Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2026 TMOB 10

Date of Decision: 2026-01-27

IN THE MATTER OF A SECTION 45 PROCEEDING

Requesting Party: Deeth Williams Wall LLP

Registered Owner: Rachel Ettinger

Registration: TMA1,085,893 for HERE FOR HER

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. TMA1,085,893 for the trademark HERE FOR HER (the Mark). This registration, now under consideration, covers the following services (the Services):

> Providing information in the field of women's health issues via an online blog

[2] The owner of the registration is Rachel Ettinger (the Owner), the founder of what she describes generally as "Here for Her", a social enterprise focused on health education, movement building and activism, pertaining to issues that include polycystic ovary syndrome, ovarian cancer, pregnancy during a pandemic and menstrual equality.

[3] For the reasons that follow, this registration is maintained.

PROCEEDING

[4] On January 23, 2025, at the request of Deeth Williams Wall LLP (the Requesting Party), the Registrar of Trademarks issued the Owner of the Mark a notice under section 45 of the Act. The notice required the Owner to show whether the Mark had been used in Canada in association with each of the services at any time within the three years immediately preceding the date of the notice. If the Mark was not so used, the Owner was required to provide the date when it was last used and the reason for the absence of use since that date. In this case, the relevant period for showing use is January 23, 2022, to January 23, 2025 (the Relevant Period).

[5] It is well accepted that 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. As such, the evidentiary threshold that a registered owner must meet has been recognized as being quite low [*Performance Apparel Corp v Uvex Toko Canada Ltd*, 2004 FC 448 at para 68]. What has been described by the courts as "evidentiary overkill" is not required [*Union Electric Supply Co v Canada (Registrar of Trade Marks)* (1982), 63 CPR (2d) 56 (FCTD) at para 3]. The Owner need only supply facts from which a conclusion of use may follow as a logical or reasonable inference [*Cosmetic Warriors Limited v Riches, McKenzie & Herbert LLP*, 2019 FCA 48 at para 10 and *Sherzady v Norton Rose Fullbright Canada LLP/sencrl, srl*, 2022 FC 1712 at para 21]. Nonetheless, the evidence must be sufficient to inform the Registrar of the prevailing situation in respect of the use of the trademark during the Relevant Period. The evidence cannot be limited to bald assertions of use [*Plough (Canada) Limited v. Aerosol Fillers Inc* (1980), 53 CPR (2d) 62 (FCA) and *Alliance Laundry Systems LLC v Whirlpool Canada LP*, 2014 FC 1224 at paras 26-27].

[6] The relevant definition of "use" in the present case is set out in section 4(2) of the Act as follows:

> 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.

