Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2026 TMOB 27

Date of Decision: 2026-02-17

IN THE MATTER OF A SECTION 45 PROCEEDING

Requesting Party: LCA Operations Pty Limited

Registered Owner: The Laser Clinic Inc.

Registration: TMA772,037 for THE LASER CLINIC & DESIGN

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. TMA772,037 for the trademark THE LASER CLINIC & DESIGN (the Trademark), reproduced below.

THE LASER CLINIC.CA

TOTAL BEAUTY SOLUTIONS

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

> (1) The selling of skin care preparations and skinceutical [*sic*] of others, namely cleansers, toners, creams, balms, emollients, gels, antioxidant formulas, sunscreens, sunblocks, body lotions and self-tanning lotions;

Customer loyalty rewards program featuring discount and incentive programs in the field of non-surgical medical esthetics.

(2) Laser hair removal, administering cosmetic injections, laser skin rejuvenation, microdermabrasion, varicose vein therapy, skin photo rejuvenation, laser acne removal, acne therapy, laser cellulite treatment, facials, luxury facials, electrolysis, waxing, body treatments, scar and stretch mark treatments, permanent make-up, cosmelan for hyperpigmentation, laser wrinkle reduction, chemical peels for skin, injection wrinkle and line reduction, injection filling of creases and wrinkles, skin tightening, tissue tightening and skin lightening, make up artistry, permanent make-up; Operation of a business offering esthetic services; Treatment of skin diseases using laser therapy; Medical services, namely performing cosmetic procedures; Operation of a website providing information in the field of non-surgical medical esthetics.

(3) Laser treatment for weight management counselling, smoking cessation and for the treatment of hair loss.

[3] For the reasons that follow, I conclude that the registration ought to be amended to delete part of the services listed at (1) and (2), and all of the services listed at (3).

RECORD

[4] On November 21, 2024, at the request of LCA Operations Pty Limited (the Requesting Party), the Registrar of Trademarks issued a notice pursuant to section 45 of the Act to The Laser Clinic Inc. (the Owner), the registered owner of the Trademark.

[5] The notice required the Owner to show whether the Trademark was used in Canada in association with 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. In this case, the relevant period for showing use is between November 21, 2021 to November 21, 2024.

[6] In response to the Registrar's notice, the Owner submitted an affidavit of Jessica Bell, together with Exhibits A to C (the Bell Affidavit); and an affidavit of Christina Fradsham, together with Exhibits A to D (the Fradsham Affidavit).

[7] Only the Owner filed written representations. No hearing was requested.

BACKGROUND ON SUMMARY EXPUNGEMENT PROCEEDINGS

[8] 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. The evidence in a section 45 proceeding need not be perfect; indeed, a registered owner need only establish a *prima facie* case of use within the meaning of sections 4 and 45 of the Act. This burden of proof is light; evidence must only supply facts from which a conclusion of use may follow as a logical inference [per *Diamant Elinor Inc v 88766 Canada Inc*, 2010 FC 1184 at para 9].

[9] Where an owner does not meet the low evidentiary threshold to show use, the registration is liable to be expunged, unless the absence of use is excused by special circumstances [section 45(3) of the Act].

[10] The definition of "use" with respect to 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.

OVERVIEW OF THE EVIDENCE

[11] Ms. Bell identifies herself as the owner and operator of the Owner. According to Ms. Bell, the Owner has continuously provided "beauty, esthetician, dermatological care and related services" at its business

premises located in Ontario, Canada since 2003. Broadly speaking, her affidavit provides evidence regarding the Owner's business operations since that time, including the operation of the website located at *thelaserclinic.ca*.

[12] Ms. Fradsham identifies herself as an assistant of the agent for the Owner and explains that she conducted a search for pages from the website *thelaserclinic.ca* archived during the relevant period. As a result of this search, Ms. Fradsham provides webpage printouts captured by the Wayback Machine in November 2020, March 2021, January 2022, and May 2022.

