



Consommation
et Corporations Canada

Consumer and
Corporate Affairs Canada

Ottawa / Hull, Canada
K1 A 0C9

2 1986

'JUIL

Messrs. Scott & Aylen,
170 Laurier Avenue West,
Ottawa, Ontario.
K1P 5V5

votr« referenc« v our tue

TM 6698

NOire reference Our file

339684

Gentlemen:

Re: SECTION 44 PROCEEDINGS
Registration No. 207.446
Trade Mark: TENDRLEEN & Design

On November 12, 1984, the Registrar of Trade Marks, at the request of Canada Packers Inc., issued a Section 44 notice to Domain, Inc. in respect of its registration No. 207,446 covering the trade mark TENDRLEEN & Design for use in association with meats, namely beef carcasses, sides, halves, quarters, cuts, steaks and chops.

In response to the s. 44 notice, the registered owner filed an affidavit of Paul Kriwoy, the Assistant-Secretary of Maple Leaf Mills Limited, a registered user of registration Ho. 207,446. Neither party filed a written argument; however, both parties were represented at the oral hearing.

It would appear from the Kriwoy affidavit, that Maple Leaf Mills Limited markets beef and dairy **beef** feeding programs and sells feed to beef producers in association with the trade mark TENDRLEEN & Design. Stickers and wrapping tape bearing the trade mark TENDRLEEN & Design are provided to butchers who either produce and butcher TENDRLEEN fed beef or purchase and butcher TENDRLEEN fed beef for application to the packages of meats prior to their sale.

Having regard to the definition of the term "trade mark" in s.2 of the Trade Marks Act and to the definition of "use" in s. 4, it is clear that in order for the owner of a trade mark to **be** using its trade mark in association with wares, either it or a registered user must be manufacturing, selling, leasing or hiring those wares.

In the present case, neither the registered owner nor its registered user Maple Leaf Mills Limited sells or in any way deals in meats. **It** appears that meats bearing the trade mark TENDRLEEN & Design are being sold in Canada by various butchers; such butchers are, however, not recorded as registered users and accordingly any use by them of the trade mark TENDRLEEN & Design does not accrue to the benefit of the registered owner.

In view of the above, I have decided that registration No. 207,446 ought to be expunged.

Alan M. Troicuk
for REGISTRAR OF TRADE MARKS

AMT:gmc-m2

c.c. Messrs. Ridout & Maybee,
Suite 2300,
101 Richmond Street West,
Toronto. Ontario MSH 2J7.

Canada