



# Canadian Intellectual Property Office

## **THE REGISTRAR OF TRADEMARKS**

**Citation:** 2025 TMOB 175

**Date of Decision:** 2025-09-02

## **IN THE MATTER OF A SECTION 45 PROCEEDING**

**Requesting Party:** TP-Link Corporation Limited

**Registered Owner:** Kasa Supply Ltd.

**Registration:** TMA1,009,980 for KASA

### **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. TMA1,009,980 for the trademark KASA (the Mark), owned by Kasa Supply Ltd. (the Owner).

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

### **THE RECORD**

[3] At the request of TP-Link Corporation Limited (the Requesting Party), the Registrar of Trademarks issued a notice to the Owner under section 45 of the Act on July 23, 2024. The notice required the Owner to show whether the Mark had been used

in Canada in association with the goods and services 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 July 23, 2021, to July 23, 2024.

[4] The Mark is registered for use in association with the following goods and services:

**Goods** (Nice class & Statement)

- (1) Plumbing and waterworks supplies namely, pipes, valves and fittings; bathroom appliances, fixtures, bath tubs, toilets, sinks, faucets, toilet seats, shower bases; pumps, floats and panels for septic tanks, sewage, sump and groundwater; hot water tanks, range boilers, storage tanks, water heaters, water systems, pumps, panels and brackets; high density poly piping, heating boilers, curb stops, corporation stops, service saddles, iron and PVC pipes, municipal castings, manhole covers, flanged pipes and fittings, test pumps, and furnaces
- (2) Plumbing supplies; plumbing supplies namely, ABS pipe and fittings, copper pipe and fittings, PEX pipe and fittings, MJ pipe and fittings, hot water tanks, heaters, boilers, indirect tanks, submersible sump pump and pump kits, brass fittings and valves, OXY pipe, clamps and ties, galvanized sheet metal pipe and fittings, braided hoses, supply tubes, silicon, gas pipe and fittings, System 636 pipe and fittings, gas connectors and regulators, and push-fit fittings
- (3) Electrical supplies; electrical supplies namely, hydroduct and teleduct pipe and fittings, SCH40 and RPVC conduit pipe and fittings, smoke alarms, electrical wire, baseboard heaters, electrical meter box, staples and connectors, mast kit and accessories, expansion joint and junction boxes, and screws, tools and accessories

**Services** (Nice class & Statement)

- (1) Retail and wholesale store services featuring building supplies; retail and wholesale store services featuring building construction tools, equipment and hardware.

[5] 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.

[6] It is well accepted that the threshold for establishing use in these proceedings is low [*Woods Canada Ltd v Lang Michener* (1996), 71 CPR (3d) 477 (FCTD)], and evidentiary overkill is not required [*Union Electric Supply Co Ltd v Registrar of Trade Marks* (1982), 63 CPR (2d) 56 (FCTD)]. However, sufficient facts must still be provided to permit the Registrar to arrive at a conclusion of use of the trademark in association with the goods and services specified in the registration during the relevant period [*John Labatt Ltd v Rainier Brewing Co* (1984), 80 CPR (2d) 228 (FCA) (*John Labatt*)].

[7] In response to the notice, the Owner furnished the affidavit of Sarbjeet Sahota, the president and director of the Owner, sworn on December 20, 2024. Both parties filed written representations; no oral hearing was held.

### **EVIDENCE**

[8] Mr. Sahota states that the Owner is a retailer and wholesaler of building supplies, construction tools, equipment and hardware, which it sells directly to plumbers, contractors, electricians, and other customers. It has a number of storefront locations in British Columbia, Alberta, and Ontario. As Exhibit 4, he attaches representative photographs showing how the Mark was displayed during the relevant period at such stores, including on storefront signage, packaging of the products, and clothing worn by employees.

