



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

**Citation: 2012 TMOB 69**  
**Date of Decision: 2012-04-24**

**IN THE MATTER OF A SECTION 45 PROCEEDING  
requested by Cameron IP against registration  
No. TMA535,053 for the trade-mark ENCORE  
GOURMET & Design in the name of Pinnacle  
Ingredients and Flavors Inc.**

[1] At the request of Cameron IP (the Requesting Party), the Registrar of Trade-marks issued a notice under section 45 of the *Trade-marks Act* RSC 1985, c T-13 (the Act) on June 14, 2010 to Encore Gourmet Food Corporation sometimes doing business as Encore International (Encore), the registered owner at that time of registration No. TMA535,053 for the trade-mark ENCORE GOURMET & Design (the Mark), shown below:



[2] The Mark is registered for use in association with the following wares: “soups, spices”.

[3] Section 45 of the 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 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 between June 14, 2007 and June 14, 2010.

[4] 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 filed the affidavit of Laurence Bloom, Vice President Business Development of Pinnacle Ingredients and Flavors Inc. (Pinnacle), sworn on September 9, 2010. Both parties filed written representations; an oral hearing was not held.

[7] Mr. Bloom states that from 1992 to September 2, 2010, he held the position of Vice President Business Development with Encore, the previous owner of the Mark. On that date, he explains, Pinnacle acquired the Mark through a receivership sale of Encore’s assets. By virtue of his positions with Encore and Pinnacle, Mr. Bloom attests that he has personal knowledge of the information set out in his affidavit or that it is based on the business records of both companies, to which he has complete access. In any event, I note that ownership of the Mark during the Relevant Period is not at issue in this proceeding.

[8] As evidence of use of the Mark, Mr. Bloom attests that Encore sold spices in Canada during the Relevant Period. In support of his assertion of use, attached as Exhibit B to his affidavit are printouts of 37 labels of various spice products that Mr. Bloom attests show how the Mark was affixed to Encore’s spice products sold in Canada during the Relevant Period. I note that the Mark appears prominently on each label.

[9] As proof of sales during the Relevant Period, attached as Exhibits C through F are 32 invoices for Encore’s spice products, all dated during the Relevant Period and showing what appear to be bulk sales by Encore to Canadian customers. I note that “Encore Gourmet” appears in the product description of most of the invoices provided, and Mr. Bloom attests that all the

invoices are for sales of Encore's spice products displaying the Mark. Furthermore, Mr. Bloom provides that total sales in Canada of Encore's spice products under the Mark were approximately \$20,000,000 from 2007 to August 31, 2010.

[10] Accordingly, in view of the foregoing, I am satisfied that there was use of the Mark in association with the wares "spices" during the Relevant Period within the meaning of sections 4 and 45 of the Act.

[11] With respect to the remaining ware, as the Requesting Party notes in its written representations, the evidence does not show or allege use of the Mark in association with "soups", and no reasons are provided for the absence of such use.

#### Disposition

[12] In view of the foregoing, pursuant to the authority delegated to me under section 63(3) of the Act and in compliance with the provisions of section 45 of the Act, the registration will be amended to delete the following wares: "soups".

---

Andrew Bene  
Hearing Officer  
Trade-marks Opposition Board  
Canadian Intellectual Property Office