



LE REGISTRAIRE DES MARQUES DE COMMERCE  
THE REGISTRAR OF TRADEMARKS

**Citation: 2022 TMOB 164**

**Date of Decision: 2022-08-25**

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

**4337107 Canada Inc.**

**Requesting Party**

**And**

**Goody Products, Inc.**

**Registered Owner**

**TMDA48,111 for “GOODY”**

**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. TMDA48,111 for the trademark “GOODY” (the Mark).

[2] The Mark is registered for use in association with the following goods:

- (1) Hair wavers, hair combs, barrettes, hair pins, hat pins, hair clasps, buckles, buttons, hair ornaments, toilet sets, dress ornaments, hat ornaments, novelty jewelry of imitation and of precious metals.
- (2) Hair nets, hair brushes, hair lifters (combs with widely spaced teeth), hair rollers, curlpapers.
- (3) Head scarves hair caps, headbands.
- (4) Hair pieces, hair pads, wig pedestals.

- (5) Pillow covers.
- (6) Tote bags.
- (7) Mirrors.
- (8) Manicure implements namely: manicure scissors; cuticle pushers; orange sticks; nail files; emery boards; nail buffers; toe nail clippers; finger nail clippers, and tweezers.
- (9) Gloves for house and garden use namely: rubber gloves.
- (10) Plastic travel containers namely: plastic soap dishes and small empty plastic bottles (to be filled with toilet preparations).
- (11) Cosmetic bags

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

THE PROCEEDING

[4] On February 12, 2021, at the request of 4337107 Canada Inc. (the Requesting Party), the Registrar of Trademarks issued a restricted notice pursuant to section 45 of the Act to Goody Products, Inc. (the Owner) for the following goods listed in the registration:

- (1) buckles, buttons, toilet sets, dress ornaments, hat ornaments, novelty jewelry of imitation and of precious metals.
- (5) Pillow covers.
- (6) Tote bags.
- (8) Manicure implements namely: manicure scissors; cuticle pushers; orange sticks; nail files; emery boards; nail buffers; toe nail clippers; finger nail clippers, and tweezers.
- (9) Gloves for house and garden use namely: rubber gloves.
- (10) Plastic travel containers namely: plastic soap dishes and small empty plastic bottles (to be filled with toilet preparations).
- (11) Cosmetic bags

[5] The notice required the Owner to show whether the Mark was used in Canada in association with the goods mentioned above in paragraph 4 at any time within the three-year period immediately preceding the date of the notice and, if not, the date when the Mark 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 between February 12, 2018 and February 12, 2021 (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] In response to the Registrar's notice, the Owner submitted the affidavit of Ms. Marina Binichis, Executive Vice President of Marketing for the Owner, sworn on September 9, 2021.

[8] Only the Requesting Party submitted written representations and no oral hearing was held.

#### THE OWNER'S EVIDENCE

[9] Ms. Binichis explains that the Owner is headquartered in the USA and is an innovative designer and manufacturer of various hair styling accessories since 1907 with products sold worldwide [paras 3 and 4], including Canada. Ms. Binichis provides the list of Canadian stores and online stores selling the Owners products; it includes Walmart, London Drugs, Lawtons, Nivel, Value Drug Mart, to name a few [para 15].

[10] In her affidavit, Ms. Binichis asserts that the Owner submits evidence of use for the following products: Plastic travel containers namely: plastic soap dishes, small empty plastic bottles (to be filled with toilet preparations), and cosmetic bags [para 9].

[11] Ms. Binichis provides Canadian sales volumes and total value per year from February 12, 2018 until February 28, 2021; they are as follows:

- Cosmetic bags: total of 127,050 units for a total value of more than \$374,000 [para 18].
- Soap dishes: total of 202,500 units for a total value of more than \$79,600 [para 19].
- Plastic bottles: total of 50,000 units for a total of more than \$77,000 [para 20].

[12] In support, Ms. Binichis attaches the following relevant exhibits to her affidavit:

- Exhibit “3”: Screenshots from Walmart.ca and LondonDrugs.com offering “Goody Travel Bottles” and “Goody Soap Dish” for sale in packages bearing the Mark. Ms. Binichis states that the products shown are the same or similar to the products available at Canadian retailers during the Relevant Period [para 10].
- Exhibit “4”: Pictures from store displays of multiple products, including plastic bottles and soap dishes in packages bearing the Mark as well as a small bag to which is attached a tag bearing the Mark. Ms. Binichis states that the products shown are the same or similar to the products available at Canadian retailers during the Relevant Period [para 11].
- Exhibit “8”: Copies of eight invoices from the Owner to Canadian customers from the Relevant Period for “Soap Dish Bagged Assort Color” with quantity and price. Ms. Binichis states that these are representative invoices evidencing sale of soap dishes from 2018 to 2021 [para 21].
- Exhibit “9”: Copies of eight invoices from the Owner to Canadian customers from the Relevant Period for “VolHSRoller Multi”, “Curl Foam Rollers”, “Clear Polyband Bag”, “Black Rubberban Bag” with quantity and price. Ms. Binichis states that these are representative invoices evidencing sale of cosmetic bags from 2018 to 2021 [para 22].
- Exhibit “10”: Copies of six invoices from the Owner to Canadian customers from the Relevant Period for “Bottle Value Pack” with quantity and price. Ms. Binichis states that these are representative invoices evidencing sale of plastic bottles from 2018 to 2020 [para 22].

