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LE REGISTRAIRE DES MARQUES DE COMMERCE  
THE REGISTRAR OF TRADEMARKS

**Citation: 2021 TMOB 276**

**Date of Decision: 2021-12-13**

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

**HGCI, Inc.**

**Requesting Party**

**and**

**Lighting and Supplies, Inc.**

**Registered Owner**

**TMA899,708 for SUNLITE**

**Registration**

INTRODUCTION

[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. TMA899,708 for the trademark SUNLITE (the Mark), currently owned by Lighting and Supplies, Inc.

[2] The Mark is registered for use in association with goods listed in Schedule “A”.

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

PROCEEDING

[4] At the request of HGCI, Inc. (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the Act on September 18, 2019, to Lighting and Supplies, Inc. (the Owner), the registered owner of the Mark.

[5] The notice required the Owner to show whether the trademark was used in Canada in association with each of 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 September 18, 2016 to September 18, 2019 (the Relevant Period).

[6] The relevant definition of use in the present case 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.

[7] 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 [*Performance Apparel Corp v Uvex Toko Canada Ltd*, 2004 FC 448 at para 68] and “evidentiary overkill” is not required [see *Union Electric Supply Co v Canada (Registrar of Trade Marks)* (1982), 63 CPR (2d) 56 (FCTD) at para 3]. Nevertheless, sufficient facts must still be provided to allow the Registrar to conclude that the mark was used in association with the goods.

[8] In the absence of use, pursuant to section 45(3) of the Act, the registration is liable to be expunged, unless the absence of use is due to special circumstances.

[9] In response to the Registrar’s notice, the Owner furnished an affidavit of Mr. Mordechai Kohn, sworn on August 4, 2020, to which were attached Exhibits A to D.

[10] Only the Owner filed written representations. No oral hearing was held.

EVIDENCE AND ANALYSIS

[11] Mr. Kohn is the Chief Executive Officer of the Owner which is in the business of manufacturing and distributing lighting products.

[12] In paragraph 4 of his affidavit, Mr. Kohn lists the products which he expressly alleges use in the ordinary course of business during the Relevant Period, as follows :

“extension cords, electric light dimmers, electronic timers, electric switch plates; lighting fixtures, vanity lighting fixtures, outdoors lighting fixtures, fluorescent light bulbs; compact fluorescent light bulbs; swirl light bulbs; compact fluorescent globe-shaped light bulbs; compact fluorescent colored swirl light bulbs; compact fluorescent colored globe shaped light bulbs, fluorescent circline light bulbs; straight-tubed fluorescent light bulbs; incandescent light bulbs; incandescent night lamps; incandescent tubular lamps; incandescent decorative lamps; incandescent reflector lamps; incandescent heat lamps; incandescent carbon filament lamps; high intensity discharge lamps; halogen lamps; halogen spot and flood lamps, decorative light fixtures, stage lamps, and studio lamps. Household electric light bulbs, candelabra flame light bulbs, candelabra topedo light bulbs, and night lights.”

[13] Mr. Kohn affirms that the goods specified above were sold to Amazon.Com.Ca. and further listed for sale on the website [www.amazon.ca](http://www.amazon.ca) (paras 6-7). He also affirms that those goods were bearing the Mark during the Relevant Period (para 9).

[14] As evidence, Mr. Kohn provides several invoices (Exhibit A). I note that all of them are dated during the Relevant Period. I also note that the Mark is prominently displayed in the top left corner of the invoices. The Mark also appears in the description of the items sold. Finally, I note that all the shipping address indicated on the invoices are located in Canada.

[15] Further to this, Mr. Kohn provides screenshots showing the products bearing the Mark offered for sale on the website [www.amazon.ca](http://www.amazon.ca) (Exhibit B). He certifies that those screenshots represent the way the goods were listed for sale during the Relevant Period (para 7).

[16] In addition, Mr. Kohn provides a report correlating the goods specified above with their corresponding invoices submitted as Exhibit A (Exhibit C).

[17] Lastly, Mr. Kohn provides photographs showing how the Mark was displayed on the products themselves, on their boxes or on their packages (Exhibit D). He states that the invoices submitted reflect sales of identical goods shown in the pictures.

