



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

Citation: 2016 TMOB 110
Date of Decision: 2016-07-06

IN THE MATTER OF A SECTION 45 PROCEEDING

Gowling Lafleur Henderson LLP

Requesting Party

and

142576 Canada Inc.

Registered Owner

TMA317,057 for DAZZLE

Registration

[1] At the request of Gowling Lafleur Henderson 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 September 12, 2014 to 142576 Canada Inc. (the Owner), the registered owner of registration No. TMA317,057 for the trade-mark DAZZLE (the Mark).

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

- (1) Jewellery.
- (2) Hair accessories, namely barrettes, bobby pins, ponytail holders, hair clips, hair bands, hair elastics, hair combs and hair wires.
- (3) Belts, coin purses, key cases, eyeglass cases, key chains and wallets.
- (4) Men's, women's and children's imitation custom jewellery, namely necklaces, bracelets, earrings, rings and cufflinks.
- (5) Precious metals, namely sterling silver, 10, 14 or 18 carat gold and gold filled earrings, necklaces, pendants, chains, bracelets, anklets, charms and rings.

[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 September 12, 2011 and September 12, 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] In response to the Registrar’s notice, the Owner furnished the affidavit of Leon Archie Indig, President of the Owner, sworn on December 4, 2014 in Montreal.

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

The Owner’s Evidence

[8] In his affidavit, Mr. Indig states that the Owner is in the business of importing, selling and distributing across Canada jewellery, hair accessories, small leather products and costume jewellery. He states that the Owner carries on this business under the trade name Regency Jewellery Manufacturing Co.

[9] Mr. Indig explains that the Owner’s major customer for its products is Dollarama L.P., which operates retail discount stores across Canada. In support of his assertion of use of the Mark during the relevant period with respect to some of the registered goods, Mr. Indig provides clear evidence of use in the form of physical samples and representatives invoices, attached to his affidavit as Exhibits 3 through 42.

[10] In each case, the samples show the particular good with the Mark displayed on the packaging or a tag affixed to the good. The corresponding invoices show sales of the particular good in Canada during the relevant period by the Owner to Dollarama.

[11] For example, with respect to goods (1), “Jewellery”, Exhibit 41 consists of four fashion bracelets that Mr. Indig attests are representative of the jewellery sold by the Owner to Dollarama during the relevant period. Hangtags bearing the Mark are attached to the bracelets. Mr. Indig confirms that such hangtags were attached to these types of bracelets when sold. As evidence of such sales, attached as Exhibit 42 to the affidavit are three invoices showing bulk sales of the exhibited bracelets to Dollarama, all dated within the relevant period.

[12] With respect to goods (2), “hair accessories”, samples and invoices are provided for two types of “barrettes” (Exhibits 15, 16, 39 & 40); “bobby pins” (Exhibits 17 & 18); “ponytail holders” (Exhibits 19 & 20); three types of “hair clips” (Exhibits 21 through 26); “hairbands” (Exhibits 27, 28, 29 & 30); and various types of “hair elastics” (Exhibits 31 through 38). Again, all the samples bear the Mark on packaging or hang tags and all the exhibited invoices are dated within the relevant period.

[13] With respect to goods (3), a sample and invoice are provided only for the goods “coin purses”. In this respect, Exhibit 3 consists of a sample leather coin purse that Mr. Indig attests is representative of coin purses sold by the Owner to Dollarama. A hangtag bearing the Mark is attached to the purse. Exhibit 4 consists of an invoice dated during the relevant period showing the bulk sale of thousands of such coin purses.

[14] Finally, with respect to “women’s and children’s imitation costume jewellery” from goods (4), samples and invoices are provided for “necklaces” (Exhibits 5 & 6); “bracelets” (Exhibits 7 & 8); two types of “earrings” (Exhibits 9, 10, 11 & 12); and “rings” (Exhibits 13 & 14).

[15] In view of the foregoing, I am satisfied that the Owner has demonstrated use of the Mark in association with such goods within the meaning of sections 4 and 45 of the Act.

[16] As confirmed in its written representations, the Owner furnished no evidence of use of the Mark in association with the remaining registered goods. In particular, the Owner concedes

non-use with respect to “hair combs and hair wires” from goods (2), “belts, key cases, eyeglass cases, key chains and wallets” from goods (3), “cufflinks” from goods (4) and “*men’s* imitation costume jewellery” more generally from goods (4), and all of goods (5). Furthermore, the Owner furnished no evidence of special circumstances excusing such non-use of the Mark. The registration will be amended accordingly.

Disposition

[17] 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 amended to delete the following from the statement of goods:

- (2) ... hair combs and hair wires.
- (3) Belts, ... key cases, eyeglass cases, key chains and wallets.
- (4) Men’s, ... cufflinks.
- (5) Precious metals, namely sterling silver, 10, 14 or 18 carat gold and gold filled earrings, necklaces, pendants, chains, bracelets, anklets, charms and rings.

[18] The amended statement of goods will be as follows:

- (1) Jewellery.
- (2) Hair accessories, namely barrettes, bobby pins, ponytail holders, hair clips, hair bands, hair elastics.
- (3) Coin purses.
- (4) Women’s and children’s imitation custom jewellery, namely necklaces, bracelets, earrings, rings.

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

Robinson Sheppard Shapiro S.E.N.C.R.L./L.L.P.

For the Registered Owner

Gowling WLG (Canada) LLP

For the Requesting Party