



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

**Citation: 2015 TMOB 58**  
**Date of Decision: 2015-03-30**

**IN THE MATTER OF A SECTION 45 PROCEEDING  
requested by David John Critchley against registration  
No. TMA732,968 for the trade-mark KICK ASS in the  
name of Kicking Horse Coffee Co. Ltd.**

[1] At the request of David John Critchley (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 April 24, 2013 to Kicking Horse Coffee Co. Ltd. (the Owner), the registered owner of registration No. TMA732,968 for the trade-mark KICK ASS (the Mark).

[2] The notice required the Owner to furnish evidence showing that the Mark was in use in Canada, in association with each of the goods and services specified in the registration, at any time between April 24, 2010 and April 24, 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.

[3] The Mark is registered for use in association with the following goods and services:

**GOODS**

- (1) Bakery and pastry goods, namely muffins, biscotti, scones, croissants, cookies, rolls, breads, granola items and cakes.
- (2) Prepared and pre-packaged food items, such as wraps and sandwiches.
- (3) Non-alcoholic hot and cold beverages, namely sodas, carbonated beverages, coffees, espresso based beverages, teas, cocoas, speciality/gourmet coffees, speciality/gourmet teas, and ciders.
- (4) Coffee beans, ground coffee, tea leaves and mixes for tea, cider and cocoa.
- (5) Electric and hand-operated coffee, tea and cider preparation and brewing equipment, namely, coffee grinders, coffee mills, percolators, coffee makers, espresso and cappuccino makers, tea kettles, tea pots, tea strainers, and tea balls, for domestic and commercial use.

- (6) Publications, print and electronic, namely newsletters, humorous and scenic postcards, note pads, posters, stickers, gift certificates and gift cards, coffee table books, recipe books, door and window signs, posters, and magazines.
- (7) Non-alcoholic flavouring syrups for coffee, milk and soda.
- (8) Clothing, namely t-shirts, baseball and sun hats, toques, scarves, denim shirts, aprons, golf shirts, sweatshirts, hooded jackets and sweatshirts, socks, gloves, vests, and shorts.
- (9) Paper and non-paper coffee filters; paper, plastic and synthetic beverage cups.
- (10) Confectionary items, namely, chocolate, chocolate and/or yogurt covered coffee beans, chocolate and/or yogurt covered cherries and/or strawberries, chocolate-coffee cookies and bars.
- (11) Cooking, baking and serving utensils, namely pans, molds, grills, glassware namely coffee and tea mugs, cups, bowls, trays and plates.
- (12) Travel mugs, cooler bags, thermal insulated bottles, water bottles, and cup holders for use in vehicles.

## SERVICES

- (1) Operation of chain retail café, snack bars and/or coffee houses specializing in the service of prepared foods and beverages, catering services and take-out services, and retail sales of the Applicant's bakery and pastry goods and non-alcoholic beverages.
- (2) Wholesale, retail and mail order sales of ground and whole bean coffee; tea leaves, cocoa, and mixes for teas, cocoa and cider.
- (3) Providing financing for charitable and recreational organizations or events.

[4] The relevant definitions of use with respect to goods and services are set out in sections 4(1) and 4(2) 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.

4(2) A trade-mark is deemed to be used in association with services if it is used or displayed in the performance or advertising of those services.

[5] It is well established that mere assertions of use are not sufficient to demonstrate use in the context of section 45 proceedings [*Plough (Canada) Ltd v Aerosol Fillers Inc* (1980), 53 CPR (2d) 62 (FCA)]. Although evidentiary overkill is not required [*Union Electric Supply Co Ltd v Registrar of Trade Marks* (1982), 63 CPR (2d) 56 (FCTD)], sufficient facts must still be provided to permit the Registrar to arrive at a conclusion of use of the trade-mark in association with each of the goods and services specified in the registration during the relevant period. With respect to services, the display of the Mark on advertising is sufficient to meet the requirements

of section 4(2) when the trade-mark owner is offering and prepared to perform those services in Canada [*Wenward (Canada) Ltd v Dynaturf Co* (1976), 28 CPR (2d) 20 (TMOB)].

[6] In response to the Registrar's notice, the Owner furnished the affidavit of Lynn Hodgson, Media Relations manager of the Owner, sworn on July 19, 2013. Both parties filed written representations; only the Owner was represented at an oral hearing held on November 17, 2014.

