

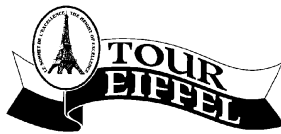
SECTION 45 PROCEEDINGS
TRADE-MARK: TOUR EIFFEL & Design
REGISTRATION NO.: 485,362

On March 9, 2004 at the request of Brouillette Kosie Prince, the Registrar forwarded the notice prescribed under Section 45 of the Trade-Marks Act to Charcuterie La Tour Eiffel Inc., the registered owner of the above-referenced trade-mark registration.

The trade-mark TOUR EIFFEL & Design (shown below) is registered for use in association with the following wares:

- (1) Seafood mousses, namely shrimp, smoked salmon, seafood and lobster; cheese; paté; European sausages.

- (2) Prepared meals; frozen, chilled, cooked and/or processed meats; frozen dinners; entrees; pizza; cheese fondu; head cheese; liverwurst; cretons; beef sausages; pork sausages; roast beef; roast pork; chicken; veal; turkey; mock chicken; bacon; bologna; hams, namely cooked and old fashioned; meat loaf; pepperoni; salami; pastrami; smoked meats; weiners; pork drippings; blood pudding; fresh entrees namely soups, sauces and salads; sauces; baked goods namely tarts; meat pies; egg rolls; vegetables.



Section 45 of the Trade-marks 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/or services listed on 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 use since that date. The relevant period in this case is any time between March 9, 2001 and March 9, 2004.

In response to the notice, the affidavit of Nicole Basenach together with exhibits has been furnished. The registered owner alone filed a written argument. Each party was represented at the oral hearing.

Ms. Basenach is Director of Marketing and U.S. Sales for the registered owner. She indicates that the registrant is the industry leader in the area of patés but also manufactures a variety of other food products which are produced in processing plants located in Vanier and Blainville, Quebec. As Exhibit B she provides a copy of a plant brochure which describes the operation of her company. She then states that her company has used the trade-mark in Canada on its food products since at least September of 1995 with respect to some of its wares and expanded that usage into other areas in 1997 and that currently and within the relevant period the registrant was using the trade-mark on its food products.

She explains that the food products manufactured and/or distributed by the registered owner including products bearing the trade-mark are sold to large food chains as well as grocery stores and as Exhibit C she provides a list of stores in Canada to which the registrant sells its products.

She specifies that the registrant affixes labels bearing the trade-mark on the food products listed

in the trade-mark registration and as Exhibits D-1 to D-8 she provides specimen labels for some food products.

As Exhibits E-1 to E-4 she provides specimen brochures and as Exhibits F-1 to F-4 and G-1 to G-2 she provides advertising materials.

She also provides a representative sample of invoices, a listing of product codes corresponding to the products appearing on the invoices, and approximate annual sales figures for the years 2001 to 2004.

At the hearing, the registrant's representative conceded that the following wares could be deleted from the trade-mark registration:

cheese; prepared meals; frozen, chilled, cooked or processed meats; frozen dinners; entrees; pizza; cheese fondu; meat loaf; pastrami; pork drippings; blood pudding; soups and salads; baked goods namely tarts; meat pies; and egg rolls.

Accordingly these wares will be deleted from the trade-mark registration.

Concerning the remaining registered wares the requesting party argues that the evidence is either insufficient or completely fails to show use with such wares.

Having considered the evidence, I find it is sufficient to permit me to arrive at a conclusion of use concerning the following wares: seafood mousses namely shrimp, smoked salmon; paté; European sausages; cretons, beef sausages; pork sausages; roast pork; turkey; hams namely

cooked and old fashioned; and salami.

In my view, Exhibits D-1 to D-8 (the labels) confirm that the trade-mark appears on the packaging for the following wares: “patés, ham; sausages; shrimp mousse, smoked salmon mousse”; Exhibit E-1 which contains pictures of some products confirm that the trade-mark appears on the packaging for the following wares: “hams; sausages; salami; turkey breast; pork roast; patés; cretons; Exhibit E-2 shows the trade-mark on the packaging of patés; duck liver mousse (not wares covered by the present trade-mark registration); Exhibits E-3 and E-4 show that the trade-mark appears on the packaging for European sausages; Exhibits F-1, F-2 and F-3 show that the trade-mark appears on the packaging for European sausages and patés.

As Ms. Basenach has clearly indicated that the food products bearing the trade-mark are sold to large food chains and to small grocery stores and as she has specified that the registrant was using the trade-mark in association with its food products bearing the trade-mark during the relevant three-year period, and taking into consideration the sales figures provided with respect to products bearing the trade-mark, I am prepared to conclude that sales of each of the above-mentioned wares were made during the relevant period. The invoices further confirm that wares bearing the trade-mark were sold during the relevant period. I note that a number of the product codes appearing in the invoices matches the product codes found in Exhibit E-1 for products associated with the trade-mark. For example Product Code 77424 for “Paté-Poivre” matches the code found in Exhibit E-1 for “Paté au Poivre Noir” associated with the trade-mark, Product Code 77504 for “Jambon Foret Noire” matches the code found in Exhibit E-1 for “Jambon Forêt

Noire” associated with the trade-mark.

As I have concluded that the evidence is sufficient to show use of the trade-mark in association with the wares “seafood mousses namely shrimp, smoked salmon; paté; European sausages; cretons, beef sausages; pork sausages; roast pork; turkey; hams namely cooked and old fashioned; and salami” I conclude that such wares ought to be maintained on the trade-mark registration.

With respect to the registered wares “seafood mousses namely seafood and lobster; liverwurst; roast beef; chicken, veal, mock chicken, bacon, smoked meats and weiners” I find the evidence completely fails to show any use of the trade-mark in association with such wares. Accordingly these wares will be deleted from the trade-mark registration.

Concerning the registered wares “head cheese and bologna”, I note that sales of these wares were made during the relevant period. The invoices show sales of “Tête Fromage” (i.e. head cheese) for example - Product Code 80932, and of “bologna” for example - Product Codes 94104 and 94121. However, from Exhibit E-1 and the invoice dated “03-12-02” bearing the heading “BILOPAGE”, it appears these products are associated with the trade-mark BILOPAGE not TOUR EIFFEL & Design. Consequently, in view of the above, I conclude that the trade-mark shown to be in use in association with “head cheese” and “bologna” is not the trade-mark TOUR EIFFEL & Design. Therefore these wares will be deleted from the trade-mark registration.

Exhibit E-1 shows that the registrant also offers for sale “pepperoni” but in association with the trade-mark BILOPAGE not the trade-mark TOUR EIFFEL & Design. As there is absolutely no evidence showing that the wares “pepperoni” were sold in association with the trade-mark TOUR EIFFEL & Design, such wares will be deleted from the trade-mark registration.

Concerning the registered wares “sauces and vegetables” although the invoices show sales of such wares, the evidence fails to show that it is the trade-mark TOUR EIFFEL & Design that was associated with such wares in a manner complying with the requirements of s-s. 4(1) of the Act. Accordingly, these wares will also be deleted.

Consequently, in view of the evidence furnished, I conclude that only the wares “seafood mousses namely shrimp and smoked salmon; paté; European sausages; cretons; beef sausages; pork sausages; roast pork; turkey; hams namely cooked and old fashioned; and salami” ought to be maintained on the trade-mark registration.

Registration No. 485,362 will be amended accordingly in compliance with the provisions of Section 45(5) of the Act.

DATED AT GATINEAU, QUEBEC, THIS 21ST DAY OF MARCH 2007.

D. Savard
Senior Hearing Officer
Section 45 Division

