



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2025 TMOB 111

Date of Decision: 2025-05-20

IN THE MATTER OF A SECTION 45 PROCEEDING

Requesting Party: Scruffs Workwear Ltd

Registered Owner: Perry Street Software, Inc.

Registration: TMA905,941 for SCRUFF

INTRODUCTION

[1] At the request of Scruffs Workwear Ltd (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the *Trademarks Act* (the Act) on May 7, 2024, to Perry Street Software, Inc. (the Owner), the registered owner of registration No. TMA905,941 for the trademark SCRUFF (the Mark), registered in association with the following goods and services:

Goods

(1) Downloadable software in the nature of a mobile application for social networking, introduction, and dating services.

(2) Tops, namely, t-shirts; Wearable garments and clothing, namely, shirts.

Services

(1) Providing information, news and commentary in the field of current events; Providing information, news and commentary in the field of entertainment relating to the gay community.

(2) Dating services, namely, providing an on-line computer database featuring single people interested in meeting other single people; Internet based social networking, introduction, and dating services; Internet-based dating, social introduction and social networking services; Marriage partner introduction and dating services; On-line gay, lesbian and bisexual social networking services; Providing an on-line searchable database featuring information concerning the lifestyles of gay, lesbian, bi-sexual and transgender people.

(3) Providing information, news and commentary in the field of current events relating to the gay community; Providing information, news and commentary in the field of entertainment relating to the gay community.

[2] The notice required the Owner to show whether the Mark was used in Canada in association with the registered goods and services 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 May 7, 2021 to May 7, 2024.

[3] The relevant definitions of “use” in the present case are 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.

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.

[4] 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.

[5] In response to the Registrar's notice, the Owner furnished the affidavit of Eric Silverberg, its Chief Executive Officer. Only the Owner filed written representations. No hearing was held.

[6] For the reasons that follow, the registration will be maintained.

THE OWNER'S EVIDENCE

[7] Mr. Silverberg's evidence is that:

- The Owner is the publisher of the leading LBGTQ+ dating mobile application SCRUFF, which is used for social networking, introduction and dating services which may lead to the introduction of marriage partners [para 6];
- The Owner operates the website accessible at *www.scruff.com*, screenshots of which from the relevant period display the Mark [paras 7-8, Exhibit A]. The website explains the services offered by the Owner. I note that the screenshots reference notably dating, travel, information, events and social networking services, all available via the SCRUFF mobile application;
- The website shows screenshots of the SCRUFF mobile application, which Mr. Silverberg states are representative of how the mobile application appeared during the relevant period [para 8]. I note that the Mark is displayed prominently at the top of each screenshot of the mobile application;

- The SCRUFF mobile application was downloaded and used in Canada. Mr. Silverberg provides data regarding the number of downloads and monthly users in Canada both via the *Apple Store* and *Google Play* platforms, from August 1, 2019 until August 1, 2024 [paras 9-12, Exhibits C-F]. I note that these metrics show numerous downloads and monthly users throughout the relevant period;
- Revenues are derived from SCRUFF Pro subscriptions available via the SCRUFF mobile application. Mr. Silverberg provides subscription data showing revenues from Canada from mid 2019 to August 2024 of over 2.44 million USD on *Apple iOS* and over 620,000 USD on *Google Android* [paras 13-15, Exhibits H-I]. He also provides a representative invoice for a SCRUFF Pro subscription issued to a Canadian address during the relevant period [Exhibit J];
- Mr. Silverberg explains that in addition to dating type services, the SCRUFF mobile application provides “information, commentary and news on lifestyle, travelling, current events and entertainment relating to the LGBTQ+ community” and provides examples [para 16].
- Mr. Silverberg also explains that the Owner offers for sale and sells apparel, including shirts and T-Shirts. He states that during the relevant period, these products were offered for sale via the Owner’s <https://shop.scruff.com> website and provides a screenshot thereof showing products he identifies as “shirts and T-shirts”, which I note display the Mark [paras 17-19, Exhibit K].
- He also provides a copy of an invoice showing a sale in Canada during the relevant period, of a product he describes as a “shirt/T-

shirt” [para 20, Exhibit L]. I note that the invoice identifies the product as a “T-shirt” and that the product corresponds to one of the T-shirts displaying the Mark shown in Exhibit K;

- Mr. Silverberg explains that in late 2023 and early 2024 the Owner expanded its SCRUFF apparel store and that the apparel store “continues to be an important part of the Company’s business, including in Canada” [para 21].

