

BAUSCH & LOMB OPTICAL COMPANY... APPELLANT;

AND

THE COMMISSIONER OF PATENTS... RESPONDENT.

1930
 Mar. 6.
 Mar. 7.

Trade-marks—Specific trade-marks—Expiration—Section 11 (b) and Sec. 17 of the Trade-Marks and Designs Act—Registered trade-mark.

In December, 1929, B. & L.O. Co. applied to have the letters "B. & L" registered as a trade-mark. This application was refused by the Commissioner of Patents for the sole reason that one Laurence had registered the letters "B.L." as a specific trade-mark in the year 1885. This latter mark was never renewed. Hence this appeal.

Held, that the trade-mark "B.L." having expired in the year 1910, was not at the time of the application of B. & L.O. Co. a registered trade-mark within the meaning of Section 11 (b) of the Trade-Marks and Designs Act; and that the Commissioner of Patents was not justified in refusing the application aforesaid solely because of the registration aforesaid made in the year 1885.

APPEAL from the decision of the Commissioner of Patents dated the 16th December, 1929, rejecting the application of the appellants herein to register the letters "B & L" as a specific trade-mark.

The matter came on before the Honourable Mr. Justice Maclean, President of the Court, at the city of Ottawa.

O. M. Biggar, K.C., for the appellant.

The Commissioner of Patents appearing personally.

The facts are stated in the Reasons for Judgment.

THE PRESIDENT, now (this 7th March, 1930), delivered judgment.

This is an appeal from the decision of the Commissioner of Patents, dated 16th December, 1929, rejecting the application of the Bausch and Lomb Optical Company, for registration of the letters "B & L" as a specific trade-mark to be used in connection with the sale of certain articles. The refusal of the Commissioner of Patents to grant the application for registration, was based upon the ground that a similar mark, "B L", was registered by one Barnett Laurence on the 16th day of July, 1885, which trade-mark expired on the 16th day of July, 1910, and was not afterwards renewed.

The only point for decision here is whether the Commissioner of Patents was justified in refusing the application

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in question by reason of the registration of Laurence in 1885 and which expired in 1910. No other question is involved in the appeal.

Sec. 17 of the Trade-Mark Act is as follows:

A specific trade-mark, when registered, shall endure for the term of twenty-five years, but may be renewed before the expiration of the said term by the proprietor thereof, or by his legal representative, for another term of twenty-five years, and so on from time to time; but every such renewal shall be registered before the expiration of the current term of twenty-five years.

The registration of Laurence having expired in 1910 it was no longer, it seems to me, a registered trade-mark and was in just the same position after 1910 as if it had never been registered at all. I assume the register would show the mark to be one that had expired as a registered mark, that being so, the register should be treated as being entirely silent upon the matter. An expired registered mark is not a registered mark. Section 11 (b) of the Act states that the Minister may refuse to register any trade-mark "if the trade-mark proposed for registration is identical with or resembles a trade-mark already registered." I do not think this refers to a mark once registered but which has expired. I think it refers solely to an unexpired registered mark.

I do not think, therefore, that the Commissioner was justified in refusing the application of The Bausch and Lomb Optical Company upon the ground that the register showed registration in 1885 of a somewhat similar mark but which had expired in 1910. The appeal is therefore allowed.

Judgment accordingly.