Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2026 TMOB 36

Date of Decision: 2026-02-26

IN THE MATTER OF A SECTION 45 PROCEEDING

Requesting Party: Strathcona Beer Company Ltd.

Registered Owner: 1513231 B.C. LTD.

Registration: TMA913,902 for LOLO

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. TMA913,902 for the trademark LOLO (the Mark).

[2] The Mark is registered in association with the following goods and services:

Goods

(1) Novelty items, namely, stickers, hats, casual and athletic clothing, golf balls, key chains, novelty buttons, beverage glassware, sport water bottles, coffee mugs, and fridge magnets.

Services

(1) Organizing community festivals featuring a variety of activities, namely, food services, art exhibitions, musical performances, flea markets and cultural events; charitable activities conducted for the benefit of the public, namely, organizing community-based fundraising events and community-based charitable projects
(2) Restaurant services; organizing community sporting events

[3] For the reasons that follow, I conclude that the registration ought to be maintained with respect to the goods "novelty items, namely, hats, casual and athletic clothing, beverage glassware, coffee mugs" and the services "restaurant services".

THE PROCEEDING

[4] At the request of Strathcona Beer Company Ltd. (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the Act on October 24, 2024, to the registered owner of the Mark, 1513231 B.C. LTD. (the Owner).

[5] The notice required the Owner to show whether the Mark was used in Canada in association with each of the registered goods and services at any time within the three-year period immediately preceding the date of the notice. If the Mark was not so used, the Owner was required to provide the date when the Mark was last in use and the reason(s) for the absence of use since that date. In this case, the relevant period for showing use is October 24, 2021 to October 24, 2024.

[6] 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 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 association is then given to the person to whom the property or possession is transferred.

> (2) 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.

[7] 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. Although the threshold for establishing "use" in section 45 proceedings is quite low [*Woods Canada Ltd v Lang Michener* (1996), 71 CPR (3d) 477 (FCTD)], and evidentiary overkill is not required [*Union Electric Supply Co Ltd v Canada (Registrar of Trade Marks)* (1982), 63 CPR (2d) 56 (FCTD)], 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 specified in the registration during the relevant period [*John Labatt Ltd v Rainier Brewing Co* (1984), 80 CPR (2d) 228 (FCA)]. Bare assertions of use are not sufficient to demonstrate use in the context of section 45 proceedings [*Plough (Canada) Ltd v Aerosol Fillers Inc* (1980), 53 CPR (2d) 62 (FCA)].

[8] 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.

[9] In response to the Registrar's notice, the Owner furnished the affidavit of Mr. Scott McArthur, the president and sole director of the Owner, sworn on April 23, 2025, together with Exhibits A to H.

[10] Both parties filed written representations and made representations at an oral hearing on the matter.

THE EVIDENCE

[11] Mr. McArthur is also the president and sole director of the Owner's predecessor-in-title, McArthur Trading Inc, dba Raglan's Bistro (Raglan's), a position he has held since Raglan's inception in 1999 [para 1].

[12] Mr. McArthur explains that the Mark was originally owned by him personally and used under license by Raglan's until he assigned the Mark to Raglan's on September 3, 2024. He states that the Mark was then assigned from Raglan's to the current Owner on November 25, 2024 [para 7].

[13] Mr. McArthur states that the Mark was used by the Owner's predecessors-in-title throughout the relevant period in association with the goods and services as detailed in his affidavit [para 8].

