

Canadian Intellectual Property Office

THE REGISTRAR OF REGISTERED MARKS

Citation: 2026 TMOB 15

Date of Decision: 2026-01-29

IN THE MATTER OF A SECTION 45 PROCEEDING

Requesting Party: Cassels Brock & Blackwell LLP

Registered Owner: Corner Capital Corp.

Registration: TMA843,086 for AMERICA'S HOTTEST GIRL

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. TMA843,086 for the trademark AMERICA'S HOTTEST GIRL (the Registered Mark), owned by Corner Capital Corp. (Corner Capital).

[2] The Registered Mark is registered for use in association with the following services:

Arranging of beauty contests;

Entertainment in the nature of beauty pageants;

Entertainment services, namely, providing a web site featuring photographic, audio, video and prose presentations featuring people competing in beauty contests and pageants.

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

THE RECORD

[4] At the request of Cassels Brock & Blackwell LLP (the Requesting Party), the Registrar of Trademarks issued a notice to Corner Capital pursuant to section 45 of the Act on February 5, 2025. The notice required Corner Capital to show whether the Registered Mark was used in Canada in association with each of the registered services 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.

[5] The relevant period for showing use is therefore between February 5, 2022 and February 5, 2025. In the absence of use, pursuant to section 45(3) of the Act, the registration is liable to be expunged, unless the absence of use is excused by special circumstances.

[6] It is well established 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. Although the evidentiary threshold that the owner must meet is quite low [*Performance Apparel Corp v Uvex Toko Canada Ltd*, 2004 FC 448 at para 38], 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 or services specified in the registration during the relevant period [*John Labatt Ltd v Rainier Brewing Co* (1984), 80 CPR (2d) 228 (FCA)] and bare assertions of use are not sufficient to demonstrate use in the context of section 45 proceedings [*Plough (Canada) Ltd v Aerosol Fillers Inc* (1980), 53 CPR (2d) 62 (FCA)].

[7] In response to the Registrar's notice, Corner Capital submitted the affidavit of Jeff Levy, president of Corner Capital, sworn on May 1, 2025, together with Exhibits 1, 2, and 3.

[8] Only the Requesting Party filed written representations. No hearing was requested.

[9] Before turning to the evidence, I note that Mr. Levy is the original owner of the subject registration and that he assigned the registration to Corner Capital on February 1, 2024. The change in ownership is not in dispute and has no effect on the outcome of this proceeding.

EVIDENCE

[10] In his affidavit, Mr. Levy states that, as president, he has managed “brands and businesses all owned by Corner Capital... and all with respect to beauty contests, pageants and entertainment namely providing a web site for such contests, agency work and model management” [para 3]. Mr. Levy collectively defines Corner Capital’s portfolio of brands and businesses as “the Brands”.

[11] Mr. Levy asserts that, during the relevant period, the “Registered Mark had been used in Canada in association with the [registered services] by Corner Capital” and, more specifically, that the services “were actively made available to Canadian clients, and Corner Capital had licensed certain rights to the Registered Mark for similar commercial use in Canada” [para 11].

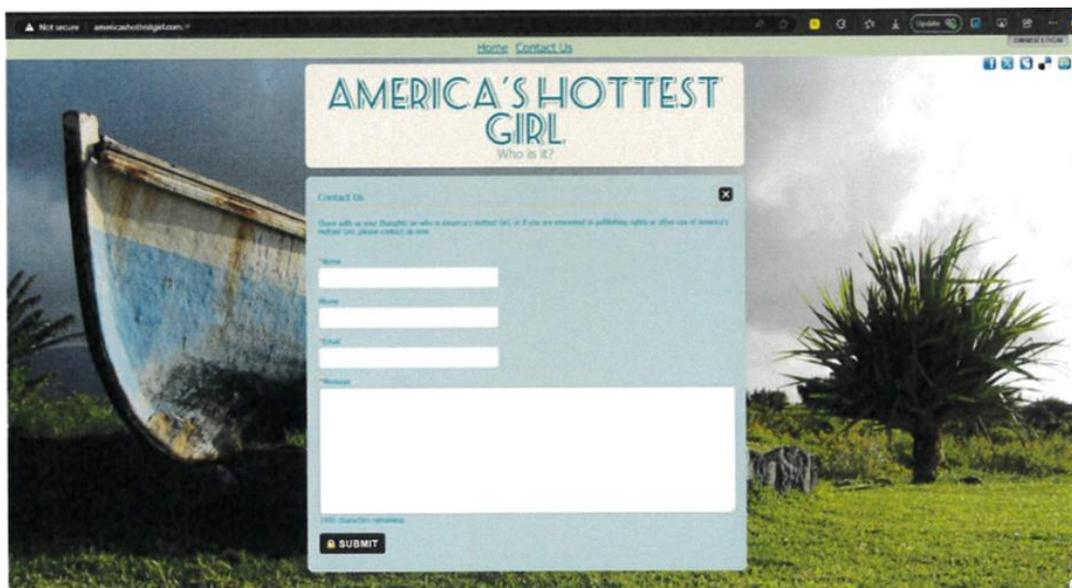
[12] In his affidavit, Mr. Levy essentially sets out two types of use of the Registered Mark: by Corner Capital on its website *AmericasHottestGirl.com* and by licensees.

