

SECTION 45 PROCEEDINGS
TRADE-MARK: ANFORIO
REGISTRATION NO: TMA 206,012

At the request of Johnston Wassenaar LLP (the “requesting party”) the Registrar forwarded a notice under section 45 of the *Trade-marks Act* on April 5, 2006 to AMBROGIO E GIOVANNI FOLONARI DISTRIBUZIONE Anforio-Della-Staffa-Pegaso-Previ-Premiovini S.r.l., the registered owner of the above-referenced trade-mark.

The trade-mark ANFORIO is registered in association with:

Wares: Wines

Section 45 of the *Trade-marks Act*, R.S.C. 1985, c. T-13, requires the registered owner of the trade-mark to show whether the trade-mark has been used in Canada in association with each of the wares and/or services listed on the registration at any time within the three year period immediately preceding the date of the notice, and if not, the date when it was last in use and the reason for the absence of use since that date. In this case, the relevant period for showing use is any time between April 5, 2003 and April 5, 2006.

What qualifies as use of the trade-mark is defined in s. 4 of the Act, which states:

4. (1) A trade-mark is deemed to be used in association with wares if, at the time of the transfer of the property in or possession of the wares, in the normal course of trade, it is marked on the wares themselves or on the packages in which they are distributed or it is in any other manner so associated with the wares that notice of the association is then given to the person to whom the property or possession is transferred.

(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.

(3) A trade-mark that is marked in Canada on wares or on the packages in which they are contained is, when the wares are exported from Canada, deemed to be used in Canada in association with those wares.

In response to the Registrar’s notice, the Registrant furnished the affidavit of Rodolfo Cappelli – a Director of the Italian company, Ambrogio E. Giovanni Folonari

Distribuzione, Anforio, Della, Staffa, Pegaso, Previ, Premiovini S.R.L. (the Registrant). Neither party filed a written argument and an oral hearing was not conducted.

In paragraph 3 of the affidavit, Mr. Cappelli explains that the Registrant is in the business of wholesaling and distributing wines, alcoholic beverages and foods; selling wines and alcoholic beverages in Italy, and exporting Italian wines, alcoholic beverages and foods throughout the world, including Canada, through wholesalers and distributors.

In paragraph 4, he states that wine, bearing labels that include the trade-mark ANFORIO, have been continuously sold in Canada through wholesalers and distributors during the past three years. Attached as Exhibit "A" are electronic photographs of sample labels, demonstrating the manner in which the trade-mark was affixed to the registered wares during the past three years. The trade-mark ANFORIO can be clearly seen on the label.

As further evidence supporting use of the subject trade-mark in Canada during the relevant period, sales figures from 2003 until August 31, 2006 have been provided, in addition to invoices and exportation documentation (Exhibit "B") showing sales of ANFORIO wine in Canada. Three of the four documents attached under Exhibit "B" are dated within the relevant period, and appear to show completed sales transactions in Canada within the material time period. Although the invoices and exportation documentation refer to sales by Ambrogio E. Giovanni Folonari Distribuzione S.R.L., the affiant has indicated in paragraph 2 of the affidavit that this is a trade-name of the Registrant. Furthermore, in paragraph 8 of the affidavit, it is apparent that these invoices reflect sales of wine bearing labels as depicted in Exhibit "A", as Mr. Cappelli clearly explains that the bar code listed on these labels is the same bar code listed in the product description of the sample invoices.

Having considered the evidence, I am satisfied that it shows use of the trade-mark ANFORIO during the relevant period in association with "wines" in the manner required by the Act. Not only have enumerated sales figures been provided exhibiting sales during the relevant period (paragraph 6), but also the invoices that are dated within the

relevant period clearly confirm that sales of ANFORIO wine by the Registrant were made in Canada during the relevant period. Furthermore, I accept that the notice of association required by ss. 4(1) of the Act was given to the purchaser at the time of transfer of the wares as Mr. Cappelli has clearly confirmed that the trade-mark appeared on the label for the wares in the manner shown by Exhibit "A" attached to the affidavit.

In view of the above, as I have concluded that use has been shown of the subject trade-mark within the meaning of section 45 and subsection 4(1) of the Act, Registration TMA 206,012 for the trade-mark ANFORIO will be maintained in compliance with the provisions of ss. 45(5) of the *Trade-marks Act*, R.S.C. 1985, c. T-13.

DATED IN GATINEAU, QUEBEC THIS 13TH DAY OF FEBRUARY 2008.

K. Barnett
Junior Hearing Officer
Section 45 Division