



# Canadian Intellectual Property Office

## **THE REGISTRAR OF TRADEMARKS**

**Citation:** 2025 TMOB 274

**Date of Decision:** 2025-12-31

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

**Requesting Party:** Licensing IP International SARL

**Registered Owner:** Van Boeckel Beheer B.V.

**Registration:** TMA695,954 for HUB

### **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. TMA695,954 for the trademark HUB (the Mark), owned by Van Boeckel Beheer B.V. (the Owner).

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

## **THE PROCEEDING**

[3] At the request of Licensing IP International SARL (the Requesting Party), the Registrar of Trademarks issued a notice to the Owner under section 45 of the Act on September 12, 2024.

[4] The notice required the Owner to show whether the Mark had been used in Canada in association with each of 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 September 12, 2021 to September 12, 2024.

[5] The Mark is registered for use in association with the Goods:

(1) All-purpose sports bags; duffel bags for clothing; trunks (luggage), travelling bags; travelling bags with wheels; carryalls, backpacks, storage bags, sporting bags, duffel bags for clothing; belts; wallets.

(2) Sports shoes, sandals, beach-sandals, fashion-shoes, street-shoes, rain-shoes, mountaineering shoes, boots, slippers.

(3) Headgear, namely, hats, caps, berets, beanies, head bands and head scarves.

[6] The relevant definition of use is set out in section 4(1) of the Act:

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.

[7] It is well accepted that the threshold for establishing use is low [*Woods Canada Ltd v Lang Michener* (1996), 71 CPR (3d) 477 (FCTD)]. While evidentiary overkill is not required [*Union Electric Supply Co Ltd v Registrar of Trade Marks* (1982), 63 CPR (2d) 56 (FCTD)], an owner must

still establish a *prima facie* case of use of the trademark in association with each of the goods specified in the registration during the relevant period [*Diamant Elinor Inc v 88766 Canada Inc*, 2010 FC 1184 at para 2].

[8] In response to the Registrar's notice, the Owner furnished the affidavit of Huub P. van Boeckel, the Managing Director of Hub Bub B.V. (Hub Bub) and the Current Owner (para 1). Hub Bub has been licensed to use the Mark (in Canada and elsewhere) and pursuant to the unwritten license agreement, the Owner maintains control over the character and quality of the Goods (paras 8, 10).

[9] The Requesting Party alone submitted written representations and attended an oral hearing.

### **EVIDENCE**

[10] Hub Bub promotes, advertises and sells its goods through the website *www.hubfootwear.com* (para 13). The website includes many photos of HUB-branded goods as well as sales prices in Euros (Exhibit D). Hub Bub also sells its goods to retailers and resellers who sell and distribute Hub Bub's goods "through online stores and related channels of trade" (para 13).

[11] Mr. van Boeckel's evidence specific to Canada is that "[i]n the normal course of trade, and during the [Relevant] Period, Hub Bub has sold goods marked with the HUB Trademark in Canada" (para 14). He attaches a copy of what he describes as a representative invoice dated March 11, 2023 issued to "Webshop HUB Footwear Canada" showing the sale of 10 pairs of sports shoes with the identity of the purchaser redacted (para 14, Exhibit E). The address of the purchaser shows Burrard Street 505 1900, British Columbia. At Exhibit F to his affidavit, he includes pictures of the sports shoes listed in the invoice all of which display the Mark (paras 15-16, Exhibit F).

## **REASONS FOR DECISION**

### ***Does the Evidence Show Use with Sports Shoes?***

[12] The Requesting Party submits that the evidence does not show that the sale of ten pairs of sports shoes is in the normal course of trade as required by section 4(1) of the Act.

