

Federal Court



Cour fédérale

Date: 20260619

Docket: T-2380-25

Citation: 2026 FC 846

Ottawa, Ontario, June 19, 2026

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

**BEIJING POP MART CULTURAL
CREATIVE CO., LTD.**

Applicant

and

EC NEW YORK (UK) LTD

Respondent

REASONS AND JUDGMENT

[1] By Notice of Application dated July 11, 2025, brought pursuant to sections 57 and 58 of the *Trademarks Act*, RSC, 1985, c T-13 [*Trademarks Act*], the Applicant, Beijing Pop Mart Cultural Creative Co., Ltd., requested various relief, including the expungement of the registered trademark ROBO SHOP, No. TMA1246685 [Impugned Trademark]. At the time the proceeding was instituted, the Impugned Trademark was registered in the name of the Respondent, EC New York (UK) Ltd.

[2] The Respondent was an entity having a registered address in the United Kingdom [UK]; however, it was dissolved on January 28, 2025. The Applicant was relieved by the Court from the requirement to serve the Notice of Application or any further documents on the Respondent. The application therefore proceeded unopposed.

[3] On October 7, 2025, the Applicant filed a Notice of Partial Discontinuance, without prejudice, with respect to the remedies and causes of action set out in the Notice of Application, except for the expungement of the Impugned Trademark.

[4] At the hearing of the application, counsel for the Applicant disclosed, for the sake of transparency, that a paralegal employed by the law firm had accessed the Canadian Trademarks Database maintained by the Canadian Intellectual Property Office on June 9, 2026 and discovered that ownership of the Impugned Trademark had been transferred by Hua Zhang to a new owner on October 25, 2025. Counsel is commended for bringing to the attention of the Court an updated status of the trademark registration at issue; however, at this stage, this development is of no moment. As stated in section 19 of the Act, a registered trademark is presumed to be valid (*Yiwu Thousand Shores E-Commerce Co Ltd v Lin*, 2021 FC 1040 at para 24). The onus of proving otherwise is on the party seeking to expunge the registration. As explained further below, the Applicant has met its burden on numerous grounds. The application is accordingly granted.

I. Facts

[5] The facts in this case are based on the affidavit evidence of the Applicant's legal director, Zhao Hengru. While recognizing that Mr Hengru has a close interest in the outcome of this case, his evidence is specific and detailed and well supported by documentary material. I find no reason to doubt its reliability.

A. *The Applicant and its activities*

[6] The Applicant specializes in toy designing, manufacturing and marketing, and related business.

[7] The toys are commercialized under the POP MART brand. The toys are sold in stores and, since 2017, in vending machines known as POP MART ROBO SHOP [Applicant's Mark]. Since 2017, the Applicant has operated the POP MART ROBO SHOP vending machines directly, or through licensees located around the world, primarily in China, but also in Canada, the United States, New Zealand, Australia, South Korea, Japan, Singapore, Malaysia, Thailand, Hong Kong, Taiwan, Macau, France and the UK.

[8] In Canada, the Applicant, directly or through its affiliated companies and licensees, has been using the Applicant's Mark continuously since at least 2020, in association with, notably, rental services of vending machines, thereby distinguishing the Applicant's services from those of the competition.

[9] The Applicant has also promoted and advertised its services offered in association with the Applicant's Mark to Canadians by various means, including through promotional materials and through its various social media platforms.

[10] The Applicant's Canadian revenue exceeded \$120,000 in 2022, \$330,000 in 2023 and \$620,000 in 2024.

[11] Through the use of the Applicant's Mark in Canada, the Applicant's Mark has become a leading trendy culture and entertainment trademark known for its distinctive vending machines for toys, especially for Canadian consumers from the Asian community and for Canadian consumers with an interest in anime and animation.

[12] The Applicant is the owner of Trademark Application No. 2262477 for the registration of the Applicant's Mark in Canada. This application was filed on March 16, 2023, as a Canadian designation under the Madrid Protocol, with a priority date of February 2, 2023.

