



TRANSLATION
THE REGISTRAR OF TRADE-MARKS

Citation: 2018 TMOB 18

Date of Decision: 2018-02-08

**[UNREVISED ENGLISH
CERTIFIED TRANSLATION]**

IN THE MATTER OF A SECTION 45 PROCEEDING

Cassels Brock & Blackwell LLP

Requesting Party

and

**Les Placements Jean-Paul Beaudry &
Fils Inc.**

Registered Owner

TMA362,875 for DU QUARTIER

Registration

INTRODUCTION

[1] This decision concerns a summary expungement procedure against Registration No. TMA362,875, property of Les Placements Jean-Paul Beaudry & Fils Inc. (the Owner), for the DU QUARTIER trade-mark (the Mark), covering the services relating to the operation of grocery-convenience store businesses (the Services).

[2] On the following grounds, I conclude that the registration must be maintained.

THE PROCEDURE

[3] On February 4, 2016, the Trade-marks Registrar sent a notice under section 45 of the *Trade-marks Act* RSC 1985, c. T-13 (the Act) to the Owner of the Mark. The notice was issued at the request of Cassels Brock & Blackwell LLP (the Requesting Party).

[4] Section 45 of the Act requires the Owner to show that it has used its Mark in Canada in association with the Services at any given time during the three years preceding the date of the notice or, if not, provide the date on which it was last used and the reason for its absence of use since this date. The relevant period is therefore from February 4, 2013, to February 4, 2016 (the Relevant Period).

[5] The procedure pursuant to section 45 is simple and expeditious, and serves to clear “deadwood” from the register. Accordingly, the threshold to establish use of the Mark, within the meaning of section 4 of the Act, during the Relevant Period is not very high [see *Uvex Toko Canada Ltd v Performance Apparel Corp*, (2004) 31 CPR (4th) 270 (FCTD)]. The issue is to establish a use of the Mark *prima facie* [see *1459243 Ontario Inc v Eva Gabor International, Ltd*, 2011 FC 18 (FCTD)].

[6] A simple assertion of use of the Mark in association with the Services is not sufficient to establish its use within the meaning of section 4(2) of the Act. There is no need to file abundant evidence [see *Plough (Canada) Ltd v Aerosol Fillers Inc* (1980), 53 CPR (4th) 62 (FCA)].

[7] In response to this notice from the Registrar, the Owner filed Mr. Jacques Beaudry’s affidavit and Exhibits A and B.

[8] Only the Owner filed written representations and was represented at the hearing.

THE EVIDENCE OF RECORD

[9] Mr. Beaudry has been the President of the Owner since 2004. He alleges that the Owner has used the Mark in association with the Services since at least August 1989. To this effect, Mr. Beaudry attached to his affidavit, as Exhibit A, photographs of banners and signs bearing the

grocery-convenience store Mark of various businesses located in the Province of Quebec that currently exist and that existed during the Relevant Period.

[10] Mr. Beaudry explained that the Mark is used under licence by various licensees he identified. He also provided the date of initial use of the Mark by each of them in association with the operation of grocery-convenience stores.

[11] Mr. Beaudry affirmed that the licence, affiliation and procurement agreements expressly stipulate that the contracts are confidential. He added that the licensees must procure from Beaudry & Cardin Inc. (the Corporation), a food wholesaler whose leading majority shareholder is the Owner. He affirmed that he is the President and Secretary of the Corporation.

[12] Mr. Beaudry explained that the goods found on the shelves of the stores operated by licensees in association with the Mark are goods that comply with the Owner's standards, [TRANSLATION], "which ensures that the goods sold in the DU QUARTIER grocery-convenience stores are goods for which [the Owner] controls the character and quality and which ensure a level of quality of the DU QUARTIER stores".

[13] Mr. Beaudry added that the owner, primarily through him, as CEO, ensures compliance with the quality standards and conditions established in the licence agreements. Thus, the Owner controls the character and quality of the Services rendered by the licensees in Canada. He added that the licence agreements provide, in particular, that the stores may be visited at any time during business hours to conduct all the necessary inspections to ensure compliance with all the obligations of the licensees.

[14] Mr. Beaudry concluded his affidavit by filing, as Exhibit B to his affidavit, various invoices involving purchases made by various licensees from the Corporation and which show that the goods offered for sale and sold in the grocery-convenience stores operated in association with the Mark during the relevant period came from the Corporation, of which the Owner is the majority shareholder.

ANALYSIS OF EVIDENCE

[15] In the absence of written representations on the part of the Requesting Party and its presence at the hearing, I am satisfied that the evidence described above shows the use of the Mark in Canada by the Owner in association with the Services and during the Relevant Period.

DECISION

[16] In exercising the authority delegated to me pursuant to the provisions of section 63(3) of the Act, registration TMA362,975 will be maintained in the register in compliance with the provisions of section 45 of the Act.

Jean Carrière
Member
Trade-marks Opposition Board
Canadian Intellectual Property Office

Certified true translation
Arnold Bennett

**TRADE-MARKS OPPOSITION BOARD
CANADIAN INTELLECTUAL PROPERTY OFFICE
APPEARANCES AND AGENTS REGISTERED IN THE CASE**

DATE OF HEARING 2018-01-16

APPEARANCES

Élodie Dion

FOR THE REGISTERED OWNER

No appearance

FOR THE REQUESTING PARTY

AGENT(S) OF RECORD

Goudreau Gage Dubuc

FOR THE REGISTERED OWNER

Cassels Brock & Blackwell LLP

FOR THE REQUESTING PARTY