



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

Citation: 2012 TMOB 250
Date of Decision: 2012-12-20

**IN THE MATTER OF A SECTION 45 PROCEEDING
requested by Coastal Trademark Services against
registration No. TMA568,662 for the trade-mark
STURGIS ANNUAL BLACKHILLS MOTORCYCLE
CLASSIC & Design in the name of Bruce Bouthillette**

[1] At the request of Coastal Trademark Services (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 April 13, 2011 to Bruce Bouthillette (the Registrant), the registered owner of registration No. TMA568,662 for the trade-mark STURGIS ANNUAL BLACKHILLS MOTORCYCLE CLASSIC & Design (the Mark), shown below:



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

Jewellery, namely, rings, bracelets and pendants; mens', women's and children's clothing, namely, t-shirts, golf shirts, sweatshirts, sweatpants, tracksuits, shorts, trousers, jackets, shoes, ties, hats and caps; novelty items, namely, watches, pins, key fobs, sports bags, golf bags, briefcases, tote bags, pens, pencils, playing cards, golf balls, coffee mugs, balloons, rulers and sunglasses; glassware, namely, mugs and tankards; decals, including window stickers and bumper stickers.

[3] Section 45 of the Act requires the registered owner of the trade-mark to show whether the trade-mark has been used in Canada in association with each of the wares and services 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 between April 13, 2008 and April 13, 2011.

[4] The relevant definition of “use” with respect to wares is set out in section 4(1) of the Act:

4(1) A trade-mark is deemed to be used in association with wares if, at the time of the transfer of the property in or possession of the wares, in the normal course of trade, it is marked on the wares themselves or on the packages in which they are distributed or it is in any other manner so associated with the wares 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 Registrant filed his own affidavit, sworn on July 7, 2011. Only the Requesting Party filed written representations; an oral hearing was not held.

[6] In his brief affidavit, the Registrant states that he is a jewellery designer by trade and that he casts rings, bracelets and pendants using a process known as “lost wax casting”, a casting process that begins with a wax copy. Attached as Exhibit A to his affidavit is a picture of an orange wax cast of a ring. This particular ring bears the Mark as registered. The Registrant states that he has “used this process to cast a ring as lately as July of 2010”.

[7] It is well established that 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), 53 CPR (2d) 62 (FCA)]. Although the threshold for establishing use in these 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 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 trade-mark in association with each of the wares specified in the registration during the relevant period.

[8] In this case, however, the Registrant provides no evidence of sales during the relevant period of the referenced “rings, bracelets and pendants”, nor does he make any assertion of a

transfer of the wares whatsoever. Although he describes himself as a “jewellery designer”, the Registrant provides no other statements regarding his normal course of trade from which it can be inferred how or even if he sold such jewellery. Indeed, the statements in the Registrant’s affidavit are so ambiguous that it is not clear if the ring cast in July 2010 was from the wax ring depicted in Exhibit A or even if it bore the Mark.

[9] With respect to the other wares listed in the registration, there is no reference to them whatsoever in the Registrant’s affidavit.

[10] In view of the foregoing, I cannot conclude that the Registrant has demonstrated use of the Mark in association with any of the registered wares within the meaning of sections 4 and 45 of the Act during the relevant period. Furthermore, there is no evidence of special circumstances to excuse non-use of the Mark before me.

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 expunged.

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