Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2026 TMOB 29

Date of Decision: 2026-02-17

IN THE MATTER OF A SECTION 45 PROCEEDING

Requesting Party: 14095863 Canada Inc.

Registered Owner: Abercrombie & Fitch Trading Co.

Registration: TMA956,795 for Moose Design (Solid)

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. TMA956,795 for the trademark Moose Design (Solid) (the Mark), owned by Abercrombie & Fitch Trading Co. (the Owner) and shown below:

[2] For the reasons that follow, I conclude that the registration ought to be amended.

THE RECORD

[3] At the request of 14095863 Canada Inc. (the Requesting Party), the Registrar of Trademarks issued a notice to the Owner under section 45 of the Act on December 28, 2024. The notice required the Owner to show whether the Mark had been used in Canada in association with the goods specified in the registration 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 December 28, 2021, to December 28, 2024.

[4] The Mark is registered for use in association with the following goods:

> Bath linen; bed blankets; blankets for outdoor use; household linen; lap blankets; throws; cloth towels.

[5] The relevant definitions of "use" in the present case are set out in section 4 of the Act as follows:

> 4(1) A trademark is deemed to be used in association with goods if, at the time of the transfer of the property in or possession of the goods, in the normal course of trade, it is marked on the goods themselves or on the packages in which they are distributed or it is in any other manner so associated with the goods that notice of the association is then given to the person to whom the property or possession is transferred.
>
> (3) A trademark that is marked in Canada on goods or on the packages in which they are contained is, when the goods are exported from Canada, deemed to be used in Canada in association with those goods.

[6] In response to the notice, the Owner furnished the affidavit of Lindsay Yeakel Capps, Director, Legal – Intellectual Property of the Owner, sworn on May 27, 2025. Both parties filed written representations; no hearing was held.

EVIDENCE

[7] Ms. Capps states that the Owner has used the Mark in Canada for more than 20 years in association with various clothing goods and online retail services, particularly

the goods “blankets for outdoor use”; “lap blankets”; and “throws” (collectively, the Claimed Goods).

[8] She states that such goods were provided in Canada through the Owner’s retail locations in Canada and the Canadian subdomains of its website. She further states that throughout the relevant period, the Owner’s licensee AFH Canada Stores Co. (AFH Canada) used the trademark under a licence with terms providing that the Owner exercises control over the character and quality of goods and services offered, performed, and sold in Canada in association with the Mark. Ms. Capps further confirms that all goods sold by AFH Canada originate from the Owner.

[9] As Exhibits A through D, she provides website evidence showing locations of the Owner’s retail stores in Canada for the years 2021 through 2024.

[10] As Exhibit F, Ms. Capps attaches sample photographs of a product identified as a “hooded moose blanket with antlers” on a tag in the photograph, which also displays a white moose design against a dark background on a sewn-in tag. She states that this product “constitutes an example of a ‘blanket for outdoor use’, ‘lap blanket’, and ‘throw’”, and that the photograph is representative of the appearance of the Claimed Goods during the relevant period. As Exhibit H, she attaches sales records showing sales of the hooded blanket in Canada during the relevant period. Exhibits I and J include promotional materials for a number of the Owner’s products; however, other than the hooded blanket, there do not appear to be any products corresponding to the Claimed Goods, and Ms. Capps makes no such correlations in her affidavit.

ANALYSIS

Preliminary comments regarding the Requesting Party’s submissions

[11] I note that in its written representations, the Requesting Party makes reference to at least one case that does not appear to exist [Requesting Party’s written representations, para 73]. This may suggest the use of generative artificial intelligence (AI) in the preparation of these materials, and a failure to verify the correctness of such materials.

[12] Courts have stated that reliance on decisions that do not exist or do not stand for the relied upon principles can lead to miscarriages of justice [*Zhang v Chen*, 2024 BCSC 285 at para 29; *Ko v Li*, 2025 ONSC 2965 at paras 14–17] and have also awarded costs against the party that made those misrepresentations [*JRV v NLV*, 2025 BCSC 1137; *Hussein v Canada (Immigration, Refugees and Citizenship),* 2025 FC 1138]. The Owner submitted in its written representations, and I agree, that such conduct can lead to an award of costs against the offending party under section 74.1(1)(b) of the *Trademarks Regulations*, SOR/2018-227 (the Regulations). However, as the Owner did not make such a request pursuant to section 74.2 within the timeframe set out in the Regulations, costs cannot be awarded in this instance.

