



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2026 TMOB 39

Date of Decision: 2026-02-27

IN THE MATTER OF A SECTION 45 PROCEEDING

Requesting Party: Pollock-Cameron Investments Corporation

Registered Owner: Canada Gold and Silver Exchange Ltd.

Registration: TMA868,975 for GOLD VANCOUVER

INTRODUCTION

[1] This is a decision involving summary expungement proceedings under section 45 of the *Trademarks Act*, RSC 1985, c T-13 (the Act) with respect to registration no. TMA868,975 for the trademark GOLD VANCOUVER (the Mark). The Mark, owned by Canada Gold and Silver Exchange Ltd. (the Owner), is registered in association with the following goods (the Goods):

(1) Printed and electronic publications, namely, newsletters, brochures, pamphlets, flyers, posters, signs, calendars, postcards and directories.

(2) Promotional items, namely, t-shirts, stickers, bumper stickers, keychains, mouse pens, coffee mugs and fridge magnets.

[2] For the reasons set out below, I conclude the registration should be amended to delete all Goods with the exception of “printed publications, namely, pamphlets and flyers”.

PROCEEDING

[3] At the request of Pollock-Cameron Investments Corporation (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the Act on March 20, 2025 to the Owner in respect of the registration for the Mark.

[4] The notice required the Owner to show whether the Mark was used in Canada with each of 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 such use since that date. In this case, the relevant period for showing use is March 20, 2022 to March 20, 2025 (the Relevant Period).

[5] The definition of “use” for a trademark in association with goods is set out in section 4(1) 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.

[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. As such, the evidentiary threshold that a registered owner must meet is quite low [*Performance Apparel Corp v Uvex Toko Canada Ltd*, 2004 FC 448 at para 68] and “evidentiary overkill” is not required [see *Union Electric Supply Co v Canada (Registrar of Trade Marks)*, 1982 CanLII 5195 (FC) at para 3]. That said, mere assertions of use are not sufficient to demonstrate use in the context of section 45 proceedings [*Plough (Canada) Ltd v Aerosol Fillers Inc*, 1980 CanLII 2739, 53 CPR (2d) 62 (FCA)], and 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 and services specified in the registration, during the relevant period [*John Labatt Ltd v Rainier Brewing Co*, (1984), 80 CPR (2d) 228 (FCA) (*John Labatt*)].

[7] Where an owner has not shown “use” a registration is liable to be expunged or amended, unless there are special circumstances that excuse the absence of use.

[8] In response to the Registrar’s notice, the Owner filed the affidavit of Gary Lazeo (the Lazeo Affidavit), sworn August 15, 2025.

[9] Both parties filed written representations. No hearing was held.

EVIDENCE

[10] Mr. Lazeo is the President of the Owner [para 1].

[11] The Lazeo Affidavit contains, *inter alia*, the following statements, information, and exhibits:

- In the normal course of the Owner’s business, the Owner provides potential customers verbal appraisal of their gold, silver, platinum, diamonds, old coins, jewellery and other valuable goods free of charge in the hopes of buying the product or selling them written appraisal in the form of printed and electronic publications, namely pamphlets and flyers (the Appraisal Documents). The Appraisal Documents appear to be printed documents with headings, page numbers and dates [para 10].
- Some customers specifically purchase Appraisal Documents from the Owner for insurance, estates, auction, or resale purposes. In such cases, the Appraisal Documents are customized for the

appraised product and the assessed value of the product [para 11].

- For many years, including throughout the Relevant Period, the Owner has sold Appraisal Documents bearing the Mark in Canada in the normal course of trade [para 13]. The Mark appears in a variety of ways in association with the Appraisal Documents, including on the Appraisal Documents, on invoices, and other accompanying documents, in both physical and electronic form [para 13].
- Exhibit 1 are sample Appraisal Documents bearing the Mark as sold in Canada in the normal course of trade during the Relevant Period [paras 14 and 15].
- Exhibit 2 are sample sales orders dated during the Relevant Period bearing the Mark and including total sales figures that are provided to consumers when they purchase Appraisal Documents. [para 16].
- Exhibit 3 is a flyer bearing the Mark that was provided to customers who purchased Appraisal Documents during the Relevant Period [para 18].
- During the Relevant Period, the Owner sold 28 Appraisal Documents to 28 consumers, for total sales in excess of \$15,000 [para 19].