B. *The Respondent's Acts*

[13] On March 3, 2020, a "Robo Shop Authorized Operation Contract" [License Agreement] was signed between Party A, Pop Mart International Group Ltd [Pop Mart International], a wholly owned subsidiary of the Applicant, and Party B, Encounter Entertainment Operations Management Inc. [Encounter Entertainment]. The purpose of the License Agreement was to grant Encounter Entertainment with the operation rights for "POP MART Roboshop" Self-

service Sales Terminals developed and operated by Encounter Entertainment within authorized areas in Canada between March 3, 2020, and March 3, 2022.

[14] Encounter Entertainment and the Respondent were affiliated companies, all being subsidiaries of Encounter International (CA) Group Limited, a private limited company incorporated in Canada [EC CA].

[15] The UK Corporate Registry lists the name of Hua Zhang as a person with significant shareholding control of the Respondent. Corporate Records for Encounter Entertainment and EC CA list the name of Haiyan Xue as a person with significant shareholding control.

[16] Hua Zhang and Haiyan Xue, the two representatives who signed the Licensing Agreement on behalf of Encounter Entertainment, have a business relationship with each other, both being persons with significant control of another now-dissolved company, Lianhua (UK) Investment Holding Group Co., Ltd., which was also the main investor in EC CA.

[17] The Respondent presented itself as a member of a corporate group named Encounter Your Way (EYW), which is the trading name of a group of companies that includes the Respondent and Encounter Entertainment, as well as Encounter International (US) Group LLC, and lists EC CA as its principal company.

[18] On October 20, 2022, the Respondent filed an application to register the Impugned Trademark in Canada in association with several goods (Class 7) and services (Class 35), including vending machines and vending machines services.

[19] The Impugned Trademark was subsequently registered on July 26, 2024, notably in association with vending machines and vending machines services.

[20] The Applicant only learned about the registration of the Impugned Trademark on October 31, 2024 when the Respondent sent emails to three shopping malls in Toronto, namely, Scarborough Town Centre, Station Square and Upper Canada Mall, the same malls where the Applicant or its affiliated companies had already installed vending machines and authorized their operation under the Applicant's Mark. The Respondent's emails advised the owners of the shopping malls of the existence of the Impugned Trademark and asked for the removal of the Applicant's vending machines within thirty days "to ensure compliance with (the Respondent's) intellectual property rights."

[21] The Applicant also learned that Encounter International (US) Group LLC, represented itself on its website as having a commercial relationship with the Applicant, with the following statement:

Encounter International is a global development company founded in Canada. We are committed to spreading joy and beauty to trendy young and family consumers around the world in the spirit of Chinese hospitality. At the same time, Encounter International is the official partner of Pop Mart in Eastern North America, representing its brand to operate sales channels in eastern North America, including the Pop Mart Robo Shop. At the same time, we also hope that with the innovation of China and the spirit of

exporting trendy culture from China overseas, we will practice the practical actions of spreading the new culture of china (*sic*).

[22] Prior to the dissolution of the Respondent, on January 16, 2025, the UK Intellectual Property Office [UKIPO] granted an application filed by Pop Mart, seeking to cancel the Respondent's ROBO SHOP UK trademark registration.

[23] The UKIPO Registrar invalidated the registration based on bad faith, stating that the Respondent likely had knowledge of the Applicant's prior use of the ROBO SHOP trademark in the UK: *Trade Marks Inter Partes Decision O/0040/25*.

C. *Pop Mart's cease and desist letter*

[24] Upon learning of the registration of the Impugned Trademark and the Respondent's behaviour, the Applicant's solicitors sent a cease and desist letter to the Respondent on December 24, 2024, putting the Respondent on notice to voluntarily cancel the registration for the trademark ROBO SHOP and to stop damaging and interfering with the Applicant's commercial activities and contractual relationships in Canada.

[25] On that same day, the Respondent responded by email denying any affiliation with EC CA. The Respondent did not comply with the Applicant's demands.

