



LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADE-MARKS

Citation: 2013 TMOB 179
Date of Decision: 2013-10-21

**IN THE MATTER OF A SECTION 45 PROCEEDING
requested by Cameron IP against registration
No. TMA508,571 for the trade-mark TERRA NOSTRA
in the name of Fromageries Bel Portugal S.A.**

[1] At the request of Cameron IP (the Requesting Party), the Registrar forwarded a notice under section 45 of the *Trade-marks Act* RSC 1985, c T-13 (the Act) on April 28, 2011 to Lacto Iberica, Industria De Lacticinios E Queijo, S.A. (Lacto Iberica), a former name of the registered owner Fromageries Bel Portugal S.A. (Fromageries Bel) (collectively referred to as the Registrant) for the trade-mark TERRA NOSTRA (the Mark). I will return to that change of name below.

[2] The Mark is registered for use in association with “cheese”.

[3] Section 45 of the Act requires the registered owner to show whether the trade-mark has been used in Canada in association with each of the wares or services specified in 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 such use since that date. In this case, the relevant period for showing use is any time between April 28, 2008 and April 28, 2011.

[4] For the purpose of this decision, the relevant definition of “use” is set out in section 4(1) of the Act:

4(1) A trade-mark is deemed to be used in association with wares if, at the time of the transfer of the property in or possession of the wares, in the normal course of trade, it is marked on the wares themselves or on the packages in which they are distributed or it is in any other manner so associated with the wares that notice of the association is then given to the person to whom the property or possession is transferred.

[5] It is well established that the purpose and scope of section 45 of the Act is to provide a simple, summary and expeditious procedure for removing “deadwood” from the register and, as such, the evidentiary threshold that the registered owner must meet is quite low [*Uvex Toko Canada Ltd v Performance Apparel Corp* (2004), 31 CPR (4th) 270 (FC)].

[6] In response to the Registrar’s notice, the Registrant furnished the affidavit of Ana Cláudia Rodrigues Pereira de Sá Loureiro de Sousa, who identifies herself as the General Management [sic] of Lacto Iberica, sworn November 28, 2011.

[7] Only the Registrant filed written submissions and was represented at a hearing.

[8] On the eve of the hearing, the Registrant filed a request with the Registrar asking that the register be amended to record the change of name of the Registrant from Lacto Iberica to Fromageries Bel resulting from the merger of Lacto Iberica with and into Fromageries Bel on January 11, 1995, which change was recorded by the Registrar on October 1, 2013.

[9] Turning to the evidence of use of the Mark by the Registrant, Ms. De Sousa states that Lacto Iberica is specialized in the manufacturing and distribution of cheese, butter, milk and other dairy products worldwide and that one of these products is the cheese TERRA NOSTRA.

[10] Ms. De Sousa states that use of the Mark in Canada is made under license. She states that by virtue of its license with the licensed user of the Mark in Canada, Lacto Iberica always had and still has direct control over the character or quality of the TERRA NOSTRA products manufactured and then sold to Canada.

[11] Ms. De Sousa goes on to explain that all of the TERRA NOSTRA cheese products sold in Canada are sold in packaging depicting the Mark. She attaches to this end as Exhibit 1 to her affidavit a reproduction of the label marked on the packaging of the TERRA NOSTRA branded cheese products. She adds that this label typically illustrates how the Mark has been

marked on cheese products, as sold by the owner under license in Canada within the relevant period.

[12] Ms. De Sousa further attaches as Exhibit 2 to her affidavit invoices for the years 2010 and 2011 showing the sale of TERRA NOSTRA branded products in Canada. The TERRA NOSTRA products sold and shipped to Canada are indicated on these invoices as “QUEIJO T.NOSTRA”. Ms. De Sousa explains that “QUEIJO” is the Portuguese word for “cheese” and that the abbreviation “T.NOSTRA” refers to the Mark and that it means that the designated products are TERRA NOSTRA branded cheese.

[13] Upon review of these exhibits, I note that the Mark is indeed displayed on the label for the cheese. Two out of four of the invoices are dated within the relevant period. The invoices were all issued under the Registrant’s name Fromageries Bel and addressed to an import and export company located in Ontario.

[14] While Ms. De Sousa’s affidavit is quite brief and does not provide ample information on the Registrant’s normal course of trade in Canada, I find that it contains clear statements of fact that the Mark has been used in Canada with respect to the registered wares during the relevant period, which statements are corroborated by visual representation of the Mark (as shown in Exhibit 1) and sample invoices evidencing sales to a Canadian customer (as shown in Exhibit 2).

[15] As mentioned previously, evidentiary overkill is not necessary. In the absence of any submissions made by the Requesting Party, I see no reason not to maintain the registration.

Decision

[16] Pursuant to the authority delegated to me under section 63(3) of the Act, the registration

will be maintained in accordance with the provisions of section 45(5) of the Act.

Annie Robitaille
Member
Trade-marks Opposition Board
Canadian Intellectual Property Office