



# Canadian Intellectual Property Office

## **THE REGISTRAR OF TRADEMARKS**

**Citation:** 2024 TMOB 025

**Date of Decision:** 2024-02-09

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

**Requesting Party:** Zhejiang Nowvow Mechanical and Electrical Corp., Ltd.

**Registered Owner:** Vulcan Compagnie de Palans Ltée/The Vulcan Hoist  
Company Ltd.

**Registration:** TMA606,664 for NOVA

### **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. TMA606,664 for the trademark NOVA (the Mark).

[2] The Mark is registered for use in association with “Palans manuels à chaîne, chariots manuels sur rail, leviers à rochet, grappins” [TRANSLATION: hand chain hoists, hand rail trolleys, ratchet pullers, beam clamps] (the Goods).

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

## **PROCEEDING**

[4] At the request of Zhejiang Nowvow Mechanical and Electrical Corp., Ltd. (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the Act on June 2, 2023, to Palans Ltée/The Vulcan Hoist Company Ltd (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 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 June 2, 2020 to June 2, 2023.

[6] The relevant definition of “use” in the present case is set out in section 4 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. 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 [per *Diamant Elinor Inc v 88766 Canada Inc*, 2010 FC 1184 at para 9].

[8] In response to the Registrar’s notice, the Owner furnished the affidavit of Alain Giasson, President and CEO of the Owner, sworn on August 28, 2023, together with Exhibits A to E. Only the Owner submitted written representations and no hearing was held.

## **EVIDENCE AND ANALYSIS**

[9] Mr. Giasson states that the Owner's activities include the sale of the Goods. He asserts that the Owner used the Mark in association with the Goods in Canada during the relevant period. In particular, he states that the goods were available for sale by telephone and through the Owner's website *vulcanhoist.com* (the Website) [paras 6, 9 and 10].

[10] As Exhibit B, Mr. Giasson attaches two photographs, each of which shows two products assembled on a metal beam. He correlates two of these products with the goods "ratchet puller" and "beam clamp". He describes the two other products as "chain block" and "trolley". The Mark is displayed on metal plates applied to each of these products. As Exhibit C, he attaches six printouts of the Website, which Mr. Giasson states are representative of how the Mark was associated with the Goods on the Website throughout the relevant period [para 10]. The printouts show products photographed individually, among which are a ratchet puller, a beam clamp and a product identified as "adjustable NOVA trolley". I note that the latter product is essentially the same described as "trolley" in one of the photographs. The Mark is displayed on these three products in the same manner as that shown in the photographs. As Exhibit E, Mr. Giasson attaches five operating manuals, which he states accompanied the Goods purchased in Canada [para 13]. The manuals include descriptions and images of several products, four of which are essentially the same as those shown in the photographs and printouts. I note that the product described as "chain block" in one of the photographs is identified as "hand chain hoists" in its manual. The Mark is displayed on the cover pages of all the manuals.

[11] Given Mr. Giasson's correlation, I am satisfied that they show how the Mark was associated with "beam clamps" and "ratchet pullers" during the relevant period. Further, the manual's content allows me to conclude that the product described as "chain block" in one of the photographs correlates with "hand chain hoists". As for the product described or identified as "trolley" and as "adjustable trolley", from the evidence as a whole, I find that it reasonably correlates with "hand rail trolleys".

[12] With respect to the transfer of the Goods, Mr. Giasson asserts that their approximate sales in Canada during the relevant period were in excess of 8 million dollars. He also asserts that he could identify in the records at least one sale of each of the Goods [para 11]. As Exhibit D, he attaches a number of invoices, all issued by the Owner to Canadian purchasers and dated during the relevant period. All the products listed in the body of the invoices are identified with the Mark.

[13] From the review of the invoices, I note that the beam clamps and the ratchet pullers are identified in the body of their respective invoices in the same way as in the registration. I therefore find that the invoices detailing these products clearly demonstrate transfers of “beam clamps” and “ratchet pullers” in Canada during the relevant period. A similar conclusion applies to the product listed as “CHAIN BLOCK 20’ LIFT” on the invoice number 112609, as I have concluded that a product identified as “chain block” correlates with “hand chain hoists”. As for the product identified as [TRANSLATION] “PUSH TROLLEY COMBINED WHEELS” on the invoice number 115049, taking at face value Mr. Giasson’s statement that he identified at least one sale of each of the Goods, I accept that this product correlates with “hand rail trolleys”. I therefore find that the invoice number 115049 show sales of “hand rail trolleys” in Canada during the relevant period.

[14] In view of the representative printouts showing a ratchet puller, a beam clamp and a hand rail trolley bearing the Mark, I conclude that the requisite notice of association was given at the time of transfer of possession, namely upon delivery of these goods to Canadian purchasers. As for the hand chain hoists, given that the images of this good in the operating manual display the Mark, I find it reasonable to conclude that such good also bore the Mark when delivered to Canadian purchasers. In any event, if I am wrong in so finding, I would still find that the operating manual accompanying the hand chain hoists provided the requisite notice of association at the time of delivery.

[15] As the Owner has demonstrated that the Mark was displayed on the Goods at the time of their transfer, and has shown that they were sold in Canada in the normal

course of trade, I am satisfied that the Owner has shown use of the Mark in association with the Goods within the meaning of sections 4(1) and 45 of the Act.

**DISPOSITION**

[16] Accordingly, 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.

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Maria Ledezma  
Hearing Officer  
Trademarks Opposition Board  
Canadian Intellectual Property Office

# Appearances and Agents of Record

**HEARING DATE:** No hearing held

## **AGENTS OF RECORD**

**For the Requesting Party:** Warren Sinclair LLP

**For the Registered Owner:** Osler, Hoskin & Harcourt LLP