

SECTION 45 PROCEEDINGS
TRADE-MARK: THE PLANT DOCTOR and DESIGN
REGISTRATION NO. 303,546

On October 24, 1989, at the request of Messrs. Gowling, Strathy & Henderson, the Registrar forwarded a Section 45 notice to Randall Prue, the registered owner of the above-referenced trade-mark registration.

The trade-mark THE PLANT DOCTOR and Design (shown below) was registered on June 7, 1985 for use in association with the following wares and services:

- Wares Plant foods and other horticultural accessories comprising the following specific wares namely liquid seaweed, fish emulsion, soils, pots, plant lights, books, pamphlets and magazine articles.
- Services: Sale, service and maintenance of as well as the educational development of the public as regards green indoor plants.



In response to the Registrar's notice, the affidavit of Randall Prue was filed. Neither party filed a written submission and no oral hearing was conducted.

Mr. Prue states in his affidavit that he has used the trade-mark THE PLANT DOCTOR and Design in Canada in association with all the registered wares and services, achieving a gross revenue in Canada of approximately \$100,000.00 per year for each of the last ten years.

As examples of the use of the trade-mark in association with the registered wares, the registrant has submitted photocopies of labels bearing subject trade-mark for the wares fish emulsion and liquid seaweed; a 1989 catalogue bearing the

trade-mark and referring to products and services available; and a price list also bearing the trade-mark. Both the price list and the catalogue also identify the registrant. I am of the view that when a consumer orders the wares from the catalogue or price list bearing the trade-mark and then receives an invoice bearing the trade-mark (see paragraph 8 iii) of the affidavit) that sufficient notice is given of the trade-mark in association with the wares pursuant to S. 4(1) of the Act. From the statements contained in paragraph 8 of the affidavit and the sales figures for each year, it can be inferred that sales of the wares were made at or immediately prior to the material date. Consequently, the evidence submitted is sufficient to show use of the trade-mark THE PLANT DOCTOR and Design by the registrant in association with all of the registered wares.

Concerning the services, I am satisfied that Exhibits C, D and E show the registered trade-mark in the advertising of all of the services. Also, Exhibit C displays the registered trade-mark in the performance of the educational development of the public regarding green indoor plants as it provides information relating to green indoor plants. It can be inferred from the sales figures and the evidence in its totality that all of the services were being offered by the registrant at or immediately prior to the material date. Consequently, the evidence shows use of the trade-mark in association with the services pursuant to S. 4(2) of the Trade-marks Act.

From the evidence filed in these proceedings, I have concluded that the trade-mark was in use in the normal course of trade in association with the wares and with the services. I have arrived at this conclusion bearing in mind the dictum enunciated in Union Electric Supply Co. Ltd. v. Registrar of Trade-marks, 63 C.P.R. (2d) 56). Therefore, registration No. 303,546 ought to be maintained on the register.

Registration No. 303,546 will be maintained in compliance with the provisions of Section 45(5) of the Trade-marks Act.

DATED AT HULL, QUEBEC, THIS 30TH DAY OF NOVEMBER

1992.

D. Savard
Senior Hearing Officer