Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2026 TMOB 19

Date of Decision: 2026-01-30

IN THE MATTER OF A SECTION 45 PROCEEDING

Requesting Party: Dickinson Wright LLP

Registered Owner: Corner Capital Corp.

Registration: TMA688,103 for Complete Medical Centres & Design

THE PROCEEDING

[1] At the request of Dickinson Wright LLP (the Requesting Party), the Registrar of Trademarks issued a notice pursuant to section 45 of the *Trademarks Act*, RSC 1985, c T-13 (the Act) on September 4, 2024, to Corner Capital Corp., the Owner of registration No. TMA688,103 for the trademark Complete Medical Centres & Design shown below (the Mark):

[2] The section 45 notice required the Owner to show whether the Mark was used in Canada in association with each of the registered services (the

Services) set out below at any time within the three-year period before the notice's date (the Relevant Period):

> Class 35 (1) Management of health care clinics for others; management of medical clinics
>
> Class 44 (2) Medical clinics; medical clinic services

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

ANALYSIS

[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 Owner need only establish a *prima facie* case of use within the meaning of sections 4(2) and 45 of the Act. Section 4(2) of the Act states:

> 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.

[5] Where the Owner does not show use, the registration is liable to be expunged or amended, unless there are special circumstances that excuse the absence of use.

[6] In response to the Registrar's notice, the Owner submitted as its evidence the affidavit of Jeff Levy, the President of the Owner. The Requesting Party alone submitted written representations. Neither party attended a hearing.

Assessing Evidence in a Section 45 Proceeding

[7] The following principles for assessing evidence in a section 45 proceeding are relevant in this case:

(a) Evidence need not be perfect [*Lewis Thomson & Son Ltd v Rogers, Bereskin & Parr*, 1988 CanLII 10180 (FCTD)], and reasonable inferences can be made from the evidence provided as a whole [*Eclipse International Fashions Canada Inc v Shapiro Cohen*, 2005 FCA 64].

(b) Ambiguities in evidence should be resolved in an owner's favour, without, however, reducing the owner's burden [*Fairweather Ltd v Registrar of Trade-marks*, 2006 FC 1248 at para 41; *Fraser Sea Food Corp v Fasken Martineau Dumoulin LLP*, 2011 FC 893 at para 19]

(c) Because evidence is not subject to cross-examination, a registered owner's affidavit must be considered from the point of view of what it does not say [*Plough (Canada) Ltd v Aerosol Fillers Inc*, 1980 CanLII 2739 (FCA); *The House of Kwong Sang Hong International Ltd v Gervais,* 2004 FC 554 at para 33].

Does the Evidence Show Use of the Mark by the Owner or Enuring to the Owner?

[8] In this case, the section 45 notice issued on September 4, 2024 to the Owner who was only assigned the Mark on February 1, 2024. Prior to this time, the Mark was owned by Mr. Levy - the President of the Owner and the affiant in this case.

[9] The Owner's evidence is sufficient to demonstrate the requisite control required by section 50(1) of the Act. A clear statement by a trademark owner that they exert the requisite control a trademark is sufficient to establish control [*Empresa Cubana Del Tabaco Trading v Shapiro Cohen*, 2011 FC 102 at para 84, aff'd 2011 FCA 340]. Mr. Levy explains that since 2009 Levy Zavet has been a licensee of the Mark, collaborating with himself

as both a lawyer and consultant providing the services under the Mark from a legal and business standpoint (paras 6, 17). Additionally, since 2008, the medical clinic at 630 Peter Robinson Blvd., Unit 16 in Brampton, Ontario has been a licensee (para 17). With respect to the period of time in which Corner Capital owned the Mark, Mr. Levy actively exerted direct and indirect control of the manner in which the appointed licensees can use the Mark and provide the Services thereunder, including maintaining ownership and managing control over such licensees, such as Levy Zavet (para 19).

Was the Mark Used in the Performance or Advertisement of the Services During the Relevant Period?

[10] The Owner provides representative screenshots of the *www.completemedicalcentres.com* website which Mr. Levy explains show how the Mark appeared during the Relevant Period (para 14, Exhibit 6). The Mark is shown in the top left corner on this website which appears to advertise clinic management services and includes information about the offering of "tailored management solutions" for physicians (Exhibit 6). Medical clinics and their services also appear to be advertised on this website with the address, phone number, and hours of operation for the Springdale Complete Medical Centre in Brampton as well as a mission statement for this clinic being set out (Exhibit 6).