[13] I will return to the evidence where relevant in my analysis below.

ANALYSIS

[14] In her affidavit, Ms. Bell defines the services provided by the Owner during the relevant period as the "LC Services" and asserts that the Owner provided those services in association with the Trademark [para 9]. The LC Services correspond to those described in the subject registration with the exception of the following:

- "[The selling of skin care preparations and skinceutical of others, namely…] self-tanning lotions", and "Customer loyalty rewards program featuring discount and incentive programs in the field of non-surgical medical esthetics" in services (1);
- "laser cellulite treatment" and "cosmelan for hyperpigmentation" in services (2); and
- all of services (3).

[15] As they are nowhere referenced in the Owner's evidence, I am not satisfied that the Owner has shown use of the Trademark in association with the above-listed services within the meaning of the Act. In the absence of

special circumstances excusing non-use, the registration will be amended accordingly.

[16] The remaining registered services essentially consist of selling skin care preparations and skinceuticals in services (1), and providing various esthetic and skin care treatments in services (2). I will address each of them below, starting with the latter.

Providing Esthetic and Skin Care Treatments

[17] In her affidavit, Ms. Bell attests that, during the relevant period, the Trademark was displayed on the *thelaserclinic.ca* website [para 13], on invoices issued to customers [para 14], and on laser treatment consent forms [para 18].

[18] Ms. Bell explains that the Owner's website *thelaserclinic.ca* is the primary means of advertising and booking the LC Services [para 10], and provides a webpage capture that she asserts is representative of how the Trademark was displayed on this website between November 21, 2022 and May 2022 [Exhibit A]. The evidenced webpage displays the Trademark and provides information on a number of the LC Services, including skin rejuvenation and tightening, scar removal, laser light therapy, laser hair removal, electrolysis, waxing, chemical peels, permanent make-up, and facials. I note that the webpage also features a "BOOK NOW" button, as well as separate tabs for "services" and "products".

[19] The archived webpages tendered by Ms. Fradsham in her affidavit are substantially similar, though they present a higher quality image resolution. In those exhibited webpages, I also note references to acne therapy, laser facial genesis, and laser vein removal.

[20] In terms of performance, Ms. Bell provides monthly sales figures for LC Services offered by the Owner from September 2021 to November 2024 [para 16]. The figures vary between about $40,000 and $80,000 per month.

[21] Ms. Bell also provides a bundle of invoices issued by the Owner during the relevant period [para 17, Exhibit B]. The invoices reference various beauty and skin care services rendered including brow shaping, facials, hair removal treatments (*i.e.* electrolysis, basic bikini), and a treatment identified as "Laser Genesis (Full Face With Deluxe Mask)". The Trademark is displayed in the header of each of the exhibited invoices.

[22] In addition to display on the website and on invoices, Ms. Bell attests that the Trademark "without the underlying swirl image" was also displayed on "customer intake Medical History and Consent forms" which were distributed to customers when purchasing LC Services during the relevant period [para 18, Exhibit C]. Indeed, the forms display a minor variation of the Trademark, wherein the wave design element in the lower portion of the mark has been removed. The forms contain various empty fields for customers to fill out, such as contact information, medical history, and a selection of laser treatments to be selected:

___ Laser Genesis Rejuvenation _____ 1064nm Yag ___ 755 nm Alex Toning ____ FX16 Fractionated Skin Tightening
___ Laser Vantage Vascular Face/Leg Veins ___ 755nm
___ Laser For Hair Removal ___ 755nm_____1064nm Yag
___ Brown Spots 755nm

[23] I note here that, aside from Ms. Bell's assertion of trademark use in association with the LC Services at paragraph 9 of her affidavit, the evidence makes no reference to any type of injection, or microdermabrasion treatments.

[24] Having regard to the evidence as a whole, I am satisfied that the Owner has met the low evidentiary threshold to show use of the Trademark

in association with most of the LC Services, including hair removal treatments, laser skin treatments such as rejuvenation and tightening, and esthetic and cosmetic treatments such as facials and permanent make-up.

