



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2025 TMOB 183

Date of Decision: 2025-09-10

IN THE MATTER OF A SECTION 45 PROCEEDING

Requesting Party: Registrar of Trademarks

Registered Owner: Leviton Manufacturing Co., Inc.

Registration: TMA695,084 for FASTCAM

OVERVIEW

[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. TMA695,084 for FASTCAM (the Mark), in the name of Leviton Manufacturing Co., Inc. (the Owner).

[2] The Mark is registered for use in association with the goods “Fiber optic connectors”.

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

INTRODUCTION

[4] As part of the pilot project on Registrar-initiated section 45 expungement proceedings, the Registrar of Trademarks issued a notice to

the Owner under section 45 of the Act on January 20, 2025, requiring it to show use of the Mark, as defined in section 4(1) of the Act, at any time in the three years preceding the notice or, if the Mark had not been used, the date when it was last used and the reasons for absence of use since that date. In this case, the relevant period for showing use is January 20, 2022 to January 20, 2025.

[5] 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; *Black & Decker Corp v Method Law Professional Corp*, 2016 FC 1109]. The owner’s evidentiary threshold is quite low [*Performance Apparel Corp v Uvex Toko Canada Ltd*, 2004 FC 448] and “evidentiary overkill” is not required [see *Union Electric Supply Co v Canada (Registrar of Trade Marks)* (1982), 63 CPR (2d) 56 (FCTD)]. An owner need only establish use on a *prima facie* basis and all that is required is for evidence to supply facts from which a conclusion of use may follow as a logical inference [*Diamant Elinor Inc v 88766 Canada Inc*, 2010 FC 1184]. Moreover, ambiguity in evidence should be resolved in an owner’s favour, without, however, reducing the owner’s burden [*McDowell v Laverana GmbH & Co KG*, 2016 FC 1276; *Sea Tow Services International, Inc v Trademark Factory International Inc*, 2021 FC 550; *Sherzady v Norton Rose Fullbright Canada LLP/sencrl, srl*, 2022 FC 1712; *Vermillion Networks Inc v Essilor Group Canada Inc*, 2024 FC 382].

[6] Where an owner has not shown “use”, the registration is liable to be expunged or amended, unless there are special circumstances that excuse the absence of use.

[7] In response to the Registrar’s notice, the Owner furnished a solemn declaration of Dean Lipke, sworn on April 14, 2025 to which were attached sample invoices and what Mr. Lipke referred to as “specimens showing use”.

I note that two different versions of this evidence were provided – although the declarations themselves are identical, the invoices are redacted in one version and unredacted in the other, and the excerpt from *Amazon.ca* provided in each version is different. As both versions were filed by the Owner’s evidentiary deadline, given the specific circumstances of this case, both will be considered.

[8] The Owner submitted written representations on July 3, 2025. No oral hearing was held.

EVIDENCE

[9] As Mr. Lipke’s solemn declaration is very short, I reproduce its substantive portions below.

1. I am an authorized representative of Leviton Manufacturing Co., Inc., the registered owner of the trademark **FASTCAM** registered under number **TMA695084**.
2. The trademark has been used in Canada by Leviton Manufacturing Co., Inc. and/or through a licensee in association with the following goods and/or services:

Fiber optic connectors.

3. The trademark has been used in Canada during the period of from at least January 20, 2022 to January 19, 2025. Attached hereto are specimens showing the use of the trademark in Canada during the relevant period.

[10] The invoices are dated during the relevant period and are issued to customers in Canada. They show sales of items described as “CONNECTEUR FASTCAM”. I note that the heading of the invoices as well as their “remit to” field identifies “Manufacture Leviton du Canada S.R.I./Leviton Manufacturing Company of Canada ULC”. I also note that the date of the invoice is, in both cases, the same as the date of shipping and that the invoices provide details

regarding delays for claims, credits and returns, running from receipt of shipment.

[11] Mr. Lipke also includes excerpts from *Amazon.ca* showing two different fibre optic connectors, which include the Mark prominently in their product description. Both identify the manufacturer only as “Leviton”, and while one provides no further details, the other provides an indication that the manufacturer’s business location is “MELVILLE, NY, 11747 US”, which corresponds to the Owner’s location.

REASONS FOR DECISION

[12] I note, at the outset, that the declaration of Mr. Lipke consists essentially of bare assertions of use, which are insufficient to demonstrate use in the context of section 45 proceedings [*Plough (Canada) Ltd v Aerosol Fillers Inc* (1980), 53 CPR (2d) 62 (FCA)]. I therefore give them little to no weight.

[13] In its written representations, the Owner submits that the specimens provided from *amazon.ca* demonstrate use of the Mark. I agree that the display of a trademark on a transactional website can, in certain circumstances, show notice of association between goods and a trademark it displays. However, there must also be evidence, absent in the present case, that the transactional website in question is at least representative of the relevant period, and that there were Canadian sales during this period *via* the transactional website, as mere offering for sale is not sufficient [see *Method Law Professional Corporation v Black & Decker Corporation*, 2015 TMOB 226 at para 63].

[14] I accept that the invoices show sales, in Canada, in the normal course of trade, of fibre optic connectors during the relevant period. While I do not consider the evidence sufficient for me to infer that that these invoices

correspond to sales from the *amazon.ca* website, I am prepared to infer from the details of the invoices themselves, that they accompanied the goods at the time of shipping. As such, in view of the display of the Mark describing fibre optic connectors in the invoices, I consider them sufficient to provide the notice of association required by section 4(1) of the Act [see *Hortilux Schreder BV v Iwasaki Electric Co*, 2012 FCA 321; *Tint King of California Inc v Canada (Registrar of Trade Marks)*, 2006 FC 1440].

[15] Considering the specific circumstances of this case and the evidence as a whole, including notably the *amazon.ca* specimens indicating that the manufacturer's location is the same as the Owner's, I am also prepared to infer that the Owner is the manufacturer and the first link in the distribution chain of the fibre optic connectors. As such, I accept that the invoices demonstrate use of the Mark enuring to the Owner [see *Manhattan Industries Inc v Princeton Manufacturing Ltd* (1971), 4 CPR (2d) 6 (FCTD); *Lin Trading Co v CBM Kabushiki Kaisha* (1988), 21 CPR (3d) 417 (FCA)].

[16] In view of the foregoing, I find that the Owner has met its low onus to show it used the Mark in Canada, during the relevant period, pursuant to sections 4(1) and 45 of the Act.

DISPOSITION

[17] As such, 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

No hearing held

AGENTS OF RECORD

For the Requesting Party: No agent appointed

For the Registered Owner: No agent appointed