

**IN THE MATTER OF AN OPPOSITION filed  
by Agropur Coopérative Agro-Alimentaire to  
Application No. 795511 for the Trade-mark  
HALLOUMI filed by the Ministry of  
Commerce, Industry and Tourism of the  
Republic of Cyprus**

**I The Pleadings**

On October 23, 1995 the Ministry of Commerce and Industry of the Republic of Cyprus filed an application to register the trade-mark HALLOUMI (the “Mark”), application number 795511, as a certification mark based on use in Canada since at least as early as October 19, 1995 in association with cheese (the “Wares”). The applicant subsequently changed its name to The Ministry of Commerce, Industry and Tourism of the Republic of Cyprus (the “Applicant”).

I shall reproduce hereinafter the defined standard appearing in the application:

The use of the certification mark is intended to indicate that the specific wares listed above in association with which it is used are of the following defined standard: the defined standard prescribes that the cheese is produced only in Cyprus using the historic method unique to that country, namely: traditionally, it has been produced from sheep's and/or goat's milk. In case of mixtures, cow's milk is also allowed. Raw materials which are used for its production include rennin, mint leaves and salt. See file for information about quality characteristics, chemical characteristics and maturation.

The Applicant overcame office actions and the application was advertised on November 28, 2001 in the Trade-marks Journal for opposition purposes.

Agropur Coopérative Agro-Alimentaire (the “Opponent”) filed on March 8, 2002 a statement of opposition that was forwarded on May 21, 2002 by the Registrar to the Applicant.

The Applicant denied all grounds of opposition in a counter statement filed on May 28, 2002.

The Opponent filed the affidavits of Ian MacDonald, Denise Khoury and Farid Kadé as their evidence while the Applicant filed the affidavits of Yiannos Pittas, Eric Moscahlaidis, Mike Georgiopoulos, Kostas Andreou, Steve Kiliaris, George Tsioros, Spiro Aravantinos, Kavita Ramamoorthy and Catherine Vadeboncoeur (two (2) affidavits). It should be noted that the affidavits of Mr. Tsioros and Mr. Aravantinos were returned to the Applicant for failure to submit themselves to a cross-examination. All the other deponents were cross-examined except for Kavita Ramamoorthy. The Opponent's deponents were also cross-examined. All transcripts of the cross-examinations were filed in the record. The parties filed written arguments and only the Applicant was represented at an oral hearing.

## **II The Statement of Opposition**

I shall reproduce the grounds of opposition as they appear in the statement of opposition:

[Translation]

1. The application does not conform to the requirements of s. 30 of the *Trade-marks Act* R.S.C. 1985, c. T-13, (the "Act") in that:
  - a) The Mark was not used as stated in the application; as well it was not used as a certification mark;
  - b) The Applicant has abandoned in whole or in part the Mark, by way of discontinued use;
  - c) The particulars of the defined standard related to the Mark are vague and in any event unacceptable and impossible to apply. The name haloumi or haloum is widely used in Canada to identify a type of cheese manufactured in Canada or elsewhere, without any other form of control on the part of the Applicant;
  - d) It is falsely that the Applicant stated that it was not engaged in the manufacture, sale, leasing of the Wares;
  - e) The word HALOUMI cannot be used as a certification mark as it does not serve to inform the public that it is a certification mark.
2. The Mark is not registrable pursuant to the provisions of s. 38(2)(b) and 12(1) of the Act since:
  - a) The Mark whether depicted, written or sounded, is either clearly descriptive or deceptively misdescriptive in the English or French language of the character or quality of the Wares in association with which it was allegedly used or intended to be used, namely cheese of the type haloumi or haloum, the whole contrary to s. 12(1)(b) of the Act;
  - b) The Mark constitutes the name in any language of the Wares, namely haloum or haloumi cheese, the whole contrary to s. 12(1)(c) of the Act;

- c) The Mark is a mark for which the adoption is prohibited by s.10 of the Act since the Mark has by ordinary and *bona fide* commercial usage become recognized in Canada as designating a type, quality, value or place of origin of the Wares, namely haloumi or haloum cheese and thus nobody can adopt such word as a trade-mark or certification mark in association with the Wares or others of the same general category or use it in a way likely to mislead the whole contrary to s. 10 of the Act;
- 3) The Applicant is not entitled to the registration of the Mark in virtue of the provisions of s. 16(1) of the Act as “it has not filed an application in accordance with s. 30 of the Act for the registration of a registrable trade-mark” for the reasons hereinbefore invoked in paragraph 2; The Mark is therefore not registrable and as such the Applicant is not the person entitled to the registration of the Mark; Finally the Applicant has erroneously mentioned that it is not engaged in the manufacturing, sale, lease or hiring of Wares;
- 4) Pursuant to s. 38(2)(d), the Applicant’s Mark is not distinctive of the Applicant’s Wares having regard to s. 2(d) of the Act nor is it adapted to distinguish them for all the reasons outlined above.