[11] Where a trademark owner is offering and prepared to perform the services in Canada, use of the trademark on advertising of those services meets the requirements of section 4(2) [*Wenward (Canada) Ltd v Dynaturf Co,* 1976 CanLII 2656 (TMOB)]. To constitute advertising, materials displaying the trademark must be "distributed to" or accessed by prospective customers [*Cornerstone Securities Canada Inc v Canada (Registrar of Trade Marks),* 1994 CanLII 19518 (FC)]. The Owner states they were willing and able to perform the Services in Canada during the Relevant Period (para 16), but there is no evidence that the advertising of the Services on the Complete

Medical Centres website were actually "distributed to" or accessed during the Relevant Period. To the extent that there is information provided on the website that would support finding that the Services were performed, there is no reasonable inference that any Canadians were exposed to this website during the Relevant Period. The Owner's evidence that the website was public and existed during the Relevant Period (para 15, Exhibit 5) does not establish that it was accessed during the Relevant Period [*Canada Lands Company Limited v The Toronto Regional Real Estate Board*, 2025 TMOB 74 at paras 45–46]. I am not prepared to infer that Canadians accessed this website because this is a key issue in this case and it would have been a simple matter for the affiant to provide some supporting evidence that Canadians accessed this website. In fact, Mr. Levy provides analytics for visits to *LevyZavet.com*, albeit from outside the Relevant Period (Exhibit 4).

[12] The remainder of the Owner's evidence does not allow me to find or reasonably infer that the Mark was used during the Relevant Period based on the Owner's broad and unspecific wording:

- The Owner provides undated examples of advertising that was "continuously taken out" in the Canadian Medical Association Journal, the Guardian newspapers, the Yellow Pages, and the Ontario Medical Association classifieds (para 3, Exhibit 1). The Owner also states the Mark was "always used" in advertising the medical clinics for its services and procurement of health professionals (para 3). The examples do not always show the Mark, a design. While display of the identical trademark is not required to support use of a registered trademark, one must look to see whether the dominant features of the registered trademark have been preserved [*Promafil Canada Ltée v Munsingwear Inc*, 1992 CanLII 12831, 44 CPR (3d) 59 (FCA)]. In the present case, the dominant features of the Mark are the words

Complete Medical Centres and the heart logo. The advertisements do not always preserve the Mark's dominant features and sometimes omit the words, the logo, or both. Therefore the evidence in Exhibit 1 does not help the Owner establish use of the Mark during the Relevant Period as it is not possible to determine which of the advertisements were distributed during the Relevant Period.

- The Owner provides mock-up business cards and medical clinic signage and states clinics "often had the same signature signage" (para 4, Exhibit 2). There is no indication the signage was used during the Relevant Period.

- The Owner provides undated excerpts from *LevyZavet.com* and states "the web pages mentioned above" are part of Levy Zavet's ongoing SEO (search engine optimization) and advertising campaigns that have been "ongoing for over 15 years, generating on average a few hundred thousand impressions of, leads and clients from the website and other social media assets" (para 7, Exhibits 2–4). However, there is no link between these pages and the display of the Mark during the Relevant Period.

- The Owner's states that "[t]hroughout the years" Levy Zavet amassed hundreds of medical clients (para 17). Even if I infer that these clients received the Services during the Relevant Period there is no evidence on how they would have been exposed to the Mark.

- The Owner provides undated excerpts from physician licensees' professional profiles and related webpages (para 17, Exhibit 7) that do not show use of the Mark, a design, during the Relevant Period. The excerpts do not show the heart logo, the dominant feature of the Mark.

[13] Although evidentiary ambiguities are generally resolved in favour of the Owner, the Federal Court of Appeal found that inferring sales made during the relevant period based on sales during an overlapping ten-year period was unreasonable [*Alliance Laundry Systems LLC v Whirlpool Canada LP*, 2015 FCA 232]. The present case is analogous. It is unreasonable to infer that advertising was placed, signage displayed, or webpages were accessed during the Relevant Period based on undated evidence and statements covering a broader multi-year period.

[14] Evidence should be forthcoming in quality not quantity [*Philip Morris Inc v Imperial Tobacco Ltd et al*, 1987 CanLII 9726 (FCTD)]. The Owner provides various types of evidence to show an association between the Mark and Services, but it does not show that there was use during the Relevant Period.

[15] As the Owner made no submissions and there is no evidence before me of special circumstances excusing the absence of such use, the registration will be expunged.

DISPOSITION

[16] 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.

Natalie de Paulsen
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

Appearances and Agents of Record

No hearing held

AGENTS OF RECORD

For the Requesting Party: Yuri Chumak c/o Dickinson Wright LLP

For the Registered Owner: Allan Oziel (Oziel Law)