



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2025 TMOB 265

Date of Decision: 2025-12-22

IN THE MATTER OF A SECTION 45 PROCEEDING

Requesting Party: Registrar of Trademarks

Registered Owner: 1123800 Ontario Limited

Registration: TMA998768 for FUJI

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. TMA998,768 for the trademark FUJI (the Mark), owned by 1123800 Ontario Limited (the Owner).

[2] For the reasons that follow, the registration will be amended.

THE RECORD

[3] 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. The notice required the Owner to show whether the Mark had been used in Canada in association with the goods 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 January 20, 2022 to January 20, 2025 (Relevant Period).

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

- (1) Sports bags
- (2) Martial arts clothing, namely, uniforms, jackets and belts
- (3) Boxing and martial arts equipment, namely, heavy bags, striking mitts, boxing gloves, striking bags, protective guards for the head, face, hands, knees, shins and arms, groin protectors, hand wraps, shields; fitness equipment, namely floor mats, skipping ropes and medicine balls

[5] The relevant definition of "use" in the present case is set out in section 4(1) of the Act:

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.

[6] In response to the Registrar's notice, the Owner furnished as its evidence the affidavit of Roman Hatashita, its President. No written representations were filed, however the Owner was represented at a hearing.

ANALYSIS

[7] 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. Although the threshold for establishing "use" in section 45 proceedings is quite low [*Woods Canada Ltd v Lang Michener* (1996), 1996 CanLII 17297 (FC), 71 CPR (3d) 477 (FCTD)], and evidentiary overkill is not required [*Union Electric Supply Co Ltd v Canada (Registrar of Trade Marks)* (1982), 1982 CanLII 5195 (FC), 63 CPR (2d) 56

(FCTD)], sufficient facts must still be provided to permit the Registrar to arrive at a conclusion of use of the trademark in association with each of the goods specified in the registration during the relevant period [*John Labatt Ltd v Rainier Brewing Co* (1984), 1984 CanLII 5833 (FCA), 80 CPR (2d) 228 (FCA)].

[8] In his affidavit, Mr. Hatashita explains that the Owner has for decades manufactured martial arts and combat sports equipment under numerous brands, including the Mark. Goods bearing the Mark have been, and are, sold in Canada [para 4]. The Owner is today a leading supplier of such equipment in Canada, and its customers include large government agencies, as well as hundreds of independent sports clubs and dojos across the country [para 5]. The Owner also sells its martial arts and combat sports equipment wholesale, as well as direct to retail consumer. Direct to retail customer sales are carried out through the Owner's website at *hatashita.com* [para 6].

Evidence is silent with respect to certain goods

[9] The Hatashita affidavit is silent with respect to the use of the Mark in association with the following goods:

Boxing and martial arts equipment, namely, groin protectors, hand wraps, shields; fitness equipment, namely skipping ropes and medicine balls

[10] As there is no evidence of special circumstances which could excuse non-use of the Mark within the meaning of sections 4 and 45 with any of these goods, they will be deleted from the registration.

Use has been shown for the remaining goods

[11] The rest of the goods listed in the registration are as follows (the Remaining Goods):

sporting bags; martial arts clothing, namely uniforms, jacket and belts; boxing and martial arts equipment, namely heavy bags, striking mitts, boxing gloves, striking bags, striking mitts, boxing gloves, protective guards for the head, face, hands, knees, shins and arms; fitness equipment, namely floor mats

[12] Mr. Hatashita's evidence of use of the Mark in association with the Remaining Goods includes the following:

- images showing the Mark displayed directly on each of the Remaining Goods, which images are stated to be representative of how the Mark appeared on such goods sold by the Owner during the Relevant Period [para 8(a)-(h)].
- an itemized chart showing revenue generated by the Owner in 2024 from sales of each of the Remaining Goods bearing the Mark, as well as the corresponding number of units sold [para 10].
- a selection of representative invoices (redacted) dating from the Relevant Period, showing sales in Canada by the Owner of the Remaining Goods [paras 11, 12; Exhibit A]

[13] In view of the foregoing, I am satisfied that that the Owner has shown use of the Mark with the Remaining Goods.

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 delete the following goods: [boxing and martial arts equipment, namely,] groin protectors, hand wraps, shields and [fitness equipment, namely] skipping ropes and medicine balls.

[15] As such, the registration will be amended to read as follows:

- (1) Sports bags
- (2) Martial arts clothing, namely, uniforms, jackets and belts
- (3) Boxing and martial arts equipment, namely, heavy bags, striking mitts, boxing gloves, striking bags, protective guards for the head, face, hands, knees, shins and arms; fitness equipment, namely floor mats

Jennifer Galeano
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

Appearances and Agents of Record

HEARING DATE: 2025-10-27

APPEARANCES

For the Registered Owner: Tamara Céline Winegust

AGENTS OF RECORD

For the Registered Owner: Smart & Biggar LP