

## TRADUCTION/TRANSLATION

SECTION 45 PROCEEDINGS  
TRADE-MARK: GOLDEN SUN  
REGISTRATION NO.: 213,466

On May 28, 2003 at the request of 88766 Canada Inc, the Registrar forwarded a Section 45 notice to Margarine Thibault Inc., the registered owner of the above-reference trade-mark registration.

The trade-mark GOLDEN SUN is registered for use in association with the following wares:  
“margarine”.

Section 45 of the Trade-marks Act requires the registered owner of a 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. The relevant period in this case is any time between May 28, 2000 and May 28, 2003.

In response to the notice the registrant filed the affidavit of Danielle Bergeron together with exhibits.

Only the registrant filed written arguments. Neither party has requested an oral hearing.

In her affidavit Danielle Bergeron states that she is president of Margarine Thibault Inc. She was also vice president of J.E. Bergeron et Fils Ltée (“Bergeron”), a company that until October 1, 2003 was an affiliated company of the registrant. She states that both the registrant and Bergeron have used the trade-mark in association with margarine during the relevant period ending May 28, 2003.

Authorization for the use of the GOLDEN SUN trade-mark by Bergeron was given by the registrant by way of a verbal license agreement and Ms. Bergeron states that the registrant had control over the quality and character of the wares produced by Bergeron. She outlines the following combined sales figures by both the registrant and Bergeron since 2000 with respect to the sale of GOLDEN SUN margarine:

May 5, 2000 to September 30, 2000:	\$46,458
October 1, 2000 to September 30, 2001	\$84,277
October 1, 2001 to September 30, 2002	\$366,222

October 1, 2002 to September 30, 2003      \$280,351

Marked as exhibit “A” to the Bergeron affidavit are various labels used in Canada by Bergeron during the relevant period and affixed to the margarine products. These labels are for 4Kg and 13 Kg containers of soft margarine and show the words GOLDEN SUN. Also found on the labels is the mention “Prepared for / Préparé pour: J.E. Bergeron et Fils Ltée”. Marked as exhibit “B” are practically identical labels, but bear the mention “Prepared for / Préparé pour: Margarine Thibault Inc.” which labels were used in Canada by the registrant during the relevant period and which were still being used at the date of the affidavit (November 26, 2003). Marked as exhibit “C” is a substantial amount of copies of invoices showing sales by both Margarine Thibault Inc. and Bergeron of GOLDEN SUN margarine in various sizes to Canadian customers during the relevant period.

In its written arguments the registrant submits that the evidence shows use of the trade-mark GOLDEN SUN in association with margarine during the relevant period; that, not only does it show

use by the registrant but also by a licensee in conformity with s. 50 of the Trade-marks Act.

Having considered the evidence I totally agree with the registrant and find that use of the trade-mark

GOLDEN SUN has been shown in Canada in association with margarine during the relevant period.

With respect to the use by the registrant, the labels clearly show the trade-mark and bear the

registrant's name and the invoices confirm that sales of the wares in the normal course of trade and

during the relevant period have been made by Margarine Thibault Inc. This alone is sufficient to

maintain the trade-mark registration.

However, the evidence also shows use by the licensee "Bergeron", which use meets the requirements

of the *Trade-marks Act*. There is mention of a verbal license between the registered owner and

Bergeron and Ms. Bergeron has sworn that the registrant controlled the nature and quality of the

wares produced. This is sufficient for the purposes of Section 45 to permit me to conclude that any

use shown by the licensee is deemed use by the registrant pursuant to Section 50(1) of the Act (see

*Gowling, Strathy & Henderson v. Samsonite Corp.* (1996), 66 C.P.R. (3d) 560 (T.M.S.H.O.) at p.56

and *Mantha & Associes/Associates v. Central Transport, Inc.* (1995), 64 C.P.R. (3d) 354 (F.C.A.)).

Based on the above findings, I conclude that the trade-mark GOLDEN SUN ought to be maintained.

Registration No. 213,466 will be maintained in compliance with the provisions of Section 45(5) of the Trade-marks Act.

DATED AT GATINEAU, QUEBEC, THIS 29TH DAY OF SEPTEMBER 2005.

D. Savard  
Senior Hearing Officer  
Section 45 Division