Website Use

[13] Mr. Levy explains that, as part of his role, he set up the *AmericasHottestGirl.com* website to “generate leads with respect to beauty contestants, nominations, model and talent agency work” [para 3]. He also states that the website existed throughout the relevant period and was

“used as a means of advertising the [registered services], which are actively commercially available to the general Canadian public” [para 12].

[14] In support, Mr. Levy attaches webpage screenshots, reproduced below, which he states are “representative of how the Registered Mark appeared alongside the...[registered services] during the Relevant Period and evidences that Corner Capital was willing and able to perform the [registered] services in Canada” [para 14 and Exhibit 1]. Both webpages display the Registered Mark, but neither makes reference to any service.



Licensed Use

[15] Mr. Levy indicates that, over the past 13 years, “the Registered Mark has been continuously used in licensing agreements with others to use the Registered Mark and other Brands” [para 5].

[16] Mr. Levy also references a “transfer” of the Registered Mark, stating that he founded Corner Capital on July 26, 2012, and since then has “been involved in all aspects of the business, including accepting the transfer of the Registered Mark to further expand the business of the Registered Mark with other partners and investors” [para 6].

[17] While there are no further details on such transfer, Mr. Levy makes the following statements regarding licensing:

16. Throughout the years, many of the Brands were licensed for use, including the Registered Mark together with the associated mark. Typically, most of the interest to license the Brands, including the Registered Mark were with respect to using same in a television series involved in searching for the hottest girl in America by Hit `Em Straight Productions.

17. I, vis-a-vis Corner Capital, actively exerted direct and indirect control of the manner in which the appointed licensees can use the Registered Mark and provide the [registered services] thereunder, including maintain [sic] ownership and managing control over such licensees.

REASONS

Display of the Registered Mark on the Website

[18] As noted above, Mr. Levy states that the *AmericasHottestGirl.com* website existed throughout the relevant period and was “used as a means of advertising” the registered services. Although I accept that the Registered Mark was displayed on Corner Capital’s website, this evidence is insufficient to show use of that trademark in association with any of the registered services.

[19] The relevant definition of “use” in respect of services is set out at section 4(2) of the Act as follows:

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.

[20] It is well accepted that for a website to constitute advertising, it must be “distributed to” or accessed by prospective customers, and that the mere existence of a website does not establish that it was accessed by Canadians [see *Cornerstone Securities Canada Inc v Canada (Registrar of Trade Marks)* (1994), 58 CPR (3d) 417 (FCTD); *Shift Law v Jefferies Group, Inc*, 2014 TMOB 277; and *ITV Technologies Inc v WIC Television Ltd*, 2003 FC 1056 at paras 20-22]. To establish access, a clear statement may be sufficient. Alternatively, there should be some evidence from which it can be reasonably inferred that Canadians accessed the webpages [*Ridout & Maybee v Residential Income Fund LP*, 2015 TMOB 185 at para 47].

[21] In the present case, Corner Capital has provided no such evidence.

[22] In any event, the exhibited webpages make no reference to any of the registered services. In fact, apart from the display of the Registered Mark and what appears to be a contact form, the exhibited webpages lack content. As such, even if I accept Mr. Levy’s assertion that the website was used as a means of advertising, the evidence is insufficient to determine which, if any, of the registered services were advertised.

[23] Finally, while I am satisfied that Corner Capital provided a website, there is no evidence that the website featured the content described in the registered entertainment services, namely “photographic, audio, video and prose presentations featuring people competing in beauty contests and pageants”. As such, the website evidence does not assist Corner Capital in showing performance of those services.

Use by Licensees

[24] Regarding use by licensees, Mr. Levy references “licensing agreements with others” and asserts that the Registered Mark was “licensed for use”. However, he provides no details concerning the agreements or licensees, nor any indication that licensees did in fact use the Registered Mark.

[25] In the absence of factual particulars regarding actual performance or advertisement of the registered services by any licensees in Canada, I find that Mr. Levy’s statements are tantamount to a bare assertion of use [see *Plough, supra*].

DISPOSITION

[26] In conclusion, I am not satisfied that Mr. Levy’s affidavit demonstrates use of the Registered Mark in association with the registered services pursuant to section 4(2) and 45 of the Act.

[27] As there is no evidence of special circumstances excusing non-use, 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.

Eve Heafey
Member
Trademark Opposition Board
Canadian Intellectual Property Office

Appearances and Agents of Record

HEARING DATE: No hearing held

AGENTS OF RECORD

For the Requesting Party: Cassels Brock & Blackwell LLP

For the Registered Owner: No agent appointed