[18] The affidavit and associated exhibits clearly demonstrate that the Mark was displayed on the goods expressly listed by Mr. Kahn. The evidence also clearly shows their transfer in the normal course of trade in Canada during the Relevant Period. Accordingly, I am satisfied that the Owner has demonstrated use of the Mark within the meaning of sections 4 and 45 of the Act in association with the products listed below.

[19] The remaining registered goods are:

Electrical devices for attracting and killing insects, electric wall switches, concealed spiral fluorescent light bulbs; compact fluorescent jar-shaped light bulbs; compact fluorescent chandelier light bulbs; compact fluorescent reflector light bulbs.

[20] It is well established that sufficient facts must be provided to permit the Registrar to arrive at a conclusion of use of the trademark in association with each of the goods specified in the registration during the relevant period [*John Labatt Ltd v Rainier Brewing Co* (1984), 80 CPR (2d) 228 (FCA) and *Guido Berlucchi & C Srl v Brouillette Kosie Prince*, 2007 FC 245, 56 CPR (4th) 401 at para 18]. While the Registrar is permitted to draw reasonable inferences, the evidence provided in this case does not lead me to infer any use of the Mark in association with the products I just quoted. As no special circumstances have been brought to excuse the absence of use, the registration will be amended accordingly.

#### DISPOSITION

[21] In view of all of the above, 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 goods:

Electrical devices for attracting and killing insects, electric wall switches, concealed spiral fluorescent light bulbs; compact fluorescent jar-shaped light bulbs; compact fluorescent chandelier light bulbs; compact fluorescent reflector light bulbs.

[22] Consequently, the amended statement of goods will read as follows:

- (1) Extension cords, electric light dimmers, electronic timers, electric switch plates; lighting fixtures, vanity lighting fixtures, outdoors lighting fixtures, fluorescent light bulbs; compact fluorescent light bulbs; swirl light bulbs; compact fluorescent globe-shaped light bulbs; compact fluorescent colored swirl light bulbs; compact fluorescent colored globe shaped light bulbs, fluorescent circline light bulbs; straight-tubed fluorescent light bulbs; incandescent light bulbs; incandescent night lamps; incandescent tubular lamps; incandescent decorative lamps; incandescent reflector lamps; incandescent heat lamps; incandescent carbon filament lamps; high intensity discharge lamps; halogen lamps; halogen spot and flood lamps, decorative light fixtures, stage lamps, and studio lamps.
- (2) Household electric light bulbs, candelabra flame light bulbs, candelabra topedo light bulbs, and night lights.

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Jean Carrière  
Member  
Trademarks Opposition Board  
Canadian Intellectual Property Office

SCHEDULE A

**Goods described in Registration TMA899,708**

- (1) Electrical devices for attracting and killing insects, extension cords, electric wall switches, electric light dimmers, electronic timers, electric switch plates; lighting fixtures, vanity lighting fixtures, outdoors lighting fixtures, fluorescent light bulbs; compact fluorescent light bulbs; swirl light bulbs; concealed spiral fluorescent light bulbs; compact fluorescent globe-shaped light bulbs; compact fluorescent jar-shaped light bulbs; compact fluorescent chandelier light bulbs; compact fluorescent reflector light bulbs; compact fluorescent colored swirl light bulbs; compact fluorescent colored globe shaped light bulbs, fluorescent circline light bulbs; straight-tubed fluorescent light bulbs; incandescent light bulbs; incandescent night lamps; incandescent tubular lamps; incandescent decorative lamps; incandescent reflector lamps; incandescent heat lamps; incandescent carbon filament lamps; high intensity discharge lamps; halogen lamps; halogen spot and flood lamps, decorative light fixtures, stage lamps, and studio lamps.
  
- (2) Household electric light bulbs, candelabra flame light bulbs, candelabra topedo light bulbs, and night lights.

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

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No Hearing Held

**AGENTS OF RECORD**

SMITHS IP

For the Registered Owner

OYEN WIGGS GREEN & MUTALA LLP

For the Requesting Party