



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

**Citation: 2018 TMOB 162**

**Date of decision: 2018-12-21**

**[UNREVISED ENGLISH  
CERTIFIED TRANSLATION]**

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

**Farris, Vaughan, Wills & Murphy LLP**

**Requesting Party**

**and**

**Maison des Futailles, S.E.C.**

**Registered Owner**

**TMA711,795 for CARIBOU &  
DESSIN**

**Registration**

INTRODUCTION

[1] This decision relates to a summary expungement procedure brought against registration No. TMA711,795, property of Maison des Futailles S.E.C. (the Owner), for the CARIBOU & Dessin trade-mark (the Mark) covering alcoholic beverages, namely aperitif liqueurs (the Goods).

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

## THE PROCEDURE

[3] On February 2, 2017, 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 Farris, Vaughan, Wills & Murphy 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 Goods 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 2, 2014, to February 2, 2017 (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 Goods is not sufficient to establish its use within the meaning of section 4(1) 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 the notice, the Owner filed Mr. Sylvain Fontaine’s affidavit and Exhibits SF-1 and SF-2.

[8] Only the Owner filed written representations and there was no hearing.

## THE EVIDENCE OF RECORD

[9] Mr. Fontaine is the Owner’s Senior Vice-President, Sales and Marketing. He alleges that, in this capacity, he has personal knowledge of all the facts related in his affidavit.

[10] Mr. Fontaine affirms that the Owner is a manufacturer, a bottler and a distributor of alcoholic beverages sold under different trade-marks, including the Goods sold under the Mark.

[11] Mr. Fontaine explains that due to the government monopoly granted to the Société des Alcools du Québec (SAQ) and the analogous corporations in the other provinces (the Alberta Gaming and Liquor Commission (AGLC), the Liquor Control Board of Ontario (LCBO) and the Manitoba Liquor & Lotteries Corporation (MLLC), the Owner cannot sell the Goods directly to consumers. Thus, in Québec, the Goods bearing the Mark must first be sold to the SAQ, which then handles their sale and distribution. In fact, the SAQ is the exclusive distributor in Québec of the Goods bearing the Mark. This regulation and this practice are similar in the other provinces.

[12] Mr. Fontaine affirms that the Goods bearing the Mark are sold retail in the different SAQ branches and the same is done in the other provinces where the Goods bearing the Mark are sold. He adds that the Owner also exports the Goods bearing the Mark for resale in other countries.

[13] To prove the use of the Mark in association with the Goods during the Relevant Period, Mr. Fontaine:

- a) reproduced in paragraph 10 of his affidavit a label affixed to the bottles of the Goods, 750 ml format, sold during the Relevant Period, on which the Mark appears;
- b) filed as Exhibit SF-1 a printout of the SAQ website promoting the Goods. Although this printout is subsequent to the Relevant Period, it confirms that the bottle, as shown, is identical to the bottle as it was sold during the Relevant Period;
- c) reproduced in paragraph 13 of his affidavit photographs taken on January 24, 2017 and February 3, 2017 showing the Goods sold in association with the Mark, as they were sold at an SAQ branch located in Lévis, Québec;
- d) filed as Exhibit SL-2 invoices issued by the Owner during the Relevant Period and that concern the Goods sold in association with the Mark. They involve sales made to the ALGC, the SAQ, the MLLC, the LCBO and foreign companies to which the Owner exported the Goods bearing the Mark in Canada. The invoices thus filed include the identification of the Goods in association with the Mark.

[14] Mr. Fontaine affirms that a total of nearly 12,000 cases of twelve bottles were sold in Canada or exported from Canada during the Relevant Period. The Goods then were generally resold to the consumer public.

[15] Mr. Fontaine also provided the sums of money spent by the Owner during the years 2014, 2015 and 2016 to promote Goods sold in association with the Mark. He reproduced, in paragraph 19 of his affidavit, advertisements that were distributed during the Montréal en Lumière Festival and the Carnaval de Québec in 2015 where the Goods in association with the Mark were sold for consumption on site.

#### ANALYSIS OF EVIDENCE

[16] In the absence of written representations on the part of the Requesting Party and its representations at a hearing, I am satisfied that the evidence described above shows the use of the Mark in Canada, within the meaning of section 4(1) of the Act, by the Owner in association with the Goods during the Relevant Period.

#### DECISION

[17] In exercising the authority delegated to me pursuant to the provisions of section 63(3) of the Act, registration No. TMA711,795 will be maintained in the register in according to the provisions of section 45 of the Act.

---

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

Certified translation  
Arnold Bennett

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

---

No hearing held

**AGENT(S) IN THE CASE**

BCF S.E.N.C.R.L.

FOR THE REGISTERED OWNER

Farris, Vaughan, Wills & Murphy LLP

FOR THE REQUESTING PARTY