Restaurant Services

[14] Mr. McArthur states that the Mark was used with restaurant services by being printed on menus and customer receipts, on restaurant signage, menu boards, and on staff uniforms [para 9]. He provides as Exhibits A and B, what he describes are representative examples of restaurant signage and menus displaying the Mark during the relevant period. He also provides representative bills/receipts showing how the Mark was displayed on customer receipts for food and beverages during the relevant period [para 13, Exhibit C]. Examples of how the Mark appears include the following:

Restaurant signage:

Menus:

Receipts:

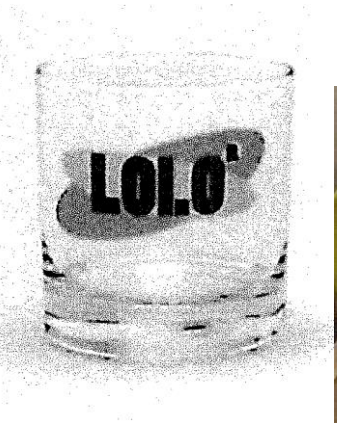
[15] Mr. McArthur states that during the relevant period, sales of food and drink offered at the Lolo restaurant totalled over $2 million [para 12].

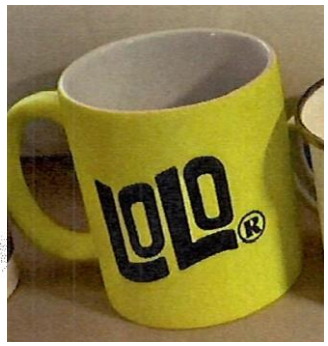
Novelty and Clothing Items

[16] Mr. McArthur states that "novelty and clothing items" displaying the Mark were sold by the Owner's predecessors-in-title during the relevant period, with retail sales totalling approximately $2,500.00 [para 14].

[17] Mr. McArthur explains that stickers featuring the Mark were made at the restaurant using a computerized sticker machine [para 15]. He provides as Exhibit D, photographs of a representative custom sticker displaying the Mark during the relevant period and of the sticker making equipment and material.

[18] Mr. McArthur states that branded glassware and mugs were sold at the restaurant during the relevant period [para 17], and that hats and clothing were sold both online and at the restaurant during the relevant period [para 16]. He provides representative photos/depictions of such clothing items (namely, t-shirts and tank tops), hats, beverage glassware and coffee mugs sold, along with representative purchase receipts [Exhibits E and F]. The following are examples of how the Mark appears on t-shirts, tank tops, hats, glassware and mugs in these exhibits:





[19] Further to the above, the exhibited receipts show that t-shirts, glassware, and mugs were sold during the relevant period, with the Mark appearing on the receipts in the same manner as the above Exhibit C invoices.

Organizing Community Festivals, Sporting Events and Charitable Activities

[20] Mr. McArthur explains that the Owner is committed to the community and is active with advocacy to the City of North Vancouver municipality, North Shore Tourism, Lower Lonsdale BIA and acts as lead creative for the Central Lonsdale BIA. He states that additionally, the Owner was involved in municipal and provincial outreach and visioning in the creation of public spaces such as the Lower Lonsdale Shipyards Area and the North Vancouver Patio Project. These spaces, he explains, are now key areas that facilitate community events of all kinds, including both charitable activities and sporting events in support of the local community [para 18].

[21] Mr. McArthur states that during the relevant period, the Owner hosted community events at its restaurant, including playoff hockey events and Canada Day celebrations. In support, he provides photographs from these events which he attests took place in June and July 2024 [para 19, Exhibit G]. The Mark does not appear in these photographs.

[22] Lastly, Mr. McArthur explains that during the relevant period, the Owner developed a mobile application and a progressive web application (PWA) to connect users to community events, such as festivals, concerts, sporting events, and charity events, as well as smaller daily events, such as local business events (*e.g.*- trivia night, merchant specials, etc.) [para 20]. He states that prior to the end of the relevant period, the applications were published locally, and that additionally the PWA was viewable to the public on the web; however, these apps were still in the developmental beta testing phase during the relevant period waiting to be uploaded to the Apple App Store and Google Play store for final development [para 21]. He provides sample sign-up event forms for the beta development and screenshots of the application database representative of the apps during the relevant period [para 21, Exhibit H]. The Mark does not appear on the

sign-up event forms, but does appear on the application database screenshots.