II. Issues to be determined

[26] The Applicant proposed the following issues to be determined:

- i. Whether the Applicant is a “person interested” under Section 57 of the Trademarks Act?
- ii. Whether the Impugned Trademark is distinctive of the Respondent?
- iii. Whether the Impugned Trademark has been abandoned?
- iv. Whether the Respondent was entitled to secure the registration of the Impugned Trademark?
- v. Whether the Respondent’s trademark application was filed in bad faith?
- vi. Whether the Respondent’s registration should be expunged?

[27] The Court may make an order expunging a trademark registration under section 57 of the *Trademarks Act* where the registration is invalid under section 18. Subsection 18(1) sets out five circumstances in which a trademark registration will be invalid. Although I find that all the invalidity grounds raised by the Applicant are well founded, for the purposes of these reasons, I will focus on three of them, as each ground by itself constitutes a sufficient basis for expungement of the Impugned Trademark.

III. Analysis

A. *The Applicant has the requisite interest*

[28] The Applicant submits this Court has jurisdiction to grant the requested relief because the Applicant is a person interested pursuant to subsection 57(1) of the *Trademarks Act*. I agree.

[29] Section 2 of the *Trademarks Act* defines “person interested” to include “any person who is affected or reasonably apprehends that he may be affected by any entry in the register, or by

any act or omission or contemplated act or omission under or contrary to this Act, and includes the Attorney General of Canada.” The jurisprudence of this Court confirms that this is a low threshold to meet: *Advanced Purification Engineering Corporation (APEC Water Systems) v iSpring Water Systems, LLC*, 2022 FC 388 at para 13 [APEC]; *Blossman Gas, Inc v Alliance Autopropane Inc*, 2022 FC 1794 at para 42 [Blossman].

[30] The term “person interested” is to be interpreted broadly and includes a party whose rights may be restricted by a trademark registration or who has a reasonable apprehension of prejudice or whose business is likely to be hampered by a trademark registration: *Apotex Inc v Registrar of Trademarks*, 2010 FC 291 at para 7; *TLG Canada Corp v Product Source International LLC*, 2014 FC 924 at para 38.

[31] Considering the facts in evidence, the Applicant clearly qualifies as a “person interested” in these proceedings.

B. *The Trademark ROBO SHOP is not distinctive of the Respondent*

[32] The Applicant invokes paragraph 18(1)(b) of the *Trademarks Act* which provides that the registration of a trademark is invalid if “the trademark is not distinctive at the time proceedings bringing the validity of the registration into question are commenced.”

[33] This Court explained the requirements for distinctiveness in trademark expungement proceedings in *Blossman*, at para 131, where Justice Nicholas McHaffie indicated:

[131] Distinctiveness is a question of fact, with three conditions that must be established: (1) the trademark and the goods (or services) must be associated; (2) the mark's owner must use this association in manufacturing and selling its goods (or offering and performing its services); and (3) this association must enable the mark's owner to distinguish its goods (or services) from those of others: *Bodum USA, Inc v Meyer Housewares Canada Inc*, 2012 FC 1450 at para 117, aff'd 2013 FCA 240 at paras 3, 5. In addition to the issues of descriptiveness and generic terms that were at issue in *Bodum*, the third of these conditions invokes the question of confusion, since a mark that leads to confusion as to the source of goods or services cannot enable the owner to distinguish its goods or services from those of others: *Yiwu* at para 32; *8073902 Canada Inc v Vardy*, 2019 FC 743 at para 79.

[34] I find that the registration of the trademark ROBO SHOP is invalid pursuant to paragraph 18(1)(b) of the *Trademarks Act*, as it was not distinctive of the Respondent in that, at the filing date of this proceeding (July 11, 2025), the Applicant's Mark was known in Canada and was used in association with the relevant goods and services.

[35] The evidence before me establishes that through the use of the Applicant's Mark in Canada, including advertising and promotional efforts since at least 2020, the Applicant's Mark has become a leading trendy culture and entertainment trademark known for its distinctive vending machines for toys, especially for Canadian consumers from the Asian community and for Canadian consumers with an interest in anime and animation. The Applicant's sales have also increased each year since 2020. I find that the Applicant's Mark has enjoyed significant reputation and goodwill in Canada that is sufficient to negate the distinctiveness of the Impugned Trademark.

