

LE REGISTRAIRE DES MARQUES DE COMMERCE

THE REGISTRAR OF TRADE-MARKS

Citation: 2017 TMOB 133

Date of Decision: 2017-09-29

IN THE MATTER OF A SECTION 45 PROCEEDING

**Robinson Sheppard Shapiro
S.E.N.C.R.L./L.L.P.**

Requesting Party

and

Fairtrade Canada Inc.

Registered Owner

**TMA801,957 for
FAIR TRADE CERTIFIED, CERTIFIÉ
ÉQUITABLE & DESIGN**

Registration

[1] At the request of Robinson Sheppard Shapiro S.E.N.C.R.L./L.L.P. (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 July 21, 2015, to Fairtrade Canada Inc. (the Owner), the registered owner of registration No. TMA801,957 for the certification mark FAIR TRADE CERTIFIED, CERTIFIÉ ÉQUITABLE & DESIGN, reproduced below (the Mark):



[2] The Mark consists of the words FAIR TRADE CERTIFIED in an upper band and CERTIFIÉ ÉQUITABLE in a lower band, with a black-and-white a line drawing in between. The line drawing features a human figure holding two bowls, against a stylized globe background.

[3] The Mark is registered for use in association with the following goods:

(1) Body and personal care products, namely, skin care preparations, laundry liquid soap, laundry powdered soap, laundry liquid detergent, kitchen and bathroom cleaning liquids, all purpose cleaning preparations; hand soap bars, hand soap liquid; body soap bars, body soap liquid, deodorant soaps, lip balms, shea oil, cocoa oil, hand creams, hand lotions, body lotion, shea butter, cocoa butter, exfoliating cream (the Body and Personal Care Goods).

(2) Clothing for men, women, children, and infants, namely, shirts, pants, sleepwear, shorts, dresses; cloth towels; bed linens; canvas shopping bags; fresh flowers; green foliage accompanying fresh flowers in a bouquet (the Clothing and Household Goods).

(3) Sports balls, namely, soccer balls, volleyballs, basketballs, rugby balls, footballs (the Sports Ball Goods).

(4) Chocolate products, namely, chocolate syrup, chocolate chips, chocolate bonbons, chocolate bars, hot chocolate non-alcoholic beverage, cocoa powder, chocolate protein powder; condiments, namely, jams; vanilla syrup; flavoring, namely, syrup; baked goods, namely, cookies, gingerbread, muffins, cakes; candy; cereal-based bars; non-alcoholic beverage, namely, chocolate milk, sweet flavoured milk, tea, tea-based beverages, carbonated drinks, fruit drinks and fruit juices; milk-based desserts, namely, ice-creams; frozen non-dairy desserts, namely, hemp-based ice-cream; coffee; cocoa; sugar; molasses; quinoa; quinoa pasta; quinoa noodles; quinoa soup; rice; honey; herbs and spices for cooking purposes; dried fruits (the Food Goods).

[4] Section 45 of the Act requires the registered owner of the certification mark to show whether the trade-mark has been used in Canada in association with each of the goods 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 the trade-mark was last used and the reason for the absence of such use since that date. In this case, the relevant period for showing use is July 21, 2012 to July 21, 2015.

[5] The relevant definition of “use” in association with goods is set out in section 4(1) of the Act as follows:

4(1) A trade-mark is deemed to be used in association with goods if, at the time of the transfer of the property in or possession of the goods, in the normal course of trade, it is marked on the goods themselves or on the packages in which they are distributed or it is in any other manner so associated with the goods that notice of the association is then given to the person to whom the property or possession is transferred.

[6] Section 2 of the Act defines a “certification mark”, as follows:

“certification mark” means a mark that is used for the purpose of distinguishing or so as to distinguish goods or services that are of a defined standard with respect to

- (a) the character or quality of the goods or services,
- (b) the working conditions under which the goods have been produced or the services performed,
- (c) the class of persons by whom the goods have been produced or the services performed, or
- (d) the area within which the goods have been produced or the services performed,

from goods or services that are not of that defined standard.

[7] In addition, sections 23(1) and (2) of the Act provide as follows:

(1) A certification mark may be adopted and registered only by a person who is not engaged in the manufacture, sale, leasing or hiring of goods or the performance of services such as those in association with which the certification mark is used.

(2) The owner of a certification mark may license others to use the mark in association with goods or services that meet the defined standard, and the use of the mark accordingly shall be deemed to be use thereof by the owner.

[8] In this case, the following defined standard is set out in the registration:

The wares shall be produced, imported, processed and/or distributed in conformity with defined standards as set in the attached Trade Certification- Standard Operating Procedure manual and shall either be sourced from organizations of small producers or from establishments using hired workers. The organizations of small producers shall: be composed mainly of small producers; be able to demonstrate accountability to its

members and for the resources used in its activities; use a portion of its income from the wares to invest in community initiatives for the improvement of social and economic conditions of its members; ensure the respect of national norms concerning the use and storage of pesticides; encourage its members to use environmentally sound methods of production; receive a set price or premium over the market price. The hired workers shall: receive minimum wages and benefit from safe and stable working conditions as defined by national legislation in the country of production; have the right and be given the opportunity to form a labour union; determine the use of the funds from the price premium associated with the sale of the wares through their elected representatives on a joint committee of workers and management representatives; use the funds for social and economic initiatives to improve their socio-economic conditions. Where wares contain ingredients that cannot be sourced according to the above criteria, the wares shall: contain at least 20% Fair Trade Certified ingredients by dry weight; contain only Fair Trade Certified Ingredients where standards exist for those ingredients.

[9] It is well established that mere assertions of use are not sufficient to demonstrate use in the context of section 45 proceedings [*Plough (Canada) Ltd v Aerosol Fillers Inc* (1980), 53 CPR (2d) 62 (FCA)]. Although the threshold for establishing use in section 45 proceedings is quite low [*Woods Canada Ltd v Lang Michener* (1996), 71 CPR (3d) 477 (FCTD)], and evidentiary overkill is not required [*Union Electric Supply Co Ltd v Registrar of Trade Marks* (1982), 63 CPR (2d) 56 (FCTD)], sufficient facts must still be provided to permit the Registrar to arrive at a conclusion of use of the trade-mark in association with each of the goods specified in the registration during the relevant period [*John Labatt Ltd v Rainier Brewing Co* (1984), 80 CPR (2d) 228 (FCA)].

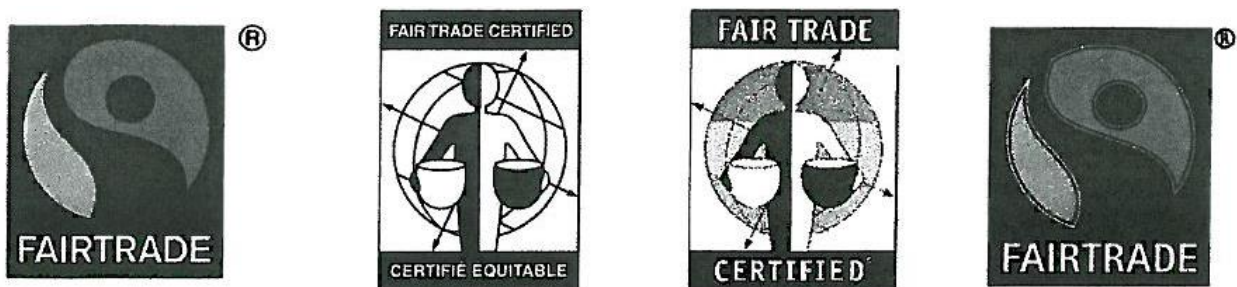
[10] In response to the Registrar's notice, the Owner furnished two affidavits of its Office Manager, Suzanne Blais, sworn on October 21, 2015. Attached as Exhibit N to one of these affidavits is a copy of a third affidavit of Suzanne Blais, sworn on October 16, 2015. The original affidavit of October 16, 2015, was submitted in a concurrent section 45 proceeding with respect to registration No. TMA607,646 for the trade-mark FAIR TRADE CERTIFIED & DESIGN; a separate decision will issue for that registration.

[11] Only the Requesting Party filed written representations. An oral hearing was not requested.

THE OWNER'S EVIDENCE

[12] In each of her affidavits, Ms. Blais states that the Owner is a “national, non-profit fair trade certification organization” located in Ottawa. She explains that the Owner is the only Canadian member of a global network of 25 “Fairtrade organizations” led by Fairtrade International.

[13] Ms. Blais attests that the Owner licenses Canadian companies to sell the registered goods in Canada in association with various “Fairtrade Certification Marks”. In support, she attaches as Exhibit C to her affidavit an excerpt from the “standard form licence agreement applicable to licensees during the Relevant Period”. This excerpt from the agreement depicts four design marks under the definition of a “Fairtrade Certification Mark”, as follows:



[14] As can be seen, the Mark is one of these four licensed design marks. One of the other licensed design marks is also similar to the Mark. However, in that version of the design (the Similar Mark), the French words are omitted, the English words are redistributed, and the background element is shaded. The remaining two licensed design marks differ substantially from the Mark: they feature the word FAIRTRADE under a simpler design resembling a yin and yang symbol (collectively the Different Fairtrade Mark).

