

RECORDAL OF TRADE-MARKS LICENCES IN CANADA

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The Trade-marks Office now records, since April 1996, licence agreements and documents terminating licence agreements, with respect to registered trade-marks.

The licence agreement or the document cancelling a licence is placed on the Office's trade-mark file, and an explanatory note is inscribed on the register, upon receipt by the Office of the prescribed fee (25 \$ per mark). However, the Office advises that in so doing, it takes no position with respect to the effect of the recordal of licence agreements and documents terminating licence agreements.

Before June 9, 1993, the *Trade-marks Act* included provisions on the recordal of registered users, i.e. entities or persons to whom the trade-mark owner had permitted use of the trade-mark. The 1993 amendments to the Act repealed the registered user system and replaced it with the concept of use under licence, without necessity of registration.

Section 50 of the Act provides the parameters of use under licence which is deemed to benefit the registered owner: authorization, designation of the country covered by the licence, direct or indirect control by the owner of the character or quality of the wares or services. Section 50(2) also provides that to the extent that public notice is given of the fact that the use of a trade-mark is a licensed use, and of the identity of the owner, a licence shall be presumed to exist.

Section 50, which does not impose formal requirements upon the owner and his licensee, with respect to their agreement, is not modified by the Trade-marks Office's new administrative policy on the recordal of licence agreements and documents terminating licence agreements. This recordal is

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made under sub-paragraph 26(2)(c) of the Act, which includes, among the information to be shown on the register with reference to each registered trade-mark, a summary of all documents deposited with the application for registration or subsequently thereto, and affecting the rights to the trade-mark.

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