



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

**Citation: 2012 TMOB 150**  
**Date of Decision: 2012-08-15**

**IN THE MATTER OF SECTION 45 PROCEEDINGS  
requested by Agribrands Purina Canada Inc. against  
registration Nos. TMA401,199 and TMA427,738 for the  
trade-marks CAT'S DELIGHT and DOG'S DELIGHT in  
the name of Tritap Food Broker, a division of 676166  
Ontario Limited.**

[1] At the request of Agribrands Purina Canada Inc. (the Requesting Party), the Registrar of Trade-marks issued notices under section 45 of the *Trade-marks Act* RSC 1985, c T-13 (the Act) on October 22, 2009 to Tritap Food Broker, a division of 676166 Ontario Limited (the Registrant), the registered owner of registration Nos. TMA401,199 and TMA427,738 for the trade-marks CAT'S DELIGHT and DOG'S DELIGHT.

[2] With respect to registration No. TMA401,199, CAT'S DELIGHT is registered for use in association with the following wares: (1) Products for cats, namely cat food and cat litter; (2) Cat toys, cat dishes, cat collars, cat leashes, cat brushes and combs, cat baskets, and cat litter boxes.

[3] With respect to registration No. TMA427,738, DOG's DELIGHT is registered for use in association with the following wares: (1) canned dog food; (2) dog biscuits and dog bones.

[4] 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 and services 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 October 22, 2006 and October 22, 2009 (the Relevant Period).

[5] 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.

[6] 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)].

[7] In response to the Registrar’s notices, the Registrant filed affidavits of Joel Usher, Secretary Treasurer of the Registrant, both sworn on April 22, 2010. Only the Registrant filed written representations; an oral hearing was not held.

[8] With respect to TMA401,199, Mr. Usher states that the Registrant used the mark CAT’S DELIGHT in association with canned cat food during the Relevant Period in Canada. He attests that the Registrant sold, through its related distribution company, canned cat food to Canadian retail stores, or indirectly through other distributors, for sale to consumers. In support, attached as Exhibit A to his affidavit is a label for a can of cat food bearing the trade-mark CAT’S DELIGHT, which Mr. Usher attests is representative of those sold in Canada during the Relevant Period. As proof of sales, attached as Exhibit B to his affidavit are five representative invoices showing sales during the Relevant Period of CAT’S DELIGHT cat food to various Canadian retailers.

[9] Mr. Usher provides similar evidence with respect to TMA426,738. In addition to a DOG’S DELIGHT canned dog food label, Mr. Usher attaches two representative invoices

showing sales during the Relevant Period of DOG'S DELIGHT canned dog food to Canadian retailers.

[10] In view of the foregoing, I am satisfied that the Registrant has demonstrated use of the trade-mark CAT'S DELIGHT in association with cat food and use of the trade-mark DOG'S DELIGHT in association with canned dog food within the meaning of sections 4 and 45 of the Act.

[11] Mr. Usher does not assert use with respect to the remaining wares in each registration, and no evidence of special circumstances excusing non-use was submitted. As such, the registrations will be amended to delete the wares for which Mr. Usher made no assertion of use.

Disposition for TMA401,199

[12] Accordingly, 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, registration No. TMA401,199 for CAT'S DELIGHT will be amended to delete "and cat litter" from wares (1) and the entirety of wares (2). The amended statement of wares for registration No. TMA401,199 will read as follows: "Products for cats, namely cat food".

Disposition for TMA427,738

[13] Furthermore, 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, registration No. TMA427,738 for DOG'S DELIGHT will be amended to delete wares (2). The amended statement of wares for registration No. TMA 427,738 will read as follows: "canned dog food".

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