



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

**Citation: 2017 TMOB 160**

**Date of Decision: 2017-11-30**

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

**Goodmans LLP**

**Requesting Party**

**and**

**Bronco Wine Company**

**Registered Owner**

**TMA328,148 for GRAND CRU**

**Registration**

**VINEYARDS DESIGN**

[1] This is a decision involving summary expungement proceedings with respect to registration No. TMA328,148 for the trade-mark GRAND CRU VINEYARDS DESIGN (the Mark), shown below, owned by the Bronco Wine Company.



[2] The Mark is registered in association with “wines”.

[3] For the reasons that follow, I conclude that the registration ought to be maintained.

## THE PROCEEDINGS

[4] On October 7, 2015, the Registrar of Trade-marks sent a notice under section 45 of the *Trade-marks Act* RSC 1985, c T-13 (the Act) to the Bronco Wine Company (the Owner). The notice was sent at the request of Goodmans LLP.

[5] The notice required the Owner to furnish evidence showing that it had used the Mark in Canada, at any time between October 7, 2012 and October 7, 2015, in association with the goods specified in the registration. If the Mark had not been so used, the Owner was required to furnish evidence providing the date when the Mark was last in use and the reasons for the absence of use since that date.

[6] The relevant definition of use 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.

[7] It has been 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 [see *Uvex Toko Canada Ltd v Performance Apparel Corp*, 2004 FC 448, 31 CPR (4th) 270].

[8] In response to the Registrar’s notice, the Owner furnished the affidavit of Fred T. Franzia, sworn May 6, 2016, together with Exhibits A1 and A2.

[9] Neither party filed written representations; an oral hearing was not conducted.

## THE EVIDENCE

[10] Mr. Franzia has been the CEO of the Owner since he founded the company back in 1973.

[11] Mr. Franzia attests that during the relevant period, the Owner was using the Mark in the normal course of trade in Canada in association with the goods. He defines the normal course of

trade as referring to sales made by the Owner directly to its distributors such as the LCBO. He attests that the LCBO then in turn sold the goods bearing the Mark in Ontario during the relevant period.

[12] In support Mr. Franzia attaches the following to his affidavit:

- Exhibit A-1: a representative invoice dated November 5, 2012 for the sale of 60 cases of wine bearing the Mark by the Owner to the LCBO.
- Exhibit A-2: a photograph of a bottle of wine which clearly bears the Mark. Mr. Franzia confirms that this photograph evidences the way that the Mark was affixed to the bottles of wine sold in Canada by the Owner during the relevant period. He further confirms that the bottle of wine depicted in this exhibit is a correct representation of the bottles of wine referred to in the Exhibit A-1 invoice.

#### ANALYSIS AND REASONS FOR DECISION

[13] As previously mentioned, evidentiary overkill is not required in a section 45 proceeding. All a registered owner is required to do is establish a *prima facie* case of use, and evidence which includes a single sale in this regard can be sufficient provided it follows a pattern of a genuine commercial transaction [*Phillip Morris Inc v Imperial Tobacco Ltd et al* (1987), 17 CPR (3d) 237 (FCA)].

[14] In the present case, I am satisfied that the registered owner has met this threshold and that use has been shown that satisfies sections 4 and 45 of the Act. In particular, Mr. Franzia has attested to the normal course of trade of the Owner, and the invoice in evidence demonstrates a sale of wine by the Owner that is entirely consistent in this regard. Although a single sale, there is nothing in the evidence that would lead me to conclude that it was not a genuine sale, contrived merely to protect the registration. Furthermore, the Mark clearly appears on the bottle of wine in Exhibit A-2, and Mr. Franzia has clearly attested that the Exhibit A-2 photograph is an accurate representation of how the Mark was affixed to bottles of wine sold in Canada by the Owner during the relevant period, including those evidenced as sold in the Exhibit A-1 invoice.

DISPOSITION

[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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Kathryn Barnett  
Hearing Officer  
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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No hearing held.

**AGENTS OF RECORD**

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FOR THE REGISTERED OWNER

Goodmans LLP

FOR THE REQUESTING PARTY