[25] In coming to this conclusion, I have considered that services should be given a broad and liberal interpretation [*Renaud Cointreau & Co v Cordon Bleu International Ltd* (2000), 11 CPR (4th) 95 (FCTD), aff'd 2002 FCA 11; *Live! Holdings LLC v Oyen Wiggs Green & Mutala LLP*, 2019 FC 1042], that services may include incidental or ancillary services [*Venice Simplon-Orient-Express Inc v Société Nationale des Chemins de Fer Français SNCF* (2000), 9 CPR (4th) 443 (FCTD)], and that "in certain cases, statements of services contain overlapping and redundant terms in the sense that the performance of one service would necessarily imply the performance of another" [*Gowling Lafleur Henderson LLP v Key Publishers Co*, 2010 TMOB 7 at para 15; see also *Provent Holdings Ltd v Star Island Entertainment, LLC*, 2014 TMOB 178 at para 22; *GMAX World Realty Inc v RE/MAX, LLC*, 2015 TMOB 148 at para 69].

[26] However, given that injections and microdermabrasion services are not evidenced beyond a mere assertion of use and without the benefit of correlations from the Owner, I am not prepared to find use in association with: "administering cosmetic injections", "microdermabrasion", and "injection wrinkle and line reduction, injection filling of creases and wrinkles". As no special circumstances excusing non-use have been evidenced, these services will be deleted.

Sale of Skin Care Preparations and Skinceuticals

[27] As indicated above, the registration covers services described as "selling of skin care preparations and skinceutical [*sic*] of others". The statement of services includes descriptions of the types of products susceptible to be sold as part of this service.

[28] Regarding product sales, the Owner's evidence includes webpages from the Owner's website which feature a tab for "products", as well as an invoice for a "Discoloration Defense Serum" sold during the relevant period. I also note other invoiced products, namely "Metacell Renewal B3" and "Phloretin CF".

[29] This evidence, together with Ms. Bell's assertion that the Owner provided the LC Services during the relevant period, as well as the evidenced display of the Trademark on the website and invoices, is in my view sufficient to establish a *prima facie* case of use in association with the services of selling products, namely "The selling of skin care preparations and skinceutical of others, namely cleansers, toners, creams, balms, emollients, gels, antioxidant formulas, sunscreens, sunblocks, body lotions".

DISPOSITION

[30] 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 services:

> (1) …and self-tanning lotions; Customer loyalty rewards program featuring discount and incentive programs in the field of non-surgical medical esthetics.
>
> (2) … administering cosmetic injections, … microdermabrasion, … laser cellulite treatment, … cosmelan for hyperpigmentation, … injection wrinkle and line reduction, injection filling of creases and wrinkles, …
>
> (3) Laser treatment for weight management counselling, smoking cessation and for the treatment of hair loss.

[31] The amended statement of services will now read as follows:

> (1) The selling of skin care preparations and skinceutical of others, namely cleansers, toners, creams, balms, emollients, gels, antioxidant formulas, sunscreens, sunblocks, body lotions;

(2) Laser hair removal, laser skin rejuvenation, varicose vein therapy, skin photo rejuvenation, laser acne removal, acne therapy, facials, luxury facials, electrolysis, waxing, body treatments, scar and stretch mark treatments, permanent make-up, laser wrinkle reduction, chemical peels for skin, skin tightening, tissue tightening and skin lightening, make up artistry, permanent make-up; Operation of a business offering esthetic services; Treatment of skin diseases using laser therapy; Medical services, namely performing cosmetic procedures; Operation of a website providing information in the field of non-surgical medical esthetics.

Eve Heafey
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

Appearances and Agents of Record

HEARING DATE: No hearing held

AGENTS OF RECORD

For the Requesting Party: Osler, Hoskin & Harcourt LLP

For the Registered Owner: Riches, McKenzie & Herbert LLP