



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2026 TMOB 44

Date of Decision: 2026-03-06

IN THE MATTER OF A SECTION 45 PROCEEDING

Requesting Party: Registrar of Trademarks

Registered Owner: Swanson Systems, Inc.

Registration: TMA1092917 for AGILE AUTOMATION

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 TMA1092917 for the trademark AGILE AUTOMATION (the Mark), in the name of Swanson Systems, Inc. (the Owner).

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

Machine tools, machines, and components thereof, namely, electrical motor drives to control the rotation and motion of modular automated assembly machines, and structural support parts of modular automated assembly machines to be used within a manufacturing environment, to assemble and test a product during the manufacturing process.

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

THE PROCEEDING

[4] As part of the pilot project on Registrar-initiated section 45 expungement proceedings, the Registrar of Trademarks issued a notice to the Owner under section 45 of the Act on June 16, 2025, requiring it to show use of the Mark, as defined in section 4 of the Act, at any time in the three years preceding the notice or, if the Mark had not been used, the date when it was last used and the reasons for absence of use since that date. In this case, the relevant period for showing use is June 16, 2022, to June 16, 2025.

[5] 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 [*Miller Thomson LLP v Hilton Worldwide Holding LLP*, 2020 FCA 134; *Black & Decker Corp v Method Law Professional Corp*, 2016 FC 1109]. The owner’s evidentiary threshold is quite low [*Performance Apparel Corp v Uvex Toko Canada Ltd*, 2004 FC 448] and “evidentiary overkill” is not required [*Union Electric Supply Co v Canada (Registrar of Trade Marks)* (1982), 63 CPR (2d) 56 (FCTD)]. An owner need only establish use on a *prima facie* basis and all that is required is for evidence to supply facts from which a conclusion of use may follow as a logical inference [*Diamant Elinor Inc v 88766 Canada Inc*, 2010 FC 1184].

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

[7] In response to the Registrar’s notice, the Owner furnished the affidavit of Sven Swanson, sworn in Erie, Pennsylvania, on November 14, 2025.

[8] The Owner did not submit written representations; no hearing was held.

SUMMARY OF RELEVANT EVIDENCE

[9] Mr. Swanson, the Owner's Vice President, states that the Owner has a long history in the field of manufacturing automation, designing and building highly specialized automated assembly and processing systems across a broad range of markets [para 4, Exhibit A]. He explains that the Mark is used by the Owner and related companies, Swanson Erie Corp. and Swanson-Erie Corporation, under license from the Owner who controls the character and quality of the goods and services offered, provided and promoted in association with the Mark [para 7].

[10] Mr. Swanson states that the Mark has been used in Canada since at least as early as March 2006, and as recently as 2019 or 2020 [para 10, Exhibits B-D]. He states that the Owner has "identified sales of the Registered Goods in Canada at least as recently as February 18, 2019", and that the invoices provided in Exhibits B and D are examples of such sales of "AGILE AUTOMATION marked Registered Goods" [para 13].

[11] Mr. Swanson explains that when "AGILE AUTOMATION products are sold and shipped into Canada, the AGILE AUTOMATION trademark is clearly labelled on the products and/or packaging themselves" and provides representative photographs of the Registered Goods "including the sales corresponding to the invoices at Exhibits B and D" [para 14, Exhibit H].

[12] Mr. Swanson explains as follows under the heading "Circumstances Beyond the Registrant's Control":

Swanson sells highly specialized automation systems that are produced in limited quantities for approximately \$2-4 million USD. Due to these factors, the effects of the Covid-19 global pandemic (the "Pandemic") were particularly impactful on the business. Limits in cross-border travel restricted in person marketing for the products in Canada. In addition to economic effects of the Pandemic, there have been a number of customers of Swanson that have recently relocated the [sic] operations outside of Canada. Given the capital-intensive nature of the Registrant's business, it takes time to

identify and market to new Canadian customers. Attached as Exhibit "I" to my affidavit are redacted contact lists gathered from trade shows to identify leads for new business in Canada – including Canadian buyers present as [sic] Assembly Show in Chicago in 2023 and 2024. The Registrant has plans to attend and display their goods at Toronto-based trade shows in 2026 and 2027 to establish new business and re-enforce our presence in the Canadian marketplace [para 15].

[13] Mr. Swanson further states that "had it not been for the Covid pandemic, economic and political factors impacting the existing Canadian client base, sale of the Registered Goods in Canada would have been conducted in the last three years in association with the Mark" [para 16].

ANALYSIS

[14] As the Owner's evidence does not show use of the Mark during the relevant period, the question to be determined is whether the Owner has evidenced special circumstances excusing absence of use pursuant to section 45(3) of the Act.