[15] As noted by Ms. Blais and set out in the exhibited excerpt, the standard form licence agreement grants licensees the right to use any one of these four licensed design marks in association with products and promotional items approved by the Owner and listed in “Appendix 1” of the agreement.

[16] Ms. Blais explains that the Owner is responsible for certifying that Canadian products bearing the Mark “have been produced, imported, processed and/or distributed in conformity

with the standards set in the Trade Certification – Standard Operating Procedure manual based on International Fairtrade Standards”, which she calls the “Defined Standard”. Ms. Blais attests that the Owner’s licensees “are required in their licenses to conform to the character and quality of the goods set out in [this standard]”. I note that the agreement excerpt at Exhibit C also provides that “improper use of the Fairtrade Certification Mark can lead to termination of this agreement.”

[17] With respect to use of the Mark in association with the registered goods, Ms. Blais states that, because “[the Owner’s] activity is certifying, not selling goods”, the Owner does not have access to licensees’ retail sales invoices and has no authority to demand them. She also states that there are no invoices specifying which of the licensed marks was used in association with any given product. Ms. Blais states that she is therefore “providing evidence that Fairtrade Canada has licensed the use of [the Mark] on each of the goods listed in the registration during the Relevant Period, and also evidence that reasonably points to the goods bearing [the Mark] being sold in the market during the Relevant Period”.

[18] Her evidence in this respect is divided among the three affidavits, each of which addresses different registered goods, as detailed below.

Affidavit of October 16, 2015

[19] Ms. Blais attests that the Owner is currently licensing 119 Canadian companies to sell various coffee products in Canada in association with the Fairtrade Certification Marks. The relevant exhibits attached to her affidavit in this respect are as follows:

Licensing arrangements

- Exhibit D is a two-page document titled “Canadian coffee companies currently licensed with Fairtrade Canada (Date: October 15th 2015)”. Ms. Blais explains that this document is an internal record of the Owner’s licensees, redacted to maintain confidentiality “with respect to our business operations”. Three licensee names are left visible: Club Coffee LP, Just Us! Coffee Roasters Co-Op, and Merchants of Green Coffee.

- Exhibit J is a one-page document titled “Licensing Fee clauses from Fairtrade Canada’s standard form licensing agreement”. Ms. Blais explains that the clauses set out in this excerpt describe how licence fees for use of the Mark are calculated. As noted by Ms. Blais, clause 6(b) provides for a licence fee “payable based on volume or value of sales”—Ms. Blais attests that this is the licensing fee “structure” applicable to the invoices attached as exhibits to her affidavit.

Coffee

- Exhibits E and F are October 2015 printouts from the Merchants of Green Coffee website. Ms. Blais explains that Merchants of Green Coffee is a café in Toronto and was a licensee of the Mark during the relevant period. The exhibited printouts describe the licensee’s coffee products generally (Exhibit E) and advertise its presence at the weekly Leslieville Farmers’ Market in Toronto “[e]very Saturday & Sunday during summer 2014” (Exhibit F).
- Exhibit G is a printout from the Leslieville Farmers’ Market website. As referenced by Ms. Blais, this website lists Merchants of Green Coffee as a vendor, with the notation “Click on the vendors below for a drop-down description”. Indeed, that description appears on the printout, together with a product photograph, an enlargement of which is provided at Exhibit H. The photograph depicts rows of coffee bags displaying a design consistent with the Mark. The word elements are illegible, but consistent in size and shape with the word elements in the Mark.
- Exhibit I is an invoice from the Owner to Merchants of Green Coffee dated during the relevant period. Ms. Blais attests that the “Amount” and “Total Amount” fields, which have been redacted, contain licence fees payable to the Owner for use of the Mark. The invoice description indicates that it is for kilograms of “Coffee”, although the precise number of kilograms has been redacted. Although Ms. Blais refers to the invoice as representing sales during “Q4 of 2015”, the invoice description itself is dated “Q1 2015”, which I interpret as referring to coffee sold in the first quarter of 2015.

- Exhibit K is an image of a label for “Organics PC Fair Trade Medium Roast whole bean coffee”. Ms. Blais identifies the image as a label specimen for coffee sold by Club Coffee LP, a Toronto “roaster, manufacturer and distributor of packaged coffee” and a licensee of the Mark during the relevant period. Ms. Blais attests to having “personal knowledge” of Club Coffee’s Fair Trade Medium Roast whole bean coffee being “available on the market, at the very least, immediately prior to when the Registrant received [the section 45 notice]”. A design consistent with the Mark is displayed on the depicted label. Again, the word elements are illegible, but they are consistent in size and shape with the word elements in the Mark.
- Exhibits L and M each contain an October 2015 printout of a webpage with the title “PC Organics Fair Trade Medium Roast Whole Bean Coffee | Loblaws”. Ms. Blais attests that the respective printouts are from “the online store of President’s Choice” and “the online store of Atlantic Superstore, the distributor of President’s Choice products in Atlantic Canada”. As noted by Ms. Blais, the webpages display a product bearing the label depicted at Exhibit K.
- Exhibit N contains two invoices from the Owner to Club Coffee, dated during the relevant period. The dollar amounts have again been redacted, but Ms. Blais indicates that they are the licence fees for use of the Owner’s certification marks. The invoices list kilograms of “Coffee” for Canada and the United States for “Q4 2014” and “Q2 2015”.
- Exhibit O is an image depicting a row of “just us!” coffee bags, which Ms. Blais identifies as the packaging for the coffee products of Just Us! Coffee Roasters Co-Op, a group of coffeehouses in Nova Scotia. Ms. Blais attests that Just Us! Coffee was another licensee of the Mark during the relevant period. A design consistent with the Mark is displayed on the bags.
- Exhibits P, Q and R contain screen captures that Ms. Blais attests are from the Facebook pages of Just Us! Coffee and its Grand Pré coffeehouse. Ms. Blais attests that these pages were accessed from links on the Just Us! Coffee website, printouts of which are included in Exhibits P and Q. Each screen capture shows part of a 2014 post by Just Us! Coffee, with an image featuring coffee bags. Ms. Blais identifies the depicted coffee

bags as the type of coffee to be sold at an event in the coffeehouse (Exhibit P) and as coffee being sold “in a grocery store” (Exhibit Q) and “in the Cole Harbour, N.S. Sobeys location” (Exhibit R). The clearest image (Exhibit P) shows a bag displaying a design consistent with the Mark, in connection with a post that appears to advertise free samples of the coffee.

- Exhibits S and T contain an image of a label for “President’s Choice Fair Trade Ground Coffee”, on its own and in two 2015 webpage printouts titled “PC Fair Trade Ground Coffee – Latin America Dark Roast | Loblaw’s”. Ms. Blais attests that the exhibited image is from “the President’s Choice online store”. She identifies the depicted label as packaging for a product sold by Club Coffee, which she states is also a licensee of the Mark for “ground coffee”. A design consistent with the Mark is displayed on the label. The webpage at Exhibit T also includes customer reviews for the product dated prior to the relevant period.

First Affidavit of October 21, 2015

[20] Ms. Blais attests that the Owner is currently licensing several Canadian companies to sell various Body and Personal Care Goods, Clothing and Household Goods, and Sports Ball Goods in Canada in association with the Fairtrade Certification Marks. The relevant exhibits attached to her affidavit in this respect are as follows:

Licensing arrangements

- Exhibit I is a copy of the “Licensing Fee clauses from Fairtrade Canada’s standard form licensing agreement” that were furnished with the affidavit of October 16, 2015. Ms. Blais confirms that clause 6(b), which provides for a licence fee “payable based on volume or value of sales”, also applies to the invoices in the present affidavit.
- Exhibit II is a one-page document titled “Fairtrade Certified Operator Contract, License Fees (Appendix 4)”. As noted by Ms. Blais, this document contains an excerpt from clause 21 of the Contract, which provides for a 10% discount on licence fees when certain criteria are met. One of those criteria is that “[a]t least 95% in volume of Fairtrade

certifiable products purchased, manufactured and sold are as Fairtrade Certified”. Ms. Blais attests that this “Fairtrader Reduction Clause” is a standard clause in the Owner’s Fairtrade Certified Operator Contract.