### **III Disposal of the grounds of opposition not argued in the Opponent’s written argument**

There were no written representations with respect to the grounds of opposition described in paragraphs 1 b), c), d) and e), 2a) and b) and 3. Despite the abundance of evidence filed by each party, there is no evidence to support any of these grounds of opposition. As in any opposition proceeding, the Opponent has an initial evidential onus to establish the facts relied upon by it in support of each ground of opposition pleaded. Once this initial onus is met, the Applicant then has to prove, on a balance of probabilities, that the particular grounds of opposition should not prevent the registration of the Mark. [See *Joseph E. Seagram & Sons Ltd. et al v. Seagram Real Estate Ltd.*, 3 C.P.R. (3d) 325, at pp. 329-330; *John Labatt Ltd. v. Molson Companies Ltd.*, 30 C.P.R. (3d) 293 and *Wrangler Apparel Corp. v. The Timberland Company*, [2005] F.C. 722] I may add that in any event the evidence shows [reference to exhibit YP-5e to Mr. Pittas’ affidavit] that the term “halloumi” is derived from the Greek word “halmi” which means “salty”. Therefore s. 12(1)(b) or (c) are not applicable to our case as the Mark by itself does not mean “cheese” in any language. Grounds of opposition 1b), c), d) and e), 2a) and b) and 3 are dismissed for failure by the Opponent to meet its initial onus.

As a result I shall address the issues of registrability, distinctiveness and conformity (only with respect to ground 1a)).

#### **IV Registrability of the Mark**

The Opponent argues that the Mark is not registrable because it has become recognized in Canada as a type of cheese through ordinary and *bona fide* commercial usage. Therefore the Applicant would be precluded from adopting the Mark as a certification mark in association with the Wares, the whole contrary to s. 10 of the Act. I first have to determine if the Opponent has adduced sufficient evidence to conclude that the Mark has become recognized in Canada as designating the kind, quality, value, or place of origin of the Wares.

The relevant date is the date of the Registrar's decision. [See *B.C. Hydro and Power Authority v. Consumers Gas Co.* (2001), 9 C.P.R. (4<sup>th</sup>) 280 (T.M.O.B.) and *Park Avenue Furniture Corporation v. Wickes/Simmons Bedding Ltd.* (1991), 37 C.P.R. (3d) 413 at 424 (F.C.A)]

Without going into an elaborate analysis of the evidence filed by both parties there seems to be a consensus that cheese manufactured in Cyprus bearing the Mark has the particular characteristic that it does not melt when exposed to heat during cooking. Any cheese manufactured in Canada and bearing a visual or phonetically similar trade-mark such as HALLOUM, HALLOOM, HALOUMI or HALOMI does not possess such characteristic.

The purpose of a certification mark is to alert the Canadian consumers that the product bearing such mark possesses a certain standard that distinguishes it from other similar types of products. In this particular case the Mark would be used to distinguish that type of cheese from any other type of cheese. However one would not be able to obtain the monopoly over a term or word under pretext that it is a certification mark if such mark has been used extensively in Canada by

others prior to the relevant date such that it has become recognized in Canada as designating the kind, quality, value, or place of origin of the Wares. Therefore, I must review the evidence with these principles in mind.

Mr. MacDonald is the Director of Marketing for Produits Laitiers du Canada. During his cross-examination he admitted that he is not versed in the manufacturing practices of cheese makers nor does he have expertise on “HALLOUMI type of cheese in a non-Canadian context”. Therefore he cannot be considered as an expert on these topics. I give very little weight to his statement in his affidavit that “to his knowledge HALLOUMI is a generic term for a semi-soft unripe/unripened cheese produced in several countries of the Middle East and Canada”.

He filed certain documents (exhibits IM-1 to IM-3 to his affidavit) in which there are references to HALLOUMI and HALLOOM. Exhibit IM-1 is a document entitled “le guide complet des fromages au Québec”. It has information on « La Fromagerie Polyethnique » and « La Fromagerie Marie Kadé ». Under those two headings there are references to HALLOUMI and HALLOOM. However we have no indication as to when this document was made first available to the Canadian consumers and of its circulation figures in Canada. It is impossible to determine with this document the extent of the use of these terms in Canada and since when.