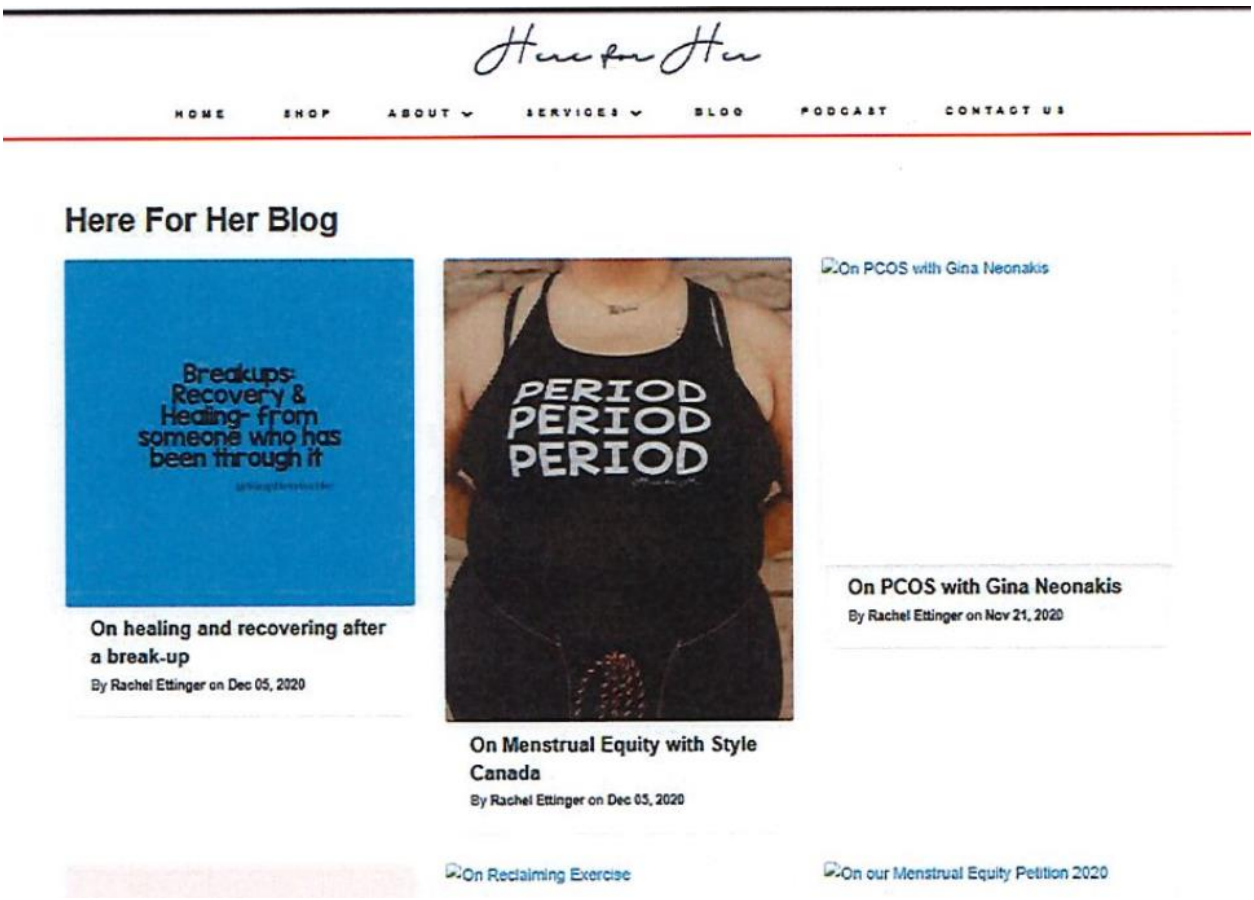
[7] However, the mere advertising of services is not sufficient to establish use under this provision. Rather, some aspect of the services must be performed or delivered in Canada, or at least available to be performed or delivered in Canada [*Miller Thomson LLP v Hilton Worldwide Holding LLP*, 2020 FCA 134 at para 7, citing *Porter v Don the Beachcomber*, 1966 CanLII 972 (CA EXC), [1966] Ex CR 982, (1966), 48 CPR 280 at para 17 and *Marineland Inc v Marine Wonderland & Animal Park Ltd*, (1974), 16 CPR (2d) 97 (FCTD)].

[8] In response to the Registrar's notice, the Owner filed an affidavit in her own name. Both parties filed written representations and participated in a hearing.

THE EVIDENCE

[9] In her affidavit, Rachel Ettinger explains the nature of the services she offers and the context in which she offers them. She also shows the manner of use of the Mark in association with those services. In this regard, I note that she attests to operating a social enterprise that collaborates with communities, organizations, activists and brands to help drive awareness and policy-making involving gender equality for Canadians. She explains that she introduced her blog in September 2020 and confirms that it remains active. She provides archived screen captures of her blog website, showing the Mark, on dates within the Relevant Period. More particularly, the materials in question include blog postings created before December 2020 that appear in archived screen captures from November 2022 and March 2023.

[10] The Mark appears on the site as follows:



[11] Ms. Ettinger provides information available through the website hosting company she utilizes for her blog posts. This material includes an analysis of site visits during the Relevant Period. For example, Ms. Ettinger attests to having 49 visitors to her blog page involving ovarian cancer. The documentary support from the website hosting company confirms this number.

[12] While a mere indication of visitor numbers will not, by itself, establish that the Owner's blog site was accessed by readers in Canada, to remedy this, Ms. Ettinger also provides the website host's report showing the location of visitors to her blog. I note a number of visitors were located in Canada.

[13] Ms. Ettinger also attaches materials to her affidavit relating to her social media accounts during the Relevant Period [Exhibit E]. I note that much of this material is illegible. I am unable to conclude that the social media information demonstrates use of the Mark in association with the Services. Thus, this portion of the evidence is neither relevant nor persuasive with respect of the analysis of the use of the Mark in association with the Services.

ANALYSIS

Use of the Mark

[14] The Requesting Party submits that there is no evidence to show that the Services were provided in Canada [Requesting Party written representations, paras 18 and 19]. It further argues that the nature of the Owner's relationship with the website host company has not been specified. In addition, it submits that no information has been provided regarding the location of the website host company, although it does not explain why the host's location would be relevant. The Requesting Party also contends that the Owner lacks personal knowledge of the website host's activities and of the reliability of information provided [Requesting Party written representations, para 20].

[15] The Requesting Party's position is that because the information described above has not been provided, the evidence is inadmissible hearsay [Requesting Party's written representations, paras 18 to 20].