Skin care preparations and exfoliating cream

- Exhibit E is three-page document titled “Fairtrade Certified Article List”. Ms. Blais explains that the Owner issues such Fairtrade Certified Article Lists to its licensees to provide “documentation that the Licensee’s goods have been certified”. She further states, “The significance of this list is that all the items appearing on the list are on the market as of the date it was issued”. The list at Exhibit E is dated in October 2015 and includes entries for “Crème pour le visage (argan/ karité)” and “Exfoliant melaleuca” for the brand “Douceur de Géraldine”. Ms. Blais attests that Douceur de Géraldine is a Québec skin care company and a licensee of the Mark for skin care preparations and exfoliating creams, licensed “continuously since 2008”.
- Exhibits D and F are October 2015 screen captures from the online store of Douceur de Géraldine. These webpages depict jars of “Crème pour le visage huile d’argan et beurre de karité” and “Exfoliant melaleuca”, which Ms. Blais identifies respectively as a “Skin Care Preparations good” and an “exfoliating cream”. Ms. Blais attests to having “personal knowledge” that these two products, bearing the Mark, were “available on the market, at the very least, immediately prior to when the Registrant received [the section 45 notice]”. The depicted jars appear to bear a Fairtrade Certification Mark consistent with the Mark, although it is barely visible in the photograph at Exhibit D.

Soap bars, deodorant soaps, lip balms, shea butter and cocoa butter

- Exhibit H is an invoice from the Owner to Soc. d’agri-gestion Delapointe dated during the relevant period. The invoice lists a value of “*cosmétiques*” (cosmetics) for Canada for the fourth quarter of 2014, with an applied discount. Ms. Blais attests that this invoice is for licence fees payable by the licensee to the Owner for use of the Mark. (I note that Ms. Blais also references a second invoice in connection with Exhibit H, but no such invoice is attached to her affidavit.)

- Exhibit G is an October 2015 screen capture from the online store of Karité Delapointe, which Ms. Blais attests is a Quebec skin care company and a licensee of the Mark for hand and body soap bars, deodorant soaps, lip balms, shea butter and cocoa butter. The exhibited webpage depicts several bars, and Ms. Blais identifies those “in the rightmost image” as “hand and body soap bars”. The webpage also depicts several jars and tubes. A Fairtrade Certification Mark consistent with the Mark appears on the bars, and what appears to be the edge of such a mark is also visible on one of the jars.
- Exhibit J is a screenshot from the Internet Archive at *www.archive.org*, showing an archived version of the Exhibit G webpage, from May 2013. The two versions of this webpage are substantively similar.
- Exhibit K is an October 2015 printout from Karité Delapointe’s online store, depicting a “Delapointe” bar of “Freshness Clay and Mint Soap”, which Ms. Blais identifies as both a “hand and body soap bar” and a “deodorant soap”. The webpage advertises the product’s “refreshing” and “surprising” scent and provides instructions to “[g]ently lather the soap on your face and body for a soft-yet-deep cleaning”; it does not specifically mention deodorization. A Fairtrade Certification Mark consistent with the Mark appears on the bar’s packaging.
- Exhibit O is an October 2015 printout from Karité Delapointe’s online store depicting a “Delapointe” bar of “Fruity Spicy Cranberry Soap”, which Ms. Blais identifies as both a “hand and body soap bar” and a “shea butter product”. The webpage advertises this soap as containing “50% pure shea butter” and, as noted by Ms. Blais, provides an ingredient list that includes “Fair Trade & Organic Certified Shea Butter”. Again, the webpage provides instructions to “[g]ently lather the soap on your face and body for a soft-yet-deep cleaning”. A Fairtrade Certification Mark consistent with the Mark appears on the bar’s packaging.
- Exhibit M is another October 2015 printout from Karité Delapointe’s online store, depicting a tube of the “Delapointe” product “Unscented Authentic Lip Balm”. An enlargement of this image is included in the exhibit. The webpage advertises the product

as containing “85% pure shea butter”. Part of a Fairtrade Certification Mark consistent with the Mark appears on the depicted tube.

- Exhibit Q is an October 2015 printout from Karité Delapointe’s online store, depicting a jar of the “Delapointe” product “100% Pure Shea Butter Body & Face Authentic Balm”, which Ms. Blais identifies as a “cocoa butter good”. An enlargement of this image is included in the exhibit. The depicted product label displays a text box indicating “Shea and Cocoa butters available in bulk format”, but the exhibited webpage does not otherwise reference cocoa butter. A Fairtrade Certification Mark consistent with the Mark appears on the jar’s packaging.
- Exhibits L, N, P and R contain screen captures from the Internet Archive at www.archive.org, showing archived versions of the Exhibit K, M, O and Q webpages. The archived pages are from January 2011 and are substantively similar to the corresponding October 2015 webpages.

Hand creams and hand lotions

- Exhibit AA is an October 2015 screen capture from the online store of Ten Thousand Villages. Ms. Blais attests that this company “operates 37 stores across Canada, selling artisan-crafted personal accessories, home decor and gift items from around the globe”. She explains that its private label “Ten Thousand Villages” is produced by Delapointe, which is a licensee of the Mark for hand creams and hand lotions. The exhibited webpage depicts a jar of a “Ten Thousand Villages” product labelled “Fair Trade Shea Butter Body & Hand Cream”; an enlargement of this image is included in the exhibit. The image shows the left edge of a Fairtrade Certification Mark, consistent with the Mark and Similar Mark, printed on the container.
- Exhibit BB is an image of the label design for the “Fair Trade Shea Butter Body & Hand Cream”, which Ms. Blais attests to having received from the licensee “within the Relevant Period or earlier”. The Mark is clearly displayed on the depicted label, which Ms. Blais attests is “exactly as it appears on the online store’s product”. Ms. Blais further states, “based on the timing in which I received the label from the Licensee, along with

the fact that the goods are still presently Fairtrade Certified, I can attest to the fact that this product would have been on the market during the relevant period in association with [the Mark]”.

Soap liquid and body lotion

- Exhibits S, T, W and Y are October 2015 screen captures from the online store of Tashodi, which Ms. Blais attests is a Toronto body care company and a licensee of the Mark for liquid hand soaps, liquid body soaps, and body lotions. The exhibited webpages depict four bottles of “Tashodi” products —“ocean minerals hand wash”, “pure lavender hand wash”, “pure lavender shower crème” and “pure lavender body lotion” —which Ms. Blais identifies respectively as two “liquid hand soaps”, a “liquid body soap” and a “body lotion”. A Fairtrade Certification Mark consistent with the Mark and Similar Mark appears to be printed on the side of the hand wash and body lotion bottles, although it is mostly hidden from view on the hand wash.
- Exhibits U, X and Z are images of label designs for “Pure Lavender Hand Wash”, “Pure Lavender Shower Cream” and “Pure Lavender Body Lotion”, which Ms. Blais attests were provided to the Owner by Tashodi. The Mark is clearly displayed on each label design. I note that the body lotion label indicates that that the product is to “[a]pply to skin after bathing”; the label does not mention hands in particular.
- Exhibit V contains screen captures of an October 2012 post on the “Tashodi Fair Trade Body Care” Facebook page and of the Tashodi store webpage that Ms. Blais attests links to the Facebook page. The post includes an image of various product containers, which Ms. Blais attests include “[v]arious liquid hand soaps”. A Fairtrade Certification Mark consistent with the Mark and Similar Mark is visible on some of the depicted containers; however, only one liquid soap label is identifiable and the Mark is not visible on that label.

Clothing for men and women

- Exhibit CC contains two photographs showing a hangtag and neck label on a shirt, which Ms. Blais describes as “the packaging (the tags) on a Boutique fibrEthik unisex adult T-shirt, dated at or around December 2011”. Ms. Blais attests that Boutique fibrEthik is a cotton clothing and household goods manufacturer based in Montreal, and a former licensee of the Mark for adult T-shirts. The Mark is clearly displayed, together with the licensee’s name, on the tag and neck label.
- Exhibit DD is a printout from the Internet Archive at *www.archive.org*, showing an archived webpage from August 2012. The webpage is from fibrEthic’s online store and promotes the company’s Fairtrade and Global Organic Textile Standard (GOTS) certifications. Both the Mark and the Different Fairtrade Mark are displayed.
- Exhibits EE and FF are a printout and screenshot from *www.archive.org*, showing archived webpages from October 2012. These webpages are also from fibrEthic’s online store and show various men’s and women’s T-shirts. An enlargement of one of the women’s T-shirts is included in Exhibit FF. The image is of poor quality, but shows what appears to be a Fairtrade Certification Mark consistent with the Mark and Similar Mark printed on the T-shirt’s neck label.

Clothing for children and infants; towels and linens

- Exhibit GG is a printout from the Internet Archive at *www.archive.org*, showing an archived webpage from October 2012. Ms. Blais describes the depicted webpage as the entry into the “online shop portal” of Nosilla Organics, which she attests is a Vancouver-based cotton clothing goods manufacturer and a former licensee of the Mark for children’s and infant’s shirts, pants, sleepwear, shorts and dresses. The depicted webpage displays buttons for “boy” and “girl” under the heading “SHOP NOW”. The webpage also displays photographs of three children—from infant to toddler—in various combinations of hats, shirts and pants. Both the Mark and the Different Fairtrade Mark are displayed at the bottom of the webpage.

