

TRADUCTION/TRANSLATION

**PROCEEDING UNDER SECTION 45
TRADE-MARK: OASIS
REGISTRATION NO.: TMA 139,031**

On August 2, 2000, at the request of Messrs. Ridout & Maybee, the Registrar sent a notice prescribed by section 45 of the *Trade-marks Act* to A. Lasseonde Inc., the registered owner of the registration cited above.

The trade-mark OASIS is registered for use in association with the following wares and services:

MARCHANDISES :

- (1) Jus et breuvages de fruits.
- (2) Nécessaire pour pommes de terre, qui consiste en une série de bâtonnets et un mélange contenant du sucre et du colorant.

SERVICES :

Opération d'un établissement de restauration; opération d'un débit de boissons.

Section 45 of the *Trade-marks Act* states that the registered owner must show, with respect to each of the wares or services specified in the registration, whether the trade-mark was in use in Canada at any time during the three-year period immediately preceding the date of the notice and, if not, the date when it was last so in use and the reason for the absence of such use since that date. The period relevant to this matter is some time between August 2, 1997, and August 2, 2000.

The affidavits of Jean Gattuso, Humberto Rebelo and Gaston Lavoie were provided in response to the notice. Each party filed written submissions. No hearing was held in this matter.

I have considered the evidence submitted, and find that it does not show any use of the trade-mark during the relevant period in association with the wares described as “nécessaire pour pommes de terre, qui consiste en une série de bâtonnets et un mélange contenant du sucre et du colorant.” Mr. Gattuso has provided no reason for the absence of use during the relevant period, and, while he states that the owner still intends to use the trade-mark in association with those wares, he provided no documentary evidence showing that the owner was seriously contemplating a resumption in the use of the trade-mark in association with the wares in the near future. In no way does the evidence in the record establish that the absence of use in association with those wares is due to special circumstances that excuse the absence of use. Consequently, I find that those wares should be struck from the registration.

As for the wares described as “jus et breuvages de fruits”, the applicant conceded that the evidence is sufficient to maintain them in the Register. I agree with the applicant and find accordingly.

As for the services described as “opération d’un établissement de restauration; opération d’un débit de boissons”, the applicant submits that the use shown does not constitute use by the owner, or use on which the owner can rely. Moreover, the applicant adds that the use shown is not a use of the trade-mark OASIS *per se*.

The evidence shows that use is being made by the licencees ‘Les Résidences du Carrefour Enr.’ and ‘Oasis Catering Ltd.’ and, in paragraphs 11 and 12 of his affidavit, Mr. Gattuso states that A. Lassonde Inc. has direct control over the nature and quality of the services that these licencees offer in association with the trade-mark. In my opinion, Mr. Gattuso’s statement, to the effect that the owner has control over the quality and nature of the services, is a sufficient basis on which to find that the use shown by these licencees satisfies the requirements of subsection 50(1) of the Act (see *Fitzsimmons, MacFarlane v. Caitlin Financial Corp. N.V.*, 79 C.P.R. (3d) 154 at 157 and *Sim & McBurney v. LeSage Inc.*,

67 C.P.R. (3d) 571). Moreover, the licensing contracts were provided in this case, and they include clauses with terms governing non-compliance with quality standards.

I therefore find that the use of the trade-mark by the licencees in question is deemed to be use by the trade-mark owner.

As for whether it is the use of the OASIS trade-mark that has been established, I find, based on the evidence, that although the OASIS trade-mark is sometimes combined with certain words such as “Convention Centre” or “Catering” or “restaurants” and “salle à manger”, this does nothing to alter the first impression given by the trade-mark. Since the words “Convention Centre”, “Catering”, “restaurants” and “salle à manger” are descriptive, I find that they would be perceived as such, and that the word OASIS would be perceived as a trade-mark (*Nightingale Interloc Ltd. v. Prodesign Ltd.*, 2 C.P.R. (3d) 535 and *Munsingwear Inc. v. Promafil Canada Ltd.*, 44 C.P.R. (3d) 59).

In view of the above, and since I have found that it has been shown that the OASIS trade-mark was used in association with the wares described as “jus et breuvages de fruits” and the services described as “opération d’un établissement de restauration; opération d’un débit de boissons”, but not in association with the wares “nécessaire pour pommes de terre, qui consiste en une série de bâtonnets et un mélange contenant du sucre et du colorant”, the registration must be amended by striking the words “nécessaire pour pommes de terre, qui consiste en une série de bâtonnets et un mélange contenant du sucre et du colorant” from the statement of wares.

Pursuant to subsection 45(5) of the Act, Registration No. 139,031 will be amended accordingly.

SIGNED AT GATINEAU, QUEBEC, THIS 24TH DAY OF NOVEMBER 2004.

D. Savard
Senior Hearing Officer
Section 45