Exhibit IM-2 is an extract of pages of the website [www.servicevie.com](http://www.servicevie.com). It contains cooking information and recipes. There is a section on HALLOUMI type of cheese. We have no information as to when these pages were made available to Canadians, the number of Canadians who visited such website and more importantly who read those pages. Finally there is an extract of another website, [www.milkingredients.ca](http://www.milkingredients.ca) (exhibit IM-3) wherein under the heading “List of Dairy Ingredients” we have “Halomi/Hallom...” without any further details. For the same reasons detailed previously with respect to the other website I do not consider such evidence as establishing that HALLOUMI has become recognized in Canada as designating the kind, quality, value, or place of origin of the Wares.

Mr. Kadé is the president of 3903032 Canada Inc. doing business under the trade-name Fromagerie Marie Kadé. He states that the company specialized in the manufacturing and sale of cheese. He filed a sample of a packaging bearing the trade-mark HALLOOM. He states that HALLOOM is a synonym of the generic term “halloumi”. He also states that the company sells a cheese of the type HALLOUMI since 1988. He also alleges that, to his personal knowledge, HALLOUMI is a generic term that is used to identify a type of cheese manufactured in many countries of the Middle East. I do not consider Mr. Kadé as an expert in the field of cheese in general and in particular cheese from Cyprus. We have no information on his expertise in the field of cheese. As for his statement that he has been commercializing cheese of the type HALLOUMI since 1988 we have no details on the quantities sold, where, to whom, etc... This is simply a bald statement that has no meaningful bearing in the assessment of the Opponent’s evidence to determine if they have met their burden of proof to succeed under s. 10 of the Act.

Finally we have the affidavit of Denise Khoury. She is the president of Les Aliments Karine Inc. She states that her company specialized in the wholesale of cheese. She filed as exhibit DK-1 a packaging bearing the trade-mark HALLOOM used by her company. She states that her company has been selling a cheese of the type HALLOUMI since 1979. Again we have not been provided with information such as sale figures and where such cheese was sold by her company to determine the extent of the use of such trade-mark. Moreover during her cross-examination she admitted that she has no expertise in the field of cheese. Her husband has such expertise but he did not file any affidavit. Therefore I give very little weight to the statement that “to her knowledge the terms HALLOOM and HALLOUMI are generic terms to identify a cheese manufactured in many Middle East countries”.

Individually or taken collectively, I fail to see how these affidavits would establish that the Mark has become recognized in Canada as a type of cheese through ordinary and *bona fide* commercial usage. Therefore ground of opposition 2c) described above is dismissed.

## **V Distinctiveness**

It is generally accepted that the issue of distinctiveness of the applied mark is to be decided as of the filing date of the statement of opposition (March 8, 2002). [See *Metro-Goldwyn-Meyer Inc v. Stargate Connections Inc* (2004), 34 C.P.R. (4<sup>th</sup>) 317 (F.C.T.D.)] Under such ground, the Opponent needs only to show that as of the relevant date, a confusingly similar trade-mark has become sufficiently known to negate the distinctiveness of the applied-for mark [*Motel 6, Inc. v. No. 6 Motel Ltd.* (1981), 56 C.P.R. (2d) 44 at 58 (F.C.T.D.) and *Bojangles International, LLC et al v. Bojangles Café Ltd.*, 2006 F.C. 657]. I cannot reach such a conclusion. The evidence filed by the Opponent and described above falls way short of meeting this threshold test. Accordingly, the third ground of opposition is also dismissed.

## **VI Conformity of the application to the provisions of s. 30**

There is no evidence filed by the Opponent on this issue and no argument was put forward in its written argument. However, the ground of opposition is pleaded. The Opponent may rely on the evidence filed by the Applicant to determine conformity issues as most of the time an opponent is facing a situation where the information needed to meet its initial onus is in the hands of the applicant. Nonetheless when doing so, the applicant's evidence must raise serious doubts as to the accuracy of the statements contained in the application.

The Applicant takes the position that the only requirements for the registration of a certification mark are those listed in s. 30(f). Since the application contains a description of the defined standard that the use of the Mark is intended to indicate, the requirements under s. 30(f) have been met. Thus any ground of opposition pleaded under "conformity" should be dismissed.

