Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2026 TMOB 31

Date of Decision: 2026-02-23

IN THE MATTER OF A SECTION 45 PROCEEDING

Requesting Party: 1682573 Ontario Ltd.

Registered Owner: Heng Dai Media, LLC dba Music City Roots

Registration: TMA964055 for MUSIC CITY ROOTS

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. TMA964055 for the trademark MUSIC CITY ROOTS (the Mark), registered in association with the following services:

> Entertainment services in the nature of development, creation, production and post-production services of multimedia entertainment content, namely text, data, images, audio, video and audiovisual files featuring a musical concert series provided through multimedia outlets, namely, radio, webcasts, and television; entertainment services, namely, providing a web site featuring non-downloadable musical performances, musical videos, related film clips, photographs, and other multimedia materials featuring the musical concert series.

[2] For the reasons that follow, the registration will be amended to maintain only "entertainment services, namely, providing a web site featuring non-downloadable musical performances, musical videos, related

film clips, photographs, and other multimedia materials featuring the musical concert series".

THE PROCEEDING

[3] At the request of 1682573 Ontario Ltd. (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the Act on July 12, 2024, to the registered owner of the Mark, Heng Dai Media, LLC dba Music City Roots (the Owner).

[4] The notice required the Owner to show whether the Mark had been used in Canada, as defined in section 4(2) of the Act, in association with each of the registered services at any time within the three years immediately preceding the date of the notice. If not, the notice also required the Owner to specify the date when the Mark was last used and the reason for the absence of such use since that date. In this case, the relevant period for showing use is July 12, 2021, to July 12, 2024. In the absence of use, the registration is liable to be expunged unless the absence of use is due to special circumstances.

[5] The purpose and scope of section 45 of the Act is to provide a simple, summary, and expeditious procedure for removing "deadwood" [*Miller Thomson LLP v Hilton Worldwide Holding LLP*, 2020 FCA 134 (*Hilton Worldwide*)]. An owner's evidentiary threshold is relatively low [*Diamant Elinor Inc v 88766 Canada Inc*, 2010 FC 1184; *Performance Apparel Corp v Uvex Toko Canada Ltd*, 2004 FC 448]. Evidentiary overkill is not required [*Union Electric Supply Co v Canada (Registrar of Trademarks)* (1982), 63 CPR (2d) 56 (FCTD)] and an owner's evidence needs only to supply facts from which a conclusion of use may follow as a logical or reasonable inference [*Eclipse International Fashions Canada Inc v Shapiro Cohen*, 2005 FCA 64]. Nonetheless, the evidence must be sufficient to inform the Registrar of the prevailing situation regarding the use of the trademark in

association with each of the registered services during the relevant period and cannot be limited to bald assertions of use [*Plough (Canada) Limited v Aerosol Fillers Inc* (1980), 53 CPR (2d) 62 (FCA); *John Labatt Ltd v Rainier Brewing Co* (1984), 80 CPR (2d) 228 (FCA)].

[6] Use in association with services pursuant to section 4(2) of the Act requires that trademarks be displayed either in the performance or in the advertising of services, however, in the latter case the trademark owner must be willing and able to perform such services in Canada [*Vass v Leef Inc*, 2022 FC 1192 at para 53; *Wenward (Canada) Ltd v Dynaturf Co* (1976), 28 CPR (2d) 20 (TMOB)]. Moreover, display of a trademark on a website from outside Canada coupled with the mere ability of Canadians to passively view content may not be sufficient to establish use in Canada. The evidence must demonstrate a sufficient degree of interactivity between the trademark owner and the Canadian consumer [*Hilton Worldwide*, above, at para 147].

[7] In response to the Registrar's notice, the Owner relies on the affidavit of Jamie Amos, the Owner's president, sworn in Nashville, Tennessee on April 14, 2025.

[8] Only the Requesting Party submitted written representations; however, both parties appeared at a hearing.

SUMMARY OF RELEVANT EVIDENCE

[9] Mr. Amos explains that the Owner is an entertainment production company whose flagship entertainment program is the "MUSIC CITY ROOTS musical concert series" [para 2].

[10] Mr. Amos states that, during the relevant period, the Mark was displayed during the performance, advertisement and promotion of the Owner's services, notably on its website *musiccityroots.com* [para 8]. He

provides a representative screenshot of this website as it appeared during the relevant period, as well as archived versions dated during the relevant period taken from the Internet Archive's Wayback Machine [paras 8-9, Exhibits B & C], all of which display the Mark.

[11] Mr. Amos states that the Owner's website "was accessible to and accessed by Canadians during the Relevant Period" [paras 8-9]. In this regard, he provides a screenshot of a website analytics traffic report showing 504 visits to the website from Canada during the relevant period [para 10, Exhibit D].

[12] Mr. Amos explains that the Owner's website contains a hyperlink to the MUSIC CITY ROOTS YouTube page where the MUSIC CITY ROOTS musical concert series was made available in Canada [para 11]. Although Mr. Amos further states that this YouTube page "was accessible to and accessed by Canadians", he then explains that:

> Due to account access issues, the Registrant is unable to access the YouTube visitor data for the MUSIC CITY ROOTS YouTube page, but attests, on information and belief, that the videos, which were viewed thousands of times during the Relevant Period, would definitely have been accessed and viewed by individuals in Canada. [para 12]

[13] Mr. Amos also attests that the Owner promoted and advertised its services via social media posts displaying the Mark, and includes representative screenshots from the Owner's Instagram account. Mr. Amos explains that the Owner:

> […] was able to access and parse Canadian Instagram user data for the MUSIC CITY ROOTS Instagram platform, and, based upon such results and on other information and belief, attests that the aforementioned posts, which had significant user interaction during the Relevant Period, would definitely have been accessed and viewed by individuals in Canada. [para 13]

[14] Mr. Amos attaches a report from what appears to be an unidentified third party, that he states shows "at least thirteen accounts of Canadian

residents who consciously and actively […] began following the MUSIC CITY ROOTS branded programming and content via Instagram during the Relevant Period" [para 13, Exhibit G].

