



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

**Citation: 2015 TMOB 144**  
**Date of Decision: 2015-08-26**

**IN THE MATTER OF A SECTION 45 PROCEEDING**

**Borden Ladner Gervais LLP**

**Requesting Party**

**and**

**Planet of Sound Hifi Inc.**

**Registered Owner**

**TMA770,514 for Foundation Speaker  
Stands**

**Registration**

[1] At the request of Borden Ladner Gervais LLP, the Registrar of Trade-marks issued a notice under section 45 of the *Trade-marks Act* RSC 1985, c T-13 (the Act) on July 3, 2013 to Planet of Sound Hifi Inc., the registered owner of registration No. TMA770,514 for the trade-mark Foundation Speaker Stands (the Mark).

[2] The Mark is registered in association with “stands for loudspeakers”.

[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 goods 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 July 3, 2010 and July 3, 2013.

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

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 and, 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] In response to the Registrar’s notice, the registered owner filed the statutory declaration of Andrew Tran, sworn on September 25, 2013. Neither party filed written representations; a hearing was not held.

[7] In his statutory declaration, Mr. Tran attests that the registered owner has been using the Mark. As evidence of such use, Mr. Tran attaches the following:

- Copies of three sales receipts dated between June 1, 2012 and April 29, 2013 issued by “Planet of Sound” to entities located in Edmonton, Quebec City, and Winnipeg. I note that the billing address is the same as the shipping address in two of the three receipts. Items described as “Foundation SHL5 Speaker Stands Fully Welded”, “Foundation C7 Speaker Stands Fully Welded” and “Foundation M30 Speaker Stands Fully Welded” can be seen in the body of the receipts;
- Copies of three emails showing payment receipt for the renewal of the domain names FOUNDATIONSTANDS.NET and FOUNDATIONSTANDS.COM in April 2011, 2012 and 2013, said to be for the Foundation Speaker Stands website; and
- Copies of three dealer price lists dated between May 2011 and November 2012 for Foundation Speaker Stands. The documents are entitled “Foundation Speaker Stands” and contain the model numbers such as “SHL5”, “C7” and “M30”, the types of finish, the MSRPs, and the costs of the stands. No other information about these price lists was provided.

[8] There is no evidence that the Mark was marked on the goods themselves or on the packages in which the goods were distributed. Moreover, the use of domain names does not evidence use of the Mark in association with the goods themselves.

[9] As for the dealer price lists, without any evidence that these documents were used to place orders such that a notice of association between the Mark and the goods was made, the appearance of a trade-mark in a price list does not in itself constitute use in association with goods [see for example *Clairol International Corp v Thomas Supply & Equipment Co Ltd* (1968), 55 CPR 176 (Ex Ct)]. In the present case, Mr. Tran made no specific statements in this regard.

[10] Even so, I am prepared to accept that two of the sales receipts would have been viewed by the same party who received the goods considering that the goods were shipped to the same physical places that the receipts were delivered to, such that the purchaser would, at the time of transfer, have been provided with notice of association between the Mark and the goods. This has been accepted as providing sufficient notice of association to satisfy section 4(1) of the Act for the purposes of a section 45 proceeding [*Riches, McKenzie & Herbert LLP v KOM Networks Inc* (2005), 51 CPR (4th) 65; *Novopharm Ltd v Novo Nordisk A/S* (2005), 41 CPR (4th) 188 (TMOB); *Bereskin & Parr v Star-Kist Foods, Inc* (2004), 37 CPR (4th) 188 (TMOB)].

[11] Finally, as mentioned above, the sales receipts show “Foundation SHL5 Speaker Stands Fully Welded”, “Foundation C7 Speaker Stands Fully Welded” and “Foundation M30 Speaker Stands Fully Welded” as the item descriptors rather than the Mark *per se*. In the present case, I am satisfied that the Mark is being used in such a way that it has not lost its identity and remains recognizable as the dominant and essential feature of the Mark has been maintained [*Canada (Registrar of Trade-marks) v Compagnie Internationale pour l’informatique CII Honeywell Bull* (1985), 4 CPR (3d) 523 (FCA); *Promafil Canada Ltée v Munsingwear Inc* (1992), 44 CPR (3d) 59 (FCA)]. Thus, I consider the use of “Foundation SHL5 Speaker Stands”, “Foundation C7 Speaker Stands” and “Foundation M30 Speaker Stands”, to be use of the Mark as references to “SHL5”, “C7” and “M30” would likely be perceived by consumers as model numbers and not part of the trade-mark *per se*.

[12] In view of the foregoing, I am satisfied that the registered owner has demonstrated use of the Mark in association with the registered goods “stands for loudspeakers” during the relevant period within the meaning of sections 4 and 45 of the Act.

Disposition

[13] In view of all of the foregoing, 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.

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Pik-Ki Fung  
Member  
Trade-marks Opposition Board  
Canadian Intellectual Property Office

No Hearing Held

Agents of Record

No Agent Appointed

For the Registered Owner

Borden Ladner Gervais LLP

For the Requesting Party