- Exhibit HH is an invoice from the Owner to Nosilla Enterprises dated during the relevant period. The invoice lists a “value” of “cotton” for Canada for “2012 Q3”. Ms. Blais attests that this invoice is for licence fees “associated with the sale of the Licensee’s Fairtrade Certified Goods”. The invoice reflects a discount, which Ms. Blais confirms is an indication that the criteria in the Fairtrade Reduction Clause have been met. (I note that Ms. Blais also refers to a Fairtrade Certified Article List in respect of this licensee, but no such list is attached to her affidavit.)
- Exhibit JJ is an invoice from the Owner to Green Living Organics Inc. dated during the relevant period. Ms. Blais attests that Green Living Organics is a licensee of the Mark for infants’ clothing—selling shirts, pants and sleepwear—as well as for cloth towels and bed linens. The invoice lists a “value” of “Cotton” for Canada for “Q2 2015” and indicates, “Since you are 100% Fairtrader a 10% discount has been applied”. Ms. Blais attests that this invoice is for licence fees “associated with the sale of the Licensee’s Fairtrade Certified Goods”.
- Exhibit LL contains images of two label designs, which Ms. Blais attests were provided by Green Living Organics. The two designs appear to represent the front and back of a hangtag promoting the company’s “Fair Trade” and “Organic” certifications; the Mark is displayed on one of the designs. The images are undated; however, Ms. Blais states that “Exhibits ‘LL’ and ‘LL’ pre-date the Relevant Period”—I interpret this statement as a reference to the label designs at Exhibit LL and to the advertisement at Exhibit MM (discussed below).
- Exhibit KK contains two Fairtrade Certified Article Lists for Green Living Organics. Ms. Blais attests that the first list dates from December 2012; the second list indicates a date in October 2015. Ms. Blais explains that the lists contain “several different kinds of infant clothing” and other goods that “Green Living Organics was, and continues to be, certified [for] and was selling at the applicable time”. As noted by Ms. Blais, both lists include entries for “Jumpsuit”, “Onesie Gift Set” and “Hooded Spa Robe”, as well as for “Wash Cloth Trio”, “Sheet Set” and “Duvet Set”. With respect to the latter goods, Ms. Blais states, “Although no photographic evidence can be provided... as a function of

my role as Office Manager in the administration of Fairtrade Canada's operations with its licensees, I can attest to the fact that Green Living Organics was using the mark in association with cloth towels and bed linens during the Relevant Period."

- Exhibit MM is a two-page document advertising onesies, jumpsuits, hats and booties for babies aged 0 to 18 months. Ms. Blais attests that the document was provided by Green Living Organics and depicts "infant clothing being manufactured and sold by the Licensee, which the Licensee paired with [the Mark], which was appearing in the packaging and labels of the goods". The Mark is clearly displayed on the first page of this advertisement, which also states, "Our cotton is grown by family farmers organized in co-operatives that are Fair Trade Certified". I note that the advertisement provides an e-mail address for placing orders, and a Toronto telephone number. As noted above, Ms. Blais appears to state that this advertisement predates the relevant period. However, she further states that she can "attest to the fact that Green Living Organics was using the certification mark in association with these goods during the Relevant Period."

Flowers and foliage

- Exhibit NN is an image of flower packaging, which Ms. Blais attests is a specimen provided by Florimanx Vancouver around February 2013. Ms. Blais attests that Florimanx Vancouver is Vancouver-based flower distributor and former licensee of the Mark for fresh flowers and green foliage accompanying fresh flowers in a bouquet. She further states, "I can attest to the fact that Florimax would have been using the packaging as it appears" around February 2013. Both the Mark and the Different Fairtrade Mark are displayed on the depicted packaging.
- Exhibit OO is a "Fairtrade Certified Article List" for Florimanx Vancouver, which Ms. Blais attests contains "several different kinds of flower bouquets for which the Licensee was, and continues to be, certified for and was selling at the applicable time". Indeed, the list includes entries for various "African Roses" and "African Roses Bouquets". With respect to the "applicable time", I note that Ms. Blais actually references two lists—purportedly dated in December 2012 and October 2015—although only one, undated list is provided in the exhibit.

Sports balls

- Exhibit PP contains two substantively similar Fairtrade Certified Article Lists for Fair World Sports. One is undated and one is dated in October 2015. Ms. Blais explains that YSC Fair World Sports is a program operated by Ottawa Y Service Club on behalf of Y Service Clubs of Canada. Ms. Blais attests that Ottawa Y Service Club, as operator of YSC Fair World Sports, is a licensee of the Mark for soccer balls, volleyballs, basketballs, rugby balls and footballs. Indeed, each of the exhibited lists includes entries for “Indoor soccer ball”, “Match ball” and “Premier Match”, which Ms. Blais attests are soccer balls. Each list also includes entries for “Futsal ball”, “Basketball”, “Rugby Ball” and three types of “Volleyball”.
- Exhibit QQ is a four-page product list titled “YSC Fair World Sports: Your source for Fair Trade Certified Sports Balls in Canada. (A program of the Y Service Clubs of Canada)”. Ms. Blais attests that this list has been “continuously effective since January 2009”. The depicted balls include various soccer balls, a futsal ball, two volley balls, a rugby ball, a football, and a basketball. A Fairtrade Certification Mark consistent with the Mark is printed on the depicted “League Plus” and “Match Plus” soccer balls and on the futsal ball, which is described as being “great for indoor seven-a-side soccer”. A Fairtrade Certification Mark consistent with the Mark and Similar Mark is printed on the depicted basketball. The Mark is also printed at the bottom of the last page, beside the notations “Ordering: Contact us for the latest wholesale or retail price lists” and “Send in your order to YSC Fair World Sports at [e-mail address]”.
- Exhibit RR contains two invoices from the Owner to Ottawa Y Service Club, dated during the relevant period. The invoices are in respect of “Sports Balls” for “Q1 2015” and “Sport Balls” for “Q4 2014”; each invoice reflects a discount.
- Exhibit SS is an October 2015 printout from the Fair World Sports website, depicting a “League Plus”-style soccer ball bearing the Mark.

- Exhibit TT contains two photographs of a football bearing the Mark. Ms. Blais attests that the depicted football is the one shown in the product list at Exhibit QQ, but from different angles.

Second Affidavit of October 21, 2015

[21] Ms. Blais attests that the Owner is currently licensing several Canadian companies to sell various Food Goods in Canada in association with the Fairtrade Certification Marks. The relevant exhibits attached to her affidavit in this respect are as follows:

Licensing arrangements

- Exhibit E is another copy of the “Licensing Fee clauses from Fairtrade Canada’s standard form licensing agreement”. Ms. Blais confirms that clause 6(b), which provides for a licence fee “payable based on volume or value of sales”, applies to the invoice at Exhibit D.

Chocolate, chocolate bars and cereal-based bars, dried fruit

- Exhibit D is an invoice from the Owner to La Siembra dated during the relevant period. Ms. Blais explains that La Siembra has been a licensee of the Mark for Food Goods “continuously since 2011” and uses the Mark for chocolate chips, chocolate bars, chocolate syrup, cocoa powder, fruit drinks and fruit juices, molasses, and the dried fruit coconut. The invoice lists kilograms of “Chocolate”, “Cocoa Syrup”, “Cocoa powder”, “Drink powder”, “Sugar”, and “Coffee” for Canada for “Q3 2013”. It also lists a “value” of “Coconut” for Canada for “Q3 2013”. Ms. Blais confirms that the exhibited invoice is for licence fees for use of the Owner’s Fairtrade Certification Marks and attests that the invoice provides “evidence that Chocolate Chips, Chocolate Bars, Chocolate Syrup, Cocoa Powder and Dried Fruit goods were sold during the relevant period”. (I note that Ms. Blais attestation is marked by a footnote number, but there is no corresponding footnote.)

- Exhibits F and M are October 2015 printouts from the Ten Thousand Villages online store. The exhibited webpages depict packages of two “cuisine camino” products: chocolate chips and shredded coconut. The Mark is displayed on each package.
- Exhibit L is an image of a label for the “cuisine camino” product “Cocoa Powder”, which Ms. Blais attests was provided by La Siembra. The Mark is displayed on the label.
- Exhibits H and K are images of labels for two “camino” products, which Ms. Blais again attests are from La Siembra. The products are labelled “Peanut butter Dark chocolate” (Exhibit H) and “Puffed rice & quinoa Milk chocolate” (Exhibit K), which Ms. Blais attests are the licensee’s chocolate bar and cereal-based bar, respectively. The Mark is displayed on each label.
- Exhibit G is a printout from the Internet Archive at *www.archive.org*, showing an archived webpage from May 2013. Ms. Blais attests that the depicted webpage is from La Siembra’s online store and is for this licensee’s “Camino products”. The text of the webpage indicates that the products are certified by the Owner. The webpage depicts an array of packaged products, and an enlargement of this image is included in the exhibit. A Fairtrade Certification Mark consistent with the Mark is discernible on many of the depicted packages; it appears to be the only Fairtrade Certification Mark displayed. Three of the packages are consistent with the chocolate chip, cocoa powder and shredded coconut packaging depicted at Exhibits F, L and M, and they appear to display the Mark in the same manner. Two other packages, only small strips of which are visible, appear to that extent to be consistent with the chocolate bar labels depicted at Exhibits H and K; the Mark is not displayed in the visible areas.

