



## Canadian Intellectual Property Office

### THE REGISTRAR OF TRADEMARKS

**Citation:** 2024 TMOB 117

**Date of Decision:** 2024-06-19

### IN THE MATTER OF SECTION 45 PROCEEDINGS

**Requesting Party:** Ridout & Maybee LLP

**Registered Owner:** Tiffin Motor Homes, Inc.

**Registrations:** TMA871,604 for ALLEGRO, and  
TMA890,382 for ALLEGRO DESIGN

### INTRODUCTION

[1] This is a decision involving summary expungement proceedings under section 45 of the *Trademarks Act*, RSC 1985, c T-13 (the Act) with respect to registration Nos. TMA871,604 for the trademark ALLEGRO (the Word Mark) and TMA890,382 for the trademark ALLEGRO DESIGN (the Design Mark), shown below, collectively referred to as the Marks.

**ALLEGRO**

[2] The Marks are registered for use in association with “Motor homes”.

[3] For the reasons that follow, I conclude that the registrations should be maintained.

**PROCEEDING**

[4] At the request of Ridout & Maybee LLP (the Requesting Party), the Registrar of Trademarks issued notices under section 45 of the Act on February 15, 2023, to Tiffin Motor Homes, Inc. (the Owner).

[5] The notices required the Owner to show whether the Marks were used in Canada in association with each registered good at any time within the three-year period before the notices' date. If not, the Owner had to provide the last date of use and the reason for the absence of use since that date. In this case, the relevant period for showing use is February 15, 2020, to February 15, 2023.

[6] The definition of "use" in association with goods 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] Where an 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.

[8] In response to each of the Registrar's the notices, the Owner furnished an affidavit of Leigh Tiffin, the Owner's President, sworn on September 12, 2023, to which were attached Exhibits A through L. The content of both affidavits is substantially the same.

## **REASONS FOR DECISION**

[9] The purpose of section 45 of the Act is to create a summary procedure for clearing the register of marks that have fallen into disuse, often described as a process for removing “deadwood”. Evidentiary overkill is not required [*Miller Thomson LLP v Hilton Worldwide Holding LLP*, 2020 FCA 134 at paras 9-10]. To maintain a registration, an owner need only establish use on a *prima facie* basis [*Sport Maska Inc v Bauer Hockey Corp*, 2016 FCA 44 at para 55]. The burden of proof is light. All that is required is for evidence to supply facts from which a conclusion of use may follow as a logical inference [*Diamant Elinor Inc v 88766 Canada Inc*, 2010 FC 1184].

[10] As both registrations list only “motor homes”, the only question is whether the Owner’s evidence shows use of the Marks in association therewith during the relevant period.

[11] The Requesting Party submits that the Owner’s evidence fails to do so as it is insufficient to establish (i) the Owner’s normal course of trade; (ii) sales of motor homes to consumers in Canada during the relevant period; or (iii) display of the Marks on motor homes or otherwise associated therewith so that notice of association was given to the purchaser at the time of transfer.

[12] The Owner submits that the evidence is more than sufficient to show all three elements as required pursuant to section 4 of the Act.

### ***Owner’s normal course of trade***

[13] The Requesting Party submits that the Owner’s evidence is insufficient to show its normal course of trade as it does not explain how the motor homes are sold in Canada or how they are transferred or delivered to a customer in Canada.

[14] I disagree. The Owner provides a list of the “Canadian Dealers that represented the Owner for the sale of Goods in Canada during the Critical Period” [para 12, Exhibit H], and excerpts from some of their websites offering motor homes for sale, which Mr. Tiffin states “reflect the use” of the Marks during the relevant period [para 5, Exhibit A].

[15] Keeping in mind that it is not necessary to show transactions along the entire chain to the ultimate consumer for them to be in the ordinary course of trade [*CBM Kabushiki Kaisha v Lin Trading Co.* (1988), 21 CPR (3d) 417 (FCA)], I find the Owner’s evidence establishes its normal course of trade as selling motor homes to or through local Canadian dealers, from which customers in Canada purchase motor homes.

***Sales of motor homes to Canadian consumers***

[16] The Requesting Party submits that the Owner’s evidence is insufficient to establish transfer of any motor homes in Canada, highlighting that the evidence contains only alleged sales, but not a single invoice, which would have been readily available.

[17] Again, I disagree. While it is true that the Owner did not file any invoices, they are not mandatory [*Lewis Thomson & Son Ltd v Rogers, Bereskin & Parr* (1988), 21 CPR (3d) 483 (FCTD)]. What must be provided is some evidence of a transfer in the normal course of trade in Canada [*John Labatt Ltd v Rainier Brewing Co* (1984), 80 CPR (2d) 228 (FCA)]. Such evidence can be in the form of documentation like invoices, but also sales reports or clear sworn statements regarding volumes of sales, dollar value of sales, or equivalent factual particulars [see, for example, *1471706 Ontario Inc v Momo Design srl*, 2014 TMOB 79].