#### ANALYSIS AND REASONS FOR DECISION

[13] At the outset, I note that this is a restricted section 45 notice and that the following goods are excluded from the notice and will accordingly be maintained on the registration:

- (1) Hair wavers, hair combs, barrettes, hair pins, hat pins, hair clasps, hair ornaments.
- (2) Hair nets, hair brushes, hair lifters (combs with widely spaced teeth), hair rollers, curlpapers.

- (3) Head scarves hair caps, headbands.
- (4) Hair pieces, hair pads, wig pedestals.
- (7) Mirrors.

[14] Although the threshold for establishing use in in the context of section 45 proceedings is low [*Woods Canada Ltd v Lang Michener* (1996), 71 CPR (3d) 477 (FCTD)], and evidentiary overkill is not required [*Union Electric Supply Co Ltd v Canada (Registrar of Trade Marks)* (1982), 63 CPR (2d) 56 (FCTD)], sufficient facts must still be provided to permit the Registrar to arrive at a conclusion of use of the trademark in association with the goods subjected to the restricted Section 45 notice specified in the registration during the relevant period [*John Labatt Ltd v Rainier Brewing Co* (1984), 80 CPR (2d) 228 (FCA)]. In this case, the evidence establishes that the Mark has been used in Canada by the Owner during the Relevant Period only with: Plastic travel containers namely: plastic soap dishes, small empty plastic bottles (to be filled with toilet preparations), and cosmetic bags.

[15] The Requesting Party argues, and I agree, that the Owner only submitted evidence that covers goods related to plastic travel containers namely: plastic soap dishes and small empty plastic bottles (to be filled with toilet preparations) and cosmetic bags. Given that the Owner has shown sales of these goods in Canada during the Relevant Period by providing clear statements of volume of sales [paras 18, 19 and 20] and invoices [Exhibit “8, 9, 10”] both from the Relevant Period and has shown how the Mark was displayed on the package or tag of these goods when sold to customers in Canada [Exhibit “3” and “4”], I am satisfied that the Owner has shown use of the Mark in Canada within the meaning of sections 4 and 45 of the Act.

[16] For the remaining goods covered by the restricted notice; namely, (1) buckles, buttons, toilet sets, dress ornaments, hat ornaments, novelty jewelry of imitation and of precious metals; (5) Pillow covers; (6) Tote bags; (8) Manicure implements namely: manicure scissors; cuticle pushers; orange sticks; nail files; emery boards; nail buffers; toe nail clippers; finger nail clippers, and tweezers; (9) Gloves for house and garden use namely: rubber gloves; there is no mention of any of these in the Owner’s affidavit aside from repeating the goods listed in the registration. In the absence of evidence showing use of the Mark for these remaining goods

within the meaning of sections 4 and 45 of the Act, or special circumstances to justify the absence of use, these goods will be deleted from the registration.

DISPOSITION

[17] Pursuant to the authority delegated to me under section 63(3) of the Act, the registration will be amended to delete the following goods in compliance with the provisions of section 45 of the Act:

- (1) buckles, buttons, toilet sets, dress ornaments, hat ornaments, novelty jewelry of imitation and of precious metals.
- (5) Pillow covers.
- (6) Tote bags.
- (8) Manicure implements namely: manicure scissors; cuticle pushers; orange sticks; nail files; emery boards; nail buffers; toe nail clippers; finger nail clippers, and tweezers.
- (9) Gloves for house and garden use namely: rubber gloves.

[18] The statement of goods will now read as follows:

- (1) Hair wavers, hair combs, barrettes, hair pins, hat pins, hair clasps, hair ornaments
- (2) Hair nets, hair brushes, hair lifters (combs with widely spaced teeth), hair rollers, curlpapers.
- (3) Head scarves hair caps, headbands.
- (4) Hair pieces, hair pads, wig pedestals.
- (7) Mirrors.
- (10) Plastic travel containers namely: plastic soap dishes and small empty plastic bottles (to be filled with toilet preparations).
- (11) Cosmetic bags.

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Martin Béliveau  
Chairperson  
Trademarks Opposition Board  
Canadian Intellectual Property Office

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

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**HEARING DATE** No Hearing Held

**AGENTS OF RECORD**

Ooi Chee Peggy Chooi (Chooi Law Professional  
Corporation)

For the Registered Owner

Pinto Légal

For the Requesting Party