

SECTION 45 PROCEEDINGS
TRADE-MARK: ECLIPSE ONE & Design
REGISTRATION NO.: 503,419

On June 2, 2004, at the request of France-Champagne, the Registrar forwarded the notice prescribed by Section 45 of the Trade-marks Act to Domaine Combret Ltd., the registered owner of the above-referenced trade-mark registration.

The trade-mark ECLIPSE ONE & Design (shown below) is registered for use in association with the following wares and services:

wares: "Wine".

services: "Operation of a business for the sale of wine".

Eclipse One



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 June 2, 2001 and June 2, 2004.

In response to the notice, the affidavit of Olivier Combret has been furnished. Mr. Combret is President of the registered owner. He states that the trade-mark is used and has been used in association with "bag in box" wine products. He specifies that the trade-mark is used with a premium white wine and a premium red wine. As Exhibit A he provides scanned photographs of the box packaging for the bulk white wine product. He explains that the owner is and has been producing its wine products bearing the trade-mark in four different formats.

As Exhibit B he submits sample Liquor Distribution Branch Licensee Order Form invoices which are required by regulation of the Liquor Distribution Board of British Columbia. The forms show the owner as the Liquor Store Name and the name and address of the Licensee purchasing the wine products. As Exhibit C, he provides a scanned photograph of the lid of the box for the premium white wine product. He specifies that the registrant's customers are restaurants, beer and wine stores, and liquor stores in British Columbia and that the wine product sold to its customers are either delivered from the owner's winery location by courier, by an employee of the owner, or picked up at the winery location. He adds that the wine products are also sold at the owner's wine store located at the winery, which is visited by tourists from across Canada and around the world.

No written arguments were filed by the parties and although a hearing was held, at the request of the requesting party, at such hearing the person representing the requesting party indicated that it

would not be presenting any arguments.

Having considered the evidence, I am satisfied that it clearly shows use of the trade-mark in Canada in association with the registered wares during the relevant period. The invoices confirm that sales were made and the packaging support Mr. Combret's statement that at the time of sale the trade-mark was associated with the wares in the manner required by s-s. 4(1) of the Act.

Accordingly the wares "wines" will be maintained on the trade-mark registration.

As for the registered services, I find the evidence fails to show use of the trade-mark in association with the services and this was conceded at the hearing by the registrant's representative.

Accordingly, I conclude that the services ought to be deleted from the trade-mark registration.

Registration No. 503,419 will be amended accordingly in compliance with the provisions of Section 45(5) of the Act.

DATED AT GATINEAU, QUEBEC, THIS 21ST DAY OF MARCH 2007.

D. Savard
Senior Hearing Officer
Section 45 Division