



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2025 TMOB 191

Date of Decision: 2025-09-24

IN THE MATTER OF A SECTION 45 PROCEEDING

Requesting Party: Miller Thomson LLP

Registered Owner: Butchers & Packers Supplies (2001) Ltd.

Registration: TMA563,494 for B&P Logo Design

[1] At the request of Miller Thomson LLP (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the *Trademarks Act*, RSC 1985, c T-13 (the Act) on June 25, 2024, to Butchers & Packers Supplies (2001) Ltd. (the Owner). The notice required the Owner to show whether the trademark B&P Logo Design shown below (the Mark), which is the subject of registration No. TMA563,494 (the Registration), was used in Canada in association with the registered goods and services set out below (the Goods and Services), at any time within the three-year period ending on the notice's date (the Relevant Period):



The trademark B&P Logo Design

Goods

Butcher knives, meat slicers, and seasoning spices;

Services

Wholesale butcher supply services.

[2] If the Mark was not used in Canada during the Relevant Period, in association with some or all of the Goods and Services, and if the absence of use is not due to special circumstances that excuse it, the Registration is liable to be amended or expunged accordingly [section 45(3) of the Act].

[3] For the following reasons, the Registration will be amended to remove the Goods.

REASONS FOR DECISION

[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 [*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 response to the section 45 notice, the Owner filed the affidavit of Kim Kelly, its Chief Financial Officer. Ms. Kelly’s evidence includes the following:

- a description of the Owner’s business as a “wholesale and retail butcher supply company based in Edmonton, Alberta” [para 5];

- a photo of the Owner's storefront from March 2023, showing the Mark displayed prominently in the front window and on an overhead sign in front of the building [para 6 and Exhibit A];
- examples of print advertisements featuring the Mark that were published during the Relevant Period in Police Vision magazine and the Alberta Guide to Hunting Regulations [paras 8-9 and Exhibits B-C];
- an example of the sales slip that was provided to customers making in-store purchases throughout the Relevant Period, which displays the Mark at the top [para 11 and Exhibit D]; and
- an example of an insert bearing the Mark that is included in orders that are mailed to customers [para 12 and Exhibit E].

[6] Ms. Kelly also provides four example invoices that she states were issued to wholesale customers, three of which are dated during the Relevant Period. Ms. Kelly states that the orders for which the invoices were issued included the insert bearing the Mark referred to above [para 13 and Exhibits F-I].

[7] The Requesting Party argues that the Owner's evidence does not demonstrate any use of the Mark in association with the Goods [Requesting Party's written representations at paras 18-25]. At the hearing, the Owner agreed. I agree as well. The Registration will therefore be amended to remove the Goods.

[8] As for the Services, the Requesting Party acknowledged at the hearing that the evidence shows use of the Mark in association with services, but not *wholesale* butcher supply services. The Requesting Party argues that Ms. Kelly's statement at paragraph 13 of her affidavit, that the Owner sells to both wholesale and retail customers, is a bare assertion of the Owner's clientele, and there is no additional evidence from which the Registrar can

form an opinion as to whether the Owner offered wholesale butcher supply services. In the Requesting Party's submission, the evidence suggests that the Mark is actually used in association with *retail* butcher supply services.

[9] The Requesting Party cites the Federal Court's decision in *Guido Berlucchi & C Srl's v Brouillette Kosie Prince*, 2007 FC 245 (*Guido Berlucchi*), for the proposition that affidavits in section 45 proceedings must not merely state, but show trademark use. In particular, the Federal Court in *Guido Berlucchi* states the following at paras 18-19 (emphasis added):

In s. 45 proceedings, the burden of proof is on the registered owner of the trade-mark; however, it is clear that such burden is not a heavy one. The owner must only establish a *prima facie* case of use within the meaning of section 4 of the Act. In that respect, it is also clear that an affidavit containing bare allegations of use **that is simply tracking the statutory language** is insufficient [*Plough (Canada) Ltd v Aerosol Fillers Inc*, 1980 CanLII 2739 (FCA)]. An affidavit must not merely state but show use **by describing facts** from which the Registrar or the Court can form an opinion or can logically infer use within the meaning of section 4.

As noted by the Federal Court of Appeal in [*Central Transport Inc v Mantha and Associates*, 1995 CanLII 19245 (FCA)]:

In a sense all statements in affidavits are "bald assertions"; what this court has found to be inadequate in s. 45 proceedings are **assertions of use (as a matter of law)** as opposed to **assertions of facts showing use** ... On the judge's own summary of the evidence, it clearly showed facts establishing use, i.e., that the appellant "conducted its transportation business in Canada utilizing trucks and trailers bearing the trade mark". That is all that was required.

[10] From the foregoing, it is clear that what is not acceptable in section 45 proceedings are assertions that simply track statutory language, and assert as a matter of law that a trademark was "in use" in accordance with section 4 of the Act. In other words, evidence opining on the ultimate issue before the Registrar, namely, whether a trademark was in use within the meaning of section 4, is not acceptable.

[11] Rather, what the Owner must provide is evidence describing or asserting facts from which the Registrar can infer a *prima facie* case of use of the Mark, in accordance with section 4 of the Act. This is just what the Owner has provided in this case. Ms. Kelly's sworn statement that the Owner sells to both wholesale and retail customers [para 13], and the example invoices that she states are for wholesale customers [para 13 and Exhibits F-I] are evidence of the fact that the Owner has sold to wholesale customers. By the Requesting Party's admission, the term "wholesale supply services" is understood in ordinary commercial terms as supplying goods to retailers, who resell the goods to consumers [Requesting Party's written representations at para 29]. Accordingly, Ms. Kelly's statements referencing the term "wholesale" are not assertions of legal conclusions, but evidence describing the fact that the Owner sold to retailers, who resold the goods to consumers. No further evidence of the Owner's clientele is required.

[12] As for the Requesting Party's submission that the evidence suggests that the Owner actually offered *retail* services, I note that Ms. Kelly states that retail services were provided, in addition to wholesale services. It should therefore not be surprising that portions of Ms. Kelly's evidence suggest that retail services were provided. In any event, Ms. Kelly's sworn statement that the Owner provides both wholesale and retail butcher supply services must be accorded substantial credibility, absent evidence to the contrary [*Oyen Wiggs Green & Mutala LLP v Atari Interactive, Inc*, 2018 TMOB 79 at para 25]. Not only is there nothing in the evidence that is inconsistent with Ms. Kelly's statement that wholesale services were provided, the example wholesale invoices are for quantities of product that are consistent with the provision of wholesale services [see Exhibit G, which is for the sale of 5 boxes of staples, containing 2 million staples per box; see also Exhibit H, which is for the sale of hundreds of sausage casings of various types].

[13] In summary, I am satisfied that the Owner has provided wholesale butcher supply services in Canada, during the Relevant Period, for the reasons stated above. Furthermore, I am satisfied that the Mark was displayed in advertising of the services, at least on the signage at the Owner's premises, and in the performance of the services, at least on the inserts provided to mail order customers [paras 12-13, and Exhibit E]. All of the foregoing establishes at least a *prima facie* case of use of the Mark, in association with the Services pursuant to section 4(2) of the Act.

DISPOSITION

[14] 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 remove the Goods. The Registration will be maintained in respect of the Services.

Jaimie Bordman
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

Appearances and Agents of Record

HEARING DATE: 2025-08-18

APPEARANCES

For the Requesting Party: Alissa Ricioppo

For the Registered Owner: Nathan Woodruff

AGENTS OF RECORD

For the Requesting Party: Miller Thomson LLP

For the Registered Owner: Nathan Woodruff