



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2025 TMOB 34

Date of Decision: 2025-02-27

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

IN THE MATTER OF A SECTION 45 PROCEEDING

Requesting Party: Cain Lamarre, LLP

Registered owner: Mode Le Grenier Inc.

Registration: TMA442081 for POIS DE SENTEUR

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. TMA442081 for the trademark POIS DE SENTEUR (the Mark), owned by Mode le Grenier Inc. (the Owner), registered in association with the following goods:

[TRANSLATION]

Skin care products and beauty products, namely: creams, ointments, soaps, foams, moisturizing bath milks, perfumed waters as well as pacifier clips for babies, cases for holding bath products such as those aforementioned, sponges, diaper bags, plush toys and bathrobes.

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

PROCEEDING

[3] At the request of Cain Lamarre, LLP (the Requesting Party), the Registrar issued a notice to the Owner under section 45 of the Act on April 8, 2024.

[4] The notice required the Owner to show whether the Mark was used in Canada, within the meaning of section 4(1) of the Act, in association with each of the goods specified in the registration, at any time during the relevant period, from April 8, 2021, to April 8, 2024. If not, the Owner was to indicate the date when the Mark was last used and the reason for its absence of use since that date.

[5] In the absence of use, a trademark registration is liable to be expunged unless the absence of use is due to special circumstances.

[6] In response to the registrar's notice, the Owner filed the affidavit of Éliane Goulet, R&D Manager of the Owner's DANS UN JARDIN division, sworn on July 8, 2024, which includes exhibits EG-1 to EG-10.

[7] Both parties submitted written representations; no oral hearing was held.

SUMMARY OF THE EVIDENCE

[8] In her affidavit, Ms. Goulet states that the Owner operates approximately 30 DANS UN JARDIN in various shopping centres in Quebec as well as a transactional website [para 9].

[9] She asserts that the "POIS DE SENTEUR" goods, exclusive to DANS UN JARDIN stores, were sold there during the relevant period. She explains that the products in question underwent a change in "look" during the relevant period, and shows both versions, each displaying the Mark [paras 10-14].

[10] For each of the following goods, Ms. Goulet provides the name of the good as specified in the registration, the product's nomenclature and internal code, a close-up image showing the Mark directly on the good or its packaging, and an invoice dated from the relevant period on which the internal code is highlighted:

- Creams [paras 17–18, Exhibit EG-2];
- Ointment [paras 19–20, Exhibit EG-3];
- Soap [paras 21–22, Exhibit EG-4];
- Foams [paras 23–24, Exhibit EG-5];
- Perfumed water [paras 25–26, Exhibit EG-6];
- Pacifier clip for babies [paras 27–28, Exhibit EG-7];
- Cases to hold bath products [paras 29–30, Exhibit EG-8];
- Plush mascot [paras 31–32, Exhibit EG-9];
- Bathrobe [paras 33–34, Exhibit EG-10].

ANALYSIS

[11] The purpose of section 45 of the Act is to provide a simple, summary, and expeditious procedure for removing “deadwood” [*Miller Thomson LLP v Hilton Worldwide Holding LLP*, 2020 FCA 134]. In light of this, the evidentiary threshold that the Owner must meet is quite low [*Performance Apparel Corp v Uvex Toko Canada Ltd.*, 2004 FC 448 at para 38] and “evidentiary overkill” is not required [see *Union Electric Supply Co Ltd v Registrar of Trademarks* (1982), 63 CPR (2d) 56 (FCTD) at para 3]. However, the Owner must adduce sufficient evidence to allow the Registrar to conclude that the Mark has been used in association with each of the goods specified in the registration, during the relevant period [*John Labatt Ltd v Rainier Brewing Co* (1984), 80 CPR (2d) 228 (FCA)].

[12] The parties agree that the evidence does not demonstrate the use of the Mark in association with the goods “moisturizing bath milks”, “sponges” or “diaper bags”.

[13] However, the Owner submits that the evidence demonstrates the use of the Mark with all other goods specified in the registration. Although not explicitly acknowledged, I understand that the Requesting Party agrees, as they only request the expungement of the three goods identified in the preceding paragraph.

[14] I agree with the parties. I am of the view that the evidence shows the Mark displayed on the following products or their packaging, as well as their transfer in Canada in the ordinary course of trade during the relevant period:

[TRANSLATION]

Skin care products and beauty products, namely: creams, ointments, soaps, foams, ... perfumed waters as well as pacifier clips for babies, cases for holding bath products such as those aforementioned ... plush toys and bathrobes.

I therefore consider that the Owner has demonstrated the use of the Mark within the meaning of sections 4(1) and 45 of the Act in association with these goods.

[15] However, the evidence is silent on “moisturizing bath milks”, “sponges”, and “diaper bags”. There is no evidence before me to demonstrate the use of the Mark within the meaning of section 4(1) of the Act in association with these three goods, or the existence of special circumstances justifying the non-use within the meaning of section 45(3). These three goods will therefore be expunged from the registration.

DISPOSITION

[16] Pursuant to the authority delegated to me under section 63(3) of the Act, the registration will be amended to expunge the goods “moisturizing bath milks”, “sponges” and “diaper bags” in accordance with the provisions of section 45 of the Act

[17] The registration will be maintained for the following goods:

[TRANSLATION]

Skin care products and beauty products, namely: creams, ointments, soaps, foams, ... perfumed waters as well as pacifier clips for babies, cases for holding bath products such as those aforementioned ... plush toys and bathrobes.

Emilie Dubreuil
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

Certified translation
Gerald Woodard

Appearances and Agents of Record

No hearing held.

AGENTS OF RECORD

For the Requesting Party: Stéphanie Thurber

For the Registered Owner: BCF S.E.N.C.R.L. / BCF LLP