ANALYSIS

Entertainment services in the nature of development, creation, [etc.]

[15] The Requesting Party submits that the services relating to content development, creation and production must be provided to third parties, and that the Owner's creation of its own content cannot constitute such services. The Owner made no submissions regarding these services.

[16] In the present case, I do not consider it necessary to determine whether the wording of these services, as registered, would require them to be performed for others or not, given that the evidence does not explain, detail or show how the Mark was used in the performance or advertising of such services. As such and notably in the absence of submissions from the Owner pertaining to such services, I find the evidence insufficient to demonstrate use of the Mark in association therewith.

[17] As no special circumstances excusing absence of use have been pleaded or evidenced, these services will be deleted from the registration.

Entertainment services, namely providing a web site [etc.]

[18] With regard to the website-related services, the Requesting Party argues that the Owner's website is static, containing only a link to YouTube, which does not correspond to the services as registered. It further argues that, in any event, the evidence does not demonstrate a sufficient degree of interactivity between the Mark and the Canadian consumer. It submits that the Owner's evidence regarding the website traffic data is vague insofar as the website traffic report itself does not specify that it is for the Owner's website. It also submits that the Canadian Instagram accounts evidenced

represent only approximately 1.3% of the Owner's new Instagram followers during the relevant period, which it argues is insufficient to show enough interactivity with consumers in Canada to constitute use in Canada. In this regard, the Requesting Party draws a parallel with the decision in *Unicast S.A. v South Asian Broadcasting Corp.*, 2014 FC 295 (*Unicast*), wherein it submits "a finding of 0.21% of website hits being Canadian in origin was deemed negligible by the court in determining use" [Requesting Party's written submissions at page 5].

[19] The Owner argues that services are to be given a broad and liberal interpretation and that the description of the website-related services in the registration in no way requires the non-downloadable content to be offered directly on the Owner's website. It further argues that the evidence regarding website traffic, YouTube visits and Instagram accounts are more than sufficient to meet the Owner's low burden in section 45 proceedings.

[20] I agree with the Owner that services are to be given a broad and liberal interpretation [see *Hilton Worldwide*, above]. As such, I find its making non-downloadable content available via a hyperlink accessible from its website falls within the scope of the website-related services as registered. I consider the same to be true of the multimedia type content the Owner makes available, notably via its Instagram account.

[21] Moreover, I find the evidence demonstrates that, during the relevant period, the Mark was displayed on the Owner's website and on the YouTube channel accessible via hyperlink from the Owner's website, as well as on the Owner's Instagram platform, constituting – at least – advertising of the website-related services, which the Owner was willing and able to provide. The issue remains, however, whether the evidence demonstrates use of the Mark in Canada pursuant to sections 4(2) and 45 of the Act.

[22] With regard to the Owner's evidence regarding its YouTube page, I note that Mr. Amos states firstly that Canadians *accessed* the page, but then explains that the Owner could not access visitor data such that he believes, given the thousands of views of the videos, that they *would have been accessed* from Canada. In view of these seemingly contradictory assertions, in the absence of explanations for Mr. Amos' belief other than a number of total views, I do not consider that I can rely on the Owner's assertions, nor am I prepared to infer that users from Canada accessed the YouTube page.

[23] That being said, the Owner specifically attests to the fact that the website traffic data provided pertains to its website *musiccityroots.com*. Considering the evidence as a whole, I do not consider this evidence vague or inadequate. I accept the Owner's evidence that its website received hundreds of visits from Canada during the relevant period.

[24] With regard to the Instagram accounts, although the Owner's evidence is not perfect, it is well established that in section 45 proceedings, evidence need not be perfect [*Lewis Thomson & Son Ltd v Rogers, Bereskin & Parr* (1988), 21 CPR (3d) 483 (FCTD)]. Moreover, I note that the Requesting Party does not challenge the existence or number of new Instagram accounts from Canada attested to by Mr. Amos. I accept the Owner's evidence in this regard.

[25] The Requesting Party argues that the number of Instagram accounts is negligible and insufficient, relying on the *Unicast* decision. It is important to note, however, that not only did the *Unicast* decision consider different services, but it was also issued in a different context, i.e. expungement proceedings pursuant to sections 18 and 57 of the Act. As such, the legal onus at issue was different.

[26] In any event, I have accepted not only the evidence of new Canadian Instagram accounts, but also of hundreds of visits to the Owner's website from Canada. Considering this evidence and keeping in mind the Owner's onus in section 45 proceedings, I am satisfied that this constitutes sufficient interactivity for present purposes, and that the evidence shows use of the Mark *in Canada* pursuant to sections 4(2) and 45 of the Act in association with the website-related services.

DISPOSITION

[27] 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:

> Entertainment services in the nature of development, creation, production and post-production services of multimedia entertainment content, namely text, data, images, audio, video and audiovisual files featuring a musical concert series provided through multimedia outlets, namely, radio, webcasts, and television.

[28] The statement of services, as amended, will be as follows:

> Entertainment services, namely, providing a web site featuring non-downloadable musical performances, musical videos, related film clips, photographs, and other multimedia materials featuring the musical concert series.

Emilie Dubreuil
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

Appearances and Agents of Record

HEARING DATE: 2026-01-20

APPEARANCES

For the Requesting Party: Sydney Rossi

For the Registered Owner: Michael O'Neill

AGENTS OF RECORD

For the Requesting Party: Harrison Pensa LLP

For the Registered Owner: Marks & Clerk