



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

**Citation: 2013 TMOB 135  
Date of Decision: 2013-08-26**

**IN THE MATTER OF A SECTION 45 PROCEEDING  
requested by Lesperance Mendes against registration  
No. TMA571,923 for the trade-mark KRAVE'S CANDY  
CO. in the name of Brookside Foods Ltd.**

[1] At the request of Lesperance Mendes (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 April 15, 2010 to Brookside Foods Ltd. (the Registrant), the registered owner of registration No. TMA571,923 for the trade-mark KRAVE'S CANDY CO. (the Mark).

[2] The Mark is registered for use in association with the following wares: "confectionery products, namely, candies".

[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 April 15, 2007 and April 15, 2010.

[4] The relevant definition of "use" in association with wares 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 furnished the affidavit of Doug Baxter, Director of Finance and Administration of the Registrant, sworn on November 10, 2010. Neither party filed written representations; an oral hearing was not held.

[7] In his affidavit, Mr. Baxter attests that the Registrant is in the business of manufacturing and selling confectionery products, including candies. He states that, during the relevant period, the Registrant sold and shipped, to customers in Canada, “a significant amount of candies in packaging bearing the [Mark]”. He explains that as part of its normal course of trade, the Registrant sells its candy products to third parties such as schools, sports teams and community groups who then resell them to the end consumer as a part of fundraising initiatives.

[8] As an example, Mr. Baxter provides, at Exhibit A to his affidavit, a spreadsheet showing the volume and value of sales and shipments of one of its candy product lines. Mr. Baxter attests that the spreadsheet shows sales during the relevant period of 1,354 cases of its “Clodhoppers Multi Pack Fundraising” product to various customers in Canada for a total value of \$85,776.41. He also provides three invoices, which he attests are representative of such sales during the relevant period. I note that the Mark does not appear on the spreadsheet or the invoices and that one of the invoices predates the relevant period by a few weeks; however, all of the invoices show sales to customers in Canada.

[9] With respect to the display of the Mark on the wares, Mr. Baxter provides samples of packaging, namely a cardboard carrying case as Exhibit B and a foil bag as Exhibit C. Mr. Baxter attests that the exhibited packaging is representative of the boxes and bags included in the aforementioned sales and shipments to its customers in Canada. I note that the Mark as registered appears on the exterior of both forms of packaging.

[10] In view of the foregoing, I am satisfied that the Registrant has demonstrated use of the Mark in association with the wares as registered within the meaning of sections 4 and 45 of the Act.

Disposition

[11] Pursuant to the authority delegated to me under section 63(3) of the Act, the registration will be maintained in compliance with the provisions of section 45 of the Act.

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