



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

Citation: 2016 TMOB 98
Date of Decision: 2016-06-22

IN THE MATTER OF A SECTION 45 PROCEEDING

Shapiro Cohen LLP **Requesting Party**

and

LyondellBasell Industries Holdings B.V. **Registered Owner**

TMA557,958 for ADSYL **Registration**

[1] At the request of Shapiro Cohen 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 August 8, 2014 to Baselltech USA Inc., the registered owner at that time of registration No. TMA557,958 for the trade-mark ADSYL (the Mark).

[2] The Mark is registered for use in association with the following goods: “Olefin polymer resins in particulate or granulate form”.

[3] The notice required the registered 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 August 8, 2011 and August 8, 2014. If the Mark had not been so used, the registered 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] 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)].

[6] Subsequent to the issuance of the notice, the Registrar recorded a change in title of the registration to LyondellBasell Industries Holdings B.V. (the Owner). This change is not at issue in the proceeding.

[7] In response to the Registrar’s notice, the Owner furnished the affidavit of Jeff E. Griffin, Attorney of the Owner, sworn on January 16, 2015 in Houston, Texas. Only the Owner filed written representations; a hearing was not requested.

The Owner’s Evidence

[8] In his brief affidavit, Mr. Griffin asserts that the Owner sells the registered goods through its licensee, Equistar Chemicals LP. A brochure attached to his affidavit identifies the Owner as “one of the world’s largest plastics, chemical and refining companies”.

[9] With respect to the relevant period, Mr. Griffin attests that Equistar sold the registered goods to Canadian customers. He confirms that the Owner exercised care and control over the nature and quality of all ADSYL products sold by Equistar. As such, I am satisfied that any demonstrated use of the Mark by Equistar enures to the benefit of the Owner.

[10] Mr. Griffin states that, at all times, the Mark was displayed on the containers in which the goods were sold.

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

- Exhibit A consists of brochures that Mr. Griffin attests were distributed to Equistar’s customers during the relevant period. The brochures refer to the “Adsyl product family” as resins used for the packaging industry.
- Exhibit B consists of five invoices that Mr. Griffin attests shows sales of ADSYL products by Equistar to Canadian customers. I note that the Mark appears in the item descriptions on the invoices. The invoices are to customers with Canadian addresses and are all dated within the relevant period.
- Finally, Exhibit C consists of ten photographs that Mr. Griffin attests shows the “front and back of a carton in which the Products are sold in association with the trade mark ADSYL”. The packaging most prominently identifies the contents as “Polyolefins”, but the Mark is printed on the side of the packaging directly as well as appears on labels affixed to the packaging.

[12] In view of Mr. Griffin’s statements, I accept that the ADSYL products depicted at Exhibit C to his affidavit are representative of the ADSYL products sold to Canadian customers, as shown in the Exhibit B invoices.

[13] As such, 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

[14] 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: No hearing held

AGENTS OF RECORD

Riches, McKenzie & Herbert LLP

For the Registered Owner

Shapiro Cohen LLP

For the Requesting Party