[36] Moreover, as the relevant date for this ground of invalidation is July 11, 2025, the evidence establishes that the Respondent was dissolved on January 28, 2025, several months before the relevant date. The Respondent could therefore not have used the Impugned Trademark in Canada at any time after January 28, 2025. As there is no evidence of use of the Impugned Trademark at the relevant date, it follows that the Impugned Trademark could not have been distinctive at the relevant date as the only mark on the marketplace in Canada was the Applicant's Mark, which had already acquired its reputation at that time.

[37] For the above reasons, I have no difficulty reaching the conclusion that the Impugned Trademark is not distinctive of the Respondent's goods or services. This ground of invalidation is therefore allowed.

C. *The Respondent was not the person entitled to secure registration of the trademark ROBO SHOP*

[38] The Applicant also relies on paragraph 18(1)(d) of the *Trademarks Act*, which provides that the registration of a trademark is invalid if “the applicant for registration was not the person entitled to secure the registration.”

[39] The “person entitled to secure the registration” referred to in paragraph 18(1)(d) is defined by section 16, which governs entitlement to registration. Subsection 16(1) reads as follows:

Entitlement to registration	Droit à l'enregistrement
16 (1) Any applicant who has filed an application in	16 (1) Tout requérant qui a produit une demande

accordance with subsection 30(2) for the registration of a registrable trademark is entitled, subject to section 38, to secure its registration in respect of the goods or services specified in the application, unless at the filing date of the application or the date of first use of the trademark in Canada, whichever is earlier, it was confusing with

conforme au paragraphe 30(2) en vue de l'enregistrement d'une marque de commerce enregistrable a droit, sous réserve de l'article 38, d'obtenir cet enregistrement à l'égard des produits ou services spécifiés dans la demande, à moins que, à la date de production de la demande ou à la date à laquelle la marque a été employée pour la première fois au Canada, la première éventualité étant à retenir, la marque n'ait créé de la confusion :

(a) a trademark that had been previously used in Canada or made known in Canada by any other person;

a) soit avec une marque de commerce antérieurement employée ou révélée au Canada par une autre personne;

(b) a trademark in respect of which an application for registration had been previously filed in Canada by any other person; or

b) soit avec une marque de commerce à l'égard de laquelle une demande d'enregistrement avait été antérieurement produite au Canada par une autre personne;

(c) a trade name that had been previously used in Canada by any other person.

c) soit avec un nom commercial qui avait été antérieurement employé au Canada par une autre personne.

[Emphasis added.]

[Je souligne.]

[40] In sum, subsection 16(1) establishes that an applicant who has filed a proper application is entitled to register a trademark if they or their predecessor have used or made it known in Canada, provided the mark was not confusing with another's previously used mark, filed

application, or trade name. A trademark must be distinctive of a single source. A trademark that leads to confusion as to the source of the goods or services cannot enable the owner to distinguish its goods or services from those of others: *Blossman* at para 131.

(1) Test for Confusion

[41] Section 6(2) of the *Trademarks Act* describes when likelihood of confusion occurs between two trademarks.

[42] The test for confusion is based upon the hypothetical assumption that both trademarks are used “in the same area”, irrespective of whether this is actually the case, as stated by the Supreme Court in *Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27 at para 30 [*Masterpiece*]. The Court must proceed on the assumption that the trademarks at issue here, POP MART ROBO SHOP and ROBO SHOP, are used in the same area to determine if likelihood of confusion is present.

[43] The Supreme Court of Canada emphasized in *Masterpiece* at paras 40 and 74 that the confusion test is a “first impression” test. This first impression test must not take into account a consumer’s subsequent steps to dispel confusion that was present at the first impression.

[44] Section 6(5) of the *Trademarks Act* provides a non exhaustive list of circumstances to consider when conducting a trademark confusion analysis. Among those circumstances is the degree of resemblance between the marks, as described in the provision. As stated in

Masterpiece, at para 49, while this factor is listed last in section 6(5), it is often likely to have the greatest effect on the confusion analysis.

