



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

**Citation: 2016 TMOB 182**  
**Date of Decision: 2016-11-30**

**IN THE MATTER OF SECTION 45 PROCEEDINGS**

**Cyre Clothing Company** **Requesting Party**

**and**

**Cyres Inc.** **Registered Owner**

**TMA806,001 for CYRES** **Registration**

[1] At the request of Cyre Clothing Company (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 September 18, 2014 to Cyres Inc. (the Registrant), the registered owner of registration No. TMA806,001 for the trade-mark CYRES (the Mark), shown below:



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

Sporting goods, namely skateboards, skateboards accessories (sic), namely, skateboard decks, skateboard trucks, skateboard wheels and assembles (sic) and parts therefor, skateboard wheels, skateboard bumpers, skateboard bearings, skateboard rails, skateboard

shock absorbers and skateboard pads, namely knee pads and elbo pads (sic), wrist guards, skateboarding ramps and jumps, miniature skateboards, miniature skateboard parks, action figur (sic), griptape, skateboard tools, bolts and nuts, snow-skateboards, Clothing, footwear, and hardware, namely, shirts, pants, jackets, tank tops, shorts, sweaters, sweat bands, socks, bathing suits, belts, shoes, snowboard boots, sandal (sic), hats, beanies, and sun visor (sic). All purpose bags, sport bags, duffel bags, travel bags, travel cases, daypacks, backpacks, fanny packs, snowboard case, snowboard sleeves, team bags, rucksacks, straps, leashes, hats, snowboard helmets, headbands, earbands, caps, neck warmers, gloves, jackets, shirts, T-shirts, guitars (sic), suspenders, sport shoes, boots and socks for use in the sports of snowboarding, facemasks, snowboard gloves, snowboard jackets, pullovers, vests, sweaters, blouses, trousers, pants, undergarments (sic), bib guitars (sic), snowboards and snowboard binding and parts, fittings and accessories therefor, namely bindings, toe bindings, binding plates, binding bases, binding disks, mounting hardware, toe support, buckles, cuffs, brake, brake plates, brake plates interfaces, cleaners, lace protectors, leashes, straps, traction parts, mats, wax, rags, locks, washers, screws, racks, storage racks and parts therefor, cable and locks for securing a snowboard, tune-up kits for snowboards, tool kits for snowboards, carrying frames for snowboards, snowboard cores, Wakeboard and bindings and parts and tools, Kiteboarding and bindings and parts and tools and kiteboard boots, Ski and bindings and parts and tools and bags for ski, ski boots, surfboards and surf wax, clothing namely, shorts, dresses, sweaters, trousers, surfboards, wet-suits, surf wax for surfboards, leg ropes for surfboards, bags for surfboards, backpacks, surfboard boots, all kind of bicycles (sic) and stickers and all kind of signs or plates with our logo on it, watches and clock, watch bands, watch case, watch chains, watch straps.

[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 September 18, 2011 and September 18, 2014.

[4] The relevant definitions of use 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 mere assertions of use are not sufficient to demonstrate use in the context of section 45 proceedings [see *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 [see *Woods Canada Ltd v Lang Michener* (1996), 71 CPR (3d) 477 (FCTD)], and evidentiary overkill is not required [see *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 goods specified in the registration during the relevant period.

[6] In response to the Registrar's notice, the Registrant filed the affidavit of Chukuma Hedd-Williams, owner and operator of the Registrant, together with exhibits A, B and C.

[7] Only the Requesting Party filed written representations; a hearing was not requested.

[8] For the reasons that follow, I conclude that the registration ought to be maintained in part.

[9] Before discussing the reasons for my decision, I will begin with a brief summary of the evidence.

### The Evidence

[10] In his affidavit, Mr. Hedd-Williams states that the Registrant sold goods in association with the Mark through retail stores located in Toronto and Scarborough, as well as an online store located at [www.cyresskateboards.com](http://www.cyresskateboards.com). More specifically, in paragraph 3 of his affidavit, he states that the Registrant sold the following goods (which he collectively refers to as the Cyres Wares) to Canadian customers during the relevant period: skateboards and snowboards; skateboard parts and accessories; skateboard gear, including helmets, padding and gloves; clothing, including shirts and hoodies; hats (beanies); and shoes. He attests that the Mark was prominently displayed on all of these goods or their packaging at the time of transfer of possession to the Registrant's customers in the normal course of trade.

