



LE REGISTRAIRE DES MARQUES DE COMMERCE  
THE REGISTRAR OF TRADEMARKS

**Citation: 2019 TMOB 95**

**Date of Decision: 2019-09-16**

**IN THE MATTER OF A SECTION 45 PROCEEDING**

**Clark Wilson LLP**

**Requesting Party**

**And**

**Aquaterra Corporation**

**Registered Owner**

**TMA368,689 for NATURO**

**Registration**

[1] This is a decision involving a summary expungement proceeding under section 45 of the *Trademarks Act*, RSC 1985, c T-13 (the Act) with respect to registration No. TMA368,689 for the trademark NATURO (the Mark), owned by Aquaterra Corporation (the Owner).

[2] The Mark is registered for use in association with the goods “Eau de source.”

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

INTRODUCTION

[4] At the request of Clark Wilson LLP (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the Act on December 21, 2017, to Aquaterra Corporation (the Owner), the registered owner of the Mark.

[5] The notice required the Owner to show whether the trademark has been used in Canada in association with 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 December 21, 2014 to December 21, 2017.

[6] The relevant definition of use for goods is set out in section 4 of the Act as follows:

4(1) A trademark 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.

[7] On March 19, 2018, in response to the Registrar's notice, the Owner furnished the affidavit of Thomas J. Harrington, sworn on March 9, 2018. Neither party filed written representations. An oral hearing was not requested.

#### THE OWNER'S EVIDENCE

[8] In his affidavit, Mr. Harrington states that he is the CEO of the Owner. He states that the registered goods have been continuously sold in Canada in association with the Mark by the Owner and its predecessors in title since 1986. He explains that "eau de source" is "spring water" in English, and states that during the relevant period, the Owner sold registered goods in association with the Mark in Canada in the amount of \$2.5 million, reflecting over 950,000 bottles bearing the Mark shipped to Canadian customers in response to over 34,500 purchase orders. In support, Mr. Harrington attaches the following exhibits to his affidavit:

- Exhibit A: photographs of bottles of water with labels displaying the Mark. Beneath the word NATURO, the labels read "Eau de Source Naturelle" and "Natural Spring Water". Mr. Harrington states that the labels on these bottles are identical to those applied to the bottles containing the registered goods sold and shipped by the Owner to its Canadian customers during the relevant period.
- Exhibit B: three photographs of bottles displayed on shelves in retail stores. The bottles bear labels displaying the Mark in the same manner as the labels shown in Exhibit A. The first photograph is labeled "January 8, 2015: Giant Tiger, Mascouche, Quebec"; the second is labeled "August 8, 2016: Giant Tiger, S-Charles de Borromée, Quebec"; and the third is labeled "July 25, 2017: Retail Store in Quebec". Mr. Harrington states that the registered goods were made available for sale in Canada in the stores and on the dates as indicated on the photographs.

- Exhibit C: a close-up of the label shown in the second Exhibit B photograph, clearly showing that the Mark as registered was displayed on the bottle.
- Exhibit D: a series of invoices dated during the relevant period. Each shows sales of “Naturol8.5L Spring Water” or “Naturol8.9L Spring Water” to retailers in Quebec and Ontario. Mr. Harrington states that these are sample invoices issued by the Owner to its customers in Canada.

#### ANALYSIS

[9] 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 FC 448].

[10] In this case, the evidence provided by the Owner is more than sufficient to meet this low threshold. First, Mr. Harrington confirms that the “spring water” goods sold by the Owner correspond to the registered goods “eau de source”. Subsequently, his assertion of use with respect to such goods is supported by the exhibited photographs and invoices. The invoices show sales of the registered goods in the normal course of trade to various Canadian retailers during the relevant period, and the exhibited photographs show that the packaging of the goods prominently displayed the Mark.

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

#### DISPOSITION

[12] Accordingly, pursuant to the authority delegated to me under section 63(3) of the Act, the registration will be maintained in compliance with the provisions of section 45 of the Act.

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G.M. Melchin  
Hearing Officer  
Trademarks Opposition Board  
Canadian Intellectual Property Office

**TRADEMARKS OPPOSITION BOARD  
CANADIAN INTELLECTUAL PROPERTY OFFICE  
APPEARANCES AND AGENTS OF RECORD**

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No Hearing Held

**AGENTS OF RECORD**

D. Michael Bean

For the Registered Owner

Clark Wilson LLP

For the Requesting Party