#### The Owner's Evidence

[7] In her affidavit, Ms. Hodgson attests that the Owner acquired the Mark in 2012 from the previous registered owner, Leo Johnson. The Owner operates a coffee factory and café near Invermere, British Columbia that sells various food and beverage items. Additionally, some products are also sold in retail stores and online through the Owner's website. The café is called the Kicking Horse Café. Ms. Hodgson asserts that the Owner and the previous owner used the Mark in association with all of the goods and services as registered.

[8] However, as described below, some of the evidence submitted does not clearly relate to the relevant period or to the Mark as registered. Ms. Hodgson consistently refers to goods being "currently" available, such that a distinction can be made between goods sold during the relevant period and goods that may not have been sold until after the relevant period. In this respect, no evidence of transfers during the relevant period has been furnished with respect to many of the registered goods. Accordingly, such ambiguities in the evidence will be construed contrary to the Owner's interests [per *Plough, supra*].

#### Goods (1) & (10) - bakery and pastry goods, confectionary items

[9] With respect to goods (1) and goods (10), Ms. Hodgson attests that, in 2012, "more than \$15,000 CAD of Kick Ass-branded bakery, pastry and confectionary items were sold in Canada." In support, attached as Exhibits A and B to her affidavit are five photographs of various food items displayed at the Kicking Horse Café. In particular, Ms. Hodgson identifies a granola item, cake/bar and cookie bar as being associated with the Mark via signs that appear directly beside each food item. For example, a sign reading "KICK ASS BAR" is next to an item described as a cookie bar containing chocolate or fruit or coffee flavours. Accordingly, I am

satisfied that the Owner has demonstrated use of the Mark in association with “Bakery and pastry goods, namely, granola items and cakes” and “Confectionary items, namely chocolate-coffee cookies and bars”.

[10] With respect to the remaining goods in these two categories, I will also address “chocolate covered coffee beans” more specifically in the context of the Owner’s gift boxes in the discussion of goods (4) below.

[11] Otherwise, it is not clear how the Mark was associated with the remaining bakery and confectionary goods, if at all. Although some of these items are shown in the exhibited photographs, the pictures are cropped such that the corresponding labels are not shown. For example, while muffins can be seen in one of the photographs, it is not clear whether they were advertised as a “Kick Ass Muffin” or the like. I note that the evidence shows that goods displaying other trade-marks were also sold at the café and, further, that the café itself was called Kicking Horse Café, and not Kick Ass. Accordingly, absent further evidence of how the Mark was displayed in association with these goods, it is not a reasonable inference that these goods would also have been associated with the Mark. The registration will be amended accordingly.

#### Goods (2) – Prepared and Pre-Packaged Food Items

[12] With respect to goods (2), also at Exhibit A to her affidavit, Ms. Hodgson provides photographs of a “Kick Ass Breakfast Bun” and “Kick Ass Veggie Wrap” displayed at the Kicking Horse Café. However, unlike with respect to goods (1) and (10), she provides no statement of sales volume for these “prepared and pre-packaged” goods in 2012 or otherwise. Absent a clear statement regarding transfers of these goods during the relevant period, goods (2) will be deleted from the registration.

#### Goods (3) - Beverages

[13] With respect to goods (3), Ms. Hodgson attests that more than \$2500 of Kick Ass-branded carbonated water beverage and mineral water were sold in Canada in 2012. In support, she attaches a photograph of a bottle of sparkling water sold at the Owner’s café displaying the Mark at Exhibit C.

[14] With respect to “coffee”, she attests that hot beverages are consumed on the premises of the café in coffee mugs displaying the Mark, as shown in an Exhibit C photograph. The Mark is repeated in a spiral on the inside of the mug. I accept that, in the circumstances, this constitutes display of the Mark in association with beverages served in such mugs. In any event, Ms. Hodgson also attests that brewed coffee was sold for take out in carafes displaying the Mark and that, in 2012, more than \$7 million of Kick Ass-branded coffee was sold in Canada. It is reasonable to infer that some of that coffee was sold to consumers on premises at the Café.

[15] With respect to “espresso based beverages”, Ms. Hodgson attests that \$6000 of Kick Ass-branded cold coffee-based beverages was sold in Canada in 2012. She provides, at Exhibit C, a photograph of a menu board advertising a “Kick Ass Kooler” and a photograph of a “Kick Ass Kooler” cup, which she attests is what the Owner’s cold espresso-based beverage is served in to customers.