ANALYSIS

[8] 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 [*Miller Thomson LLP v Hilton Worldwide Holding LLP*, 2020 FCA 134 at paras 9-10; *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. This burden of proof is light; evidence must only supply facts from which a conclusion of use may follow as a logical inference [*Diamant Elinor Inc v 88766 Canada Inc*, 2010 FC 1184 at para 9].

[9] I find the evidence clearly shows the Mark displayed in the advertisement and performance in Canada of all the services offered via the SCRUFF mobile application during the relevant period. I also find that the services advertised and performed via the SCRUFF mobile application correspond to the services described in the registration. I am therefore satisfied that that the Owner has demonstrated use of the Mark pursuant to sections 4(2) and 45 of the Act in association with all the registered services.

[10] With regard to the downloadable software goods, I find the evidence shows the Mark displayed directly at the top of the SCRUFF mobile

application screen. The SCRUFF mobile application was transferred via download to users in Canada during the relevant period. Considering all the facts and keeping in mind the unique nature of software products [see *BMB Compuscience Canada Ltd v Bramalea Ltd* (1988), 22 CPR (3d) 561 (FCTD) and in *Specialty Software Inc v Bewatec Kommunikationstechnik GMBH*, 2016 FC 223], I find the evidence shows that the Mark was displayed on the downloadable software goods, or sufficiently otherwise associated with them for notice of association to be given at the time of transfer. I am therefore satisfied that the Owner has demonstrated use of the Mark pursuant to sections 4(1) and 45 of the Act in association with the goods “Downloadable software in the nature of a mobile application for social networking, introduction, and dating services”.

[11] With regard to the goods t-shirts and shirts, use must be shown with each [*John Labatt Ltd v Rainier Brewing Co* (1984), 80 CPR (2d) 228 (FCA)]. However, it is well established that when interpreting a statement of goods in a section 45 proceeding, one need not be astutely meticulous when dealing with the language used [see *Aird & Berlis LLP v Levi Strauss & Co*, 2006 FC 654], that goods and services are to be construed liberally and reasonable inferences can be made from the evidence [*Vermillion Networks Inc v Essilor Group Canada Inc*, 2024 FC 382], and that absent evidence to the contrary, sworn statements are to be accepted at face value and accorded substantial credibility [*Oyen Wiggs Green & Mutala LLP v Atari Interactive, Inc*, 2018 TMOB 79].

[12] The evidence shows the Mark directly on different apparel products. Mr. Silverberg identifies these products as T-shirts and shirts. In view of the above, I accept this characterisation and find that they correspond to the registered goods “Tops, namely, t-shirts; Wearable garments and clothing, namely, shirts”.

[13] Mr. Silverberg attests that the Owner offers for sale and sells shirts and T-shirts, and that such products were offered for sale in Canada during the relevant period via its online store. He also provides an invoice evidencing the sale of a “Logo T-Shirt” in Canada during the relevant period. Considering the specific circumstances of this case and the evidence as a whole, reading the evidence with a mind willing to understand what is being said [see *Portage World-Wide, Inc v Croton Watch Co, Inc*, 2017 TMOB 96], and in the absence of submissions by the Requesting Party, I understand Mr. Silverberg’s statements to be that both shirts and T-shirts were not only offered for sale, but as demonstrated by the representative invoice, sold in Canada during the relevant period.

[14] As such, I am satisfied that the Owner has demonstrated use of the Mark within the meaning of sections 4(1) and 45 of the Act in association with the goods “Tops, namely, t-shirts; Wearable garments and clothing, namely, shirts”.

DISPOSITION

[15] In view of the 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.

Emilie Dubreuil
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 Gao

For the Registered Owner: DLA Piper (Canada) LLP