I disagree with the simplistic approach adopted by the Applicant. Any type of application, including the registration of a certification mark, would have to comply with the requirements of s. 30(h) and (i) for example. I have to review the Applicant's evidence that might be relevant to this ground of opposition in order to determine if it raises serious doubts such that the accuracy of the statements contained in the application could be considered inaccurate. If that is the case,

then I have to determine if the Applicant has satisfied its burden to prove that the application meets all the applicable requirements listed under s. 30. However this analysis must be made while not losing sight of the particular wording used by the Opponent in its statement of opposition.

The term “use” is a legal term defined in the Act and no specifics needed to be provided to the Applicant. Section 23(2) of the Act clearly defines what is contemplated by the term “use” in the context of a certification mark. If there is in the record evidence of “use” of the Mark in Canada can I conclude that such “use” is to the benefit of the Applicant under the deemed “use” provision of s. 23(2) of the Act? In other words is the Applicant the entity that issues the licenses to those manufacturers of the Wares bearing the Mark? If not, any “use” of the Mark by those licensees cannot benefit the Applicant. Consequently there could not be use of the Mark as of the alleged date of first use. Ultimately, I have to determine if the evidence filed by the Applicant raise serious doubts as to whether the Applicant used the Mark within the meaning of s. 23(2) of the Act.

At the outset I should mention that there is no affidavit signed by an authorized representative of the Applicant. However it is not mandatory.

Mr. Pittas is the co-owner of Pittas Dairy Industries Limited located in Cyprus. He filed samples of packaging of cheese bearing the trade-mark PITTAS exported to the United States to distributors such as Krinos Foods Inc. and Fantis Foods Inc. The packaging also bears the Mark. [Reference to exhibit YP-4 to his affidavit] He explains that the cheese manufactured by his company and sold in Canada is imported from the United States by those American distributors. To corroborate such allegations we have in the record the affidavit of Eric Moscalhlaidis, the owner of Krinos Foods Inc. who confirms that his company imports cheese from Cyprus bearing the Mark and redistributes such cheese into Canada. Finally to end the circle we have various affidavits from Canadian retailers across Canada confirming that they sell cheese manufactured by Pittas Dairy Industries Limited and bearing the Mark. Kavita Ramamoorthy, a lawyer with the Applicant agent’s firm, purchased in Canada cheese in the same packaging as filed by Mr. Pittas. [See exhibit KR-2 to his affidavit]



There remains to determine if such use of the Mark is deemed to be the Applicant's use as per the provisions of s. 23(2) of the Act. I shall reproduce pertinent paragraphs of Mr. Pittas' affidavit:

9. To preserve and protect the unique, traditional characteristics of **HALLOUMI** cheese, its manufacture is subject to strict statutory standards, as defined by the *Cyprus Standards & Quality Control (fixed Standards - 1<sup>st</sup> Series) Regulation of 1985* (hereinafter referred to as "the Regulation"). There is now being shown to me and marked as **Exhibit YP-2** a copy of an English translation of the Regulation.
12. Different Cypriot government ministries ensure that the hygienic requirements, labeling standards and manufacturing standards of **HALLOUMI** cheese are properly complied with.
13. The Ministry of Health, together with the Department of Veterinary Services of the Ministry of Agriculture and Natural Resources, is responsible for granting licenses to the dairy manufacturers to manufacture their various dairy products, including **HALLOUMI** cheese.
14. Inspectors from the Department of Veterinary Services of the Ministry of Agriculture and Natural Resources are responsible for visiting the premises of the manufacturers to ensure that the health and hygienic requirements regarding the manufacture of **HALLOUMI** cheese are being complied with.
15. Once the **HALLOUMI** cheese reaches the market (i.e. the points of sale), inspectors from the Ministry of Health are responsible for ensuring that it is safe for consumption. These inspectors also ensure that the **HALLOUMI** cheese is manufactured according to the prescribed government standards. Municipal inspectors assist the inspectors from the Ministry of Health with this inspection.
16. Inspectors from the Ministry of Commerce, Industry and Tourism of the Republic of Cyprus are responsible for visiting the points of sale and ensuring that the labeling requirements for the **HALLOUMI** cheese are being complied with.
17. If a dairy manufacture (sic) fails to respect the standards of manufacture of **HALLOUMI** cheese, it might have its license revoked and its premises could be shut down.

Exhibit YP-2 to Mr. Pittas' affidavit is a document setting out in detail the Standards applied in Cyprus for Halloumi cheese. The document contains the following:

“They are implemented on a compulsory basis according to Section 9 of the Cyprus Standards and Control of Quality Law, 1975.”

(...)