Fruit drinks and fruit juices

- Exhibit I contains screen capture images that Ms. Blais describes as a Facebook post by La Siembra advertising fruit juices. The post is dated in May 2012 and depicts four cartons of “camino” fruit juice. The text of the post refers to such juice as being sold in “946 mL” units. The relevant portions of the labelling are largely obscured, but appear to bear a Fairtrade Certification Mark consistent with the Mark.

- Exhibit J is another invoice from the Owner to La Siembra dated during the relevant period. The invoice lists kilograms of “Chocolate”, “Cocoa powder”, “Drink Powder”, “Sugar”, and “Coffee”, and “values” of “Coconut” and “Juice”, for Canada for “2012 Q3”.

Tea and hot chocolate

- Exhibit O is an image of two boxes of “just us!” tea, provided, Ms. Blais attests, by Just Us! Coffeehouse. She attests that Just Us! Coffeehouse has been a licensee of the Owner “continuously since prior to the Relevant Period” and uses the Mark for tea, as well as for hot chocolate (discussed below). The Mark is displayed on each box of tea.
- Exhibits P and Q are screen captures of posts by Just Us! Coffeehouse on its Facebook page in 2013, showing photographs of packaged teas (Exhibit P) and hot chocolate (Exhibit Q) in retail settings. The product packages bear a Fairtrade Certification Mark consistent with the Mark.

Sugar and molasses

- Exhibit R is an October 2015 printout from the Ten Thousand Villages online store. The webpage depicts a bottle of “WHOLESOME SWEETENERS” organic molasses. Ms. Blais attests that Wholesome Sweeteners, based in Texas, has been a licensee of the Owner since July 9, 2011. She also attests to having “personal knowledge” that “this same molasses was offered in the same manner during the Relevant Period”. The Mark is displayed on the depicted bottle.
- Exhibit S is an image of a package of “WHOLESOME SWEETENERS” organic sucanat on a store shelf. Ms. Blais attests that “sucanat” is whole, unrefined, cane sugar. Indeed, the package is also labelled “Dehydrated Sugar Cane Juice”. The Mark is displayed on the label, which I note is bilingual and also bears a CANADA ORGANIC certification mark. As noted by Ms. Blais, the price tag below the package is dated in 2014.
- Exhibit T is an invoice from the Owner to Wholesome Sweeteners dated during the relevant period. The invoice lists kilograms of “sugar” for Canada for “Q2 2012”.

Ms. Blais attests that this invoice is for licence fees “associated with the sale of the Licensee’s Fairtrade Certified Good, ‘sugar’, in Canada during the second quarter of 2012”.

Chocolate milk

- Exhibit U is a photograph of three “GALERIE AU chocolat” boxes on a store shelf. Ms. Blais attests that Galerie au Chocolat, based in Montreal, has been a licensee of the Owner since June 14, 2011. The photograph depicts a box labelled “au lait milk”, between similar boxes labelled “nougat au miel honey nougat” and “riz crousti crispé”. Although Ms. Blais describes the “au lait milk” box as a package displaying the Mark on its front, I note that the box actually appears to be shown from the back. In contrast, the other two boxes appear to be shown from the front and display the Different Fairtrade Mark. Shown from the front, the boxes appear to be containers for individual chocolate bars. I also note that the “au lait milk” box includes the additional text “FAIR TRADE MILK CHOCOLATE”, “36% CACOA/COCOA”, “FINE BELGIAN CHOCOLATE” and “95g”. As observed by Ms. Blais, the price tag below the box is dated “06/05/2015”.
- Exhibit V is an invoice from the Owner to Galerie au Chocolat dated during the relevant period. The invoice lists kilograms of “*chocolat*” (chocolate) for Canada for “Q2 2015”. Ms. Blais attests that this invoice is for licence fees associated with the sale of chocolate in Canada during the second quarter of 2015.

ANALYSIS

[22] The Requesting Party submits that the Owner has furnished only a limited amount of indirect documentary evidence, which fails to support the “assumptions and inferences” required for a conclusion of use of the Mark in association with the registered goods during the relevant period.

[23] The Owner, as noted above, did not make any representations. However, in her affidavits, Ms. Blais expresses her belief that the evidence “reasonably points to the goods bearing [the

Mark] being sold in the market during the Relevant Period” and that the Owner’s “position as a licensor of a Certification Mark should be a relevant consideration in assessing this evidence”.

[24] At the outset, I note that evidence in a section 45 proceeding must be considered as a whole and the exhibits interpreted in conjunction with the statements made in the affidavit [see, for example, *Fraser Milner Casgrain LLP v Canadian Distribution Channel Inc* (2009), 78 CPR (4th) 278 (TMOB)]. Moreover, reasonable inferences can be made from the evidence provided [see *Eclipse International Fashions Canada Inc v Shapiro Cohen*, 2005 FCA 64, 48 CPR (4th) 223 (FCA)]. However, a registered owner must still establish a *prima facie* case of use of the trade-mark in association with each of the goods specified in the registration [*Diamant Elinor Inc v 88766 Canada Inc*, 2010 FC 1184, 90 CPR (4th) 428]. In other words, the Registrar must be able to “rely on an inference from proven facts rather than on speculation” to satisfy every element required by the Act [*Diamant Elinor*, *ibid* at paragraph 11; see also *Smart & Biggar v Curb*, 2009 FC 47, 72 CPR (4th) 176 at paragraph 20].

Use by the Owner’s licensees

[25] In the present case, the Owner furnished evidence concerning the activities of various licensees. The Requesting Party submits that Ms. Blais’ “contention” that these entities were licensed to use the Mark on the registered goods is not supported by copies of their licence agreements or other evidence. However, it is not necessary to furnish a written licence agreement to establish licensed use of a trade-mark [see *Wells’ Dairy Inc v UL Canada Inc* (2000), 7 CPR (4th) 77 (FCTD)]. In a section 45 proceeding, a clear statement attesting to the registered owner’s control over the character or quality of goods sold under a licence is sufficient, per *Empresa Cubana del Tabaco v Shapiro Cohen*, 2011 FC 102, 91 CPR (4th) 248. Although that case dealt with licensed use under section 50 of the Act, I consider it reasonable to apply the same principle to licensed use under section 23(2) of the Act as well.

[26] In this case, Ms. Blais clearly attests that the Owner licenses the companies she identifies as “licensees” to use the Mark and she specifies the relevant goods sold by each such licensee. Ms. Blais further attests that the Owner is responsible for certifying that licensed products bearing the Mark in Canada conform to “the Defined Standard” in respect of their character and quality.

[27] I note that, while Ms. Blais references the Act elsewhere in her affidavit, she does not explicitly state that she is using the term “Defined Standard” within the meaning of the Act. Nevertheless, I am prepared to accept the licensed use described by Ms. Blais as use deemed to be use by the Owner pursuant to section 23(2). In this respect, I am mindful that section 45 proceedings are limited in scope and not intended to try contested issues of fact [see *Meredith & Finlayson v Canada (Registrar of Trade Marks)* (1991), 40 CPR (3d) 409 (FCA)]. Indeed, the Requesting Party made no submissions regarding the contents of the referenced standard.

[28] In any event, given that Ms. Blais attests to the Owner’s control over the character and quality of goods approved for sale in association with the Mark, I am also satisfied that the licensed use described by Ms. Blais enures to the Owner’s benefit in accordance with section 50 of the Act.

[29] The Requesting Party appears to suggest that some of the licensees referenced by Ms. Blais were not in fact authorized to use the Mark, given that she identifies the subject of their licenses as “the Certification Mark”, instead of naming the Mark specifically. However, I accept that all of the licences referenced by Ms. Blais were for the four Fairtrade Certification Marks, including the Mark, as set out at the beginning of her affidavit.

