



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2023 TMOB 173

Date of Decision: 2023-10-10

IN THE MATTER OF A SECTION 45 PROCEEDING

Requesting Party: Henderson & Co.

Registered Owner: Beautynext Corporation

Registration: TMA887,266 for BEAUTYNEXT GROUP

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. TMA887,266 for the trademark BEAUTYNEXT GROUP (the Mark), owned by Beautynext Corporation.

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

Reseller services, namely, distributorship services in the field of cosmetics; Wholesale distributorships featuring cosmetics

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

PROCEEDING

[4] At the request of Henderson & Co. (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the Act on May 31, 2022, to Beautynext Corporation (the Owner), the registered owner of the Mark.

[5] The notice required the Owner to show whether the Mark was used in Canada in association with each of the services 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 May 31, 2019, to May 31, 2022.

[6] In response to the Registrar's notice, the Owner furnished the affidavit of Greg Levey, its CEO since October 2019.

[7] Neither party submitted written representations and no oral hearing was requested.

ANALYSIS AND REASONS FOR DECISION

[8] Greg Levey's evidence is that:

- a. The Owner's wholesale distributorship services consist of sourcing original cosmetic products, marketing materials, posters, manuals and display materials, then packaging and reselling such products to resellers and/or retailers [para 5];
- b. The Owner's reseller services consist of obtaining third-party cosmetic products, marketing materials, posters, manuals, and display materials and reselling them to resellers or retailers [para 5];
- c. The Mark was featured in documents used for the promotion and advertising of the Owner's services during the relevant period, notably:

- i. price lists provided to resellers and potential clients, featuring products sold as part of the wholesale distributorship services [para 15; Exhibit C]; and
 - ii. the “BeautyNext Group Professional Treatment Options” publication, distributed to existing and potential clients for both reseller and wholesale distributorship services [para 16; Exhibit D];
- d. The total value of sales from reseller and wholesale distributorship services to Canadian customers from March 31, 2019, to December 31, 2020, were in excess of \$1,150,000 [para 13]. Moreover, the Mark appears on an exemplary invoice dated during the relevant period [Exhibit B].

[9] The relevant definition of “use” is set out in section 4 of the Act as follows:

4(2) A trademark is deemed to be used in association with services if it is used or displayed in the performance or advertising of those services.

[10] Where the owner has not shown “use”, the registration is liable to be expunged or amended, unless there are special circumstances that excuse the absence of use.

[11] 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; the 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 [*Diamant Elinor Inc v 88766 Canada Inc*, 2010 FC 1184].

[12] Greg Levey’s statements and documentary evidence clearly show (i) the Mark on advertising materials (ii) distributed to Canadian clients (iii) during the relevant period (iv) for both reseller and wholesale distribution services, as well as (v) performance of both services. This evidence is more than sufficient to meet the Owner’s light burden. I am therefore satisfied that the Owner has demonstrated use of the Mark within the

meaning of sections 4 and 45 of the Act in association with all the services in the registration.

DISPOSITION

[13] 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 maintained in its entirety.

Emilie Dubreuil
Hearing Officer
Trademarks Opposition Board
Canadian Intellectual Property Office

Appearances and Agents of Record

HEARING DATE: No hearing held

APPEARANCES

For the Requesting Party: No one appearing

For the Registered Owner: No one appearing

AGENTS OF RECORD

For the Requesting Party: Henderson & Co.

For the Registered Owner: Gardiner Roberts LLP