[11] In support, Mr. Hedd-Williams provides the following exhibits attached to his affidavit:

- Exhibit A consists of printouts from the Registrant's website during the relevant period, which include pictorial representations of various Cyres Wares bearing the Mark, as well as a hyperlinked list of Cyres Wares under the heading "Categories" on the left side of

each page. Mr. Hedd-Williams attests that the Registrant sold at least one of each of the Cyres Wares as depicted and as listed under the “Categories” heading during the relevant period. I note that the following registered goods, clearly bearing the Mark, appear on the printouts: skateboards, skateboard decks, skateboard trucks, skateboard wheels, skateboard bearings, skateboard knee pads, skateboard elbow pads, skateboard wrist guards, skateboard tools, sweaters (in this case hoodies), beanies, T-shirts, and snowboards. In addition, while some of the hyperlinks under the “Categories” heading designate general categories, such as “Protection Gear”, others designate specific goods, including many of the registered goods already shown in the pictorial representations, as well as “griptape”;

- Exhibit B consists of copies of two photographs: one of a shoe and the other of a packaged set of skateboarding tools and hardware. The Mark is prominently displayed on the shoe and on the packaging of the tools and hardware set. Mr. Hedd-Williams attests that the Registrant sold at least one of each of these goods during the relevant period;
- Exhibit C consists of invoices for online sales of various Cyres Wares. All invoices are dated within the relevant period and reflect sales made by the Registrant to customers in Canada. From the product descriptions in the body of the invoice, I accept the following registered goods were sold: skateboards, t-shirts, skateboard wheels, skateboard trucks, skateboard decks, snowboards, sport shoes, skateboard elbow pads, skateboard knee pads, skateboard wrist guards, griptape, beanies, skateboard tools, skateboard bearings, and sweaters (in this case hoodies).

#### Analysis and Reasons for Decision

[12] In its brief written representations, the Requesting Party submits that all of the goods contained in the registration should be removed with the exception of the following:

Sporting goods, namely skateboards, skateboards accessories, namely, skateboard decks, skateboard trucks, skateboard wheels, skateboard bearings, and skateboard pads, namely, knee pads and elbow pads, wrist guards, clothing, footwear, and hardware, namely shirts, beanies, T-shirts, sport shoes.

[13] Indeed, I accept that the Registrant has demonstrated use of the Mark in association with all of the above-listed goods, with the exception of “shirts”. In this regard, other than for shirts, the Registrant has furnished invoices evidencing the sale of these goods during the relevant period, as well as website images and photographs showing these goods bearing the Mark. Accordingly, I am satisfied that the Registrant has demonstrated use of the Mark within the meaning of sections 4 and 45 of the Act in association with skateboards, skateboard decks, skateboard trucks, skateboard wheels, skateboard bearings, knee pads, elbow pads, wrist guards, beanies, T-shirts and sport shoes.

[14] However, with respect to “shirts”, the Registrant has not provided any evidence of transfers of such goods, any depictions of such goods bearing the Mark, or any other evidence that would permit me to conclude that such use extends to “shirts”. While the Requesting Party perhaps considers “shirts” as the registered good corresponding to the evidenced images of hoodies, the registered goods “sweaters”, in my view, corresponds more closely. In this regard, I note that the Registrant has furnished invoices evidencing the sale of hoodies (sweaters), as well as a website printout depicting this good bearing the Mark. Accordingly, I am also satisfied that the Registrant has demonstrated use of the Mark within the meaning of sections 4 and 45 of the Act in association with “sweaters”.

[15] With respect to the remaining registered goods, the Requesting Party submits that these goods are not supported by the affidavit, and as such, should be expunged from the registration. In this regard, the Requesting Party submits that the list of goods sold in Canada provided by Mr. Hedd-Williams is stated too generally and does not encompass the remaining registered goods.