[16] The Requesting Party submits that KICK ASS KOOLER does not constitute display of the Mark. However, in applying the principles as set out by the Federal Court of Appeal, I consider the addition of KOOLER in this case in association with cold beverages to be only a minor deviation from the Mark as registered [per *Canada (Registrar of Trade Marks) v Cie internationale pour l’informatique CII Honeywell Bull, SA* (1985), 4 CPR (3d) 523 (FCA) and *Promafil Canada Ltée v Munsingwear* (1992), 44 CPR (3d) 59 (FCA)].

[17] Accordingly, I am satisfied that the Owner has demonstrated use of the Mark only in association with the following from goods (3): “Non-alcoholic hot and cold beverages, namely, carbonated beverages, coffees, espresso based beverages, specialty/gourmet coffees.

[18] With respect to “teas”, “specialty/gourmet teas” and “cocoas”, again I note that Ms. Hodgson gives no clear statement regarding sales and transfers of such goods during the relevant period. Although she provides photographs of tea and coffee cups at Exhibits H and I to her affidavit, she only states that such cups are “currently” used when consumers “choose to enjoy hot beverages in the Café.”

[19] In any event, the cups at Exhibit H primarily display the KICKING HORSE logo. The Mark only appears in repeated lines of text along with what appear to be other trade-marks,

forming a background design on the cups. For example, the words “Jo Rundle Rock Bugaboo Z-Wrangler Kick Ass Cliff Hanger Espresso Pacific” appear repeatedly. As the Mark is undifferentiated from the other words appearing on the cup, I do not consider this to constitute display of the Mark as registered.

[20] As discussed in further detail below, I also note that Exhibit D shows a gift box containing tea, that Ms. Hodgson identifies as being from 2007. That tea does not appear to display the Mark. Rather, a logo with the word “thé” appears on the packaging. Unlike the Kick Ass-branded coffee, the inference is that at least the previous owner sold tea to customers that would not have been branded with the Mark. Even for tea prepared and consumed on premises at the Café, at best I consider the evidence ambiguous as to whether it was served in a Kick Ass-branded mug or a Kicking Horse-branded cup during the relevant period.

[21] Accordingly, I am not satisfied that the Owner has demonstrated use of the Mark in association with teas and cocoas within the meaning of sections 4 and 45 of the Act.

[22] As noted by the Requesting Party, the affidavit is silent with respect to “sodas” and “ciders”. The registration will be amended accordingly.

#### Goods (4) – Coffee Beans, Ground Coffee, etc.

[23] With respect to goods (4), Ms. Hodgson attests that, in 2012, more than \$7 million of Kick Ass-branded coffee was sold in Canada online, in retail stores, in the Café and in other establishments. Attached as Exhibit E to the affidavit is a photograph of such coffee beans and ground coffee in packaging prominently displaying the Mark. Accordingly, I am satisfied that the Owner has demonstrated use of the Mark in association with “coffee beans” and “ground coffee” within the meaning of sections 4 and 45 of the Act. I also note that, in its written representations, the Requesting Party conceded that use had been demonstrated in association with these goods.

[24] With respect to “tea leaves” and “mixes for tea, cider and cocoa”, Ms. Hodgson provides no evidence of transfers of such goods during the relevant period in association with the Mark or otherwise.

[25] As noted above, at Exhibit D, Ms. Hodgson does provide a photograph of what she describes as a “Kick Ass-branded gift pack”. She attests that such gift packs are sold to consumers via the Owner’s online store and contains coffee, tea, and chocolate-covered beans. I note that while the outer box displays the slogan “Have A Kick Ass Holiday”, the contents all bear their own packaging and trade-marks.

[26] While the coffee is the Owner’s Kick Ass brand, Ms. Hodgson does not explain the origin of the chocolate-covered beans and tea. These products do not bear the Mark and, in fact, appear to display different trade-marks. The picture is of poor quality, but the tea bears a logo with the word “thé”, while the chocolate-covered beans bears a trade-mark in an oval outline that does not appear to be the Mark. I note that both the “thé” trade-mark and the oval trade-mark appear on the outer gift box.

[27] It would appear, then, that the Owner packages the goods of third parties with its own coffee and sells them all together in gift boxes. While this may constitute sale of “gift boxes” in association with the Owner’s trade-mark, I do not consider the outer gift box to constitute “the packages in which [the goods] are distributed” as contemplated by section 4(1) of the Act with respect to the particular contents of the gift box that bear their own packaging and trade-marks.

[28] In any event, I do not consider the phrase “Have A Kick Ass Holiday” to constitute display of the Mark as registered. Although the phrase contains the Mark, it has lost its identity within the phrase, differing from the Mark visually, when sounded and in the idea suggested [per *Honeywell Bull* and *Promafil, supra*].