- (2) The degree of resemblance between the trademarks or trade names, including in appearance or sound or in the ideas suggested by them

[45] The Applicant's mark is POP MART ROBO SHOP while the Respondent's registered mark is ROBO SHOP. While the Respondent's mark is registered as a "design", it is basically composed of the expression ROBO SHOP and the style of lettering used for the mark does not add any distinctive feature to it.

[46] In *Masterpiece*, at para 64, the Supreme Court indicated that when the resemblance of the trademarks is considered, the preferable approach is to first consider whether there is an aspect of the trademark that is particularly striking or unique.

[47] In the present case, what is striking about the Applicant's Mark is the ROBO SHOP component, since the POP MART portion can be seen simply as a qualifier to the main portion that is ROBO SHOP. The Impugned Mark is composed of the most striking aspect of the Applicant's Mark. As both marks include ROBO SHOP there is a great deal of resemblance between the marks visually and phonetically. Even considering the ideas suggested by the marks, there is a great deal of resemblance since they both suggest a store related to robots or robotics. The fact that the Applicant's Mark includes POP MART does nothing to diminish the important degree of resemblance, since the addition of POP MART can be seen as pointing to a different

line of goods and services (*i.e.*, popular toys) under the ROBO SHOP brand, all related to the same source.

[48] When trademarks share such a common, striking element, there is obviously a significant degree of resemblance between them as discussed in *Nature Path Foods Inc v Quaker Oats Co of Canada Ltd*, 2001 FCT 366 at para 35. In that case, the applicant had previously used the mark MULTIGRAIN HONEY PUFFS and sought to expunge the respondent's mark HONEY PUFFS. Both trademarks were used for breakfast cereals. The respondent's registered mark was completely incorporated in the applicant's mark that had, however, as its first component the term MULTIGRAIN. This difference was found to actually point towards confusion at para 35 of the decision.

[49] There is a similar difference in the present case. Consumers are likely to conclude that POP MART ROBO SHOP and ROBO SHOP commercial activities have the same source, since POP MART simply qualifies ROBO SHOP. Accordingly, I find the degree of resemblance between trademarks at issue here is significant and favours the Applicant.

(3) The inherent distinctiveness of the trademarks or trade names and the extent to which they have become known

[50] The inherent distinctiveness refers to the strength (or the weakness, as the case may be) of the trademark on account of the words used within the trademarks. Here, both trademarks have a similar level of inherent distinctiveness, considering the Impugned Trademark includes the striking aspect of the Applicant's Mark. The first aspect of this factor favors Pop Mart.

[51] As for the extent to which the trademarks have become known, the evidence clearly favors the Applicant.

(4) The length of time the trademarks have been in use

[52] The evidence before me establishes that the Applicant's trademark POP MART ROBO SHOP has been used in Canada since at least 2020, which is prior to any alleged use by the Respondent of the Impugned Mark. This factor also favors the Applicant.

(5) The nature of the goods, services or business; and the nature of the trade

[53] The evidence clearly shows the Applicant's activities with rental services or sales of vending machines, which are claimed by the Respondent in its registration. There is an overlap in the parties' respective goods/services, and the machines of both parties are used to sell the same kinds of products.

[54] While some goods/services appearing in the Respondent's registration might appear unrelated to the Applicant's activities, this does not favor the Respondent in the absence of any evidence as to how its goods and services would be offered in association with the Impugned Trademark: *Restaurants Pacini inc v Earth to Table Bread Bar James St Inc*, 2022 TMOB 143 at paras 80–81. The fact that the Respondent's registration includes overlapping goods and services with those of the Applicant establishes a clear connection between those goods and the others that might appear different, since the Respondent claims to be a source for all these goods and services.

