



# Canadian Intellectual Property Office

## **THE REGISTRAR OF TRADEMARKS**

**Citation:** 2022 TMOB 223

**Date of Decision:** 2022-11-16

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

**Requesting Party:** M. Capewell & Associates Inc.

**Registered Owner:** Bollinger Industries, Inc.

**Registration:** TMA983,767 for HALO

### **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. TMA983,767 for the trademark HALO (the Mark).

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

Portable battery chargers and rechargers and accessories therefor, namely, power supply cables, connector cables, and adapters for charging and connecting with consumer electronic devices, namely power supply adapters, electric adapters, plug adapters, and interchangeable adapter tips for use with power supply and connector cables; Computer peripheral devices, namely, hand-held scanners, computer mouse devices, namely, computer mice, digital scanning software for capture, processing and transmission of digital image data, documents and images; Accessories for use with portable and hand-held electronic devices, namely, smart phones, mobile phones, tablet computers and hand-held computers, namely, speakers and earpieces; Flashlights and

rechargeable flashlights; electronic lanterns; portable light emitting diode (LED) lighting fixtures; portable utility lights; and portable lights with motion detection; all of the aforementioned specifically excluding electronic connectors and adapters for use with local area networks (LAN) or wide area networks (WAN), modules, transformers, filters and any magnetic coupling components that may be used in communications products.

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

### **THE PROCEEDING**

[4] At the request of M. Capewell & Associates Inc. (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the Act on March 3, 2021, to Halo2Cloud LLC (the Owner), the registered owner of the Mark as of that date.

[5] The notice required the Owner to show whether the Mark was used in Canada in association with each of the goods listed 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 March 3, 2018 to March 3, 2021 (the Relevant Period).

[6] On September 22, 2022, the Registrar recorded an assignment of the Mark in favour of Bollinger Industries, Inc., effective December 30, 2021 (i.e. after the Relevant Period).

[7] The relevant definition of use in the present case is set out in section 4(1) of the Act as follows:

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.

[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 the Affidavit of Chris Ahern, affirmed on September 30, 2021, to which were attached Exhibits A to N.

[10] Neither party submitted written representations. No oral hearing was held.

### **THE EVIDENCE**

[11] Mr. Ahearn is the Chief Executive Officer of Zagg Inc. and the sole member of the Owner, which he states is a wholly owned subsidiary of Zagg Inc.

[12] Mr. Ahearn states that the Owner has discontinued the use of the Mark in association with the following goods:

Computer peripheral devices, namely, hand-held scanners, computer mouse devices, namely, computer mice, digital scanning software for capture, processing and transmission of digital image data, documents and images; Accessories for use with portable and hand-held electronic devices, namely, smart phones, mobile phones, tablet computers and hand-held computers, namely, speakers and earpieces; electronic lanterns; portable light emitting diode (LED) lighting fixtures; portable utility lights; and portable lights with motion detection.

[13] Mr. Ahearn asserts that the Mark has been used in Canada by the Owner in the normal course of trade in association with the following goods (the Remaining Goods):

Portable battery chargers and rechargers and accessories therefor, namely, power supply cables, connector cables, and adapters for charging and connecting with consumer electronic devices, namely power supply adapters, electric adapters, plug adapters, and interchangeable adapter tips for use with power supply and connector cables; Flashlights and rechargeable flashlights; all of the aforementioned specifically excluding electronic connectors and adapters for use with local area networks (LAN) or wide area networks (WAN), modules, transformers, filters and any magnetic coupling components that may be used in communications products.

[14] He states that the Remaining Goods bearing the Mark are sold directly to Canadian consumers through e-commerce websites such as *zagg.com*, Amazon and *qvc.com*. In support, he provides the following exhibits, each of which he says is an accurate depiction of the products sold to customers in Canada:

Exhibit B: screen capture from *zagg.com* showing a Bolt 58830 Portable AC Car Jump Starter with a jumper cable and AC outlet for use with cars, trucks, boats, smartphones

and gaming systems. One of the pictures in the screen shot shows various connector cables and what appears to be a power supply cable. The Mark is displayed on the product itself and in the product description.

Exhibit C: screen capture from *qvc.com* showing a HALO 10,000 Powerbank with AC Plug and Charging Cables. The Mark is displayed on the product itself and in the product description.

Exhibit D: screen capture from *qvc.com* showing a HALO Mini Standing Work Light with Magnet. The Mark is displayed on the product itself and in the product description.

Exhibit E: screen capture from *amazon.ca* showing a HALO Bolt 57720 Portable Phone / Laptop Charger and Car Jump starter with AC Outlet which comes with LED flood light, USB to USB cable, car charger, AC wall plug charger and jumper cables. The Mark is displayed on the product itself and in the product description and the Owner is referenced in the product description.

Exhibit F: screen capture from *amazon.ca* showing a HALO Bolt replacement Wall Plug AC Charge Adapter for use with the 57720 charger and the 58830 charger. The Mark is displayed in the product description.

Exhibit G: screen capture from *amazon.ca* showing a HALO Portable Phone Charger Power Cube with built in wall charger and car charger with USB cables, Type-C cable and Apple Lightning cable. The Mark is displayed on the product itself and in the product description.

Exhibit H: screen capture from *amazon.ca* showing a HALO Bolt 44400 Wireless Laptop Power Bank – a portable phone / laptop charger and car jump starter with AC outlet. The Mark is displayed in the product description.