[30] The Requesting Party further submits that Ms. Blais does not state that each of the referenced licences existed during the relevant period. Indeed, I note that many of Ms. Blais’ statements regarding the Owner’s licensees are in the present tense; others reference licensing “since” or “continuously since” a given date. However, use of the present tense must be considered with the evidence as a whole [see *Smart & Biggar v Anthony Tesselaar Plants Pty Ltd*, 2010 TMOB 120, 2010 CarswellNat 3520; *Cassels Brock & Blackwell LLP v Sweet Creations Inc*, 2015 TMOB 27, 132 CPR (4th) 473]. The same can be said of references to conditions existing “since” a given date. Applying this principle to the present case, read in context, nothing in the evidence is inconsistent with the interpretation that Ms. Blais’ “present tense” statements are with respect to licensing generally, including during the relevant period. Similarly, I interpret her statements on licensing “continuously since” a given date as covering the period from that date to the present. Moreover, given that the relevant period starts in 2012, I accept that any statements of use “since” 2011 include the relevant period.

[31] In view of the foregoing, I accept that any demonstrated use of the Mark by the Owner's licensees during the relevant period is authorized use of the Mark, under licence from the Owner.

[32] It remains to be determined which of the registered goods were sold by the Owner's licensees or otherwise transferred in association with the Mark during the relevant period. I will address the evidence furnished in respect of each of the registered goods in turn.

Coffee

[33] The Owner furnished copies of its invoices to Merchants of Green Coffee and Club Coffee as evidence of sales of kilograms of "Coffee" during the relevant period. Ms. Blais explains that the invoices are for licence fees calculated based on actual sales volumes as listed in the invoices. Accordingly, I accept that the Owner's licensees Merchants of Green Coffee and Club Coffee sold coffee in the normal course of trade during the relevant period.

[34] With respect to display of the Mark, at Exhibits K, L and M to her affidavit, Ms. Blais provides an image of the label for the licensed product "Organics PC Fair Trade Medium Roast whole bean coffee" and two printouts showing the product for sale online.

[35] The exhibited label and printouts do not reference Club Coffee, but rather, President's Choice, Loblaws and Atlantic Superstore. Moreover, Ms. Blais does not explain the licensee's relationship to these entities. Nevertheless, I accept at face value Ms. Blais' statement that the depicted product is from Club Coffee. In this respect, in the context of a section 45 proceeding, an affiant's statements must be accorded substantial credibility [see *Ogilvy Renault v Compania Roca-Radiadores SA*, 2008 CarswellNat 776 (TMOB)]. Moreover, I accept that, by virtue of her experience and position with the Owner, Ms. Blais would be in a position to have knowledge of the Owner's licensees and their products. Indeed, the standard form licence agreement requires licensed products to be approved by the Owner and listed in an appendix to each agreement. Therefore, I am satisfied that any evidenced use of the Mark on the exhibited product label would enure to the Owner's benefit.

[36] Although the printouts are dated after the relevant period, Ms. Blais attests to having personal knowledge of this product being available on the market immediately prior to the date of the section 45 notice. In the circumstances, I find it reasonable to infer that the "Coffee" sales

reflected in the Owner's invoices to Club Coffee included the depicted product and that the depicted label is representative of labeling from the relevant period. Furthermore, despite the low resolution of the images, I am satisfied that the Fairtrade Certification Mark displayed on the label appears to be the Mark as registered.

[37] In sum, although the evidence with respect to sales of coffee in association with the Mark during the relevant period is not strong, the Owner need only make out a *prima facie* case of use. On balance, I am satisfied that the Owner has demonstrated use of the Mark in association with "coffee" within the meaning of sections 4 and 45 of the Act.

Skin Care Preparations and Exfoliating Cream

[38] Ms. Blais attests that Douceur de Géraldine has been a licensee of the Mark for skin care preparations and exfoliating creams continuously since 2008. She provides screen captures from the licensee's online store, showing jars of such products bearing a Fairtrade Certification Mark consistent with the Mark. Although the screen captures are from October 2015 and the Mark is not displayed clearly, Ms. Blais attests to having personal knowledge that these two products bore the Mark and were "available on the market" immediately prior to the date of the section 45 notice.

[39] However, it has previously been held that "offering for sale" is not the same as "selling" [see *Michaels & Associates v WL Smith & Associates Ltd.* (2006), 51 CPR (4th) 303 (TMOB); *Riches, McKenzie & Herbert LLP v Cleaner's Supply Inc.*, 2012 TMOB 211, 2012 CarswellNat 5229]. Although invoices are not mandatory in order to satisfactorily reply to a section 45 notice [see *Lewis Thomson & Son Ltd v Rogers, Bereskin & Parr* (1988), 21 CPR (3d) 483 (FCTD)], some evidence of transfers in the normal course of trade in Canada is necessary. Such evidence can be in the form of documentation like invoices or sales reports, or it can be through clear sworn statements. Regardless, it is insufficient merely to assert that goods were advertised or made available for purchase in Canada [see *Davis LLP v Office of the Commissioner of Baseball*, 2015 TMOB 107, 2015 CarswellNat 2801].

[40] In the present case, the Owner furnished no evidence of actual sales or transfers of skin care preparations or exfoliating cream in the normal course of trade, during the relevant period or otherwise.

[41] In this respect, I note Ms. Blais' assertion that the Fairtrade Certified Article List at Exhibit E, which includes entries for the goods in question, "provides evidence of use of the mark in the normal course of business, as it demonstrates the sale of the licensee's goods in Canada" [emphasis added]. However, Ms. Blais' affidavit, read in its entirety, appears to contain a combination of factual evidence and opinions on what inferences can reasonably be drawn from such facts. Indeed, with respect to the Owner's Fairtrade Certified Article Lists, Ms. Blais stated earlier in her affidavit that these lists are issued as documentation that products have been "*certified*" and she explained that these lists contain products that are "*on the market*".

[42] In the circumstances, I interpret Ms. Blais' statement that the Fairtrade Certified Article List is "evidence" that "demonstrates sales" merely as her opinion on what inferences might be drawn from a product's presence on this list, rather than a factual statement of any criteria the product had to meet in order to be listed. However, in the absence of factual particulars on the nature and extent of Douceur de Géraldine's online trade, I am not prepared to infer that any particular products offered for sale "immediately prior to" the date of the section 45 notice were, in fact, sold in the normal course of trade *during* the relevant period. Indeed, it is curious that the Owner chose not to support its assertion of sales of such skin care and exfoliating creams with an invoice, as was done to demonstrate sales of "coffee", for example.

[43] In view of the foregoing, I am not satisfied that the Owner has demonstrated use of the Mark in association with "skin care preparations" or "exfoliating cream" within the meaning of sections 4 and 45 of the Act.

Soap Bars

[44] The Owner furnished a copy of its invoice to Soc. d'agri-gestion Delapointe as evidence of sales of "cosmetics" in Canada during the relevant period. Although Ms. Blais does not explain the relationship between this entity and the licensee Karité Delapointe, I accept at face

value her statement that the exhibited invoice is for licence fees in respect of Karité Delapointe' sales.

[45] Ms. Blais attests that Karité Delapointe is a Quebec licensee of the Mark for products including “hand and body soap bars” and “deodorant soaps”. In support, she provides screenshots of the licensee’s online store, from January 2011, May 2013 and October 2015, showing bars of soap in packaging that appears to bear the Mark. In the circumstances, I find it reasonable to infer that the cosmetics sales reflected in the exhibited invoice to Delapointe included soap. Moreover, since the licensee’s soap bar packaging appears substantively similar in each of the screenshots from before, within and after the relevant period, I accept the depicted packaging as representative of the manner in which the Mark was displayed in association with soap bars throughout the relevant period.

[46] As for the type of soaps depicted, I accept that the “Fruity Spicy Cranberry Soap” advertised for “face and body” (Exhibits O and P) is a “body soap bar”. In addition, although it does not appear to be advertised as such, I am prepared to take at face value Ms. Blais’ statement that the “Freshness Clay and Mint Soap” (Exhibits K and L) is a “deodorant soap”.

[47] Conversely, the Owner does not appear to have furnished any specific evidence with respect to “hand soap bars”. In particular, there is no indication in the exhibits that any of the depicted soap bars are “hand soap”. Ms. Blais indicates that “hand and body soap bars” are depicted in Exhibits G, O and K; however, these appear to be the aforementioned “Fruity” body soap bar and “Freshness” deodorant soap.

[48] On this point, section 45 requires an owner to furnish evidence in respect of each of the goods listed in the registration [see *John Labatt, supra*]. Accordingly, having distinguished “hand soap bars” from “body soap bars” in the subject registration, the Owner must furnish some evidence of use in respect of each of these listed goods. The fact that a consumer might use a “body soap bar” or “deodorant soap” for hand washing is insufficient.

[49] In the circumstances, I am only satisfied that the Owner has demonstrated use of the Mark in association with “body soap bars” and “deodorant soaps” within the meaning of

sections 4 and 45 of the Act. I am *not* satisfied that the Owner has demonstrated such use in association with “hand soap bars”.

Lip Balms

[50] Ms. Blais also attests that Karité Delapointe is a licensee of the Mark for “lip balms”.