[9] As Exhibit 5, Mr. Sahota attaches a “Line Card” document listing the Owner’s most popular products, which he correlates with corresponding goods in the registration. He states that this document was accessible to customers on the Owner’s website, at the front of stores, at the checkout counters, and in close proximity to the products being sold. The words “KASA SUPPLY LTD” appear in a large font at the top of the document. Mr. Sahota states that each of the registered goods, including those shown on the line card, were sold during the relevant period. He further states that many of the

Owner's products are small items that cannot be labelled, and that the normal course of trade is for the Owner's customers to select the individual items they need for their job, bring them to the counter where they are greeted by an employee wearing a shirt bearing the Mark, and then sold, accompanied by an invoice displaying the Mark. As Exhibit 6, he attaches copies of invoices showing sales of certain of the Owner's products during the relevant period. The invoices display the Mark in the top left corner.

[10] As Exhibit 7, Mr. Sahota attaches pictures from the Owner's Surrey location showing how large plumbing and waterworks supplies were situated outside the store under signage displaying the Mark, and in crates displaying the Mark, during the relevant period. He further states that goods sold by the Owner were delivered to customers in trucks displaying the Mark during the relevant period; as Exhibit 8, he attaches a photograph of a truck displaying the Mark. Representative website screenshots, social media excerpts, and brochures are attached as Exhibits 9, 10, and 11, respectively.

### **ANALYSIS**

[11] The Requesting Party submits that because the Owner has not shown how the Mark is displayed on any of the goods or their labels or packaging, it has not established use within the meaning of the Act. In particular, the Requesting Party submits that the evidence indicates that the Owner's retail operations consist of selling third-party brands, rather than goods bearing the Mark. In this respect, it points to Exhibit 7 of the Sahota affidavit, which shows a number of products displaying third-party trademarks. Furthermore, where the evidence does show the word "KASA", the Requesting Party submits that it is often a component of "KASA SUPPLY" or "KASA SUPPLY LTD." and therefore does not amount to a trademark, but a trade name. Finally, the Requesting Party submits that there is no evidence of any use in association with the electrical supplies listed in goods (3).

[12] The Owner submits that the Mark is associated with its goods such that the requisite notice of association is provided, by way of its invoices, the line card and brochures, the store signage, and the appearance of the Mark on employees' uniforms.

The Owner acknowledges that it also sells third-party brands, but submits that this fact has no bearing on this proceeding. With respect to photographs showing the Mark appearing alongside a third-party trademark, the Owner submits that the Act does not require the Owner of a trademark to be the manufacturer of the goods in question [citing *Smart & Biggar v Canadian Tire Corporation, Limited*, 2017 TMOB 153]. With respect to the Mark appearing alongside additional material, the Owner submits that the words “SUPPLY” and “SUPPLY LTD” would be understood as purely descriptive and do not detract from the essence of the Mark as registered. Finally, the Owner submits that its line card shows that the Owner sold a number of the products listed in goods (3).

[13] Firstly, I accept that the Owner has shown use of the Mark in association with the registered services, namely, “Retail and wholesale store services featuring building supplies; retail and wholesale store services featuring building construction tools, equipment and hardware”. The invoices attached as Exhibit 6 show sales by the Owner in Canada during the relevant period of pipes, nails, valves, sump products, pumps, glue, and the like. The Mark is displayed on its own in the top left corner of the invoices; in this respect, contrary to the Requesting Party’s submissions on this point, I do not consider the design element to detract from the overall impression of the Mark, and nothing prevents a word mark from being displayed in combination with design elements [see *Thor Tech, Inc v Hyundai Auto Canada Corp*, 2020 TMOB 101 at para 25]. Further, it has been established that in the context of services, a trademark appearing at the top of an invoice for services can suffice to show use of the trademark in association with those services within the meaning of section 4(2) [see *Tint King of California Inc v Canada (Registrar of Trade Marks)* (2006), 56 CPR (4th) 223 (FCTD) at para 35]. The evidenced storefront signs displaying the Mark provide further evidence of use of the Mark in association with the registered retail services. Accordingly, I am satisfied that the Owner has demonstrated use of the Mark in association with the registered services within the meaning of sections 4(2) and 45 of the Act.