[29] Furthermore, while the Exhibit D photograph is from 2007, suggesting that gift boxes have been available for sale since then, as noted above, Ms. Hodgson provides no evidence of such sales or transfers within the relevant period.

#### Goods (5) – Appliances and Equipment

[30] Although some of the photographs attached to Ms. Hodgson’s affidavit show coffee-brewing equipment and the like, their appearance would appear to be incidental to the Owner’s services and not the subject of commerce in and of themselves. In this respect, Ms. Hodgson

provides no evidence of sales or transfers of any of goods (5) in association with the Mark or otherwise during the relevant period. The registration will be amended accordingly.

#### Goods (6) – Publications

[31] With respect to goods (6), at Exhibit F to her affidavit, Ms. Hodgson provides photographs of posters, postcards and newsletters, all displaying the Mark. However, while she attests that these items have circulated in Canada “within the last 3 years”, these appear to be in the nature of promotional items rather than the objects of commerce themselves. Again, Ms. Hodgson provides no evidence of sales of such goods within the relevant period or otherwise.

[32] With respect to “gift cards”, also attached at Exhibit F is a photograph of a “Kick Ass Card”, that Ms. Hodgson attests “is currently available to consumers in Canada” for the purchase of goods in the Kicking Horse Café. Unfortunately, it is not clear whether the card was available to or sold to customers during the relevant period.

[33] With respect to the remainder of goods (6), the affidavit is silent. The registration will be amended accordingly to delete goods (6).

#### Goods (7) - Syrups

[34] With respect to goods (7), as noted by the Requesting Party, Ms. Hodgson makes no reference to “non-alcoholic syrups for coffee, milk and soda” in her affidavit. The registration will be amended accordingly to delete such goods.

#### Goods (8) - Clothing

[35] With respect to goods 8, Ms. Hodgson attests that at least \$9000 of Kick Ass-branded clothing was sold in Canada in 2012 and at least \$8000 “to date” in 2013. At Exhibit G, she attaches photographs of various clothing items and a screen shot from the Owner’s website showing a t-shirt “currently” available for sale. The photographs depict the following items:

- An apron depicting the Kicking Horse Coffee logo and the words “KICK ASS COFFEE”.



- The back of two t-shirts, with the slogan “\* Bad Coffee Sucks \* Good Coffee Kicks Ass” – although the photograph is not clear, it would appear that in between the words “Kicks” and “Ass” is the circular design element of a donkey on a green background.
- Two hats that display the words “KICK ASS COFFEE” on the side of the hats.
- A toque with the words “KICK ASS” on the back of the hat.
- A screenshot from the Owner’s website, advertising a “T-SHIRT KICK ASS®” that displays the donkey in a green circle logo on the front of the shirt and highlights the Mark on the back of the shirt.

[36] Ms. Hodgson also references photographs of sweatshirts, baseball caps and other t-shirts at Exhibit K. However, Exhibit K shows screenshots from the Owner’s website that do not depict any articles of clothing. I do note that Exhibit L consists of photographs of employees wearing t-shirts and baseball caps, so this was perhaps simply a typographical error in the affidavit. The baseball cap has the words KICK ASS COFFEE on the back of the cap. The t-shirts are generally the same as displayed on the screenshot in Exhibit G. However, one of the t-shirts depicted shows the slogan, “WE KICK ASS” under the words “ROAST \* PACK \* SHIP” in the same font.

[37] As with the gift box slogan discussed above, I do not consider “WE KICK ASS” underneath “ROAST \* PACK \* SHIP” to constitute display of the Mark as registered. Again, in my view, the identity of the Mark has been changed and the trade-mark displayed on those t-shirts differs from the Mark visually, when sounded and in idea suggested. Similarly, I do not consider the slogan “Bad Coffee Sucks, Good Coffee Kicks Ass” as it appears on one of the Exhibit G t-shirts to constitute display and use of the Mark as registered.

[38] Unfortunately, the Owner provides no invoices or further statements to clarify which of the Owner’s clothing goods were sold during the relevant period. As it is not clear which of the clothing items were actually sold in Canada during the relevant period – those depicting the Mark or those that did not – I am not satisfied that the Owner has demonstrated use of the Mark

in association with any of the Owner's registered clothing goods within the meaning of sections 4 and 45 of the Act.

