

Publisher's Note

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Previous release was 2018 — 7

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Odutola

Odutola on Canadian Trade-mark Practice

This landmark practitioner's treatise provides an insightful analysis of trade-mark law practice and procedure before the Canadian Trademarks Office and Trademarks Opposition Board. It remains the most comprehensive text of its kind. The publication is supported by extensive references to case law, statutes, annotated cross-references to the *Trade-marks Act* and *Trade-marks Regulations*, Trade-marks Office and Trade-marks Opposition Board practice notices, and other source materials.

This release features updates to Appendix 16.6: Trade-Mark Summary Cancellation Proceedings — Summary of Procedure. This release includes updates to the Trade-Mark Law Words and Phrases. This release also features the addition of the Goods and Services Manual — Class Headings in Appendix 3.15.

Highlights

- **Trade-Mark Summary Cancellation Proceedings — Summary of Procedure — Evidence — Case Law — Affidavit** — Concerning the invoices provided concurrently with the statement, but without being mentioned therein, it is well established that technical deficiencies should not prevent an owner from responding to a notice provided

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for in section 45 when the evidence adduced could suffice to establish use. In particular, the Register may occasionally admit attachments in evidence that do not bear the inscription of the Commissioner for Oaths or the notary, when they are clearly identified and explained in the body of the statement. However, the sworn statement made no mention of attachments and offered no explanation regarding the invoices provided at the same time. The covering letter could not be considered evidence. Although the procedure stipulated in section 45 is simple and expeditious, the provisions of this section require evidence in the form of an affidavit or a statutory declaration. The fact that the invoices were not mentioned in the sworn statement or identified as attachments thereto was more than a mere technical deficiency. The invoices were not admissible as evidence: *Guixens Food Group, Inc. c. Kim Long Distributions Inc.*, 2018 CarswellNat 2080, 2018 CarswellNat 2081, 2018 TMOB 41, 2018 COMC 41 (T.M.O.B.).