

IN THE MATTER OF AN OPPOSITION by  
Effem Foods Ltd. to application No. 709,596  
for the trade-mark UPHOLDING THE STANDARDS  
OF BREEDING EXCELLENCE filed by Ralston  
Purina Canada Inc.

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On July 23, 1992, Ralston Purina Canada Inc. filed an application to register the mark UPHOLDING THE STANDARDS OF BREEDING EXCELLENCE based on proposed use in Canada in association with the wares “pet food.” The application disclaims the right to the exclusive use of the word EXCELLENCE apart from the mark as a whole. The application was advertised for opposition purposes in the Trade-marks Journal issue dated May 5, 1993 and was opposed by Effem Foods Ltd. on October 5, 1993. The applicant responded by filing and serving a counter statement.

Several grounds of opposition are pleaded, however, the determinative issues are whether the applied for mark is clearly descriptive (or deceptively misdescriptive) of the character or quality of the applicant’s wares and whether the applied for mark is merely “laudatory promotional language of a kind commonly used in the advertisement of pet foods”: see paragraphs 2.5 and 2.1, respectively, of the statement of opposition.

The opponent’s evidence consists of the affidavits of Christopher Aide, an associate with the firm representing the opponent; and Robert W. White, Senior Vice President, Canada, of the Audit Bureau of Circulations. The applicant did not file any evidence in support of its application. Both parties filed a written argument and both were represented at an oral hearing.

The opponent’s case relies on dictionary definitions for the individual words comprising the mark UPHOLDING THE STANDARDS OF BREEDING EXCELLENCE, and on the occurrence of phrases comprised of combinations of those individual words (or words similar in meaning) appearing in articles and in advertising

relating to pure-bred dogs or pet foods. Examples of such phrases are *upholding the standards; standard of excellence; breed standard; improving the breed; breeding stock . . . standard met; breeding stock evaluation; a breed type is a basic requirement of all standards; local breed standards*. The opponent argues that typical purchasers of pet food are accustomed to seeing the above phrases used in a descriptive or laudatory context by different pet food businesses to promote and advertise their respective products. Thus, according to the opponent, a typical purchaser would view the applied for mark in a similar way, that is, in a descriptive or laudatory sense.

The opponent notes that in *Quaker Oats Co. v. Ralston Purina Co.* (1989), 28 C.P.R.(3d) 157 this board found that the mark FROM A LIFETIME OF RESEARCH, A NEW STANDARD IN PETFOOD NUTRITION was clearly descriptive of the wares pet food. Board member D. J. Martin stated as follows (at p.160):

The facts in the instant case are analogous to the facts in *Quaker Oats*, above. Accordingly, I find that there is ample support for the opponent's submission (at page 13-14 of its written argument) that "an average consumer would react to the applicant's applied for trade-mark as an indication or a description that the applied for pet food wares, like competitors' products, would "uphold" the respective "standards in breeding excellence" applicable to pet animals he or she owned."

The applicant, on the other hand, submits that there is no nexus between pet food and breeding standards and consequently the applied for mark cannot be clearly descriptive or deceptively misdescriptive. In this respect, the applicant points out that breeding standards are achieved through genetic control and not through nutritional regimes. Thus, the applicant concludes that the phrase UPHOLDING THE STANDARDS OF BREEDING EXCELLENCE is “on first impression, meaningless or somewhat mystifying when applied to a pet food.” In my view, the applicant’s argument is not convincing because the average consumer would likely interpret the component BREEDING in the applied for mark in the wide sense of “rearing” or “raising” rather than in the narrow sense of controlled sexual reproduction of a species: in this regard, see *Imperial Tobacco Ltd. v. Benson Hedges Inc.* (1983), 75 C.P.R.(2d) 115 at 117:

See also examples of advertising, included *en liasse* in exhibit F of Mr. Aide’s affidavit, which communicate the message that “breeding champions requires a superior pet food”.

In view of the above, I am inclined to favour the opponent’s position.

Accordingly, I find that the applied for mark offends the provisions of Section 12(1)(b) of the Act in that the mark UPHOLDING THE STANDARDS OF BREEDING EXCELLENCE is a laudatory phrase which clearly describes the function of or the principal result achieved from using the applicant’s wares: see *Thomson Research Associated Ltd. v. Registrar of Trade Marks* (1982), 67 C.P.R. (2d) 205 at 208 (F.C.T.D.).

The applicant's application is therefore refused.

DATED AT HULL, QUEBEC, THIS 22nd DAY OF NOVEMBER, 1996.

Myer Herzig,  
Member,  
Trade-marks Opposition Board