[16] However, while I agree that the evidence is silent beyond bare statements made by Mr. Hedd-Williams with respect to most of the remaining registered goods, the Registrant has furnished invoices evidencing the sale of “skateboard tools” and “snowboards”, as well as website printouts and a photograph which clearly depict these goods bearing the Mark. Further to this, the Registrant has also furnished an invoice evidencing the sale of Cyres “Griptape”, a good which is expressly listed under the “Categories” heading on its website. This evidence, in combination with Mr. Hedd-Williams’ clear statement that the Mark was prominently displayed on all of the goods sold, which includes “griptape”, constitutes sufficient evidence to permit me

to conclude that use of the Mark also extends to “griptape”. Accordingly, I am satisfied that the Registrant has also demonstrated use of the Mark within the meaning of sections 4 and 45 of the Act in association with “skateboard tools”, “snowboards”, and “griptape”.

[17] However, while I note that Mr. Hedd-Williams also attests to the sale of “skateboard helmets”, which appears to be supported by the evidence, it is “snowboard helmets” and not “skateboard helmets” that appears in the list of registered goods. As such, I do not accept that use of the Mark has been shown in association with “snowboard helmets”; consequently, the registration will be amended accordingly.

[18] As the evidence is silent with respect to all other remaining registered goods, I am not satisfied that the Registrant has demonstrated use of the Mark in association with such remaining goods within the meaning of sections 4 and 45 of the Act. Furthermore, there is no evidence before me of special circumstances excusing such non-use. The registration will thus be amended accordingly.

#### Disposition

[19] In view 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 amended to delete the following from the statement of goods:

... skateboard wheels and assemblies (sic) and parts therefor, ..., skateboard bumpers, ..., skateboard rails, skateboard shock absorbers ..., skateboarding ramps and jumps, miniature skateboards, miniature skateboard parks, action figur (sic), ..., bolts and nuts, snow-skateboards, ..., shirts, pants, jackets, tank tops, shorts, ..., sweat bands, socks, bathing suits, belts, shoes, snowboard boots, sandal (sic), hats, ..., and sun visor (sic). All purpose bags, sport bags, duffel bags, travel bags, travel cases, daypacks, backpacks, fanny packs, snowboard case, snowboard sleeves, team bags, rucksacks, straps, leashes, hats, snowboard helmets, headbands, earbands, caps, neck warmers, gloves, jackets, shirts, ..., guitars (sic), suspenders, ..., boots and socks for use in the sports of snowboarding, facemasks, snowboard gloves, snowboard jackets, pullovers, vests, sweaters, blouses, trousers, pants, undergarments (sic), bib guitars (sic), ... snowboard binding and parts, fittings and accessories therefor, namely bindings, toe bindings, binding plates, binding bases, binding disks, mounting hardware, toe support, buckles, cuffs, brake, brake plates, brake plates interfaces, cleaners, lace protectors, leashes, straps, traction parts, mats, wax, rags, locks, washers, screws, racks, storage racks and parts therefor, cable and locks for securing a snowboard, tune-up kits for snowboards, tool kits for snowboards, carrying frames for snowboards, snowboard cores, Wakeboard and bindings and parts and tools, Kiteboarding

and bindings and parts and tools and kiteboard boots, Ski and bindings and parts and tools and bags for ski, ski boots, surfboards and surf wax, clothing namely, shorts, dresses, sweaters, trousers, surfboards, wet-suits, surf wax for surfboards, leg ropes for surfboards, bags for surfboards, backpacks, surfboard boots, all kind of bicycles (sic) and stickers and all kind of signs or plates with our logo on it, watches and clock, watch bands, watch case, watch chains, watch straps.

[20] The amended statement of goods will read as follows:

Sporting goods, namely skateboards, skateboards accessories, namely, skateboard decks, skateboard trucks, skateboard wheels, skateboard bearings, skateboard pads, namely knee pads and elbow pads (sic), wrist guards, griptape, skateboard tools, Clothing, footwear, and hardware, namely, sweaters, and beanies. T-shirts, sport shoes, snowboards.

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Kathryn Barnett  
Member  
Trade-marks Opposition Board  
Canadian Intellectual Property Office

**TRADE-MARKS OPPOSITION BOARD  
CANADIAN INTELLECTUAL PROPERTY OFFICE  
APPEARANCES AND AGENTS OF RECORD**

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No Hearing Held

**AGENTS OF RECORD**

John H. Simpson (Shift Law)

For the Registered Owner

Mark Timmis Law Corp.

For the Requesting Party