[16] The Owner responds that the evidence shows that Canadians accessed the website containing the blogs during the Relevant Period. Further, with respect to online information services, the Owner states that "evidence from which it can reasonably be inferred that the trademark was displayed on the website and that customers accessed the webpages in question can suffice

to show use" [Owner's written representations at para 17, citing *Norton Rose Fulbright Canada LLP/SENCRL, srl v Nectar, Inc*, 2017 TMOB 80 (*Nectar*) at para 35]

[17] While I agree with the Owner that the evidence shows the blog website was accessed by Canadians during the Relevant Period, I do not consider the decision in *Nectar* to support the principle stated. The evidence filed by the owner in *Nectar* did not include access data of the sort the Owner has now produced. Rather, the findings in *Nectar* indicate that it may be possible to reasonably infer that customers accessed online advertising, when the evidence at hand shows that multiple companies with Canadian offices availed themselves of the Owner's services. As such, the decision is not persuasive in respect of whether analytical information from a website provider is admissible and probative.

[18] While I agree with the Requesting Party that the information provided through the website host is *prima facie* hearsay, I disagree that this evidence is therefore inadmissible.

[19] Hearsay is generally admissible if it satisfies the criteria of necessity and reliability [*Labatt Brewing Co v Molson Breweries, A Partnership* (1996), 68 CPR (3d) 216 (FCTD)]. I find the Owner's reliance on records provided by its website host to be, in this case, both necessary and reliable. The production of records acquired from the Owner's website host is a reasonable proof that the blog site was visited, and that, in some cases, those visitors were in Canada. It is difficult to conceive how the Owner could otherwise provide proof that Canadians visited its site. I see no reason to doubt the origins or veracity of the report that appears to have been taken from the website provider's page displaying such data.

[20] As to the argument that the Owner has not provided information about its relationship with the company providing website hosting, I note that Ms. Ettinger has identified the services this company offers, namely, providing website hosting services. These statements are consistent with the supporting documentation. Nothing more is required, and information about the web hosting company's location is unnecessary. What is relevant is that Canadians accessed the Owner's blog site where the Mark appeared in association with the Services, and that these visits occurred during the Relevant Period.

[21] In addition, I note that even in respect of opposition proceedings available under the Act, where higher evidentiary standards are generally applicable, these types of reports from website hosts have previously been deemed admissible [see, for example, *9333-4266 Québec inc v Clearsurance, Inc*, 2020 TMOB 138 at para 47].

[22] Furthermore, it is well established that owing to the summary nature of these proceedings, concerns about hearsay can go to weight rather than admissibility [*1459243 Ontario Inc v Eva Gabor International, Ltd*, 2011 FC 18].

[23] Ms. Ettinger's evidence includes a clear statement that the blog site on which the Mark appears became active in September 2020, and remains active. Archived screen shots from the Relevant Period clearly display the Mark. She provides supporting documentation in the form of statistical records provided by the entity hosting the site showing total visits, as well as visits by Canadians. I find the statement made by Ms. Ettinger, considered in conjunction with the information provided by the website host, proves that Canadians visited the Owner's blog website multiple times during the Relevant Period.

Ordinary Course of Trade Not Required for Services

[24] The Requesting Party submits that the evidence does not include information as to the ordinary course of trade in respect of the Services. The Requesting Party goes on to say the "onus is on the Registrant, and not the Registrar, to explain the normal course of trade in particular industry" [Requesting Party's written representations paras 21 to 23].

[25] The Owner responds that it is not necessary to provide evidence of invoices, payments, or the like, to establish the provision of the Services [Owner's written representations, paras 20 to 21], relying on *War Amputations of Canada v FaberCastell Canada Inc* (1992) 41 CPR (3d) 577.

[26] The line of argument pertaining to evidence of the ordinary course of trade is specious. Unlike section 4(1), which concerns use of a trademark in association with goods, section 4(2) of the Act relates to services and does not require that the services be offered in the "ordinary course of trade." There is therefore no requirement under the statute for the Owner to demonstrate that the Services were offered in the ordinary course of trade.

Evidence of Payment, Subscriptions or Registration

[27] The Requesting party argues that there is no evidence to suggest that anyone interacted with the website where the blog appears, for example through payment, subscription or registration. It also argues that the Owner has not shown that the services were received by any particular person [Requesting Party written representations, para 21].

[28] I note that at least to some extent, Canadians did interact with the Owner's blog as evidenced by site visitors. Those visits to the site, where the Mark was clearly visible, establish the display of the Mark in the advertising and in the performance of the services. Even if I am incorrect and visitors did not engage with the Owner's website to the extent of reading the blog

posts and therefore availing themselves of the Services, the appearance of the Mark on the blog site is advertising of the Owner's services. Advertising available services also meets the statutory requirement regarding use of the Mark in association with the Services.