[18] The Owner's evidence of sales consists notably of a chart containing what Mr. Tiffin identifies as "sales figures evidencing the sale of the Goods by the Owner in Canada during the Critical Period" [para 7, Exhibit C].

[19] This chart is an itemized sales report containing, among other information: dealers by name, city and region of Canada; a "sale date" per item within the relevant period; a "model number" indicating what I understand from the totality of the evidence to be one of five different models of motor homes; and a "net value", which ranges from roughly \$120,000 to over \$450,000 per model.

[20] The Owner's written representations tally the information from this report as including 140 units, broken down by model as follows: "'ALLEGRO" (count of 57), "ALLEGRO BREEZE" (count of 6), "ALLEGRO BUS" (count of 35), "ALLEGRO RED" (count of 33), and "ALLEGRO RED340" (count of 9)" [Written Submissions of the Registrant, para 10]. The total value for the 140 units in question is significant, representing tens of millions of dollars.

[21] Moreover, the names of the dealers identified in the chart correlate with the list of dealers Mr. Tiffin attests represented the Owner in Canada [see paras 5 & 12, Exhibits A and H].

[22] Insofar as a single sale can be sufficient to establish use for the purposes of section 45 expungement proceedings [*Philip Morris Inc v Imperial Tobacco Ltd* (1987), 13 CPR (3d) 289 (FCTD) at 293], and an affiant's statements are to be accorded substantial credibility [*Oyen Wiggs Green & Mutala LLP v Atari Interactive, Inc*, 2018 TMOB 79 at para 25], I am satisfied that the Owner's evidence shows sales of the motor home models identified in the sales report in Canada during the relevant period.

***Use of the Marks on or associated with motor homes***

[23] The Requesting Party submits that the Owner's evidence is insufficient to show that the Marks were either directly on the motor homes sold in Canada or otherwise sufficiently associated therewith such that notice of association was given at the time of transfer.

[24] Mr. Tiffin's affidavit contains various advertisements or promotional materials showing the Marks [e.g. - Exhibits D, E, G, I and K]. The Requesting Party submits that there is no evidence that they accompanied the transfer or possession of the motor homes [citing *BMW Canada Inc v Nissan Canada Inc* (2007), FCA 255 at para 25]. I agree.

[25] Mr. Tiffin's affidavit further contains decals bearing the Marks [Exhibits B and J]. The Requesting Party submits that there is no evidence that the decals were sold. Again, I agree. Moreover, ultimately, Mr. Tiffin's evidence does not show how these decals appeared on motor homes sold in Canada.

[26] That being said, Mr. Tiffin's affidavit also contains photographs of motor homes. He clearly attests that the photographs are "of the Goods that were sold in Canada as they appeared during the Critical Period" [para 10, Exhibit F], and "consistent with the Goods sold during the critical period" [para 16, Exhibit L].

[27] Two of these photographs, reproduced below, show two different motor homes that display a stylized version of the word ALLEGRO.



[28] Although clearer images would certainly have been beneficial, I am satisfied that the stylized version of the word ALLEGRO shown in the above photographs constitutes display of the Design Mark. To the extent that any additional material surrounds it, I find the Design Mark did not lose its identity and remained recognizable given the preservation of its dominant features, namely the word ALLEGRO, the font of its letters and the extended “L”s forming a double underline [*Canada (Registrar of Trade Marks) v Cie internationale pour l’informatique CII Honeywell Bull SA* (1985), 4 CPR (3d) 523 (FCA); *Promafil Canada Ltée v Munsingwear Inc*, 1992 CanLII 12831, 44 CPR (3d) 59 (FCA)].

[29] Again, it would have been beneficial for the Owner to provide clearer evidence of which sales in the itemized report are of motor homes bearing the Design Mark. However, section 45 proceedings are summary in nature [*Sea Tow Services International, Inc v Trademark Factory International Inc*, 2021 FC 550 at para 40] and do not require evidence to be perfect [*Lewis Thomson & Son Ltd v Rogers, Bereskin & Parr* (1988), 21 CPR (3d) 483 (FCTD)].

[30] Keeping these principles in mind, I find the Owner’s evidence sufficient to show that at least some of the 140 motor homes shown to have been sold in Canada during the relevant period displayed the Design Mark.

[31] With regard to the Word Mark, as submitted in the Owner's written representations, registration of a word mark permits the Owner to use it with any style of lettering [*Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27 at para 55]. I therefore find that, in this case, use of the Design Mark constitutes use of the Word Mark.

[32] Moreover, although not strictly necessary, I also find that the evidence, considered as a whole, shows that the word ALLEGRO, in various styles which also constitute use of the Word Mark, was displayed on many of the models of motor homes sold in Canada during the relevant period.

[33] In view of all the foregoing, I am satisfied that the Owner has demonstrated use of the Marks within the meaning of sections 4(1) and 45 of the Act.

**DISPOSITION**

[34] 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, both registrations will be maintained.

Emilie Dubreuil  
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:** Smart & Biggar LP

**For the Registered Owner:** Gowling WLG (Canada) LLP