

1925
Dec. 9.

MAX JACOBSPETITIONER;

AND

W. F. BUSHOBJECTING PARTY.

*Trade-Marks—Voluntary Association—Right to object to registration—
“Person aggrieved”—“Interest.”*

J. filed a petition to be permitted to register a certain trade-mark, and the objecting party was authorized, by order of this court, to oppose such application for the benefit of the Union Garment Workers of America, a voluntary association or trade union. Upon application by petitioner to have the objections filed by Bush dismissed because he was not a person entitled to object, it was

Held, that section 42 of the Trade-Marks and Designs Act applied only where a person is seeking to have a trade-mark expunged, varied or rectified, in which case such person must be a “person aggrieved,” but that in the present case any person “interested” may oppose the registration, and that the objecting party herein was a person entitled to so object to the registration asked for, under rules 34 et seq. of the Rules and Orders of this Court.

HEARING on questions of law.

Ottawa, October 30, 1925.

Hearing on said questions of law had before the Honourable Mr. Justice Maclean.

R. S. Smart for the petitioner.

L. P. Sherwood for the objecting party.

(1) [1900] 6 Ex. C.R. 374.

(2) [1919] 19 Ex. C.R. 304.

(3) [1901] 7 Ex. C.R. 150; 33 S.C.R. 252.

The facts are stated in the reasons for judgment.

MACLEAN J., now this 9th day of December, 1925, delivered judgment.

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By his petition filed herein on the 17th of March, 1925, Max Jacobs, doing business in Montreal as a manufacturer of overalls and other garments under the name and style of the Union Overall Manufacturing Company of Canada, seeks to obtain an order of the court directing that a mark or label consisting of two clasped hands with the words "Mechanics and Labourers are you Union Men," and the words "Union Overalls of Canada" be registered as a specific trade-mark in Canada.

On the 6th June, 1925, an order was made by me directing that

Walter Frederick Bush, of Greenwood, in the province of Ontario be and he is hereby authorized to oppose this application on behalf of and for the benefit of the United Garment Workers of America, and that all members of the said association be bound by the result of this action or proceeding as though they had been before the court throughout the action or proceeding.

On the 9th of July, Bush, in his representative capacity, filed a statement of objections to the petition alleging, among other things, that the United Garment Workers of America was a voluntary association or trade union having its chief place of business in New York City, U.S.A., that it had a large membership throughout the United States and Canada, and that he, Bush, was a member of it. He further alleged that the association was organized in April, 1891, and about that time had adopted as its distinguishing badge or union label a representation of two clasped hands; that such label had been used by the association continuously since its adoption in connection with its various activities, and is usually associated with other features, as, for instance, the name of the association; that the association has contracts with a large number of manufacturers in the United States and Canada whereby such manufacturers operate their establishments as union shops and are permitted by the association, as a method of advertising and as a means of promoting sales, to affix the union label to all garments manufactured by them under such contracts; that the petitioner has no contract with the association, and that his establishment is not operated

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under or in accordance with the rules of the association nor is union labour employed therein; that the said label is used by the petitioner without the permission of the association. The association further alleges that the label is not the proper subject of a trade-mark, is calculated to deceive or mislead the public, and that the association would be aggrieved by such registration.

On the 23rd October, 1925, Mr. R. S. Smart, on behalf of the petitioner, obtained an order setting the case down for argument on points of law. These points substantially ask it to be determined whether Bush is a person entitled to appear and file a statement of objections herein; whether the use of the label of the said association is such as entitled it to object to the registration of the mark in question by the petitioner; and whether the facts set out in Bush's statement of objections constitute any answer to the prayer of the petition.

The argument of the said points of law was heard before me on the 30th October, 1925, Mr. R. S. Smart appearing for the petitioner, and Mr. L. P. Sherwood for Mr. Bush. It is well to state here that a statement of objections to the petition was also filed by the Superior Knitting Mills, Limited, of Winnipeg, but that company was not represented at the hearing of the said argument, and took no part therein.

I think it well to confine my present decision on the points of law to the question as to whether Mr. Bush is a person entitled to file a statement of objections to the petition, leaving the other points mentioned to go over for consideration at the trial.

So far as the pleadings disclose—and on the present hearing I am confined to the facts as stated therein—I see no reason to order that the statement of objections filed by Mr. Bush should be stricken out of the record.

It is no answer to the objections of this voluntary association or trade union to say that they have as a body no legal right to register as a trade-mark the label used by them in connection with their various activities. That might well be the case, but it does not derogate from their right to oppose the registration of their label, as a trade-mark by the petitioner.

Mr. Smart objects that this trade union is not a "person aggrieved" by the proposal of the petitioner to register the mark in question. I do not find, either by statute or by the rules of court, that a person desiring to oppose a petition for registration must especially qualify as a "person aggrieved." It is true that section 42 of the Trade-Marks and Designs Act contemplates that any person taking action to expunge or vary the entry of a trade-mark must be a "person aggrieved," but that is not this case. Here the trade union is opposing an application to register a mark which affects their interests, an entirely different matter. Turning to the Rules governing such a matter, I find that Rule 34 directs that a petitioner for registration, must publish a notice of his petition, requiring "any person desiring to oppose it" to file his objections within a specified time. Rule 35 requires the petition to be served "upon any person known to the petitioner to be interested in or opposed to the application." Rule 37 directs the time within which "any person" who appears to oppose the application to register, must file his statement of objections. Nothing is said in any of these Rules as to the person objecting being a "person aggrieved." I cannot reach the conclusion that Mr. Bush, who has been authorized to represent the United Garment Workers of America, in these proceedings is not "a person" within the meaning of the Rules above cited. As I have before pointed out, he is a member of such association.

The application of the petitioner to have the statement of objections by Mr. Bush dismissed from the record is refused, and with costs to the objecting party Bush, in any event.

Judgment accordingly.

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