[15] The Federal Court of Appeal has recently summarized the principles regarding special circumstances excusing absence of use as follows [see *Centric Brands Holding LLC v Stikeman Elliott LLP*, 2025 FCA 161 (*Centric Brands*) at para 9; *Comité interprofessionnel du vin de champagne v Coors Brewing Company*, 2026 FCA 2 (*Coors Brewing*) at para 41]:

- A. The general rule is that absence of use of a trademark by the owner during the relevant period will be penalized by expungement, and the exception will apply only if the special circumstances are the reason for the non-use of the trademark (*Scott Paper Limited v Smart & Biggar*, 2008 FCA 129 (*Scott Paper*) at paras. 21-22, *Canada (Registrar of Trade Marks) v Harris Knitting Mills Ltd*, 4 CPR (3d) 488 (FCA) (*Harris Knitting*) at para. 10);
- B. Special circumstances are circumstances not found in most cases of absence of use of a trademark (*Scott Paper* at para. 22, *Harris Knitting* at para. 10); and

- C. Factors to consider in determining whether special circumstances exist that excuse non-use include (i) the length of time during which the trademark has not been in use, (ii) whether the non-use was due to circumstances beyond the registered owner's control, and (iii) whether there was an intention to resume use of the mark in the near term (*Harris Knitting* at para. 11).

[16] The Federal Court of Appeal also noted the following principles [*Coors Brewing*, above, at para 42, citing *Centric Brands*, above]:

- (a) Registered owners may not hold on to a registration notwithstanding that the mark is no longer in use.
- (b) The burden of proof on the registered owner subject to section 45 proceedings is not a heavy one, however.
- (c) Such proceedings are summary and administrative in nature.
- (d) It is not the appropriate vehicle for a trial of a contested issue of fact.
- (e) The usual penalty for non-use is expungement, and there is a threshold to meet before the exception for special circumstances applies.
- (f) To be "special", the circumstances must be unusual, uncommon or exceptional.
- (g) Plans for future use of the mark at issue do not in themselves explain the period of non-use and therefore cannot amount to special circumstances.

[17] Keeping these principles in mind, I find the Owner's evidence insufficient to demonstrate special circumstance excusing absence of use of the Mark in the present case.

[18] Mr. Swanson states that absence of use of the Mark is due to the combination of: (1) the Covid-19 pandemic, which limited cross-border travel and in person marketing for its products; (2) the nature of its automated systems products, which are highly specialized and capital intensive and thus produced in limited quantities; and (3) "economic and political factors", which resulted in some clients relocating out of Canada.

[19] However, the relevant period in the present case has little if any overlap with Covid-19 related travel restrictions. Moreover, while the Covid-19 pandemic was undoubtedly a uniquely disruptive event for businesses worldwide, an owner cannot merely rely on pandemic-related restrictions or simply state that, but for the pandemic, its trademark would have been used. It must provide sufficient details explaining how its business was impacted in a way that prevented the trademark's use [*The Wonderful Company LLC and Fresh Trading Limited* at para 37; *Pelton Crane Inc v KaVo Dental Technologies, LLC*, 2023 TMOB 123 at para 20; *USConnect, LLC v Lodestar Anstalt*, 2025 TMOB 77; *Emily Schultz Inc v Ralf Hütter*, 2023 TMOB 199]. The Owner's evidence in this regard is vague at best. As such, I consider the Owner's evidence insufficient to rely on the Covid-19 pandemic as a reason for absence of use of the Mark.

[20] With regard to the highly specialized and capital-intensive nature of the Owner's systems, this may be a relevant consideration, particularly in cases where an owner has evidenced a pattern of sales in its normal course of trade [*Country-Wide Automotive Ltd v CWA Constructions SA* (1994), 57 CPR (3d) 435 (TMOB)]. However, the mere fact that certain goods are expensive or sophisticated does not automatically excuse an owner from non-use of its trademark [*Rowand LLP v Gulfstream Aerospace Corporation*, 2022 TMOB 239; *Bereskin & Parr v Magnum Marine Corporation*, 2011 TMOB 68; *StarragHeckert GmbH v World, LLC*, 2014 TMOB 179; *Survival Systems Training Limited v Survival Systems Holdings Limited*, 2016 TMOB 14]. In the present case, I find the Owner's evidence insufficient to establish such a pattern of sales.

[21] The Owner also alleges economic and political factors impacting its Canadian client base. However, it does not identify such factors or explain how their impact on its Canadian clients differs from generally unfavourable

market conditions, which are not generally considered special circumstances [*Harris Knitting, supra*; *Lander Co Canada Ltd v Alex E Macrae & Co* (1993), 46 CPR (3d) 417 (FCTD); *Jose Cuervo SA de CV v Bacardi & Co*, 2009 FC 1166 at para 51, *aff'd* 2010 FCA 248].

[22] In view of the above, I find the Owner's evidence insufficient to demonstrate that absence of use of the Mark was due to special circumstances beyond its control.

[23] Although the above is sufficient to dispose of the matter, I will briefly address the question of intent to resume use of the Mark. The Owner provides "contact lists" from trade shows held in the United States, however, neither the contact lists nor any commercial efforts flowing therefrom are further described, and the lists themselves are redacted to a point of being unintelligible. The Owner also states that it intends to attend unspecified trade shows in Canada in 2026 and 2027. Without more detail, I find such evidence insufficient to show an intent to resume use in the near term.

DISPOSITION

[24] 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.

Emilie Dubreuil
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: Gowling WLG (Canada) LLP