing “the shipment of the Goods, such as the Feather-Lite Bra”, from the Owner to NuBra [para 16, Tab 3 in Exhibit A].
- Screenshots of NuBra’s website, at *nubra-canada.com*, for the Feather-Lite Bra, the Nu Wash Bra Cleanser and the NuBra Travel Case products, as well as a screenshot of an online shopping cart containing a Feather-Lite Bra product. These screenshots are representative of the website during the relevant period [paras 17-18, Tab 4 in Exhibit A].
- Screenshots of *amazon.ca* listing for the Feather-Lite Bra, the Nu Wash Bra Cleanser, and the NuBra Travel Case products. These screenshots are representative of the website during the relevant period. Screenshots of reviews left by Canadian purchasers on *amazon.ca* during the relevant period are also included [paras 19-20, Tab 5 in Exhibit A].
- The Stock History Details, printed from NuBra’s records on April 30, 2024, to show the changes that occurred in NuBra’s inventory of the Goods between April 22, 2021, and March 25, 2024 [para 22, Tab 6 in Exhibit A].

[17] Based on the exhibited Stock History Details, Mr. Chen includes in his affidavit a table providing the number of the Feather-Lite Bra, the Nu Wash

Bra Cleanser and the NuBra Travel Case products purchased by Canadian customers during the relevant period.

### **ANALYSIS**

[18] At the outset, I agree with the Requesting Party that the evidence is silent regarding any use of the Mark during the relevant period in association with the following registered goods:

- CI 3 (1) Beauty care cosmetics; cosmetic kits; cosmetic hair care preparations; cosmetic skin care preparations; cosmetics and make-up; cosmetics for children; cosmetics for animals; essential oils for cosmetic purposes; sun care preparations for cosmetic purposes; skin care cosmetics; skin cleansing creams; facial moisturizers; cosmetic creams, milks, lotions, gels and powders for the face, hands and body; cosmetic facial toners; beauty masks; body scrubs for cosmetic purposes; body and beauty care cosmetics; bath oils and bath salts; body deodorants; deodorants for pets; scented room sprays; liquid perfumes; breath fresheners; dental bleaching gel; depilatory preparations and substances; cosmetic nail care preparations.
- CI 25 (2) [...]; foundation girdles; [...] foundation corsets; sleeping garments; corselets; foundation corsets; slips [underclothing]; briefs; underwear; girdles; nightgowns; hosiery; panties; one piece combinations of a girdle and brassiere; cosmetic pads for insertion in bras; [...]; breast enhancer pads as parts of clothing; silicone breast enhancer pads as parts of clothing.

[19] Further, the affidavit does not put forward special circumstances to justify the absence of use of the Mark in Canada in association with these goods. Accordingly, they ought to be deleted from the registration.

[20] It remains to be decided whether the evidence furnished by Mr. Chen satisfactorily establishes use of the Mark, within the meaning of sections 4(1) and 45 of the Act, in association with the following registered goods: "(2) Ladies' underwear; women's lingerie; [...]; brassieres; strapless brassieres [...] adhesive bras; [...]" (the Remaining Goods).

### ***The Remaining Goods***

[21] I shall first deal with the Requesting Party's contention that the Remaining Goods could not have been the subject of sales in Canada since none of the exhibited product packaging complies with Canadian labelling requirements. Suffice to say that it has been held in many instances that compliance with statutes other than the Act is not a relevant consideration in proceedings under section 45 of the Act [see *Lewis Thomson & Son Ltd v Rogers, Bereskin & Parr* (1988), 21 CPR (3d) 483 (FCTD)].

[22] I am satisfied that the evidence provided by Mr. Chen satisfactorily establishes use of the Mark by the Owner during the relevant period in association with the Feather-Lite Bra, the Nu Wash Bra Cleanser and the NuBra Travel Case products. As such, the question to be determined is which of the Remaining Goods can be correlated with the products for which the Owner has shown use of the Mark.

