

SECTION 45 PROCEEDINGS
REGISTRATION NO.: 266,522
TRADE-MARK: HIGH SIERRA

At the request of H. Bernbaum Import-Export Co., represented by Messrs. Osler, Hoskin & Harcourt, the Registrar forwarded a Section 45 Notice on February 14, 1994 to Mexican Artifacts (Western) Ltd., the registered owner of the above-referenced trade-mark. The trade-mark was registered on February 12, 1982 in regard to the wares "Western riding boots, namely, cowboy boots".

In response, the affidavit of Mr. George Enns, President of the registrant company was furnished. Both the requesting party and registrant made written submissions; an oral hearing was not conducted.

Mr. Enns states at paragraph 3 that the registrant "contracts with Mexican suppliers to manufacture boots in Mexico to be forwarded... [to the registrant] for sale at retail in Canada". At paragraph 4, he states that the trade-mark is applied to the registrant's wares once the "cowboy boots" have arrived in this country. It therefore appears from a fair reading of these statements that the registrant imports the wares in Canada; that it applies the trade-mark to the wares and then sell the wares in Canada at retail. In my view, the statements contained in paragraphs 5 through 8 together with Exhibits A and B clearly describe the registrant's normal course of trade in Canada with respect to the wares and show the manner the trade-mark is associated with the registered wares at the time of sale.

Mr. Enns submits that since the boots are sold at retail, no invoices are available. However, at paragraph 10, he provides an estimate of sales figures relating to boots sold by the registrant bearing the trade-mark during the two years preceding the date of the Notice. The requesting party submits that estimated evidence without documentation in support thereof is of little or no probative value. However, in my opinion it seems to me on balance

that Mr. Enns as President of the registrant company, is manifestly in a position to provide estimates of sales figures and "to know whereof he disposed" (see Vapor Canada Ltd. v. MacDonald et al., 6 C.P.R.(2d) 204 and Union Electric Supply Co. Ltd. v. Registrar of Trade-marks, 63 C.P.R.(2d) 56. Consequently, I accept the sales figures provided as proper estimates of the registrant's sales with respect to the wares.

Accordingly, from the evidence filed, I conclude that the registrant was using the trade-mark in the normal course of trade in association with the registered wares and during the relevant period. Consequently, its registration ought to be maintained.

Registration No. 266,522 will be maintained accordingly, in compliance with the provisions of Section 45(5) of the Trade-marks Act.

DATED A HULL, QUEBEC, THIS 29th DAY OF June, 1995.

D. Savard
Senior Hearing Officer