



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

**Citation: 2010 TMOB 77**  
**Date of Decision: 2010-05-25**

**IN THE MATTER OF A SECTION 45 PROCEEDING  
requested by Borden Ladner Gervais LLP against  
registration No. TMA541,634 for the trade-mark  
TELEVISION FOR HOME & STYLE in the name of  
Canadian Home Publishers**

[1] At the request of Borden Ladner Gervais LLP (the requesting party), the Registrar forwarded a notice under s. 45 of the *Trade-marks Act* R.S.C. 1985, c. T-13 (the Act) on July 11, 2007 to Canadian Home Publishers, the registered owner of the above-referenced trade-mark (the registrant).

[2] The trade-mark TELEVISION FOR HOME & STYLE (the Mark) is registered for use in association with the following service: “television programming”.

[3] Section 45 of the Act requires the registered owner to show whether the trade-mark has been used in Canada in association with each of the wares or services 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 any time between July 11, 2004 and July 11, 2007 (the relevant period).

[4] “Use” in association with services is set out in s. 4(2) of the Act:

4. (2) A trade-mark is deemed to be used in association with services if it is used or displayed in the performance or advertising of those services.

[5] In response to the Registrar's notice, the registrant furnished the affidavit of Lynda Reeves sworn on October 11, 2007, together with Exhibits "A" and "B". Ms. Reeves states that she is the president of the registrant. Only the registrant filed written submissions and was represented at the oral hearing.

[6] It is well established that mere assertions of use are not sufficient to demonstrate use in the context of s. 45 proceedings [*Plough (Canada) Ltd v. Aerosol Fillers Inc.* (1980), 53 C.P.R. (2d) 62 (F.C.A.)]. Although the threshold for establishing use in these proceedings is quite low [*Woods Canada Ltd. v. Lang Michener* (1996), 71 C.P.R. (3d) 477 (F.C.T.D.) at 480], and evidentiary overkill is not required, 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 wares or services specified in the registration during the relevant period.

[7] With respect to the manner in which the trade-mark has been associated with the registered services, Ms. Reeves states that the Mark is featured in the advertisements of the registrant's television programs offered under its HOUSE & HOME brands. In support, sample copies of print ads found in the September 2003, 2004 and 2005 issues of the House & Home magazine are attached as Exhibit "A". The sample ads provide information about a television program called "House & Home TV", as well as its weekly broadcasting schedule on HGTV Canada. I note that in these ads, the term "TELEVISION FOR HOME & STYLE" can be seen in black below the terms "H & H" and "HOUSE & HOME", both shown in different shades of blue or brown. All three terms appear on separate lines with the Mark in a much smaller and leaner font.

[8] The use of a trade-mark in combination with additional words or features constitutes use of the registered mark if the public as a matter of first impression, would perceive the trade-mark *per se* as being used. As elaborated in *Nightingale Interloc Ltd. v. Prodesign Ltd.* (1984), 2 C.P.R. (3d) 535 (T.M.O.B.):

This is a question of fact dependent upon such factors as whether the mark stands out from the additional material, for example by the use of different lettering or sizing [...] or whether the additional material would be perceived as purely descriptive matter or as a separate trade mark or trade name [...]

See also *Canada (Registrar of Trade-marks) v. Cie International pour l'informatique CII Honeywell Bull* (1985), 4 C.P.R. (3d) 523 at 525 (F.C.A.). Furthermore, there is nothing in the legislation that prohibits the use of two or more trade-marks simultaneously [*A. W. Allen Ltd. v. Warner-Lambert Canada Inc.* (1985), 6 C.P.R. (3d) 270 (F.C.T.D.)].

[9] In the present case, given the positioning and the use of the different fonts, sizes and colours, I am of the view that the words “TELEVISION FOR HOME & STYLE” would be perceived as a separate trade-mark by the public on first impression despite having been used in conjunction with other trade-marks of the HOUSE & HOME brands in these sample print ads. Consequently, I am satisfied that the Mark *per se* has been used by the registrant during the relevant period.

[10] With respect to the circulation of the magazine, Ms. Reeves provides that it was widely circulated in Canada during the relevant period. In support, a table containing the circulation numbers of the magazine from 1986 to 2006 is attached as Exhibit “B”. I note that an average of over 250,000 paid copies of the magazine were circulated in Canada each month during the relevant period. Having considered the affiant’s statements in conjunction with the supporting documents, I am satisfied that the Mark was displayed in advertising materials that were widely circulated in Canada during the relevant period.

[11] It is well established that mere advertising of the services in Canada is not sufficient to demonstrate use of a trade-mark in association with services within the meaning of s. 4 of the Act; the registrant also needs to show that it was able and willing to offer the services in Canada during the relevant period [*Wenward (Canada) Ltd. v. Dynaturf Co.* (1976), 28 C.P.R. (2d) 20 (T.M.O.B.)].

[12] With respect to the provision of the service, Ms. Reeves explains that the registrant, whose headquarter is located in Toronto, distributed the television program in Canada. As mentioned above, the weekly broadcasting schedule of the television program on a Canadian television station, HGTV Canada, can be seen at the bottom of the September 2003, 2004 and 2005 print ads in which the Mark also appeared. When the evidence is viewed as a whole, I find it reasonable to conclude that the registrant provided television programming services in Canada during the relevant period.

[13] In view of the foregoing, I am satisfied that there was use of the Mark within the meaning of s. 45 and 4(2) of the Act in association with “television programming” during the relevant period. Accordingly, and pursuant to the authority delegated to me under s. 63(3) of the Act, registration TMA541,364 for the trade-mark TELEVISION FOR HOME & STYLE will be maintained in compliance with the provisions of s. 45 of the Act.

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P. Fung  
Hearing Officer  
Trade-marks Opposition Board  
Canadian Intellectual Property Office