



LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADE-MARKS

Citation: 2015 TMOB 126
Date of Decision: 2015-07-13

IN THE MATTER OF A SECTION 45 PROCEEDING

On Route Distribution Inc.	Requesting Party
and	
Compañía Nacional de Chocolates S.A.S.	Registered Owner
TMA521,786 for JET	Registration

[1] At the request of On Route Distribution Inc., the Registrar of Trade-marks issued a notice under section 45 of the *Trade-marks Act* RSC 1985, c T-13 (the Act) on May 10, 2013 to Compañía Nacional de Chocolates S.A., the registered owner of registration No. TMA521,786 for the trade-mark JET (the Mark). On December 11, 2013, the Registrar recorded a change in name of the registered owner to Compañía Nacional de Chocolates S.A.S. This change of name is not at issue in this proceeding.

[2] Although the Mark was originally registered in association with a variety of cocoa products, subsequent to the issuance of the notice, the owner voluntarily amended the registration. The Mark is now registered only in association with the goods “chocolates, chocolate bars”.

[3] Section 45 of the Act requires the registered owner of the trade-mark to show whether the trade-mark has been used in Canada in association with each of the goods specified in the registration at any time within the three year period immediately preceding the date of the notice

and, if not, the date when it was last in use and the reason for the absence of such use since that date. In this case, the relevant period for showing use is between May 10, 2010 and May 10, 2013.

[4] The relevant definition of “use” in association with goods is set out in section 4(1) of the Act:

4(1) A trade-mark is deemed to be used in association with wares if, at the time of the transfer of the property in or possession of the wares, in the normal course of trade, it is marked on the wares themselves or on the packages in which they are distributed or it is in any other manner so associated with the wares that notice of the association is then given to the person to whom the property or possession is transferred.

[5] It is well established that the purpose and scope of section 45 of the Act is to provide a simple, summary and expeditious procedure for removing “deadwood” from the register and, as such, the evidentiary threshold that the registered owner must meet is quite low [*Uvex Toko Canada Ltd v Performance Apparel Corp* (2004), 31 CPR (4th) 270 (FC)].

[6] In response to the Registrar’s notice, the registered owner filed the affidavit of Alejandra Sarasty Quintero, the International Business Manager of the owner, sworn on December 10, 2013 in Medellin, Colombia. Neither party filed written representations; an oral hearing was not held.

[7] In his affidavit, Mr. Quintero attests that the owner “is responsible for the production and sale of JET branded products and has been selling such products in Canada during the [relevant] period.” He explains that goods bearing the Mark are sold to Canadian importers which in turn sell the goods to grocery and specialty food stores to be sold to individual customers. He provides a breakdown of sales to certain Canadian importers by year, amounting to tens of thousands of dollars in sales during the relevant period. For example, he attests that sales to Candesa Foods in 2011 were approximately CDN\$7800.

[8] In support, Mr. Quintero provides a dozen representative invoices at Exhibit A to his affidavit, all dated within the relevant period. The invoices show sales to Canadian importers, such as Candesa Foods, of various quantities of chocolate products, including “JET milk

chocolate bars”, “JET peanut chocol. bar” and “JET Chocolates”. I note that the listed products are of various sizes and weights.

[9] Mr. Quintero also provides, at Exhibit B, over 60 pages of “invoicing statistics” detailing sales of JET branded chocolate products from Candesa Foods to various Canadian retail food and grocery stores during the relevant period.

[10] With respect to display of the Mark on the registered goods, attached as Exhibit C are eight photographs labelled as having been taken in various retail locations in Quebec. The photographs show various packaged food items, including different chocolate products displaying the Mark. Although some of the pictures are unclear, consistent with the aforementioned invoices, I am able to identify two types of chocolate bars bearing the Mark as well as product packaging for “JET chocolates”. While the photographs are from after the relevant period, Mr. Quintero attests that they are representative of how the Mark was used on packaging and displayed in stores during the relevant period.

[11] In view of the foregoing, I am satisfied that the Owner has demonstrated use of the Mark in association with the registered goods “chocolates, chocolate bars” during the relevant period within the meaning of sections 4 and 45 of the Act.

Disposition

[12] Accordingly, pursuant to the authority delegated to me under section 63(3) of the Act, the registration will be maintained in compliance with the provisions of section 45 of the Act.

Andrew Bene
Hearing Officer
Trade-marks Opposition Board
Canadian Intellectual Property Office

Hearing Date: No Hearing Held

Agents of Record

Marks & Clerk

For the Registered Owner

Ross & McBride LLP

For the Requesting Party