#### Goods (9) – Cups and Filters

[39] With respect to goods (9), Ms. Hodgson provides photographs of cups at Exhibit H that she attests are distributed to consumers when purchasing a beverage or in association with the Owner's take out and catering services. She also notes that the Exhibit C "Kick Ass Kooler" cup is distributed to consumers when they purchase a cold coffee-based beverage. However, I agree with the Requesting Party that such "Kick Ass Kooler" cups do not appear to be the object of trade in themselves; rather, they are simply the containers for the beverage goods purchased. Further, as noted above, the Exhibit H cups display the Kicking Horse Coffee logo, and I do not consider the appearance of the words "Kick Ass" undifferentiated from the other words appearing in the background of the cup to constitute display and use of the Mark.

[40] Furthermore, Ms. Hodgson is silent with respect to the goods "coffee filters".

[41] Accordingly, I am not satisfied that the Owner has demonstrated use of the Mark within the meaning of sections 4 and 45 of the Act with respect to goods (9).

#### Goods (11) – Cooking utensils and glassware

[42] With respect to goods (11), Ms. Hodgson attaches two photographs of ceramic mugs at Exhibit I, describing them as "tea and coffee cups". Although she attests that these mugs "are currently sold to consumers in Canada" – in addition to being used when consumers purchase hot beverages at the Kicking Horse Café – she provides no evidence of transfers or sales of such mugs during the relevant period. As such, even if I were to consider the ceramic mugs depicted at Exhibit I as "glassware", I am not satisfied that the Owner has demonstrated use of the Mark in association with "glassware namely coffee and tea mugs, cups" within the meaning of sections 4 and 45 of the Act.

[43] Furthermore, the affidavit is silent with respect to the other "cooking, baking and serving utensils" and "glassware" set out in goods (11). The registration will be amended accordingly to delete goods (11).

Goods (12) – Travel mugs, etc.

[44] With respect to goods (12), in contrast to the statements regarding the Owner's other cups and mugs, Ms. Hodgson attests that, in 2012, more than \$1500 of Kick Ass-branded travel mugs were sold in Canada and that "to date", more than \$2000 worth were sold in 2013.

Unfortunately, the slogan appearing on the travel mugs depicted at Exhibit J is "\*Bad Coffee Sucks\* Good Coffee Kicks Ass!"

[45] As above with respect to this slogan appearing on some of the Owner's t-shirts, I do not consider this to constitute display of the Mark [per *Honeywell Bull* and *Promafil, supra*]. Accordingly, I am not satisfied that this evidence demonstrates use of the Mark in association with "travel mugs" within the meaning of sections 4 and 45 of the Act.

[46] Furthermore, the registration is silent with respect to the remainder of goods (12). The registration will be amended accordingly to delete goods (12).

Services (1) and (2) – Food and Beverage Services

[47] The Requesting Party conceded that the evidence shows use of the Mark in association with services (1) and (2). In this respect, although the Owner's primary trade-mark and trade name is KICKING HORSE, the Mark does appear on employee uniforms (as shown in photographs at Exhibit L), on the Owner's website (Exhibit N), on promotional "Kick Ass" codes used by customers for discounts on coffee through the website (Exhibit N), in advertisements of the Owner's services (Exhibit M), and on business cards handed out to customers (Exhibit O). The Mark also appears prominently on thermal carafes used in association with the Owner's take out services in British Columbia.

[48] Services (1) and (2) will be maintained accordingly.

Services (3) – Providing Financing for Charitable and Recreational Organizations or Events

[49] With respect to the Owner's charitable financing services, Ms. Hodgson attests that the Owner sponsored or financed various athletes and events during the relevant period. Attached as Exhibit P to her affidavit are photographs taken at two events in 2011 and 2012. However, the

first two photographs only show a banner displaying the “Good Coffee Kicks Ass” slogan, while the second photo only shows various cans of Kick Ass-branded coffee displayed on a table near a “Finish” sign at a winter sporting event. Both the banner and the coffee cans also display the Owner’s Kicking Horse Coffee logo.

[50] I do not consider the mere display of Kick-Ass branded coffee at a charitable or sporting event to constitute display of the Mark in association with the financing services as registered. At best, the Mark would be associated with the coffee itself, and not the “providing financing services” of the Owner. In my view, absent further context, the display of a trade-mark on goods simply available at charitable or sporting events does not automatically mean that such trade-marks would be associated with the financing of such events. Again, the Owner providing the financing is known as Kicking Horse Coffee, as clearly displayed on the exhibited banners.

