Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2024 TMOB 56

Date of Decision: 2024-03-26

IN THE MATTER OF A SECTION 45 PROCEEDING

Requesting Party: WHC zShuttle, LLC

Registered Owner: Super Shuttle Share-A-Ride Corp.

Registration: TMA999,708 for SUPER SHUTTLE SHARE-A-RIDE

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. TMA999,708, for the trademark SUPER SHUTTLE SHARE-A-RIDE (the Mark), which is registered for use in association with the following services:

> Ground transportation services, namely bus services, limousine services and taxi services.

[2] For the following reasons, the registration will be maintained.

PROCEEDING

[3] At the request of WHC zShuttle, LLC (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the Act on November 8, 2022, to Super Shuttle Share-A-Ride Corp. (the Owner), the registered owner of the Mark.

[4] The notice required the Owner to show whether the Mark was used in Canada in association with each of the services stated 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 use since that date. In this case, the relevant period for showing use is November 8, 2019 to November 8, 2022.

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

[6] 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 [see *Diamant Elinor Inc v 88766 Canada Inc*, 2010 FC 1184 at paras 2, 9].

[7] In response to the Registrar's notice, the Owner furnished the affidavit of Vazken Kerametlian, sworn on June 5, 2023 (the Kerametlian Affidavit). Neither party submitted written representations, and no hearing was held.

EVIDENCE AND ANALYSIS

[8] Mr. Kerametlian is the President of the Owner [Kerametlian Affidavit, para 4]. He swears that the Mark has been used by both the Owner and its licensees, in association with the Owner's services, since at least the mid-1990's and throughout the relevant period [paras 3, 7, 9]. The particular services provided by the Owner and its licensees

are described on various websites operated by the Owner [paras 12(e),12(f), and Exhibits F, G]. The Owner's services appear to be in the nature of airport shuttle and taxi services, airport limousines and corporate limousines, which correspond to the services stated in the registration. When the Mark is used by the Owner's licensees, Mr. Kerametlian states that the Owner exerts control over the character or quality of the services being offered in association with the Mark, and provides a description of how such control is exerted [para 10].

[9] Mr. Kerametlian's affidavit includes an email from a longstanding customer of the Owner, who states that he used the Owner's services on several dates within the relevant period [para 13, and Exhibit H]. Mr. Kerametlian also swears that he believes the customer's statements to be true [para 13]. While the statements in the customer's email are hearsay, it is well settled that a strict approach to hearsay is not appropriate in section 45 proceedings [*FCA US LLC v Pentastar Transportation Ltd,* 2019 FC 745 at para 46]. In view of Mr. Kerametlian's sworn statement that he believes the customer's statements are true, and the absence of any suggestion to the contrary in the evidence, I am prepared to give the statements in the customer email some weight.

[10] Mr. Kerametlian states that the Mark was used during the relevant period by displaying the Mark on the website of the Owner and at least one of its licensees, Pearson International Limousine Inc. [paras 7, 11]. Printouts from these websites, as they appeared during the relevant period, are provided [paras 12(e), 12(f), and Exhibits F, G]. Mr. Kerametlian states that the Mark was also displayed during the relevant period on other advertising and promotional items, such as brochures, business cards, letterhead, and promotional note pads, as well as print advertisements that appeared in playbills from an event at the Armenian Youth Centre in Toronto, Ontario [paras 11, 12(a)-(d)]. Mr. Kerametlian provides representative examples of these items, which include the Mark [paras 11, 12(a)-(d), and Exhibits A-E]. Mr. Kerametlian also states that the Mark appeared on invoices issued to customers throughout the relevant period when the Owner's services were provided [para 14], and provides a copy of a blank invoice bearing the mark [Exhibit I].

[11] I am satisfied that Mr. Kerametlian's evidence shows that the Mark was in use during the relevant period, in association with the services stated in the registration. It is well established that the display of a trademark in an advertisement of services is sufficient to satisfy the requirements of section 4(2) of the Act, from the time the owner of the trademark is willing and able to perform services in Canada [see *Wenward (Canada) Ltd v Dynaturf Co* (1976), 28 CPR (2d) 20 (TMOB)]. Mr. Kerametlian's evidence establishes that the Owner's services were advertised during the relevant period, at least on the websites of the Owner and its licensees [Exhibits F, G] and in the print advertisements appearing in playbills [para 12(c), and Exhibit C, fourth page], and that these advertisements featured the Mark.

[12] Furthermore, considering the evidence as a whole and the light evidentiary burden in section 45 proceedings, I am prepared to accept that the Owner was willing and able to perform its services in Canada throughout the relevant period. Mr. Kerametlian's sworn evidence that the Owner's services have been provided since at least the mid-1990's, and that invoices bearing the Mark were issued to customers throughout the relevant period, both support a *prima facie* conclusion that the Owner's services were in fact provided during the relevant period. This conclusion is further supported by the statements of the Owner's longstanding customer that services were received during the relevant period.

[13] For at least the foregoing reasons, I am satisfied that the Owner has established at least a *prima facie* case of use of the Mark in Canada during the relevant period, in association with the services stated in the registration, as required under section 45 of the Act.

DISPOSITION

[14] 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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Jaimie Bordman
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: Borden Ladner Gervais LLP

For the Registered Owner: Gilbert’s LLP