[13] It is incumbent on an owner to set out sufficient facts to allow the Registrar to conclude that any evidenced sales were in the normal course of trade [*Sim & McBurney v Majdell Manufacturing Co* (1986), 11 CPR (3d) 306 (FCTD)]. That being said, typically, “[o]nce there is evidence which reveals more than a bare statement that the trademark was in use, then it can reasonably be inferred that the use was in the normal course of trade” [*Meredith & Finlayson v Canada (Registrar of Trade Marks)* (1992), 43 CPR (3d) 473 at 486 (FCTD), reversed but not on this issue 54 CPR (3d) 444 (FCA)].

[14] In this case, the invoice attached at Exhibit E raises several questions with respect to whether it supports a sale in the normal course of trade. First, the “Invoice Address” refers to “Webshop HUB Footwear Canada”. Second, each shoe model described in the invoice corresponds to the sale of a single unit. Here, the extremely limited sales volume and the fact that the invoice is addressed to “Webshop HUB Footwear Canada” raises the issue of whether the sale is to a related company or a pro-forma transfer and does not allow me to conclude that it is in the normal course of trade [*L’Oréal v Cosmética Cabinas SL*, 2016 FC 680 at para 51; *JC Penney Co Inc v Gaberdine Clothing Co Inc*, 2001 FCT 1333 at para 92].

[15] Finally, the fact that Mr. van Boeckel describes the sale as being in the normal course of trade (para 14) does not assist the Owner as there is no

evidence that Mr. van Boeckel would understand the specific meaning of this phrase.

[16] As the Owner has not shown use of the Mark in association with sports shoes in the normal course of trade in accordance with section 4(1) of the Act and has not set out any circumstances or reasons relating to the lack of use that are unusual, uncommon, or exceptional [*John Labatt Ltd v Cotton Club Bottling Co* (1976), 25 CPR (2d) 115 (FCTD)], these goods will be deleted from the registration.

***Does the Evidence Show Use of the Mark with the Remaining Goods?***

[17] Having decided that the evidence does not show use of the Mark in association with sports shoes, I must now decide whether the evidence is sufficient to maintain the registration for any of the other Goods (the Remaining Goods).

[18] Section 4(1) of the Act requires that the registered trademark be marked or associated with the goods and that property in the goods be transferred in Canada. While Mr. van Boeckel's evidence includes the HUB brand website which shows the Mark on a variety of apparel, shoes and boots, hats and wallets (Exhibit D), there is no evidence on which I could find or infer that any of the Remaining Goods have been sold or otherwise transferred in Canada. Specifically, there is no evidence that Canadians ordered any of these goods from the *www.hubfootwear.com* website during the Relevant Period. Nor is there any evidence that goods were actually shipped to consumers. The mere offering for sale of goods on a website is not trademark use in association with goods in accordance with section 4 of the Act [*Method Law Professional Corporation v Black & Decker Corporation*, 2015 TMOB 226 at para 63].

[19] While the evidence is that the Owner has had an intention to use the Mark with these goods in Canada and “maintain[s] an intention to sell the remaining Registered Goods under the HUB Trademark as soon as possible in Canada” (para 20), there is no evidence of any unusual, uncommon, or exceptional circumstances which would excuse non-use of the Mark with the Remaining Goods [*John Labatt Ltd v Cotton Club Bottling Co, supra*]. As such, they will be deleted from the registration.

### ***Conclusion***

[20] As I do not find that there is use of the Mark in association with any of the registered goods and there are no special circumstances excusing non-use, the registration will be expunged.

### **DISPOSITION**

[21] 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 expunged.

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Natalie de Paulsen  
Member  
Trademarks Opposition Board  
Canadian Intellectual Property Office

# Appearances and Agents of Record

**HEARING DATE:** 2025-11-24

## **APPEARANCES**

**For the Requesting Party:** Catherine Bergeron

**For the Registered Owner:** No One Appearing

## **AGENTS OF RECORD**

**For the Requesting Party:** ROBIC AGENCE PI S.E.C./ ROBIC IP AGENCY LP

**For the Registered Owner:** GOWLING WLG (CANADA) LLP