



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

**Citation: 2014 TMOB 39**  
**Date of Decision: 2014-02-24**

**IN THE MATTER OF A SECTION 45 PROCEEDING  
requested by Global Distillers SRL against registration  
No. TMA616,528 for the trade-mark HOLIDAY NOG in  
the name of Angostura Canada Inc.**

[1] At the request of Global Distillers SRL, the Registrar of Trade-marks issued a notice under section 45 of the *Trade-marks Act* RSC 1985, c T-13 (the Act) on November 4, 2011 to Angostura Canada Inc. (the Owner), the registered owner of registration No. TMA616,528 for the trade-mark HOLIDAY NOG (the Mark). The Mark is registered for use in association with the wares “cream liqueur alcoholic beverages”.

[2] 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 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 November 4, 2008 and November 4, 2011 and the relevant definition of “use” 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.

[3] 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)].

[4] In response to the Registrar's notice, the Owner filed the affidavit of Horace Bhopalsingh, Secretary of the Owner, sworn on May 28, 2012. No written representations were filed; an oral hearing was not held. In his affidavit, Mr. Bhopalsingh attests that the Owner is in the business of producing, bottling and selling a range of alcoholic beverages. He explains that the Owner primarily sells its alcoholic beverages to Liquor Control Commissions in a number of provinces throughout Canada. More specifically, he attests that the Owner sold "cream liqueur alcoholic beverages" in association with the Mark during the relevant period in Canada.

[5] In support, Mr. Bhopalsingh attaches a copy of a label bearing the Mark (Exhibit B) that he attests is representative of labels affixed to bottles of cream liqueur produced by the Owner and sold to customers in Canada during the relevant period. Also attached is a photograph of a bottle of HOLIDAY NOG cream liqueur (Exhibit C), that Mr. Bhopalsingh attests is representative of those sold to customers in Canada during the relevant period.

[6] As evidence of sales of the wares in the normal course of trade, Mr. Bhopalsingh attaches eight invoices dated within the relevant period showing sales from the Owner to three Canadian distributors (Exhibit D). I note that, among other items, the invoices show sales of HOLIDAY NOG.

[7] In view of the foregoing, I am satisfied that the Owner has demonstrated use of the Mark in association with the wares during the relevant period within the meaning of sections 4 and 45 of the Act. 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, the registration will be maintained.

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