



LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADE-MARKS

Citation: 2016 TMOB 44
Date of Decision: 2016-03-18

IN THE MATTER OF A SECTION 45 PROCEEDING

Gowling Lafleur Henderson LLP

Requesting Party

and

Jana Beverages Ltd.

Registered Owner

TMA436,375 for TEANA

Registration

[1] At the request of Gowling Lafleur Henderson LLP (the Requesting Party), the Registrar of Trade-marks issued a notice under section 45 of the *Trade-marks Act* RSC 1985, c T-13 (the Act) on January 28, 2014 to Jana Beverages Ltd. (the Owner), the registered owner of registration No. TMA436,375 for the trade-mark TEANA (the Mark).

[2] The Mark is registered for use in association with “carbonated iced tea soft drinks”.

[3] The notice required the Owner to furnish evidence showing that the Mark was in use in Canada, in association with the goods specified in the registration, at any time between January 28, 2011 and January 28, 2014. If the Mark had not been so used, the Owner was required to furnish evidence providing the date when the Mark was last used and the reasons for the absence of use since that date.

[4] The relevant definition of “use” in association with goods is set out in section 4(1) of the Act as follows:

4(1) A trade-mark 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.

[5] In response to the Registrar's notice, the Owner furnished the affidavit of Keith Jackson, President of the Owner, sworn on August 19, 2014. Neither party filed written representations. Only the Owner was represented at an oral hearing, held on March 15, 2016.

The Owner's Evidence

[6] In his brief affidavit, Mr. Jackson attests that the Owner is a manufacturer and distributor of carbonated iced tea soft drinks, for sale to consumers in Canada and other countries. He explains that the Owner first introduced a line of carbonated iced tea soft drinks in association with the Mark in 1994, and that it continues to be manufactured, marketed and sold in Canada as of the date of his affidavit.

[7] In support of his assertion of use, Mr. Jackson attaches the following exhibits to his affidavit:

- Exhibit 2a is a photograph of a bottle with a label identifying it as a 12 fluid ounce (355mL) bottle of "Sparkling Iced Tea". The Mark appears prominently on the label. Mr. Jackson attests that the depicted label is representative of those used by the Owner in connection with the TEANA product line since 2009.
- Exhibit 2b consists of two pages of "informational material", which Mr. Jackson attests has been used by the Owner since 1999 to promote the Owner's line of products bearing the Mark. Mr. Jackson explains that the pages are a selection of promotional materials that have been directed to purchasing managers, beverage trade distributors and others since 1994. I note that the second page depicts a 12 fluid ounce (355mL) beverage can containing "NATURAL SPARKLING ICED TEA". The Mark is displayed prominently on the can.

- Finally, Exhibit 3 consists of nine invoices showing sales of various quantities of cases of “TEANA SPARKLING ICED TEA (24x12 Fl. Oz.)” from the Owner to Canadian customers. The invoices are all dated within the relevant period and Mr. Jackson confirms that the invoices evidence sales in Canada of the registered goods bearing the Mark.

Analysis

[8] Although the evidence in this case is not overwhelming, 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 the registered owner must meet is quite low [*Uvex Toko Canada Ltd v Performance Apparel Corp* (2004), 31 CPR (4th) 270 (FC)].

[9] Applied here, I accept that the TEANA iced tea products depicted at Exhibits 2a and 2b are representative of the TEANA iced tea products invoiced at Exhibit 3.

[10] In view of the foregoing, I am satisfied that the Owner has demonstrated use of the Mark in association with the registered goods during the relevant period within the meaning of sections 4 and 45 of the Act.

Disposition

[11] Accordingly, 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.

Andrew Bene
Hearing Officer
Trade-marks Opposition Board
Canadian Intellectual Property Office

**TRADE-MARKS OPPOSITION BOARD
CANADIAN INTELLECTUAL PROPERTY OFFICE
APPEARANCES AND AGENTS OF RECORD**

HEARING DATE: 2016-03-15

APPEARANCES

Steven Nemetz

For the Registered Owner

No one appearing

For the Requesting Party

AGENT(S) OF RECORD

Reiter-Nemetz

For the Registered Owner

Gowling WLG (Canada) LLP

For the Requesting Party