[23] Mr. McArthur concludes by explaining that the events applications that use the Mark are part of a larger project involving local BIA's, select post-secondary institutions, and input from government. He states that as part of the project, there are three other software modules - two of which are at various stages of testing, and the third still under development [para 22].

ANALYSIS AND REASONS FOR DECISION

[24] To begin with, Mr. McArthur's affidavit, while broadly referring to "novelty items", is silent with respect to evidence concerning the specific registered goods "golf balls, key chains, novelty buttons, sport water bottles, and fridge magnets". At the oral hearing, the Owner conceded that use had not been shown with respect to these specific goods, and that it would not be seeking to maintain these goods in the registration. Further, at the oral hearing, the Owner also conceded that no transfers of "stickers" had been shown in the evidence, and as such, that it would also not be seeking to maintain the registration with respect to "stickers".

[25] As use has not been shown in accordance with sections 4 and 45 of the Act and no special circumstances have been advanced that would excuse the absence of use of the Mark in association with "golf balls, key chains, novelty buttons, sport water bottles, and fridge magnets", these goods will be deleted from the registration. Thus, the ensuing analysis and decision will be with respect to the remaining registered goods "novelty items, namely, […], hats, casual and athletic clothing, […], beverage glassware, […], coffee mugs", and the registered services.

[26] The Requesting Party submits that the registration ought to be expunged in its entirety, as Mr. McArthur merely makes bald statements that

the Mark was used under license by the Owner's predecessor-in-title, Raglan's. The Requesting Party submits that while a license may be implied from the information set out in the affidavit, the McArthur affidavit did not *show* that Mr. McArthur was the sole director of Raglan's, nor is there any other evidence as to any control through license of the character or quality of the registered goods and services.

[27] In response, the Owner correctly submits that Mr. McArthur has provided clear sworn statements with respect to the licensing, transfer and ownership of the Mark. Specifically, Mr. McArthur owned the Mark himself during the relevant period up until September 3, 2024, at which time he assigned the Mark to Raglan's. Mr. McArthur clearly attests that Raglan's used the Mark under license until Raglan's obtained ownership of the Mark, and that he has been the president and sole director of Raglan's since its inception in 1999. This assignment, as attested to, was filed and recorded with the Registrar. Furthermore, I agree with the Owner, that providing documentary evidence beyond these sworn statements, including corporate documentation to substantiate Mr. McArthur's clear attestation of his position within Raglan's, is not required for the purposes of these proceedings. Mr. McArthur's sworn statements are sufficiently clear and precise regarding the transfer and ownership of the Mark as well as his position as president and sole director of Raglan's. I accept such sworn statements at face value [see *Oyen Wiggs Green & Mutala LLP v Atari Interactive, Inc*, 2018 TMOB 79].

[28] With regards to evidence of requisite control of the character and quality of the goods and services, as noted by the Owner, case law has established that certain conditions of common control between an owner and user of a trademark may satisfy the requirements of section 50 of the Act [see *Petro-Canada v 2946661 Canada Inc* (1999), 83 CPR (3d) 129 (FCTD);

Lindy v Canada (Registrar of Trade Marks) 1999 CarswellNat 652 (FCA)]. As Mr. McArthur was the original owner of the Mark, and he has clearly attested that the Mark was used under license by Raglan's, to which he was the president and sole director, I am prepared to infer that the requisite control under section 50(1) of the Act existed at such time.

The Remaining Goods

[29] As previously indicated, the remaining goods at issue are "novelty items, namely, […], hats, casual and athletic clothing, […], beverage glassware, […], coffee mugs".

[30] The Requesting Party submits that Mr. McArthur vaguely and broadly claims at paragraph 14 of his affidavit, that the sale of "novelty" and "clothing" items during the relevant period "totaled approximately $2,500.00", but does not break this number down into specific goods. The evidence of transfers otherwise, the Requesting Party submits, includes an online order and sample receipt for "shirts" only (Exhibit E), and the Exhibit F receipt is for "glass" and "mug" only, with the online order being undated.

