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LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADEMARKS

Citation: 2020 TMOB 112
Date of Decision: 2020-10-15

IN THE MATTER OF A SECTION 45 PROCEEDING

Borden Ladner Gervais LLP

Requesting Party

and

Nimbus Water Systems Inc.

Registered Owner

TMA803,063 for BLU

Registration

[1] At the request of Borden Ladner Gervais LLP (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the *Trademarks Act*, RSC 1985, c T-13 (the Act) on June 6, 2017, to Nimbus Water Systems Inc. (the Owner), the registered owner of registration No. TMA803,063 for the trademark BLU (the Mark). The Mark is registered for use in association with the goods “Bottled water, namely, reverse osmosis water and reverse osmosis carbonated water.”

[2] The notice required the Owner to show whether the Mark has been used in Canada in association with the registered goods 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 June 6, 2014, to June 6, 2017.

[3] In response to the notice, the Owner furnished the affidavit of Peter Bozzo, sworn January 2, 2018. Neither party submitted written representations. No oral hearing was held.

[4] The relevant definition of use is set out in section 4(1) 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.

[5] It is well established that the purpose of section 45 of the Act is to provide a summary and expeditious procedure for removing “deadwood” from the register and, as such, the evidentiary threshold that the registered owner must meet is quite low [*Performance Apparel Corp v Uvex Toko Canada Ltd*, 2004 FC 448].

[6] In his affidavit, Mr. Bozzo explains that he is the president of the Owner, a company that sells bottled water in association with the Mark to Canadian retailers, and that he is also the president of several companies related to the Owner. He confirms that any use of the Mark by such related companies is pursuant to license granted by the Owner. The evidence shows that the Mark was displayed on the Owner’s “natural” and “sparkling” waters sold in Canada during the relevant period (paragraph 4, Exhibit A). As Mr. Bozzo identifies these products as “reverse osmosis” water, I am satisfied that the depicted products correspond to the registered goods. Furthermore, Mr. Bozzo provides six representative invoices showing sales of such BLU-branded water products in Canada during the relevant period (paragraph 6, Exhibit C). While the invoices do not distinguish between “natural” and “sparkling” waters, I note that Mr. Bozzo confirms that sales of “BLU Bottles” included both types as shown in Exhibit A.

[7] 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. 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.

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

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

HEARING DATE: No Hearing Held

AGENTS OF RECORD

Bereskin & Parr LLP/S.E.N.C.R.L., s.r.l.

For the Registered Owner

Vantek Intellectual Property LLP

For the Requesting Party