ANALYSIS

Goods for Which no Use is Shown

[12] The Owner's evidence is silent with respect to evidence of use with the promotional goods set out as Goods (2) in the registration for the Mark.

[13] As the Owner has filed no evidence of special circumstances that would excuse the lack of use of the Mark with these goods during the Relevant Period, the Goods (2) will be deleted from the registration.

Has the Owner Show Use with Printed or Electronic Publications?

[14] The Owner has not provided any evidence of use with newsletters, brochures, posters, signs, calendars, postcards and directories. As the Owner has filed no evidence of special circumstances that would excuse the lack of use of the Mark with these goods during the Relevant Period, they will also be deleted from the registration.

[15] The only remaining issue is whether the evidence provided by the Owner demonstrates use with electronic and printed publications, specifically pamphlets and flyers.

[16] The Requesting Party argues that the Appraisal Documents provided in the Owner's evidence are not, in fact, pamphlets or flyers, and that the Owner is attempting to mischaracterize the goods and services it offers to fit within the limitations of the statement of Goods in the registration for the Mark [written representations, para 16]. The Requesting Party further submits that "appraisal services and written appraisals" are not covered by the registration for the Mark [written representations, para 20].

[17] For its part, the Owner argues that statements of goods must be interpreted broadly and generously, not narrowly or restrictively. Relying on *Michaels v Unitop Spolka Z Organiczona Odpowiedzialnoscia*, 2020 FC 937 at para 14, the Owner further submits the purpose of section 45 proceedings is to remove trademarks that have fallen into disuse, not penalize registrants for minor variations in terminology [written representations, para 16]. It is the Owner's position that the registration for the Mark should be maintained

in respect of printed and electronic publications, namely pamphlets and flyers [written representations, para 1].

[18] The Owner also provides the definition of “pamphlet” from Merriam-Webster as being “an unbound printed publication with no cover or with a paper cover” with synonyms including “booklet, brochure, leaflet, flyer, folder” and notes that the Registrar can take judicial notice of dictionary definitions [written representations, para 26].

[19] Evidence in section 45 proceedings does not have to be perfect. A registered owner only must present *prima facie* evidence of use within the meaning of sections 4 and 45 of the Act. This evidential burden is light; the evidence only has to present facts based on which a conclusion of use can be inferred logically [*Diamant Elinor Inc v 88766 Canada Inc*, 2010 FC 1184]. It is also important to consider the evidence as a whole, not dissected and considered in isolation [see *Kvas Miller Everitt v Compute (Bridgend) Limited* (2005), 2005 CanLII 94665 (CA TMOB) as cited in *Fasken Martineau Dumoulin LLP v 6892078 Canada Inc.*, 2018 TMOB 160 (CanLII)].

[20] In my view, the Owner’s evidence is sufficient to meet the low evidentiary burden applicable in section 45 proceedings and supports a *prima facie* case of use with printed pamphlets and flyers [Lazeo Affidavit, Exhibits 1 and 3]. The Owner has established that it offered appraisal services during the Relevant Period and that as part of these services, customers were provided with a printed document bearing the Mark detailing the results of such services. I find it reasonable to conclude, based on the evidence as a whole, that the Mark is not “deadwood” and that the documentation provided to customers containing the results of the appraisal services could be classified as printed pamphlets.

[21] However, the Owner's evidence appears to only shows use of printed pamphlets and flyers and not electronic publications. There is no indication in the evidence that either pamphlets or flyers were provided to customers in electronic form. As the Owner was required to provide evidence of use with each of the Mark with each type of Goods in order to maintain the registration in respect of those Goods, electronic publications will be deleted from the registration for the Mark [see *John Labatt Ltd, supra*].

[22] As a result, the registration for the Mark will be maintained in respect of "printed publications, namely, pamphlets and flyers".

DISPOSITION

[23] 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 all goods except for "printed publications, namely, pamphlets and flyers".

Leigh Walters
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: Alexander Holburn Beaudin + Lang LLP

For the Registered Owner: MBM Intellectual Property Agency