



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2025 TMOB 116

Date of Decision: 2025-05-28

IN THE MATTER OF A SECTION 45 PROCEEDING

Requesting Party: 88766 Canada Inc.

Registered Owner: Scheuing Sport AG

Registration: TMA1086437 for BLISS

INTRODUCTION

[1] At the request of 88766 Canada Inc. (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the *Trademarks Act* (the Act) on April 18, 2024, to Scheuing Sport AG (the Owner).

[2] The notice required the Owner to show whether the trademark BLISS (the Mark), subject of registration No. TMA1086437, was used with each of the registered goods, listed below, at any time within the three-year period before the date of the notice, *i.e.* between April 18, 2021 and April 18, 2024:

(1) Backpacks; sports bags; backpacks for sports

(2) Gloves for skiing and snowboarding; overgloves for skiing and snowboarding; headgear, in particular knitted caps

(3) Clothing for sports, in particular, shirts, baggy trousers, sweaters, jackets, wind-resistant jackets, bandanas (neckerchiefs), neck scarves, jerseys and hooded sweatshirts; belts; straps for gloves for skiing and snowboarding

(4) Ski poles; bags especially designed for skis and snowboards; bags especially designed for ski poles; foot straps for skiing and snowboarding, parts and components for the aforesaid goods

[3] 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.

[4] 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].

[5] 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.

[6] In response to the Registrar’s notice, the Owner furnished the affidavit of Davide Compagnoni, its President and co-founder, sworn in St. Moritz,

Switzerland, on September 11, 2024, together with Exhibits A through J. Both parties filed written representations; no oral hearing was held.

[7] For the reasons that follow, the registration will be amended to maintain only the goods “*Gloves for skiing and snowboarding; overgloves for skiing and snowboarding*”.

ANALYSIS

Preliminary matter – swearing of the Compagnoni affidavit

[8] As a preliminary matter, the Requesting Party submits that the affidavit of Mr. Compagnoni was not validly sworn, although it does not request that I consider it inadmissible and provides no further submissions on the matter. In any event, the Registrar generally accepts affidavits sworn in foreign jurisdictions as long as they meet the requirements of that jurisdiction and it has been established that technical deficiencies should not stop a party from successfully responding to a section 45 notice [see *Baume & Mercier SA v Brown* (1985), 4 CPR (3d) 96 (FCTD); *Bereskin & Parr LLP/SENCRL, srl v Vifor (International) AG*, 2015 TMOB 191]. I therefore accept the affidavit of Mr. Compagnoni.

Summary of the relevant evidence

[9] Mr. Compagnoni explains that the Owner was founded in 1989 as a manufacturer and distributor of snowboard gloves, which used and continues to use the trademark and tradename LEVEL. He provides a printout of the Owner’s *About us* page from its website [para 3, Exhibit A].

[10] Mr. Compagnoni explains that in 2008, the Owner launched the BLISS brand, which it uses in conjunction with its LEVEL trademark [para 4]. He states that the Owner has “designed, developed and manufactured gloves and overgloves for skiing and snowboarding (the Goods), under the brand

BLISS", continually since its launch, including throughout the relevant period [para 9].

[11] Mr. Compagnoni explains that, in Canada, the Owner distributes its products through Level Canada, ULC, its subsidiary and distributor [paras 6, 10-11, 13, Exhibit B].

[12] With respect to evidence of sales, Mr. Compagnoni states that revenues for Canadian sales of "the BLISS Branded Goods" during the relevant period were in excess of \$11,000 CAD [para 20]. He provides invoices from Level Canada, ULC dated during the relevant period which include products described using the Mark, *e.g.* "Bliss Siberian Mitten" and "Bliss Coral NFC Glove" [para 14, Exhibit D]. He states that these invoices are "representative of how the [Mark] was displayed on invoices for sales of the Goods in Canada during the relevant period" [para 19].