Exhibit I: screen capture from *amazon.ca* showing a HALO Bolt 58830 Portable Emergency Power Kit with tire pump, air nozzles, accessory kit, car jump starter and car charger and built in LED floodlight. The Mark is displayed on the product itself and in the product description. The device can be used as a power bank or charger for phones and laptops.

Exhibit J: screen capture from *amazon.ca* showing the HALO Bolt 57720 and 58830 compact portable car jump starters which can be used to recharge a car, phone or laptop. The Mark is displayed on the product itself and in the product description.

Exhibit K: screen capture from *zagg.com* showing a UV sanitizer with wireless charging for cell phones. The Mark is displayed in the product description.

Exhibit L: screen capture from *qvc.com* showing a HALO Bolt Flashlight and Car Jump Starter with connector cable, car charger, AC wall plug charger and jumper cables. The Mark is displayed on the case for the product and in the product description.

Exhibit M: screen capture from *zagg.com* showing a Bolt Compact portable car jump starter which can be used to charge cars, trucks, boats, laptops, smartphones, gaming systems and TV's. The Mark is displayed in the product description. Also shown on the page are HALO extra mini jumper cables.

[15] Each of the pages referenced above has an "add to cart" or similar function to permit consumer purchases.

[16] Mr. Ahearn states that the Mark generally appears on the Remaining Goods or the packaging for the Remaining Goods and on the purchase page of the e-commerce websites.

[17] Mr. Ahearn states that all portable battery chargers also include an LED floodlight and flashlight feature as depicted in Exhibits B, I and M.

[18] Exhibit N is a copy of an excerpt from the Order Register for products sold to and shipped to Canadian customers between September 2019 and March 2021. Mr. Ahearn states that the excerpt includes sales of at least the products shown in Exhibits B, I, K and M displaying and associated with the Mark as depicted in the exhibits to his Affidavit. Based on my assessment of the excerpt, it also appears to include the products shown in Exhibits E and J.

## **ANALYSIS AND REASONS FOR DECISION**

[19] Given the Owner's acknowledgement that it discontinued the use of the Mark in association with the following goods, and in the absence of evidence of special circumstances to justify non-use, they will be deleted from the registration:

Computer peripheral devices, namely, hand-held scanners, computer mouse devices, namely, computer mice, digital scanning software for capture, processing and transmission of digital image data, documents and images; Accessories for use with portable and hand-held electronic devices, namely, smart phones, mobile phones, tablet computers and hand-held computers, namely, speakers and earpieces; electronic lanterns; portable light emitting diode (LED) lighting fixtures; portable utility lights; and portable lights with motion detection.

[20] Turning to the Remaining Goods, I have kept in mind 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. The evidence in a section 45 proceeding need not be perfect; indeed, a registered owner need only establish a *prima facie* case of use within the meaning of sections 4 and 45 of the Act. This burden of proof is light; evidence must only supply facts from which a conclusion of use may follow as a logical inference [see *Diamant Elinor Inc v 88766 Canada Inc*, 2010 FC 1184].

[21] Based on a fair reading of the evidence as a whole, I am satisfied that the products shown in Exhibits B, E, I, J, K and M, namely portable chargers (with LED floodlight and flashlight feature), jumper cables, connector cables, USB to USB cables, car charger, AC wall plug chargers, were sold in Canada in the normal course of trade during the Relevant Period and that the products sold correlate to the Remaining Goods.

[22] I am satisfied that when the products shown in Exhibits B, E, I, J, K and M were sold in Canada in the normal course of trade during the Relevant Period, the Mark was displayed on the products themselves, the cases for the products or on the purchase page of the e-commerce websites when consumers made their purchases (a notice of association between a trademark and goods can be established when customers place orders by way of a catalogue or brochure that displays the trademark in close

association with those goods, and that notice of association continues when the goods are delivered [see *Dart Industries Inc v Baker & McKenzie LLP*, 2013 FC 97]).

[23] Accordingly, I am satisfied that the Mark was used in Canada by the Owner in association with the Remaining Goods during the Relevant Period within the meaning of sections 4(1) and 45 of the Act.

#### **DISPOSITION**

[24] 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:

...; Computer peripheral devices, namely, hand-held scanners, computer mouse devices, namely, computer mice, digital scanning software for capture, processing and transmission of digital image data, documents and images; Accessories for use with portable and hand-held electronic devices, namely, smart phones, mobile phones, tablet computers and hand-held computers, namely, speakers and earpieces; ...; electronic lanterns; portable light emitting diode (LED) lighting fixtures; portable utility lights; and portable lights with motion detection; ....

[25] The amended statement of goods will read as follows:

Portable battery chargers and rechargers and accessories therefor, namely, power supply cables, connector cables, and adapters for charging and connecting with consumer electronic devices, namely power supply adapters, electric adapters, plug adapters, and interchangeable adapter tips for use with power supply and connector cables; Flashlights and rechargeable flashlights; all of the aforementioned specifically excluding electronic connectors and adapters for use with local area networks (LAN) or wide area networks (WAN), modules, transformers, filters and any magnetic coupling components that may be used in communications products.

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Robert A. MacDonald  
Member  
Trademarks Opposition Board  
Canadian Intellectual Property Office

# Appearances and Agents of Record

**HEARING DATE:** No hearing held

## **AGENTS OF RECORD**

**For the Requesting Party:** Marie Capewell (M. Capewell & Associates Inc.)

**For the Registered Owner:** Miltons IP/P.I.