

SECTION 45 PROCEEDINGS
TRADE-MARK: NATURAL REGENA
REGISTRATION NO. 287,081

On January 10, 1990, at the request of Robic, Robic & Associates on behalf of Framesi S.R.L., the Registrar forwarded a Section 45 notice to Minerva Beauty Supplies Ltd.- Minerva Produits de Beaute Ltee, the registered owner of the above-referenced trade-mark registration.

The trade-mark NATURAL REGENA was registered on January 20, 1984 for use in association with the wares "hair cream".

In response to the Registrar's notice, the registrant furnished the affidavit of Angelio Baggio. The requesting party filed a written submission on May 10, 1990.

On August 7, 1990, the registrant requested and was granted a retroactive extension of time pursuant to section 47 (2) of the Trade-marks Act to file a supplementary affidavit of Angelo Baggio. The requesting party filed a further written submission; the registrant also filed a written submission; there was no oral hearing.

The registrant made a further request on April 10, 1991 for filing additional evidence; such request was refused by official letter of May 15, 1991 for the reasons stated therein.

In his second affidavit, Mr. Baggio has stated that the wares are manufactured in Italy and imported by the registrant in 100kg barrels and then filled in Montreal in 2 types of white plastic pots of 120gr. and 500 gr.; he has indicated that the pots bear a green label with the trade-mark "Natural Regina" and has submitted a specimen of the label; he has furnished sales figures for the years 1982, 1983 and 1988 and 1989; and he has submitted invoices

which, for the most part, show sales of wares including the registered wares to hair salons.

The requesting party's main argument is that the registrant is not using the trade-mark as registered i.e. NATURAL REGENA.

Although in paragraph 4 of his affidavit, Mr. Baggio has made reference to "Natural Regina" rather than "Natural Regena", the label submitted with the affidavit shows the trade-mark as being NATURAL REGENA. Furthermore, in its written submissions, the registrant has stated that the misspelling in the affidavit was due to a typographical error.

The requesting party has pointed out that if one looks closely at the invoices, it is the word REGINA that appeared as it can be seen that the "I" was changed for an "E". In response thereof, the registrant has stated in its written submission that such misspelling was due to a clerical error. It further submitted that spelling errors in the computers continue to be printed until corrected and that presently they have been corrected.

Although I find it is very peculiar that year after year the same error would have been repeated, the invoices as corrected and as submitted show the word "Regena", although it is unclear when the corrections to the invoices were made. Nevertheless, as mentioned earlier, the label submitted with the affidavit shows the trade-mark as registered.

I would like to add that section 45 proceedings are intended to be of a summary nature and that technical submissions of the nature of those put forward by the requesting party are not ones to be addressed in such proceedings.

Consequently, although the evidence furnished contains many shortcomings, when considered in its totality it is sufficient to

shown use of the trade-mark NATURAL REGENA at the material date in association with the registered wares.

In view of the evidence filed, I have concluded that at the material date the registrant had been using the trade-mark in association with the registered wares. Accordingly, its registration ought to be maintained.

Registration No. 287,081 will be maintained in compliance with the provisions of section 45(5) of the Trade-marks Act.

DATED AT HULL, QUEBEC, THIS 30th -DAY OF *November* 1992.



(Mrs.) Denise Savard
Senior Hearing Officer
section 45