Services Provided Through an Online Blog

The Requesting Party argues that because the specification of services references "via an online blog," providing information in the field of women's health issues by other means, such as social media, does not constitute use of the Mark in association with the Services [Requesting Party's written representations, para 25]. However, even if this is the case, I note the Owner's evidence is not restricted to social media materials. Rather, it has provided evidence that it operates a webpage containing blog posts providing information in the field of women's health issues.

[29] The Requesting Party also submits that the materials set out in Exhibit A to Ms. Ettinger's affidavit show only blog titles, not the posts themselves. It argues that it is not obvious from the titles whether they cover women's health issues. It submits that since some titles relate to women's health while others do not, the data involving website visits do not necessarily correspond to blogs providing the Services [Requesting Party's written representations, para 27]. However, I find the blogs to relate to women's health, both mental and physical, for e.g. menstrual equality, PCOS and healing and recovery after a break-up as noted in paragraph 10 above.

[30] The Requesting Party also argues that the Owner's choice of language in its statement of services specifying the provision of information is "via a blog", rather than via a website, suggests that a meaningful difference exists between a blog and a website. It relies on the following definition taken from the *Oxford English Dictionary*, seemingly the online version, to argue that a blog requires frequent updates:

> a frequently updated website, typically run by a single person and consisting of personal observations arranged in chronological order, excerpts from other sources, hyperlinks to other sites, etc." [Emphasis Added]
>
> *Oxford English Dictionary*, (Oxford University Press, 30 April 2025)

and from the Cambridge Dictionary, again presumably online,

> a website on which one person or group puts new information regularly, often every day" [Emphasis Added]
>
> *Cambridge Dictionary* (Cambridge University Press, 30 April 2025)

[31] Proceedings under section 45 of the Act are not *inter partes* and, as such, there is no provision for the Requesting Party to submit evidence at all, let alone in the form of unsworn evidence of dictionary definitions. That said, I may take judicial notice of dictionary definitions and will do so in this instance and accept that blogs are recognized as involving multiple postings.

[32] The Owner argues at paragraph 23 of her written representations:

> Registrant's services are "providing information in the field of women's health issues via an online blog". The Registrant's services are not "posting blogs". So long as the Registrant keeps the blog pages available to the public on her website, she continues to provide information via an online blog.

[33] The evidence suggests that the blogs were posted in late November and early December 2020. I find the Owner's multiple postings over a relatively brief period of time are consistent with the definitions of a blog shown above. Further, I note the web page containing the blogs is clearly labelled "Here for Her Blog".

[34] Additionally, I note one need not be astutely meticulous with the language used in a statement of goods or services when deciding whether use has been shown of a trademark [*Michaels v Unitop Spolka Z*

Organiczona Odpowiedzialnoscia, 2020 FC 937 at para 14 and *Guangzhou Wanglaoji Grand Health Co, Ltd v Multi Access Limited,* 2024 FC 872, 2024 at para 52].

[35] At the hearing, the Requesting Party argued that, because the evidence suggests that the website was not updated after December 2020, it could not be considered a "blog" and that the Services were not provided during the Relevant Period. As noted above, the blog posts in evidence meet the definition of a blog. The Owner's blogs existed and were accessed by Canadians during the Relevant Period. I agree with the Owner's comments made during the hearing that, so long as the evidence shows that the blog site was accessed during the Relevant Period, it is immaterial that the initial posting of the blogs predate the Relevant Period. I find that to conclude otherwise would require an overly technical approach inconsistent with the purpose of section 45 proceedings [see *Dundee Corp v GAM Ltd*, 2014 TMOB 152 at para 21; *Reckitt Benckiser (Canada) Inc v Tritap Food Broker*, 2013 TMOB 65 at para 27].

Conclusion

[36] Ms. Ettinger has manifest knowledge regarding the evidence she provided. I may properly draw inferences, which are reasonably probable, logical deductions from proven facts, after considering the evidence in its totality [*Sim & McBurney v En Vogue Sculptured Nail Systems Inc*, 2021 FC 172 at para 15]. Considering the evidence as a whole, I conclude that the Owner has met its *prima facie* burden to show use of the Mark, within the meaning of section 4(2) of the Act, in association with the Services, during the Relevant Period. There is no reason to conclude the Mark is deadwood.

DISPOSITION

[37] 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.

Coleen Morrison
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

Appearances and Agents of Record

HEARING DATE: 2025-10-01

APPEARANCES

For the Requesting Party: Gary Daniel

For the Registered Owner: Cynthia Mason

AGENTS OF RECORD

For the Requesting Party: Deeth Williams Wall LLP

For the Registered Owner: Cynthia D. Mason