(6) Conclusion on Confusion

[55] I find that the Respondent was not “the person entitled to secure registration” of the Impugned Trademark per subsections 16(1)(a) and (c) of the *Trademarks Act* as the facts before me amply support a finding of confusion on the material date. The Applicant has clearly established that it used its trademark POP MART ROBO SHOP in Canada prior to October 20, 2022, the date of first use of Impugned Trademark by the Respondent. The evidence also shows that the Applicant continuously used its mark since that time and had not been abandoned on May 8, 2024, namely, the day on which the Respondent’s application for the ROBO SHOP trademark was advertised under subsection 37(1) of the *Trademarks Act*.

[56] This ground of invalidation is accordingly allowed.

D. *The trademark ROBO SHOP was filed in bad faith*

[57] The Applicant submits that the application for registration of the Impugned Trademark was filed in bad faith, therefore rendering the registration invalid pursuant to paragraph 18(1)(e) of the *Trademarks Act*. I agree.

[58] The burden of proving that an application for a registered mark was made in bad faith lies on the party making the allegation. But where the circumstances of the case may lead to a rebuttal of the presumption of good faith, it is for the proprietor of the mark to explain and provide a plausible explanation of the objectives and commercial logic pursued by the application for registration. In the present case, there is no rebuttal from the Respondent.

[59] In the trademark context, issues such as awareness of prior rights and an intention to harm a prior user's business are relevant to the assessment of bad faith (*Blossman* at para 121). Moreover, when there has been some kind of prior relationship between the parties, and in the absence of any express consent by the legitimate trademark owner, caselaw recognizes trademark filings made in bad faith: *Beijing Judian Restaurant Co Ltd v Meng*, 2022 FC 743 at paras 32–41 and 50–51; *Blossman* at paras 117–129.

[60] The evidence before me establishes that the Respondent had knowledge of the Applicant's Mark at the time the Respondent filed its application for registration of the trademark ROBO SHOP as an affiliated entity of a former licensee of the Applicant's Mark. This is evidenced by the fact that the License Agreement was executed by a person closely associated with the Respondent. Notably, the contract includes Clause 4.2 which reads as follows:

4.2 Party A authorizes its intellectual property rights required for the operation of the "POP MART Roboshop" Self-service Sales Terminal Machines to Party B, including but not limited to trademark, copyrights and other relevant rights. Specific contents of such intellectual property rights shall be subject to the authorization document with the signatures and seal of Party A.

[61] At the time of filing its trademark application, the Respondent, Mr. Zhang, Mr. Xue and all their related companies were therefore aware that the proprietary rights in and for the trademark ROBO SHOP were vested upon the Applicant. The terms of the Licensing Agreement leave no room for doubt that the Respondent had no right to the Applicant's Mark. And yet, despite its recent contractual relationship with the Applicant, the Respondent proceeded to register a trademark that was on its face confusingly similar to the Applicant's trademark. The Respondent then proceeded to contact the Applicant's clients, the very same clients identified in

the Licence Agreement, to advise them of its registration, which led to those clients ending their business relationship with the Applicant. In the absence of any evidence to the contrary, I conclude that the Respondent did so, through a web of companies, with an intent to harm the Applicant's business and the Applicant's reputation in the Applicant's Mark. In my view, the motive or intention of the Respondent was to engage in conduct that departed from accepted principles of ethical behaviour or honest commercial practices having regard to the purposes of the trademark system.

[62] This ground of invalidation is also allowed.

E. *The Respondent's Registration for the Trademark ROBO SHOP Should Be Declared Invalid and Struck*

[63] Given the above findings, I conclude that the registration of the Impugned Trademark is invalid in accordance with the grounds set out in paragraphs 18(1)(b), (d) and (e), as well as paragraphs 16(1)(a) and (c) of the *Trademarks Act*. The Impugned Trademark shall accordingly be expunged.

JUDGMENT in T-2380-25

THIS COURT’S JUDGMENT is that:

1. The application is granted.
2. The Registrar of Trademarks shall forthwith expunge registration number TMA 1246685 for the trademark ROBO SHOP.

“Roger R. Lafrenière”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2380-25

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APPEARANCES:

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Sarah Herbert Tremblay

FOR THE APPLICANT

No appearance

FOR THE RESPONDENT

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