[13] Mr. Compagnoni states that "the Goods listed in the invoices [...] bear the BLISS trademark on the Goods themselves" [para 15]. He provides images of products, which he states are representative of the BLISS brand products in the invoices [Exhibit E], as well as photographs of certain products specifically identified in the invoices [Exhibit F]. He also explains that these same products were sold and delivered with a label that showed the Mark, images of which are also provided [para 16, Exhibit G].

Use with gloves and overgloves has been demonstrated

[14] The Requesting Party submits that evidence furnished in section 45 proceedings must be clear and unambiguous and must show, rather than state, use of the Mark. It argues that the Owner has failed to provide such evidence with any products in the registration. I note, however, that it argues, in the alternative, that the registration should at least be amended

to delete all the goods except the gloves and overgloves [Requesting Party's Written Submissions, para 7].

[15] More specifically, the Requesting Party submits that the evidence is insufficient and too ambiguous to demonstrate that the Mark was on the registered goods during the relevant period. It argues that the representative images are undated, and that the photographs of products found in the invoices and their labels are "obviously showing mittens only". It argues that this evidence is not sufficient to show use of the Mark with gloves and overgloves as specified in the registration [Requesting Party's Written Submissions, paras 17-20]. With respect, I disagree.

[16] The Owner specifically defines the products shown in its evidence as gloves and overgloves for skiing and snowboarding. The evidence includes representative images of at least one product clearly identifiable as gloves, and invoices listing, for example, "Bliss [...] Glove". The evidence also includes images of products described as "mitt" on labels and numerous listings for "Bliss [...] Mitten" products on invoices, which from the evidence as a whole, I understand the Owner correlates to "overgloves". I accept this correlation and find that these products correspond to the registered goods "Gloves for skiing and snowboarding; overgloves for skiing and snowboarding" [*per Countryside Canners Co v Canada (Registrar of Trademarks)* (1981), 55 CPR (2d) 25 (FCTD) at para 27; *Oyen Wiggs Green & Mutala LLP v Atari Interactive, Inc*, 2018 TMOB 79 at para 25].

[17] The invoices provided are dated during the relevant period and list the products discussed above. Representative images of these products show that they display the Mark. I consider this evidence to clearly show that the Mark was on these products, sold in Canada in the normal course of trade during the relevant period.

[18] The Requesting Party also submits that any potential use of the Mark would not be by the Owner. It argues that wording in certain exhibits suggests that the products originate with "LEVEL", such that the Owner's evidence is insufficient and too ambiguous to conclude that the Owner is the first link in the chain of distribution or that the Mark was properly licensed, as the case may be [Requesting Party's Written Submissions, paras 27-31].

[19] Again, I disagree. The Owner explains that it designed, developed and manufactured the BLISS brand products distributed by its Canadian subsidiary, Level Canada, ULC. The Owner also states that it uses the tradename Level and that the Mark is used in conjunction with its LEVEL trademark. I find these statements consistent with the uses of "Level" in the exhibits. I also note that the Owner's website identifies "Level Canada" as its Canadian distributor, the address of which on the website corresponds to the one on the invoices. I find this evidence shows clearly that the Owner is the first link in the distribution chain of the products in question, and that Level Canada, ULC is a distributor. As such, any use by the latter enures to the benefit of the Owner [see *Manhattan Industries Inc v Princeton Manufacturing Ltd* (1971), 4 CPR (2d) 6 (FCTD)].

[20] In view of the foregoing, 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 registered goods "Gloves for skiing and snowboarding; overgloves for skiing and snowboarding".

Use with the remaining products has not been demonstrated

[21] As recognized by the Owner in its written representations, the evidence pertains only to the products discussed above, and no special circumstances were evidenced or pleaded.

[22] As such, I find that the Owner has failed to demonstrate use or special circumstances excusing non-use of the Mark within the meaning of sections 4 and 45 of the Act with any of the remaining goods. They will therefore be deleted from the registration.

DISPOSITION

[23] 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 maintain only the goods: *Gloves for skiing and snowboarding; overgloves for skiing and snowboarding.*

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: Robic Agence PI S.E.C./ Robic IP Agency LP

For the Registered Owner: Oyen Wiggs Green & Mutala LLP