

TRADUCTION/TRANSLATION

IN THE MATTER OF A PROCEEDING under section 45 concerning registration No. 412,346 for the trade-mark SOLEIL D'OR

On February 18, 2004 at the request of Fraser Milner Casgrain LLP, the Registrar sent a notice under section 45 of the *Trade-marks Act*, R.S.C. 1985, c. T-13 (the "Act") to La Maison Orphée Inc. ("Maison Orphée"), the registered owner of registration No. 412,346 for the trade-mark SOLEIL D'OR (the "Mark") registered in association with [TRANSLATION] "edible oils of all kinds".

According to section 45 of the *Trade-marks Act*, R.S. 1985, c. T-13, the registered owner of a trade-mark must establish that the mark has been in use in Canada in association with each of the wares and services specified in the registration at any time during the three-year period immediately preceding the date of the notice and, if not, the date when it was last so in use and the reason for the absence of such use since that date. The relevant period in this case extended from February 18, 2001 to February 18, 2004. The use of a trade-mark in Canada is defined in section 4 of the Act.

A statutory declaration by Élisabeth Bélanger dated May 11, 2004, was filed in reply to the notice under section 45. Only Maison Orphée filed written representations. No hearing was held.

Ms. Bélanger, Assistant General Manager of Maison Orphée, stated that Maison Orphée is an important manufacturer, distributor and vendor of edible oils in Canada. The oils associated with the Mark are sold by Maison Orphée to retailers, consumers, health and nutrition professionals, restaurants, manufacturers of food products as well as distributors who resell them to major food-store chains, supermarkets, groceries, restaurants and other businesses selling foodstuffs. In fact, the edible oils associated with the Mark include olive, almond, wheat germ, corn, grape-seed, soybean, organic canola, organic safflower, organic olive, organic sunflower, organic sesame, organic vintage olive and new-harvest canola oils.

According to Ms. Bélanger's statements, Maison Orphée has continuously used the Mark in Canada since February 1993 in association with edible oils of all kinds. Labels, photographs of bottles and other containers to which labels were affixed and photographs of boxes for delivery of the wares are attached to the affidavit (Exhibit A). I note that the Mark appears on the labels as well as on the boxes. I noted that the name SOLEIL D'OR or SOLEIL D'OR ENR, accompanied by a partial address (province, country, postal code) corresponding to that of Maison Orphée, appeared on the labels. Although it would have been preferable for Ms. Bélanger to give a clear explanation of either of the names appearing on the labels, on the basis of the evidence as a whole, I feel that it may reasonably be concluded that this is a company name or a trade name of Maison Orphée.

Ms. Bélanger provided a summary of the value of the sales of edible oils associated with the Mark during the period from February 1, 2001 to January 31, 2004, as well as details of the sales figures for each of the edible oils associated with the Mark (Schedule C).

The following documents are also attached to the affidavit: a photograph dated May 2003 showing the stage of bottling and labelling the edible oils associated with the Mark (Schedule D); a photograph dated June 2001 showing the edible oils associated with the Mark displayed at the premises of a retailer in Toronto (Schedule E); various documents covering the relevant period, including price lists, advertising and catalogues issued by various distributors and referring to the edible oils associated with the Mark (Schedules F to I); a promotional leaflet distributed at various sales outlets across the province of Quebec in 1998, a number of which were still available to the public during 2001 (Schedule J); as well as various documents covering the relevant period, including price lists and special offers intended for Maison Orphée distributors and referring to the edible oils associated with the Mark (Schedule L). Since the specimens filed as Exhibit A show that the Mark was used within the meaning of subsection 4(1), I do not see any need to consider whether the documents attached to Exhibits F to L show that the Mark was used under subsection 4(1).

Ms. Bélanger attached photocopies of invoices issued in 2002 and in 2003 by Maison Orphée to distributors and other customers of Maison Orphée (Schedules K and M). She explained that the letters SDO in the description of the products is the computer code issued internally in reference to the Mark.

Having considered the evidence, I am satisfied that it shows that the Mark was in use in Canada by the registered owner during the relevant period and in accordance with the requirements of subsection 4(1) of the Act. The evidence clearly shows the way in which the Mark was associated with the wares when they were transferred in the normal course of trade and the invoices confirm that there were sales of the wares during the relevant period.

Given the evidence filed, I find that registration No. 412,346 must be maintained in accordance with the provisions of subsection 45(5) of the Act.

DATED AT BOUCHERVILLE, QUEBEC, APRIL 7, 2006.

Céline Tremblay
Member
Trade-marks Opposition Board