« If any additional information or any more specific answers regarding the two Cyprus Standards are required or more information on the technology of manufacturing halloumi, its chemical characteristics, etc., please contact us at the Ministry of Commerce and Industry.”

(...)

The following Ministries/Departments/Organizations/ Associations collaborated in the preparation of the standards:

Ministry of Agriculture, Natural Resources and Environment

Ministry of Health

Ministry of Commerce, Industry and Tourism

Veterinary Department of the Ministry of Agriculture, Natural Resources and Environment (...)

I shall also reproduce the following pertinent extracts of his cross-examination:

Q. [69] Do you have a license from the Ministry of Commerce, Industry and Tourism of the Republic of Cyprus to manufacture a cheese?

A. We have a license ...

Q. [70] You have a license?

A .... from the Government of Cyprus.

Q. [71] It is issued by the Government?

A. Yes.

Q. [72] Which authority?

A. It's the Veterinary Services.

Q. [73] Are there other licenses issued by the other government agencies or ministries to manufacture cheese or to export cheese?

A. Specifically for cheese or generally for the company?

Q. [74] Specifically for cheese.

A. No, we have, we have to be registered as a cheese producer -- sorry, food producer, and comply with the health regulations.

Q. [75] Okay. So you need a license as a cheese producer. This license, is it correct to say that it's issued by Veterinary Services?

A. Yes.

Q. [76] Yes. As a food producer, is it also issued by the Veterinary Services?

A. As a food producer?

Yes.

A. Yes.

Q. [78] Okay. What about compliance? Are there any license issued which confirms that you are in compliance with food legislation regulation or cheese regulation and legislation?

A. Repeat it, please?

A. Okay. Is there any license issued by the Government of Cyprus for, confirming that you're in compliance with food regulations?

A. There is a license.

Q. [79] There is a license for compliance?

A. Yes.

Q. [80] With food regulation?

A. Yes.

Q. [81] Cheese regulation?

A. Yes.

Q. [82] Okay. Is this license also issued by Veterinary Services?

A. Yes.

Q. [83] So there are three licenses issued?

A. No, there is one registration.

Q. [84] It's only one registration that deals with these three elements?

A. Yes.

Q. [85] Being a food producer, a cheese producer and being in compliance?

A. Yes.

In fact a copy of the license issued to Pittas Dairy Industries Limited was filed as a reply to an undertaking. The Ministry of Agriculture, Natural Resources and the Environment, Veterinary Services issued it. Moreover in its written argument the Applicant admitted in paragraph 72 that it is the Ministry of Health together with the Department of Veterinary Services and not the Ministry of Commerce, Industry and Tourism that is responsible for the issuance of licenses for the use of the Mark in association with the Wares.

It appears clearly from the evidence summarized above that the authority that issues the license

to use the Mark in association with the Wares is not the Applicant but the Ministry of Health together with the Department of Veterinary Services of the Ministry of Agriculture, Natural Resources and the Environment. It would appear that various Ministries of the Republic of Cyprus are involved in the supervision of the manufacture and exportation of cheese bearing the Mark and have different responsibilities depending on the stage reached in the manufacturing or exportation of the Wares. It might be that ultimately, under the parliamentary structure of the Republic of Cyprus, the Applicant delegated its authority to the Ministries of Health and of Agriculture, Natural Resources and the Environment but we have no evidence to support such hypothesis.

Under these circumstances I have no other alternative but to conclude that the Opponent has met its initial onus and that the Applicant has not provided any evidence to discharge its own burden. Consequently any “use” of the Mark in Canada cannot be deemed use by the Applicant as per s. 23(2) of the Act. The evidence shows that the users of the Mark, including Pittas Dairy Industries Limited, did not obtain their rights to use the Mark from the Applicant itself but from another governmental body. The Applicant is not the Republic of Cyprus but a specific ministry. There is no evidence that all ministries of the Republic of Cyprus can be considered as one and the same legal entity. Consequently, ground of opposition 1a) is maintained.

## **VII Conclusion**

Having been delegated authority by the Registrar of Trade-marks by virtue of s. 63(3) of the Act, I refuse the Applicant's application to register the Mark in association with the Wares, on the sole ground that the Mark was not used by the Applicant, within the meaning of s. 23(2) of the Act, as of the date of first use claimed in the application, the whole pursuant to s. 38(8) of the Act.

DATED IN BOUCHERVILLE, QUEBEC, THIS 29<sup>th</sup> DAY OF APRIL 2008.

Jean Carrière,  
Member,  
Trade-marks Opposition Board