[13] I further note that the Requesting Party's written representations refer to an affidavit filed as evidence in a pending opposition proceeding between these parties. However, pursuant to sections 45(1) and (2) of the Act, I cannot consider any evidence other than the affidavit or statutory declaration filed by the Owner in this proceeding.

Use enuring to the Owner

[14] The Requesting Party submits that the Owner has not shown that any use by the Owner's licensees enures to the Owner. However, as noted above, Ms. Capps confirms in her affidavit that the Owner exercises control over the character and quality of goods and services offered, performed, and sold in Canada in association with the Mark by AFH Canada, and that all goods sold by AFH Canada originate from the Owner. The Federal Court has held that there are three main methods by which a trademark owner can demonstrate the requisite control pursuant to section 50(1) of the Act: first, by clearly attesting to the fact that it exerts the requisite control; second, by providing evidence demonstrating that it exerts the requisite control; or third, by providing a copy of the licence agreement that provides for the requisite control [*Empresa Cubana Del Tabaco Trading v Shapiro Cohen*, 2011 FC 102 at para 84]. The Requesting Party submits that "it is critical to include an unambiguous statement confirming that use of the trademark is under the control of the trademark owner" [para 72]; in this case, Ms. Capps has done just that. This is sufficient to establish that any use of the Mark by AFH Canada enures to the Owner.

Use of the Mark

[15] The Requesting Party's written representations include a submission that the white moose design against a dark background does not amount to use of the Mark as registered as the change fundamentally alters the Mark's overall impression. In this respect, it claims that "the registrant bears the burden of proving use of the identical mark as registered" [para 38, *sic*]. Its submissions also refer to a separate registration of the Owner, TMA812,203, for an outlined moose design. However, the fact that the Owner may own other registered trademarks is neither in evidence before me nor relevant to my determination of this case; it is well-established that an owner may own several associated trademarks and that the use of one such trademark may also constitute use of other substantially similar trademarks where no person would be deceived [see *Cinnabon Inc v Austin Nichols & Co* (1998), 86 CPR (3d) 241 at para 18; *Smart & Biggar v Rothmans, Benson & Hedges Inc*, 2011 TMOB 78 at para 15].

[16] Instead, in considering whether the display of a trademark constitutes display of the trademark as registered, the question to be asked is whether the trademark was displayed in such a way that it did not lose its identity and remained recognizable, in spite of the differences between the form in which it was registered and the form in which it was used [*Canada (Registrar of Trade Marks) v Cie internationale pour l'informatique CII Honeywell Bull SA* (1985), 4 CPR (3d) 523 (FCA)]. In deciding this issue, one must look to see whether the "dominant features" of the registered trademark have been preserved [*Promafil Canada Ltée v Munsingwear Inc* (1992), 44 CPR (3d) 59 (FCA)]. In this case, the dominant features of the Mark are the solid moose design. This is preserved in the instances of display of the Mark as shown in Exhibit F, as each depicts a moose facing to the left in the same pose. I do not consider the moose being shown in white, as opposed to black, to cause the Mark to lose its identity and become unrecognizable, particularly as there is no colour claim in the registration [for similar reasoning, see *JAWHP, LLC v Loblaws Inc*, 2024 TMOB 178 at para 21]. Accordingly, I find that the moose design shown in evidence amounts to the Mark as registered.

Use in association with the goods

[17] I note that Ms. Capps does not claim that the Mark was used in association with the goods “Bath linen; bed blankets”, “household linen”, or “cloth towels”. In its written representations, the Owner submits that these goods can still be maintained, as they fall into the same general categories as the Claimed Goods and the Registrar may therefore infer that the Mark was used in association with these goods [citing, *inter alia*, *Saks & Co v Canada (Registrar of Trade Marks)* (1989), 24 CPR (3d) 49 (FCTD); *88766 Canada Inc v Thunder Tiger Model Co*, [2004] TMOB No 2].

