



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

**Citation: 2016 TMOB 184**  
**Date of Decision: 2016-12-02**

**IN THE MATTER OF A SECTION 45 PROCEEDING**

**Brouillettes & Associés/Partners**

**Requesting Party**

**and**

**Franciscan Vineyards, Inc.**  
**(A Delaware Corporation)**

**Registered Owner**

**TMA683,119 PINNACLES**

**Registration**

[1] At the request of Brouillettes & Associés/Partners (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 August 1, 2014 to Franciscan Vineyards, Inc. (A Delaware Corporation) (the Owner), the registered owner of registration No. TMA683,119 for the trade-mark PINNACLES (the Mark).

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

[3] The notice required the registered 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 August 1, 2011 and August 1, 2014.

[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 [*Uvex Toko Canada Ltd v Performance Apparel Corp* (2004), 31 CPR (4th) 270 (FC)].

[6] In response to the Registrar’s notice, the Owner furnished the affidavit of Ronald C. Fondiller. Only the Owner filed written representations and was represented at the hearing.

[7] In his affidavit, Mr. Fondiller states that he is the Senior Vice President and General Counsel and Secretary of the Owner and of Constellation Brands U.S. Operations, Inc. Mr. Fondiller further states that he is the Assistant Secretary and Senior Vice President, General Counsel – Wine & Spirits Division of Constellation Brands Inc. (Constellation Brands), the Assistant Secretary of Constellation Brands Canada Inc. (Constellation Brands Canada), as well as the Assistant Secretary of Constellation Brands Quebec Inc. (Constellation Brands Quebec). As such, Mr. Fondiller states that he has access to the corporate records of these entities and has knowledge of their business, including their commercial activities in Canada.

[8] Mr. Fondiller explains the corporate relationships between the above-mentioned entities as follows. Founded in 1945, Constellation Brands is a world leader in the production and distribution of alcoholic beverages, with a portfolio of over a hundred wines, beers and spirits. The Owner is a winery whose products are sold in Canada and in the United States. Both the Owner and Constellation Brands Canada are wholly owned subsidiaries of Constellation Brands. In addition to their own corporate activities, Constellation Brands Canada and Constellation Brands Quebec act as agents for the sales of certain products of the various Constellation Brands entities in Canada and in Quebec respectively, including products of the Owner associated with the Mark. Mr. Fondiller further notes that British Columbia’s oldest estate winery, Sumac Ridge Estate Winery Ltd. (Sumac Ridge), amalgamated with and into Constellation Brands Canada on March 1, 2008.

[9] According to Mr. Fondiller, the Owner has entered into a licence arrangement with Sumac Ridge, granting the latter a licence to sell wine in Canada in association with the Mark while the Owner maintains direct or indirect control of the character or quality of the wine products sold, as well as the use, advertising or display of the Mark. As such, I am prepared to accept that any use of the Mark by Sumac Ridge would enure to the benefit of the Owner pursuant to section 50 of the Act.

[10] In terms of the manner in which the Mark was used, Mr. Fondiller attaches as Exhibits RF-8 and RF-9 to his affidavit examples of how the Mark appeared on Sumac Ridge's wine products sold during the relevant period in Canada, as well as promotional materials shown to customers in Canada during that time. I note that the word PINNACLE, without the letter "S", appears prominently on the front and the back of two wine bottles as well as on one bottle's packaging. In each case, the word PINNACLE stands out from the surrounding written material in terms of positioning, font and size.

[11] Having reviewed the sample uses of the Mark by Sumac Ridge, I am satisfied that despite missing the letter "S" at the end of the word "PINNACLE", the Mark is being used in such a way that it has not lost its identity and remains recognizable in view of its positioning, font and size [see *Canada (Registrar of Trade-marks) v Compagnie Internationale pour l'informatique CII Honeywell Bull* (1985), 4 CPR (3d) 523 (FCA); *Promafil Canada Ltée v Munsingwear Inc* (1992), 44 CPR (3d) 59 (FCA)]. Thus, I find that the use of the term "PINNACLE" as shown in the above-mentioned samples would likely be perceived by consumers as use of the Mark.

[12] In terms of sales, Mr. Fondiller provides a chart listing the approximate annual volume and value of the wine products sold by Sumac Ridge in association with the Mark, accompanied by the associated marketing and sales expenses, for the period from 2005 – 2014, as well as another chart listing the approximate annual volume and value of the wine products sold by Sumac Ridge in association with the Mark from the winery shop at the Winery in Canada, for the period from 2010 – 2014.

[13] I further note that Mr. Fondiller provides another set of evidence of use of the Mark by the Owner itself, under one of its trade-names, Estancia Estates, during the relevant period in Canada. Since I have already concluded that there was use of the Mark by Sumac Ridge, under

licence pursuant to section 50 of the Act, in association with “wine” during the relevant period in Canada, it will not be necessary for me to consider whether the evidence of use of the Mark by the Owner itself, under its trade-name Estancia Estates, is also in compliance with section 4 of the Act.

[14] In the end, taking into consideration evidence of use of the Mark by Sumac Ridge, I am satisfied that the Owner has demonstrated use of the Mark in association with the registered goods “wine” in the normal course of trade in Canada during the relevant period within the meaning of sections 4 and 45 of the Act.

[15] 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.

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Pik-Ki Fung  
Member  
Trade-marks Opposition Board  
Canadian Intellectual Property Office

**TRADE-MARKS OPPOSITION BOARD  
CANADIAN INTELLECTUAL PROPERTY OFFICE  
APPEARANCES AND AGENTS OF RECORD**

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**HEARING DATE:** November 3, 2016

**APPEARANCES**

Bruno Barrette

For the Registered Owner

**AGENTS OF RECORD**

Brouillettes + Associés/Partners

For the Requesting Party

Bruno Barrette (Barrette Légal Inc.)

For the Registered Owner