[31] The Owner submits that Mr. McArthur's above-noted statement providing total sales figures for the sale of "novelty" and "clothing" items during the relevant period demonstrates that sales of novelty items and clothing were not token in nature. Furthermore, the Owner submits that the evidence goes beyond a bald assertion in that sales receipts of novelty items and clothing through the restaurant and online have been provided. The Owner submits that invoices are not required, and while it has supplied invoices for some of its goods, the fact that it has not provided invoices for all of the remaining goods should not be construed against it.

[32] It is true that invoices are not required; however, sufficient facts must nevertheless be provided in order to arrive at conclusion of use with respect

to each of the goods. In the present case, the evidenced receipts clearly show sales of "t-shirts", "glassware", and "mugs" (as depicted in Exhibits E and F). Thus, I accept at a minimum that transfers of "casual and athletic clothing", "beverage glassware", and "coffee mugs" occurred in the normal course of trade during the relevant period.

[33] Further to these goods, I also accept that "hats" and "other casual and athletic clothing items", namely, tank tops were sold during the relevant period. While Mr. McArthur has not provided sales figures broken down by individual good, he has provided *representative* examples of use which specifically include (in addition to those indicated in the preceding paragraph), "hats" and "tank tops" (per Exhibit E), as well as clear sworn statements regarding sales of such "hats" and "clothing items" during the relevant period, both at the Owner's restaurant and online [McArthur affidavit, para 16]. Consequently, having regard to the evidence as a whole, I find it reasonable to conclude that "hats" and "tank tops", in addition to "t-shirts", "glassware" and "mugs" are encompassed within the sworn aggregate sales figure provided.

[34] In addition to the aforementioned, the Requesting Party submits that the Mark is merely displayed and used decoratively and ornamentally on the goods and therefore, is not used as a trademark pursuant to section 4 of the Act. The Requesting Party asserts that the goods displaying the Mark in this manner would likely be perceived by the purchasing public as promotional materials and would not think that "LOLO" indicates the source of these goods. The Requesting Party notes the particular example of the hat depicted in Exhibit E, which it submits appears to be a SNAPBACK-branded hat.

[35] In reply, the Owner submits that the Requesting Party has provided no legal authority or statutory basis for characterizing such use as "merely

decorative", nor for suggesting that decorative use negates trademark use. The Owner submits that a trademark can have decorative appeal while still functioning as a trademark to distinguish a trademark owner's goods. The Owner further submits that while it is recognized that ornamentation applied to goods solely for enhancing the appearance of the goods is not proper subject matter for a trademark [see *Dot_Plastics Ltd v Gravenhurst Plastic Ltd* (1988), 22 CPR (3d) 228 (TMOB)], there is no evidence in the present case that the Mark is merely decorative in nature. The Owner submits that the Mark is affixed to the goods and prominently displayed on sales receipts listing the goods at the time of transfer, serving as a source identifier. Accordingly, the Owner submits, the Mark is used as a trademark and not merely to enhance the appearance of the goods.

[36] I agree with the Owner's submissions. Furthermore, and in any event, with respect to whether the use shown is decorative or ornamental, or serves to distinguish the goods of the Owner from those of others - these are issues that have been considered to exceed the bounds of section 45 proceedings [see *Digital Attractions Inc v LNW Enterprises Ltd* (2007), 64 CPR (4th) 418 (TMOB); *United Grain Growers Ltd. v. Lang Michener* (2001), 12 CPR (4th) 89 (FCA)].

[37] With respect to the Exhibit E hat being a SNAPBACK-branded hat, the Owner correctly notes that the Board has found that even though goods were not manufactured by the trademark owner, permanently affixing a trademark to third-party manufactured goods constitutes use of the trademark [*CWI, Inc v G N R Travel Centre Ltd*, 2020 TMOB 113 aff'd 2023 FC 2]. Indeed, there is no prohibition to the use of two trademarks simultaneously, and no requirement that those trademarks belong to the same entity. In the present case, I am satisfied that the Mark prominently

appeared on the evidenced hats, and that such use constitutes use of the Mark in association with such goods.