[18] However, the cases cited by the Owner do not stand for the proposition that a registered good may be maintained where there is no evidence that it has been sold during the relevant period, merely on the basis that use in association with other registered goods has been shown [see *Saks* at paras 53-54; *Thunder Tiger* at paras 8-9; *Riches, McKenzie & Herbert LLP v Mary Quant Cosmetics Japan Limited*, 2005 CanLII 78243 (TMOB) at para 18]. The applicability of the *Saks* principle “depends on the degree of detail that the registered owner provides and the clarity with which it explains the representative evidence” [*Matthew S George v Dr's Own, Inc*, 2018 TMOB 147 at para 72]. In this case, Ms. Capps indicates that the Mark was used specifically in association with the Claimed Goods. There is nothing in evidence to suggest that the Mark was used in association with the remaining goods, and Ms. Capps appears to concede that the Mark was not so used. Further, as discussed below, the evidence tends to suggest that certain of the Claimed Goods were not sold during the relevant period.

[19] As there is no evidence of special circumstances which would excuse non-use, the registration will be amended to delete the goods other than the Claimed Goods.

[20] As for the Claimed Goods, the Requesting Party submits that the Owner cannot rely on the hooded blanket in support of its trademark use claim because that product does not correspond to any of the Claimed Goods. The Requesting Party further submits that the Owner has not shown that the hooded blanket was transferred in Canada in the normal course of trade. On that point, the Requesting Party argues that

the Exhibit H sales report does not assist the Owner because the report has no relationship to the previous exhibits and, in any event, the three transactions referenced therein amount to a *de minimis* quantity of sales, which, coupled with the redaction of monetary values in the sales report, cannot support a conclusion of transfers in the normal course of trade.

[21] However, I find that the Owner's evidence is sufficient to show use of certain of the Claimed Goods within the meaning of the Act. The Exhibit H report specifically references a product called "hooded blanket", and Ms. Capps explicitly confirms at paragraph 21 of her affidavit that "Exhibit 'H' demonstrates sales of the Moose Product shown in Exhibit 'F'". Moreover, evidence of a single sale can be sufficient to establish use for the purposes of section 45 expungement proceedings, so long as it follows the pattern of a genuine commercial transaction and is not seen as deliberately manufactured or contrived to protect the registration [see *Philip Morris Inc v Imperial Tobacco Ltd* (1987), 13 CPR (3d) 289 (FCTD) at para 12]. In this case, Ms. Capps has clearly explained the Owner's normal course of trade, including that the hooded blanket was sold online during the relevant period, and has explicitly confirmed that the Owner or its licensees have made sales of that product in Canada during the relevant period. Despite the Requesting Party's submission that the Owner's affidavit "is not evidence, but rather deception" [para 49], I see no contradiction in the evidence or any other reason not to afford Ms. Capps' testimony substantial credibility in this case [see *Oyen Wiggs Green & Mutala LLP v Atari Interactive Inc*, 2018 TMOB 79 at para 25 for the principle that an affiant's statements are to be accepted at face value and must be accorded substantial credibility in a section 45 proceeding]. Accordingly, I am satisfied that the Owner has shown that the hooded blanket was transferred in Canada in the normal course of trade within the relevant period.

[22] However, it is a longstanding principle that use of a trademark in association with one specific product cannot generally serve to maintain multiple goods in a registration [*John Labatt Ltd v Rainier Brewing Co* (1984), 80 CPR (2d) 228 (FCA)]. As noted above, Ms. Capps correlates the hooded blanket with all three of the Claimed Goods. There is nothing to suggest that the Mark was used in association with other products

corresponding to the Claimed Goods during the relevant period. Since the hooded blanket appears to correspond most readily to the Claimed Good “blankets for outdoor use”, I am satisfied that the Owner has shown use of the Mark in association with that registered good only. In this respect, although the Requesting Party submits that “blankets for outdoor use” are “characterized by durable, weather-resistant materials for activities like camping or sporting events”, I see no reason why the hooded blanket could not be considered a “blanket for outdoor use”, bearing in mind that when interpreting a statement of goods or services in a section 45 proceeding, one is not to be “astutely meticulous when dealing with [the] language used” [see *Aird & Berlis LLP v Levi Strauss & Co*, 2006 FC 654 at para 17]. As for the other two Claimed Goods, as there is no evidence of special circumstances excusing non-use of these goods, the registration will be amended to delete the goods “lap blankets” and “throws”.

DISPOSITION

[23] In view of all of the foregoing, 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 “Bath linen; bed blankets;” and “household linen; lap blankets; throws; cloth towels” from the registered goods.

[24] The amended registration will be as follows:

Blankets for outdoor use.

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G.M. Melchin
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: No agent appointed

For the Registered Owner: CPST Intellectual Property Inc.