[51] Ms. Hodgson also attaches two screenshots at Exhibit P. The first screenshot is an undated page “from an event celebrating Fair Trade in business practices” entitled “Kick Ass Karma”. The page states that “As part of the Fair Trade Fortnight celebration, Kicking Horse Coffee is offering a special 15 percent Karma discount on online coffee purchases until May 15th”. Even if I were to accept “Kick Ass Karma” as display of the Mark in association with the registered services, it is not clear how a discount offering to consumers constitutes “financing” of the event. At best, it is a discount related to a charitable event; further, Ms. Hodgson does not specify whether the screenshot or the event it relates to is from the relevant period.

[52] With respect to the second screenshot, “celebrating Earth Day”, the page is entitled “Help Us ‘Kick Ass’ On Earth Day” and the page describes how Kicking Horse Coffee “will be donating 50% of all coffee website sales to the Columbia Valley Community Greenhouse in Invermere.” Unfortunately, the Earth Day referenced on the website as “coming up” predates the relevant period. As such, even if I were to accept that the page title’s emphasis on “Kick Ass” with the mere use of quotation marks constitutes display of the Mark, this evidence is from outside of the relevant period. If the Owner or its predecessor financed any Earth Day celebrations in association with the Mark during the relevant period, Ms. Hodgson does not state this and it is not clear why evidence of such was not furnished instead of this particular dated screenshot.

[53] Furthermore, although Ms. Hodgson attests to more than 113,000 of the aforementioned “Kick Ass” codes being distributed in 2012 to potential consumers of the Owner’s retail services, it is not clear that such codes were distributed at community and charity events it may have sponsored during the relevant period.

[54] In view of the foregoing, I am satisfied that the Owner has demonstrated use of the Mark in association with services (1) and (2) only within the meaning of sections 4 and 45 of the Act.

#### Disposition

[55] As the Owner submitted no evidence of special circumstances excusing non-use of the Mark, in view of all of the foregoing, pursuant to the authority delegated to me under section 63(3) of the Act and in compliance with the provisions of section 45 of the Act, the registration will be amended to delete services (3) and following goods:

- (1) ... muffins, biscotti, scones, croissants, cookies, rolls, breads, ...
- (2) Prepared and pre-packaged food items, such as wraps and sandwiches.
- (3) ... sodas, ... teas, cocoas, ..., speciality/gourmet teas, and ciders.
- (4) ..., tea leaves and mixes for tea, cider and cocoa.
- (5) Electric and hand-operated coffee, tea and cider preparation and brewing equipment, namely, coffee grinders, coffee mills, percolators, coffee makers, espresso and cappuccino makers, tea kettles, tea pots, tea strainers, and tea balls, for domestic and commercial use.
- (6) Publications, print and electronic, namely newsletters, humorous and scenic postcards, note pads, posters, stickers, gift certificates and gift cards, coffee table books, recipe books, door and window signs, posters, and magazines.
- (7) Non-alcoholic flavouring syrups for coffee, milk and soda.
- (8) Clothing, namely t-shirts, baseball and sun hats, toques, scarves, denim shirts, aprons, golf shirts, sweatshirts, hooded jackets and sweatshirts, socks, gloves, vests, and shorts.
- (9) Paper and non-paper coffee filters; paper, plastic and synthetic beverage cups.
- (10) ... chocolate, chocolate and/or yogurt covered coffee beans, chocolate and/or yogurt covered cherries and/or strawberries, ...
- (11) Cooking, baking and serving utensils, namely pans, molds, grills, glassware namely coffee and tea mugs, cups, bowls, trays and plates.
- (12) Travel mugs, cooler bags, thermal insulated bottles, water bottles, and cup holders for use in vehicles.

[56] The amended statement of goods and services will be as follows:

#### GOODS

- (1) Bakery and pastry goods, namely granola items and cakes.

- (2) Non-alcoholic hot and cold beverages, namely carbonated beverages, coffees, espresso based beverages, speciality/gourmet coffees.
- (3) Coffee beans, ground coffee.
- (4) Confectionary items, namely, chocolate-coffee cookies and bars.

#### SERVICES

- (1) Operation of chain retail café, snack bars and/or coffee houses specializing in the service of prepared foods and beverages, catering services and take-out services, and retail sales of the Applicant's bakery and pastry goods and non-alcoholic beverages.
- (2) Wholesale, retail and mail order sales of ground and whole bean coffee; tea leaves, cocoa, and mixes for teas, cocoa and cider.

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