[14] As for the registered goods, as noted by the Owner, the Act is clear that notice of association may be established by means other than the trademark in question being displayed on goods or their packaging. In particular, notice of association between a

trademark and goods can be established when customers place orders by way of a catalog or brochure that displays the trademark in close association with those goods, and that notice of association continues when the goods are delivered [see, for example, *Swabey Ogilvy Renault v Mary Maxim Ltd* (2003), 28 CPR (4th) 543 (TMOB) at para 12; *Rosenstein v Elegance Rolf Offergelt GmbH* (2005), 47 CPR (4th) 196 (TMOB) at para 15; *Fraser Milner Casgrain LLP v LG Electronics Inc*, 2014 TMOB 232 (TMOB) at para 21].

[15] In this case, the words “KASA SUPPLY LTD” are prominently displayed at the top of the line card in a larger font than the accompanying descriptive words “WATERWORKS & INDUSTRIAL”. As stated in *Consumers Distributing Co / Cie Distribution aux Consommateurs v Toy World Ltd*, 1990 CarswellNat 1398 (TMOB) at para 14, “trade-mark and trade-name usage are not necessarily mutually exclusive”; in this case, given the manner of the display of these words, I accept that they amount to use of a trademark and not merely as identification of a legal entity [see *Road Runner Trailer Manufacturing Ltd v Road Runner Trailer Co* (1984), 1 CPR (3d) 443 (FCTD) at para 16; *Nightingale Interloc Ltd v Prodesign Ltd* (1984), 2 CPR (3d) 535 (TMOB) at para 7]. Furthermore, I do not consider the words “SUPPLY LTD” to cause the Mark to lose its identity and become unrecognizable; it is well established that the addition of descriptive words to a word mark is not necessarily fatal to a registration, even where those descriptive words appear in the same font and size as the word mark [see, for example, *Riches, McKenzie & Herbert v Pillsbury Co* (1995), 61 CPR (3d) 96 (TMOB) at para 14; *LE PEPE' SRL v PJ Hungary Kft*, 2017 TMOB 82 at paras 18-20].

[16] As for the Exhibit 6 invoices displaying the Mark in the upper left corner, the Federal Court of Appeal has held that display of a trademark at the top of an invoice that accompanies goods at the time of transfer in the normal course of trade may, in some circumstances, constitute use of that trademark in association with the goods listed in the invoice [see *Hortilux Schreder BV v Iwasaki Electric Co*, 2012 FCA 321]. The major consideration remains “whether the trade-mark is being used as a trade-mark in describing the wares contained in the invoice and, as such, whether appropriate notice of such use is being given to the transferee of the wares” [per *Tint King of*

*California Inc v Canada (Registrar of Trade Marks)*, 2006 FC 1440 at para 32]. In this respect, it is important to consider the prominence of the trademark at the top of the invoice and whether other trademarks appear on the invoice, either in the body or otherwise [per *Hortilux*, *supra*, at para 12].

[17] In this case, I accept that the display of the Mark on the upper left corner of the invoices would establish the requisite notice of association with the goods listed in that invoices, given that the Mark appears prominently on the invoices and that most of the goods listed in the invoice are not associated with any other trademark. Thus, I accept that the display of the Mark on the invoices would, in this case, establish the requisite notice of association with the goods listed in that invoice, in the absence of other trademarks being associated with those listed goods.

[18] Thus, when reading the evidence as a whole, the Owner has provided a line card dated during the relevant period showing how the Mark was displayed in association with a number of registered goods, and also illustrating that the Owner was offering such items for sale. The Owner has also provided evidence regarding its normal course of trade, invoices displaying the Mark in association with certain goods being sold in Canada during the relevant period, and a clear sworn statement that the Owner used the Mark in association with each of the registered goods during the relevant period in this manner. On a fair reading of the affidavit as a whole, and bearing in mind that the Owner need only establish a *prima facie* case of use, I am prepared to infer that the each of the registered goods were transferred in association with the Mark in Canada during the relevant period.

[19] Accordingly, I am satisfied that the Owner has shown use of the Mark in association with each of the goods within the meaning of sections 4(1) and 45 of the Act.

**DISPOSITION**

[20] 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 maintained.

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G.M. Melchin  
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:** Xin Xu (Fang An Law PC)

**For the Registered Owner:** Coastal Trademark Services Limited