

**SECTION 45 PROCEEDINGS**  
**TRADE-MARKS: CANADIAN TIRE. THE RIGHT CHOICE HAS NEVER BEEN SO**  
**CLEAR;**  
**THE RIGHT CHOICE HAS NEVER BEEN SO CLEAR. CANADIAN TIRE**  
**REGISTRATION NOS.: TMA 312,522; TMA 312,472**

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On September 17, 1997, at the request of Messrs. Swabey Ogilvy Renault, the Registrar forwarded Section 45 notices to Canadian Tire Corporation, the registered owner of the above-referenced trade-mark registrations.

Both trade-marks are registered for use in association with the following services: selling of vehicular parts, tools and accessories of others; the selling of maintenance and service supplies of others; the selling of garden equipment, tools, supplies and accessories of others; the selling of hardware of others; the selling of housewares of others; the selling of household goods of others; the selling of sporting goods of others; the servicing and maintenance of vehicles.

In response to the notices, the registrant furnished one original and one copy of the affidavit of Daniel McVeigh together with exhibits. The original affidavit is on application No. 535591 (registration No. TMA 312,522). Each party filed a written argument. An oral hearing has not been requested in these cases.

In his affidavit, Mr. McVeigh states that Canadian Tire sells products to Canadian Tire associate stores who resell to the public; that since 1986, Canadian Tire associate dealers (who are licensees) have used the trade-marks in association with the services; that they use and display the trade-marks in promotional materials, including aisle displays, wall signs, exterior signs and door signs at their stores. As exhibit B, he encloses a photograph of signage displayed inside the store located at 975 The Queensway, Toronto, Ontario. He states that the photograph is representative of the use of the trade-marks across Canada since 1986.

The requesting party has raised several arguments concerning the evidence furnished. However, in my view, one of the main arguments is that the evidence does not show use of the trade-marks as registered. The requesting party submits that the expression “The Right Choice Has Never

Been So Clear” is being used as a slogan in a sentence that is visually separated from the words “Canadian Tire”. I reproduce below a representation of the photograph of the signage furnished as exhibit B:

I agree with the requesting party that an ordinary consumer would probably perceive the two last sentences printed in bold, as two distinct sentences and that at best would perceive the last sentence “The right choice has never been so clear”, as a slogan or trade-mark being used but separate and apart from the trade-mark CANADIAN TIRE. As the words “Canadian Tire” are being used in a different sentence from the sentence containing the other elements of the trade-marks, the use as such constitutes a substantial deviation from the registered trade-marks.

Accordingly, I conclude that the use shown does not constitute use of the registrant’s registered trade-marks.

The registrant has commented on the fact that the deviation will not cause injury or deception to the public. However the question is not whether anyone will be injured but, as stated in the case

*Registrar of Trade-marks v. CII Honeywell Bull*, 4. C.P.R. (3d) 523:

... The real and only question is whether, by identifying its goods as it did, CII made use of its trade mark BULL. That question must be answered in the negative unless the mark was used in such a way that the mark did not lose its identity and remained recognizable in spite of the differences between the form in which it was registered and the form in which it was used.

In the present case, I find the marks are used in such a way that each trade-mark has lost its

identity and is not recognizable as a trade-mark.

As I have found the use shown does not constitute use of the registered trade-marks, I conclude that the trade-mark registrations ought to be expunged. In view of my conclusion it is not necessary to consider the other arguments of the requesting party. However, I would add that I find it questionable whether the use shown is use in association with the registered services. The use shown appears more a use to distinguish the registrant's store policy with respect to prices from the policies of other stores. Consequently, even had I found that the use shown was use of the present trade-marks, I would have concluded that the use was not in association with the registered services.

Registration Nos. TMA 312,522 and TMA 312,472 will be expunged in compliance with the provisions of Section 45(5) of the Trade-marks Act.

DATED AT HULL, QUEBEC THIS 30<sup>th</sup> DAY OF November, 1999.

D. Savard  
Senior Hearing Officer  
Section 45