



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

**Citation: 2010 TMOB 80**  
**Date of Decision: 2010-05-21**

**IN THE MATTER OF A SECTION 45 PROCEEDING  
requested by Fine Financial Limited against registration  
No. TMA583,592 for the trade-mark COLA  
COURONNE in the name of Kadasso Inc.**

[1] At the request of Fine Financial Limited (the Requesting Party), the Registrar forwarded a notice under section 45 of the *Trade-marks Act*, R.S.C. 1985, c. T-13 (the Act) on October 16, 2007, to Kadasso Inc. (the Registered Owner) to establish use of the COLA COURONNE trade-mark (the Mark), the subject of registration certificate number TMA583,592, covering the following wares: soft drinks (the Wares).

[2] Section 45 of the Act requires the registered owner of a trade-mark to show that it was in use in Canada in association with each of the wares and/or services specified in the registration at some time during the three-year period immediately preceding the date of the notice and, if not, to furnish the date when it was last so in use and the reason for the absence of such use since that date. Therefore, the relevant period in this case is from October 16, 2004, to October 16, 2007 (the Relevant Period).

[3] Case law tells us that there is no need to show use of the mark by evidentiary overkill and that the purpose of section 45 proceedings is to remove the "deadwood" from the register. [See *Plough (Canada) Ltd. v. Aerosol Fillers Inc.* (1980) 53 C.P.R. (4th) 62].

[4] In reply to the notice, the Registered Owner filed an affidavit of Katia Bustros accompanied by Schedules A to C inclusive. Neither party filed written submissions or requested

a hearing. I refer to the letter from the Registrar dated March 12, 2010, which aptly summarizes the state of the record.

[5] Ms. Bustros is the president and director of the Registered Owner. She alleges that the Mark was used during the Relevant Period. This bare allegation, in and of itself, is insufficient to demonstrate use of the Mark within the meaning of subsection 4(1) of the Act. I must determine whether there is evidence in the record to support such a statement.

[6] She explains that the Wares were sold commercially in association with the Mark in the normal course of the Registered Owner's business in two formats: two-litre bottles and 355-ml cans. The Wares were also offered in three different flavours: champagne, banana and passion fruit.

[7] Ms. Bustros filed a photograph (Schedule A) showing five cans of champagne-flavoured soft drink bearing the Mark. She alleges that the photograph is a faithful representation of the Wares bearing the Mark as they were sold commercially by the Registered Owner (paragraph 11 of her affidavit).

[8] She filed a second photograph (Schedule B) showing three two-litre bottles of soft drink bearing the Mark. She also alleges that this photograph is a faithful representation of the Wares bearing the Mark as they were sold commercially by the Registered Owner during the Relevant Period (paragraphs 12 and 13 of her affidavit).

[9] Finally, she filed 16 invoices (Schedule C) issued to clients of the Registered Owner illustrating the sale and delivery of the Wares by the Registered Owner during the Relevant Period.

[10] Based on this evidence, I find that the Registered Owner has met its burden of establishing use of the Mark, within the meaning of subsection 4(1) of the Act, during the Relevant Period and in association with the Wares.

[11] Pursuant to the authority delegated by virtue of subsection 63(3) of the Act, registration No. TMA583,592 shall be upheld pursuant to subsection 45 of the Act.

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Jean Carrière  
Member, Trade-marks Opposition Board  
Trade-marks Opposition Board  
Canadian Intellectual Property Office

Certified true translation  
Francie Gow, BCL, LLB