[38] Having regard to the aforementioned, each of the remaining goods, namely, "novelty items, namely, […], hats, casual and athletic clothing, […], beverage glassware, […], coffee mugs" will be maintained in the registration.

Restaurant Services

[39] The Requesting Party submits that despite Mr. McArthur's allegations that the exhibited restaurant signage and sample menus are representative of those used during the relevant period, the exhibited photographs are undated. Additionally, the Requesting Party submits that in Exhibit A, the photograph shows the name of the restaurant to be "RAGLAN'S" and not "LOLO Surf Shack".

[40] The Owner correctly notes, however, that Mr. McArthur provides sworn statements that the exhibited restaurant signage and sample menus are representative of how the Mark appeared during the relevant period. I accept based on his personal knowledge that Mr. McArthur was in a position to accurately attest to such matters, and accept his sworn statements in this regard at face value [*Oyen Wiggs*, *supra*].

[41] With respect to the name "RAGLAN'S" appearing on restaurant signage, the Owner submits and once again I agree, that there is no bar to the simultaneous use of multiple trademarks. The Mark clearly appears throughout the restaurant on signage and menus. Furthermore, as Mr. McArthur clearly attests that McArthur Trading Inc. does business as Raglan's Bistro, I find it reasonable to infer from the evidence that "Raglan's" is merely a shortened form of "Raglan's Bistro".

[42] The Requesting Party made brief submissions at the oral hearing to challenge the *bona fides* of the exhibited customer restaurant receipts.

However, it is well established that even evidence of a single sale may be sufficient to establish use of a trademark in the normal course of trade, as long as it follows the pattern of a genuine commercial transaction and is not seen as being deliberately manufactured or contrived to protect the registration of the trademark [*Philip Morris Inc v Imperial Tobacco Ltd* (1987), 13 CPR (3d) 289 (FCTD)]. Furthermore, I note that there is no minimum amount of commercial activity required in order to maintain the registration [*Vogue Brassiere Inc v Sim & McBurney* (2000), 5 CPR (4th) 537 at 549 (FCTD)]. In the present case, I have no reason to conclude that the exhibited invoices/receipts were contrived.

[43] Having regard to the above, I accept that use of the Mark has been shown in the advertising and performance of the Owner's restaurant services.

Organizing Community Sporting Events

[44] With respect to these particular services, the Requesting Party submits that the Exhibit G photos, which include a photograph of a playoff hockey event alleging to be hosted by the Owner during the relevant period, are undated. Further, the Requesting Party submits that the photos do not support "organizing" services as claimed in the registration, or show use of the Mark.

[45] The Owner submits that Mr. McArthur has provided sworn statements that the Canada Day and hockey playoff events (per photos in Exhibit G) took place during the relevant period. Thus, the Owner submits that the evidence shows use of the Mark with organizing services during the relevant period.

[46] While I accept Mr. McArthur's sworn statement that such events took place during the relevant period, I note that the Mark does not appear

anywhere in the Exhibit G photographs. At the oral hearing, the Owner clarified its position, that since the events took place at the Owner's restaurant, and the Mark has been shown to be displayed at the restaurant, that the display of the Mark at the restaurant constitutes use of the Mark in the performance or advertising of these services.

[47] I find the Owner's submissions however, to be too far a leap to make. The fact that the Mark is displayed on signage elsewhere at the restaurant, is not evidence that the Mark was used in the performance or advertising of such *organizing* services. There is nothing to indicate that such 'events' were planned or organized by the owner/licensee, much less that the display of the Mark on signage appearing elsewhere at the restaurant and on menus was associated with anything beyond restaurant services. Indeed, without further evidence, it is entirely possible that these photographs capture celebrations that simply occurred and were initiated by the patrons of the restaurant themselves.

