

PROCEEDINGS UNDER SECTION 45
TRADE-MARK: SUBLIMO
REGISTRATION NO.: 472,323

On December 17, 2004, at the request of Riches, McKenzie & Herbert LP, the Registrar sent the notice prescribed in section 45 of the Trade-marks Act to Metro Richelieu Inc., the registered owner of the above-mentioned registration.

The trade-mark SUBLIMO is registered for use in association with the following goods:

“baked dough products namely bagels, breads, puff pastry and flatbreads”.

Section 45 of the *Trade-marks Act* requires that the registered owner of the trade-mark indicate whether the trade-mark was in use in Canada in association with each of the wares or services specified in the registration at any time during the three year period immediately preceding the date of the notice and, if not, the date when it was last so in use and the reason for the absence of such use since that date.

In response to the notice, the affidavit of Gérard Morency was provided. Only the registered owner produced written arguments. A hearing was not requested in this case.

Mr. Morency has been Head of Development, Products and Bakery for Métro Richelieu Inc. (Hereinafter called “Métro Richelieu”) since 1992. He states that he is familiar with the facts

alleged in his affidavit, either by personal knowledge or by consulting with the registers of Métro Richelieu and Briska Inc. (hereinafter called “Briska”). He claims that Briska used the licensed trade-mark SUBLIMO in association with the following products: bagels and flatbread, under the control of Métro Richelieu since June 2000 and in particular during the relevant period; that Métro Richelieu and Briska are both subsidiaries of Métro Inc.; and that the administrators of Briska are the directors of Métro Richelieu and have been since 1995, meaning the directors of Métro Richelieu have general control over the activities of Briska, and particularly, over the nature and characteristics of the products marketed under license under the trade-mark SUBLIMO.

He states that since June 2000, and particularly during the relevant period, SUBLIMO products were marketed in the province of Quebec in more than 300 grocery stores under the MÉTRO and MARCHÉ RICHELIEU banners. He confirms that METRO and MARCHÉ RICHELIEU are registered trade-marks of Métro Inc.

As exhibits “C” and “D,” he submits representative samples of packaging for SUBLIMO bagels and flatbreads as marketed in grocery stores during the relevant period. He shows sales figures for SUBLIMO products for 2002 and 2004.

He states that SUBLIMO products are advertised in grocery store flyers (exhibit “E”) and each week, close to 2,500,000 flyers are distributed throughout Quebec.

In my opinion, the evidence clearly shows the use of the trade-mark during the relevant period in association with the wares, “bagels” and “flatbreads.” In particular, the evidence shows Briska’s use, and given that this entity was authorized by the registered owner to use the trade-mark in association with the wares in question and given that Mr. Morency clearly stated that Métro Richelieu controlled the character and quality of the wares, I find that the use shown complies with the provisions set out in subsection 50(1) of the Act.

The sales figures support Mr. Morency’s claims that the products in question were sold in Canada during the relevant period and the packaging confirms that at the time the wares were transferred, the trade-mark was associated with the products in a manner complying with the provisions of subsection 4(1) of the Act.

Given the above, I find that the wares, “bagels” and “flatbreads” must be maintained on the registration.

As there is no evidence of use regarding the other wares in the registration, namely “breads” and “puff pastry,” I find that these wares should be deleted from the registration.

Registration No. 472,323 will be amended accordingly, in compliance with the provisions of subsection 45(5) of the Act.

DATED AT GATINEAU, QUÉBEC, THIS 28TH DAY OF FEBRUARY 2007.

D. Savard
Senior Hearing Officer
Section 45