



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

Citation: 2015 TMOB 166
Date of Decision: 2015-09-24

IN THE MATTER OF A SECTION 45 PROCEEDING

Riches, McKenzie & Herbert LLP

Requesting Party

and

China Cereals & Oils Corp. Ltd.

Registered Owner

**TMA228,312 for
GOLDEN EMBLEM & Design**

Registration

[1] At the request of Riches, McKenzie & Herbert LLP (the Requesting Party), the Registrar of Trade-marks issued a notice under section 45 of the *Trade-marks Act* RSC 1985, c T-13 (the Act) on July 10, 2013 to China Cereals & Oils Corp. Ltd. (the Owner), the registered owner of registration No. TMA228,312 for the trade-mark GOLDEN EMBLEM & Design (the Mark), shown below:



[2] The Mark is registered for use in association with “rice”.

[3] The notice required the Owner to furnish evidence showing that the Mark was in use in Canada, in association with the goods specified in the registration, at any time between July 10, 2010 and July 10, 2013. If the Mark had not been so used, the Owner was required to furnish

evidence providing the date when the Mark was last used and the reasons for the absence of use since that date.

[4] The relevant definition of use with respect to goods is set out in section 4(1) of the Act as follows:

4(1) A trade-mark is deemed to be used in association with goods if, at the time of the transfer of the property in or possession of the goods, in the normal course of trade, it is marked on the goods themselves or on the packages in which they are distributed or it is in any other manner so associated with the goods 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 [*Performance Apparel Corp v Uvex Toko Canada Ltd*, 2004 FC 448, 31 CPR (4th) 270].

[6] In response to the Registrar’s notice, the Owner furnished the affidavit of Kan Fat Tong, the principal and a director of the Owner, sworn on February 7, 2014 in Vancouver, British Columbia. Only the Owner filed written representations; an oral hearing was not requested.

The Owner’s Evidence

[7] In his affidavit, Mr. Tong attests that the Owner operates supermarkets within the Greater Vancouver Area that specialize in Asian grocery items and different varieties of rice sold in bulk. He explains that the Owner currently has two supermarkets located in British Columbia, trading under the names “Rice World” and “China World”, and further that the Owner also operates under the trade name Powell Trading Co. Mr. Tong asserts that, during the relevant period, the Owner advertised and sold rice in association with the Mark at its supermarkets. He attests that Golden Emblem rice is displayed and sold to Canadian consumers at the Owner’s supermarkets in 20kg bags that bear the Mark. He notes that these bags have not changed for at least ten years and that, during the relevant period, the retail price for a bag of Golden Emblem rice was \$28.99.

[8] Mr. Tong provides sales figures for Golden Emblem rice sold in Canada during the relevant period. For example, he provides that, from June 2011 to June 2012, 4,850 bags were sold, with a retail value of approximately \$140,000.

[9] Mr. Tong also attests to advertising Golden Emblem rice in a British Columbia business directory and in a popular monthly magazine during the relevant period.

[10] In support of the foregoing, Mr. Tong attaches the following exhibits to his affidavit:

- Exhibit B is a sample bag for Golden Emblem rice that Mr. Tong attests to be representative of the bags used during the relevant period. The Mark is prominently displayed on the bag.
- Exhibit C consists of photographs of bags of Golden Emblem rice on display at one of the Owner's supermarkets. The bags are the same as the one furnished at Exhibit B.
- Exhibit D consists of invoices from the Owner's rice miller, Riceland Foods Inc, that are billed and shipped to Powell Trading Co. As noted above, this is one of the Owner's trading names. The invoices are all dated within the relevant period, and the product descriptions for a number of the invoices indicate sales of "long grain milled rice" or "parboiled long grain milled rice". While these invoices show purchases by the Owner from its miller – which is not relevant *per se* – Mr. Tong asserts that this evidence "supports" the aforementioned sales figures by the Owner during the relevant period.
- Exhibits E consists of excerpts from the 2011 and 2012 British Columbia Chinese Business Directory, including advertisements for Golden Emblem rice. In the advertisement, an image of a bag of rice similar to the ones shown at Exhibits B and C is displayed.
- Similarly, Exhibit F consists of excerpts from the October 2013 issue of PLEM magazine, including an advertisement for the sale of Golden Emblem rice at the Owner's supermarkets in British Columbia.

Analysis

[11] With respect to the manner of display of the Mark, it is clear from Exhibits B and C of Mr. Tong's affidavit that the Mark was prominently displayed on the packaging of the Owner's rice sold during the relevant period.

[12] With respect to the transfer and sales of the goods during the relevant period, although Mr. Tong does not provide invoices showing sales by the Owner, he clearly attests to large volumes of sales of Golden Emblem rice bearing the Mark during the relevant period in Canada.

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

Disposition

[14] 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

Fetherstonhaugh & Co.

For the Registered Owner

Riches, McKenzie & Herbert LLP

For the Requesting Party