The Remaining Registered Services

[48] The remaining registered services encompass the registered services (1). These services are "organizing community festivals featuring a variety of activities, namely, food services, art exhibitions, musical performances, flea markets and cultural events" and "charitable activities conducted for the benefit of the public, namely, organizing community-based fundraising events and community-based charitable projects".

[49] The Requesting Party argues that in addition to the submissions made with respect to the Exhibit G evidence and organizing services, the evidence of the Owner's event applications (Exhibit H) do not support any of the registered event organizing services, nor charitable projects. In this regard, the Requesting Party submits that "developing" a product (in this case, the mobile application and PWA) is not use as defined by section 4 of the Act,

and thus, the information in paragraphs 18-22 of the McArthur affidavit is irrelevant to these proceedings.

[50] In reply, the Owner submits that Mr. McArthur has provided details regarding his involvement in the community and how he has developed a community events application. Further, the Owner submits that Mr. McArthur explains that the apps are being beta tested and provides as Exhibit H, both sample sign-up event forms and screenshots from the application database as they appeared during the relevant period. The Owner submits that a trademark owner does not need to provide the services during the relevant period – in the absence of actual performance, the evidence must show that the services had been advertised and that the owner was willing and able to perform the services in Canada during the relevant period [*Wenward (Canada) Ltd v Dynaturf Co* (1976)]. The Owner submits that Mr. McArthur not only confirms that he provided the community event services during the relevant period, but has provided evidence that the Mark was displayed in the beta testing of the applications during the relevant period. According to the Owner, this is sufficient evidence to show that the Owner was willing and able to provide these services, and therefore, qualifies as use of the Mark in association with the services.

[51] Paragraphs 18-22 of the McArthur affidavit do refer to the Owner's community involvement, events at the Owner's restaurant, and describe the intent of the Owner's event applications. However, the Exhibit H event sign-up sheets do not display the Mark nor refer to a specific list or breadth of events to include or "sign-up" for, asking simply "to enter information about events that your business is hosting". Further, the two sign-up sheets in Exhibit H, appear to have been completed by the same local restaurant, and only identify food and beverage offerings under its "event description". While the Exhibit H application database screenshots do display the Mark, they

feature "events" that appear solely in respect of restaurant offerings. Thus, at best, the Mark appears in connection with "food services"; however, it is unclear how this relates to the organization of "community festivals" as described in the registration. Furthermore, there is no indication that the Mark has been used in the advertising or display of the Exhibit H beta tested application in respect of events beyond those restaurant offerings.

[52] In any event, and more importantly, I do not find that sufficient detail has been provided with respect to the beta testing of the Exhibit H event applications. In this regard, Mr. McArthur has only stated that the applications were "published locally" and that the PWA was "viewable" to the public on the web, but there is no evidence that consumers actually viewed the applications. Furthermore, Mr. McArthur has attested that the applications were waiting to be uploaded to the Apple App Store and Google Play store for final development, so it appears that the service was not yet available to consumers.

[53] Accordingly, I am not prepared to conclude that the Mark has been used or displayed in the performance of the remaining services, or advertised such that the Owner was willing and able to perform the services in Canada during the relevant period.

DISPOSITION

[54] Having regard to the aforementioned, 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 maintained, but only with respect to the following goods and services:

Goods

[1] Novelty items, namely, hats, casual and athletic clothing, beverage glassware, coffee mugs.

Services

[2] Restaurant services.

Kathryn Barnett
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

APPEARANCES AND AGENTS OF RECORD

HEARING DATE: 2026-02-10

APPEARANCES

For the Requesting Party: Trisha Dore

For the Registered Owner: Tanya Reitzel

AGENTS OF RECORD

For the Requesting Party: Accupro Trademark Services Limited

For the Registered Owner: Coastal Trademark Services Limited