[51] Given that tubes of lip balm are advertised in the January 2011 and October 2015 screenshots from Karité Delapointe’s online store, and that similar tubes also appear in the May 2103 screenshot from this store, I find it reasonable to infer that the cosmetics sales reflected in the invoice to Delapointe at Exhibit H also included lip balms.

[52] Furthermore, although the images are not clear, I am satisfied that the Fairtrade Certification Mark displayed on the depicted lip balms’ packaging appears to be the Mark. Since this packaging is substantively similar in the screenshots from before and after the relevant period, I am prepared to infer that it was employed throughout that time, including during the relevant period.

[53] In the circumstances, I am satisfied that the Owner has demonstrated use of the Mark in association with “lip balms” within the meaning of sections 4 and 45 of the Act.

Shea Butter and Cocoa Butter

[54] In addition, Ms. Blais attests that Karité Delapointe is a licensee of the Mark for “shea butter” and “cocoa butter”.

[55] Ms. Blais presents the “Fruity Spicy Cranberry Soap” and “100% Pure Shea Butter Body & Face Authentic Balm” depicted in the screen captures from Karité Delapointe’s online store as evidence of the Mark’s use on a “shea butter good” and a “cocoa butter good”, respectively.

[56] However, although Ms. Blais correlates the face & body balm with the registered good “cocoa butter”, this correlation appears to be inconsistent with the description “100% Pure Shea Butter” in the product name itself, as it appears in the exhibited screen captures. Although the product’s label indicates that “Shea and Cocoa butters [are] available in bulk format”, this reference to cocoa butter appears to promote a *different* product. In the circumstances, and in the

absence of an explanation from the Owner, I am not prepared to take Ms. Blais' correlation of the depicted "100% Pure Shea Butter" balm to "cocoa butter" at face value. Instead, this product appears to correspond to the registered good "shea butter".

[57] Given that such "100% Pure Shea Butter" balm is advertised in the January 2011 and October 2015 screenshots from Karité Delapointe's online store, I find it reasonable to infer that the cosmetics sales reflected in the exhibited invoice for this licensee also included shea butter. Furthermore, since the product packaging is substantively similar in the screenshots from before and after the relevant period, I am prepared to infer that it was employed throughout that time, including during the relevant period.

[58] Given my conclusions with respect to the "100% Pure Shea Butter Body & Face Authentic Balm", it is not necessary to consider whether the "Fruity Spicy Cranberry Soap" containing "50% pure shea butter" also corresponds to the registered good "shea butter".

[59] In summary, I am only satisfied that the Owner has demonstrated use of the Mark in association with "shea butter" within the meaning of sections 4 and 45 of the Act. I am *not* satisfied that the Owner has demonstrated such use in association with "cocoa butter".

Hand Creams

[60] Ms. Blais attests that Delapointe is also a licensee of the Mark for hand creams.

[61] In support, she provides an image showing the Mark on a label design for a "Fair Trade Shea Butter Body & Hand Cream" produced by the licensee, and attests to having received this design from the licensee "within the Relevant Period or earlier". She also provides a screen capture showing the product offered for sale online by Ten Thousand Villages in October 2015 and attests that the Mark is displayed on the store's product "exactly" as it is on the exhibited label design. In view of Ms. Blais' attestations, I accept that the exhibited label design is representative of labeling from the relevant period that continued to be employed after the relevant period.

[62] With respect to transfers, Ms. Blais attests that "this product would have been on the market during the relevant period in association with [the Mark]". The Requesting Party submits

that her statement is not supported by “external” evidence and should therefore be disregarded. However, Ms. Blais provides the basis for her statement, and I consider it to be more than a bare assertion of use. Contrary to the Requesting Party’s submission, an affiant’s specific, factual statements should be accorded substantial credibility in a section 45 proceeding [*Compania Roca-Radiadores, supra*]. Moreover, I accept that Ms. Blais would be in a position to have knowledge on this particular point. I therefore accept her statement at face value.

[63] Notwithstanding this, Ms. Blais does not state whether this product’s presence on the market resulted in actual sales in Canada. In this respect, she states that the exhibited invoice to Delapointe is for cosmetics sales by *Karité Delapointe*, not Ten Thousand Villages. Nevertheless, given Ms. Blais’ attestation that this Body & Hand Cream would have been offered during the relevant period by Ten Thousand Villages—a company which she also attests operates 37 stores in Canada—I am inclined to infer that possession of the hand cream was at least transferred from Delapointe to Ten Thousand Villages during the relevant period.

[64] In this respect, it is well established that section 4 of the Act contemplates a chain of transactions occurring between the manufacturer and the ultimate consumer, potentially involving various distributors, wholesalers and/or retailers [see *Manhattan Industries Inc v Princeton Manufacturing Ltd* (1971), 4 CPR (2d) 6 (FCTD); and *Lin Trading Co v CBM Kabushiki Kaisha* (1988), 21 CPR (3d) 417 (FCA)]. Accordingly, I accept that a transfer from the producer of the cream to the retailer in this case would constitute a transfer in the normal course of trade.

[65] On balance, although the evidence with respect to hand creams is not strong, I consider it sufficient for a *prima facie* case of use. I am therefore satisfied that the Owner has demonstrated use of the Mark in association with “hand creams” within the meaning of sections 4 and 45 of the Act.

Liquid Soap and Body Lotion

[66] Ms. Blais attests that Tashodi is a licensee of the Mark for liquid hand soaps, liquid body soaps, and body lotions.

[67] In support, she provides October 2015 screen captures from Tashodi's online store depicting bottles of such products. Although the Mark is largely obscured in these images, Ms. Blais also furnishes label designs for a hand wash, a shower cream and a body lotion, which she attests were received from the licensee, and which clearly display the Mark.

[68] However, the only evidence with respect to Tashodi's activities in the relevant period is an October 2012 Facebook post. This evidence is not particularly probative. In particular, the quality of the image is such that display of the Mark on the products in question cannot be identified. Moreover, as noted above, it is insufficient merely to assert that goods were advertised or made available for purchase; some evidence of transfers in the normal course of trade is necessary. In the present case, in the absence of details regarding the nature and extent of Tashodi's online trade, I am not prepared to infer that any particular product advertised online was actually sold in Canada in association with the Mark in the normal course of trade during the relevant period.

[69] In the circumstances, I am not satisfied that the Owner has demonstrated use of the Mark in association with "hand soap liquid", "body soap liquid" or "body lotion" within the meaning of sections 4 and 45 of the Act.

Hand Lotions

[70] To demonstrate use of the Mark in association with hand lotion, the Owner relies on its evidence in respect of the "Fair Trade Shea Butter Body & Hand Cream" produced by Delapointe for sale by Ten Thousand Villages and the "pure lavender body lotion" offered for sale by Tashodi.

[71] However, having distinguished "hand lotion" from "hand creams" and "body lotion" in the subject registration, the Owner must furnish some evidence of use in respect of each of the listed goods. In the present case, as noted above, I have accepted that the Ten Thousand Villages "Fair Trade Shea Butter Body & Hand Cream" corresponds to the registered good "hand creams". In the absence of evidence to the contrary, I am not satisfied that the same product also corresponds to the registered good "hand lotions".

[72] With respect to Tashodi’s “pure lavender body lotion”, as noted above, I am not satisfied that the evidence demonstrates transfers of this product in association with the Mark during the relevant period.

[73] In view of the foregoing, I am not satisfied that the Owner has demonstrated use of the Mark in association with “hand lotions” within the meaning of sections 4 and 45 of the Act.

Clothing for Men and Women

[74] Ms. Blais attests that Boutique fibrEthic is a former licensee of the Mark for adult T-shirts. She provides an image showing how the Mark was displayed on this licensee’s T-shirt hang tags and neck labels *before* the relevant period, and archived webpages showing that a Fairtrade Certification Mark consistent with the Mark continued to be displayed on at least one of the licensee’s T-shirts offered for sale online *during* the relevant period.

[75] However, in the absence of details regarding the nature and extent of this licensee’s online trade in T-shirts, I am not prepared to infer that any particular T-shirt advertised online was actually sold in Canada in the normal course of trade during the relevant period. Even if I were to accept that at least some of the advertised T-shirts would have been sold, there is no evidence that the particular shirts sold would have displayed the Mark—as opposed to one of the other Fairtrade Certification Marks. Indeed, one of the archived webpages shows that Boutique fibrEthic was also displaying the Different Fairtrade Mark during the relevant period.

[76] Accordingly, I am not satisfied that the Owner has demonstrated use of the Mark in association with “clothing for men, women” within the meaning of sections 4 and 45 of the Act.