[23] It is not for the Registrar to speculate as to the nature of the registered goods sold or the trade [*Fraser Milner Casgrain LLP v Fabric Life Ltd*, 2014 TMOB 135 at para 13; *Wrangler Apparel Corp v Pacific Rim Sportswear Co* (2000), 10 CPR (4th) 568 at p 570 (TMOB)]. However, reasonable inferences can be made from the evidence provided [*Eclipse International Fashions Canada Inc v Shapiro Cohen*, 2005 FCA 64].

[24] I agree with the Requesting Party's contention that the evidence in relation to the Nu Wash Bra Cleanser and the NuBra Travel Case products is irrelevant to establish use of the Mark in association with any of the Remaining Goods. For one thing, items such as bra cleanser and bra travel case do not appear in the registration. Further, Mr. Chen does not correlate the Nu Wash Bra Cleanser and the NuBra Travel Case products with any of the Remaining Goods. Finally, upon reviewing the exhibited website

screenshots for the Nu Wash Bra Cleanser and the NuBra Travel Case products, I cannot logically correlate them with any of the Remaining Goods.

[25] The Requesting Party also contends that the evidence in relation to the Feather-Lite Bra product is irrelevant to establish use of the Mark with any of the Remaining Goods. In the alternative, and according to paragraph 27 of its written representations, the Requesting Party accepts that the evidence establishes use of the Mark in association with “adhesive bras”.

[26] I am mindful of the principle that use of a trademark in association with a single item will not generally support use in association with multiple goods in a registration [see *John Labatt Ltd v Rainier Brewing Co* (1984), 80 CPR (2d) 228 (FCA); *Diamant Elinor Inc, supra*]. Further, where use in association with a specific good could potentially support two goods in a registration, the more specific registration will be maintained over the more generalized [*Sharp Kabushiki Kaisha v 88766 Canada Inc.* (1997) 72 CPR (3d) 195 (FCTD) at paras 14-16; *88766 Canada Inc v Freedom Scientific BLV Group, LLC*, 2019 TMOB 129 at paras 30-31; *DLA Piper (Canada) LLP v Huer Foods Inc*, 2019 TMOB 62 at para 19].

[27] Applying these principles to the evidence before me, I am satisfied that the Feather-Lite Bra product can be correlated to the registered goods “strapless brassieres” and “adhesive bras” but not the more general registration for “Ladies' underwear”, “women's lingerie” and “brassieres”.

[28] Further, the affidavit does not put forward special circumstances to justify the absence of use of the Mark in Canada in association with “Ladies' underwear”, “women's lingerie” and “brassieres”. Accordingly, I conclude that these goods ought to be deleted from the registration.



## **DISPOSITION**

[29] 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 amended to delete the following registered goods:

- CI 3 (1) Beauty care cosmetics; cosmetic kits; cosmetic hair care preparations; cosmetic skin care preparations; cosmetics and make-up; cosmetics for children; cosmetics for animals; essential oils for cosmetic purposes; sun care preparations for cosmetic purposes; skin care cosmetics; skin cleansing creams; facial moisturizers; cosmetic creams, milks, lotions, gels and powders for the face, hands and body; cosmetic facial toners; beauty masks; body scrubs for cosmetic purposes; body and beauty care cosmetics; bath oils and bath salts; body deodorants; deodorants for pets; scented room sprays; liquid perfumes; breath fresheners; dental bleaching gel; depilatory preparations and substances; cosmetic nail care preparations.
- CI 25 (2) Ladies' underwear; women's lingerie; foundation girdles; brassieres; [...]; foundation corsets; sleeping garments; corselets; foundation corsets; slips [underclothing]; briefs; underwear; girdles; nightgowns; hosiery; panties; one piece combinations of a girdle and brassiere; cosmetic pads for insertion in bras; [...]; breast enhancer pads as parts of clothing; silicone breast enhancer pads as parts of clothing.

[30] The amended statement of goods will be as follows:

- CI 25 (2) strapless brassieres; adhesive bras.

Céline Tremblay  
Member  
Trademarks Opposition Board  
Canadian Intellectual Property Office

# Appearances and Agents of Record

No hearing held

## **AGENTS OF RECORD**

**For the Requesting Party:** Marks & Clerk

**For the Registered Owner:** Smart & Biggar LP