

**SECTION 45 PROCEEDINGS**  
**TRADE-MARK: THE ROYAL BRAND**  
**REGISTRATION NO.: UCA 07905**

On August 20, 1998, at the request of Pro Group, Inc., the Registrar forwarded a Section 45 notice to MRRM (Canada) Inc., the registered owner of the above-referenced trade-mark registration.

The trade-mark THE ROYAL BRAND is registered for use in association with the following wares: rice, broken rice, rice middlings, rice screenings, fox feeds, rice chicken feed, rice flour and rice meal.

In response to the notice, the registrant furnished the affidavit of Robert L. Blanchard, President of Les Aliments Dainty Foods, a division of MRRM (Canada) Inc. Each party filed a written argument. An oral hearing has not been requested in this case.

In his affidavit, Mr. Blanchard states that the trade-mark THE ROYAL BRAND has been used by his company in association with rice, rice flour and animal feed continuously and without interruption; that the trade-mark is marked on the packages of each of these products. He provides sales figures for rice, rice flour, and as exhibit B he attaches invoices; as exhibit C he submits an exact specimen of the bag actually and presently used for rice flour sold to customers; as exhibit D, he attaches an exact specimen of the bag actually and presently used for rice; as exhibits E and F he attaches specimens of the packaging for long grain rice.

The requesting party argues that the evidence fails to show use in association with each of the wares listed in the registration and further, concerning any use shown, submits that it is use of a trade-mark that is substantially different from the registered trade-mark.

From the evidence furnished, I am prepared to conclude that sales of rice, rice middlings, and rice flour occurred during the relevant period. In this regard, I note that on the invoices such wares have been highlighted. The labels refer to rice and rice flour and sales figures have been provided for rice and rice flour. Concerning the wares "broken rice, rice screening, fox feeds, rice

chicken feed, and rice meal” the evidence does not show that sales of such wares were made during the relevant three-year period; further, there are not enough facts to lead to the inference that such wares bearing the trade-mark were sold during the relevant period. Consequently such wares will be deleted from the trade-mark registration.

The next issue is whether the trade-mark shown to be in use constitutes use of the registered trade-mark.

Following is a representation of the two variations of the trade-marks being used:

Exhibit C (for rice flour)  
Exhibit D (for rice)

Exhibits E & F (for long grain rice)

Concerning Exhibits E and F, in my view, the use of the word “ROYAL” by itself as shown on the packaging does not constitute use of the trade-mark THE ROYAL BRAND. The omission of the word BRAND, which is a dominant element of the registered trade-mark, results in the use of a different mark from the mark as registered. The present trade-mark is formed of three elements, the two salient or dominant elements being the words ROYAL and BRAND. As not all of the dominant or essential elements have been preserved, I conclude that the use of the trade-mark ROYAL as shown on the packaging submitted as exhibits E and F is use of a trade-mark that is substantially different from the registered trade-mark THE ROYAL BRAND. In arriving at this conclusion I had regard to the case *Nightingale Interloc Ltd. v. Prodesign Ltd.*, 2 C.P.R. (3d) 535 (Principle 2) and the case *Munsingwear Inc. v. Promafil Canada Ltée*, 44 C.P.R. (3d) 59.

Concerning the trade-mark appearing on Exhibits C and D, in association with rice and rice flour, I find it difficult to decide whether as a matter of first impression, the public would separate out the words ROYAL BRAND from the other elements. It is true that the word “Royal” appears in the same oval design as the words “Brand-Marque” and that such words appear in the same size and lettering. However, because of the appearance of the letters MRRM in the middle portion of the design, which letters appear underneath the word Royal, I find that I cannot conclude that, as a matter of first impression, the words ROYAL BRAND “per se” would be perceived as functioning as a separate trade-mark. It may be that the public would perceive several trade-marks being used namely “Royal”, “Royal MRRM”, “MRRM”, “Royal MRRM Brand-Marque” and “Royal MRRM Brand-Marque & Design”, but I cannot conclude that they would recognize the specimen package as showing use of the present trade-mark, namely THE ROYAL BRAND. Such words do not stand out from the other elements. (I rely on the principles enunciated in *Nightingale Interloc, supra*, and in the case *Registrar of Trade Marks v. CII Honeywell Bull, S.A.*, 4 C.P.R. (3d) 523). Further, I am of the view that the trade-mark is being used in such a way as to have lost its identity (*Munsingwear, supra*).

In view of the above, I conclude that the evidence fails to show any use of the registered trade-mark THE ROYAL BRAND.

Registration No. UCA 07905 will be expunged in compliance with the provisions of Section 45(5) of the Act.

DATED AT HULL, QUEBEC THIS                      DAY OF                      NOVEMBER                      1999.

D. Savard  
Senior Hearing Officer  
Section 45