

**SECTION 45 PROCEEDINGS**  
**TRADE-MARK: PENINSULA FARM**  
**REGISTRATION NO.: TMA 233,282**

On September 24, 2003 at the request of Messrs. Stewart McKelvey Stirling Scales, the Registrar forwarded a Section 45 notice to Peninsula Farm Limited, the registered owner of the above-referenced trade-mark registration.

The trade-mark PENINSULA FARM is registered for use in association with the following wares:

“Yogurt.”

Section 45 of the *Trade-marks Act* 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. The relevant period in this case is any time between September 24, 2000 and September 24, 2003.

In response to the notice, the statutory declaration of Gordon F. Jones together with exhibits A and B has been furnished. Each party filed a written argument. Although an oral hearing had been requested and scheduled, both parties later on notified the office that they would not attend such hearing. Consequently, the hearing was cancelled.

Mr. Jones, co-founder and President of the registrant company, states that the registrant manufactures PENINSULA FARM brand yogurt which is being sold in Canada to supermarkets, institutions and individuals. He specifies that the registrant made weekly deliveries to approximately 300 customer stores with annual sales ranging between \$1.7 million and \$2.8 million over the three years prior to the issuance of the Section 45 notice. He then states that during the relevant three-year period, the majority of advertising done for the sale of PENINSULA FARM yogurt was by word of mouth, store samplings, trade shows, exhibitions and recipe books which had little or no advertising costs associated therewith. As Exhibit A he provides copies of samples of invoices evidencing sales of PENINSULA FARM yogurt during the relevant three-year period. As Exhibit B he provides copies of project information sheets, a book jacket, packaging materials and other materials which demonstrate some of the ways the registrant has used the trade-mark during the past twenty-seven years it has been in business.

The requesting party argues that the evidence fails to show use of the trade-mark complying with the requirements of s-s.4(1) of the *Act*. In particular it submits that although Exhibit A comprises invoices which show sales of yogurt, there is no evidence showing that the yogurt sold bore the trade-mark either on the wares or their packaging. It adds that although the first page of Exhibit B does include a photograph purporting to show yogurt products bearing the trade-mark, this is not tied in any way to the invoices showing the sale of yogurt during the relevant period.

Having considered the evidence, I am of the view that although the affidavit is not as precise as it could have been, it nonetheless is sufficient to permit me to conclude that the trade-mark was in

use in Canada in association with yogurt during the relevant period in a manner satisfying the requirements of s-s. 4(1) of the Act.

It is clear from the evidence that sales of the wares were made during the relevant period and based on the evidence as a whole, and the fact that Mr. Jones in paragraph 4 of his affidavit clearly refers to the wares as PENINSULA FARM brand yogurt I am prepared to accept that page one of Exhibit B shows the manner the trade-mark has been displayed on containers of yogurt sold by the registrant over the years, including during the relevant period.

Further, I also accept that the display of the trade-mark PENINSULA FARM at the top of each invoice would also be perceived as a use of the trade-mark in association with the wares being sold considering that the registrant is the manufacturer and that no other trade-mark appears in association with the wares being sold. Further I am prepared to accept that the invoices would accompany the goods at the time of delivery considering the registrant is the entity making the deliveries. Consequently, the invoices would also serve as notice of the association between the trade-mark and the wares at the time of transfer of the wares to the customers.

As I have concluded that the evidence shows use of the trade-mark in association with the wares in a manner satisfying the requirements of the *Act*, I conclude that the trade-mark registration ought to be maintained.

Registration No. TMA 233,282 will be maintained in compliance with the provisions of s-s.45(5)  
of the *Act*.

DATED AT GATINEAU, QUEBEC, THIS 20TH DAY OF SEPTEMBER 2006.

D. Savard  
Senior Hearing Officer  
Section 45 Division