Clothing for Children and Infants

[77] The Owner furnished copies of its invoices to two entities, Nosilla Enterprises and Green Living Organics Inc., as evidence of sales of children’s and infant’s clothing during the relevant period. Although these invoices are in respect of “Cotton”, when they are read in the context of the affidavit as a whole, I accept that they refer to the licensees’ sales of finished products made from cotton. Furthermore, although Ms. Blais does not explain the relationship between Nosilla

Enterprises and the licensee Nosilla Organics, I accept at face value her statement that the invoice to Nosilla Enterprises is for licence fees in respect of Nosilla Organics' sales.

[78] With respect to display of the Mark in association with specific goods, the archived webpage from Nosilla's online store shows both the Mark and some clothing items displayed on what appears to be the store's homepage. In her affidavit, Ms. Blais suggests that this evidence demonstrates a notice of association between the Mark and the licensee's goods, given that "at least 95% of the Licensee's goods were Fairtrade Certified during 2012" and that "the online store in 2013 was displaying [the Mark] at the point in which consumers would be making online selections of the goods".

[79] However, although the exhibited invoice to Nosilla reflects a discount, the Fairtrade Reduction Clause at Exhibit II does not indicate that such discounts apply when 95% of *all* goods are Fairtrade Certified. Rather, it indicates that the discount is applied when 95% of the "Fairtrade certifiable" goods are Fairtrade Certified. In any event, even if 95% of *all* Nosilla's goods were Fairtrade Certified, there is no evidence that this statistic would be known to Nosilla's customers or that they would otherwise expect *all* of Nosilla's products to be Fairtrade Certified. In the circumstances, I am not satisfied that the exhibited homepage provides a notice of association between the Mark and any particular clothing items appearing on the page—as opposed to a general notice that the vendor's product line includes at least some Fairtrade Certified products.

[80] With respect to display of the Mark by Green Living Organics, although the Mark is displayed on the exhibited advertisement for this company's cotton onesies and jumpsuits, there is no evidence that customers routinely used this advertisement when placing orders. Nevertheless, Ms. Blais attests that the Mark "was appearing in the packaging and labels of the goods" and provides a label design displaying the Mark in support. Furthermore, although it appears from Ms. Blais' affidavit that the exhibited labels and advertisement predate the relevant period, she attests to the fact that Green Living Organics "was using the certification mark in association with these goods during the Relevant Period". I also note that the 2012 and 2015 Fairtrade Certified Article Lists for Green Living Organics include entries for "Jumpsuit" and

“Onesie Gift Set”, and Ms. Blais indicates that such listed goods were sold in 2012 and continued to be sold in 2015.

[81] In the circumstances, when Ms. Blais’ statements are taken as a whole and in conjunction with the related exhibits, I find it reasonable to infer that the “cotton” sales reflected in the Owner’s invoice to Green Living Organics included onesies and jumpsuits and that the depicted label is representative of how the Mark was displayed in association such products during the relevant period. Such onesies and jumpsuits would appear to correspond with the registered good “sleepwear”.

[82] In summary, although the evidence with respect to children’s and infant’s clothing in association with the Mark during the relevant period is not strong, I consider it sufficient for a *prima facie* case of use. On balance, I am satisfied that the Owner has demonstrated use of the Mark in association with “clothing for ... infants, namely, ... sleepwear” within the meaning of sections 4 and 45 of the Act. However, I am *not* satisfied that such use has been demonstrated in association with “clothing for children” or “clothing for ... infants, namely, shirts, pants, ... shorts, dresses”.

Cloth Towels and Bed Linens

[83] The Owner also relies on its invoice to Green Living Organics as evidence of sales of “cloth towels” and “bed linens” during the relevant period. Ms. Blais notes that the Fairtrade Certified Article Lists for Green Living Organics include entries for “Wash Cloth Trio”, “Sheet Set” and “Duvet Set”, and she indicates that such listed goods were sold in 2012 and continued to be sold in 2015.

[84] With respect to display of the Mark, it is clear from Ms. Blais’ affidavit that the exhibited label design from Green Living Organics was furnished only for children’s and infant’s clothing, and not for cloth towels or bed linens. For the latter goods, Ms. Blais concedes that she cannot provide “photographic evidence” of the Mark’s display, but states, “as a function of my role as Office Manager in the administration of Fairtrade Canada’s operations with its licensees, I can attest to the fact that Green Living Organics was using the mark in association with cloth towels and bed linens during the Relevant Period.”

[85] However, in the absence of particulars on the manner in which the Mark was displayed in association with such goods, Ms. Blais' statement that Green Living Organics was "using" the Mark amounts to a mere assertion of use, rather than a statement of facts showing use.

[86] Accordingly, I am not satisfied that the Owner has demonstrated use of the Mark in association with "cloth towels; bed linens" within the meaning of sections 4 and 45 of the Act.

Flowers and Foliage

[87] Ms. Blais attests that Florimax Vancouver is a "flower distributor based in Vancouver" and a former licensee of the Mark for fresh flowers and green foliage accompanying fresh flowers in a bouquet. She provides an image showing the Mark displayed on this licensee's flower packaging and attests that such packaging is from the relevant period. She also provides a Fairtrade Certified Article List referencing flowers and bouquets, which Ms. Blais specifically attests Florimax Vancouver was "selling at the applicable time".

[88] As mentioned above, Ms. Blais provides conflicting dates for the Fairtrade Certified Article List: December 2012 and October 2015. However, it appears from the affidavit as a whole that the Owner's Fairtrade Certified Article Lists from 2015 contain a date field at the bottom of each page, whereas the Fairtrade Certified Article Lists that Ms. Blais identifies as being from 2012 do not bear a printed date. Moreover, Ms. Blais identifies Florimax Vancouver as a *former* licensee. Accordingly, I accept that December 2012 is the correct date for the exhibited, undated Fairtrade Certified Article List for Florimax Vancouver.

[89] Moreover, Ms. Blais specifically attests that Florimax was "selling" the products identified in the Fairtrade Certified Article List. Unlike her statement with respect to the sale of skin care preparations and exfoliating cream—which is expressed in terms of what the evidence demonstrates—Ms. Blais' statement in respect of flowers and bouquets is expressed as a factual statement that the exhibited Fairtrade Certified Article List contains items being sold. Although having further, corroborative evidence would have been preferable, for the purposes of the present proceeding I am prepared to take Ms. Blais' statement regarding sales of flowers and bouquets at face value. Furthermore, although Ms. Blais provides only a broad statement on the

nature of the licensee's business, there is no indication that such "selling" was not in the normal course of its trade.

[90] In the circumstances, although the evidence with respect to flowers and bouquets is by no means strong, I consider it sufficient for a *prima facie* case of use. On balance, I am satisfied that the Owner has demonstrated use of the Mark in association with "fresh flowers" and "green foliage accompanying fresh flowers in a bouquet" within the meaning of sections 4 and 45 of the Act.

Sports Balls

[91] The Owner furnished copies of two invoices to its licensee Ottawa Y Service Club as evidence of sales of "Sports Balls" during the relevant period. The Owner also furnished Fairtrade Certified Article Lists as evidence that Ottawa Y Service Club, in its capacity as operator of YSC Fair World Sports, was Fairtrade Certified in October 2015 for soccer balls, basketballs, rugby balls and volleyballs. In addition, the Owner furnished a 2009 YSC Fair World Sports product list as evidence that Fairtrade Certified soccer balls, basketballs, rugby balls, volleyballs *and footballs* were being sold "continuously" since 2009.

[92] With respect to display of the Mark, it is recognizable on two of the soccer balls depicted in the product list, and also on the futsal ball, which is described in the product list as being for indoor soccer.

[93] A Fairtrade Certification Mark is also displayed on the depicted basketball. Although, in this image, the design is consistent with both the Mark and the Similar Mark, I am prepared to infer that the Mark is the one displayed. In this respect, I note that it is the Mark that appears at the bottom of the product list, and there is no indication in the exhibits that the licensee is otherwise displaying any of the other Fairtrade Certification Marks.

[94] In view of the foregoing, I find it reasonable to infer that the "Sports Balls" sales reflected in the Owner's invoices to Ottawa Y Service Club included at least "Futsal" soccer balls and basketballs and that the exhibited product list from 2009 is representative of how the Mark was printed on such products during the relevant period. In this respect, I note Ms. Blais' statement that the product list has been "continuously effective since January 2009", which is

corroborated by entries for “Futsal ball” and “Basketball” in the October 2015 Fairtrade Certified Article List.

[95] Conversely, I am not prepared to infer that footballs were sold in association with the Mark during the relevant period. In this respect, Ms. Blais does not date the football depicted in the photograph at Exhibit TT. Even if it is the football that appears in the 2009 product list, the Fairtrade Certified Article list indicates that, by October 2015, such footballs were no longer Fairtrade Certified. In the circumstances, I interpret Ms. Blais’ statement that the product list was “continuously effective since January 2009” to mean that the products continued to be available, but not necessarily with Fairtrade certification. Without information on when the football’s certification ceased, I am not prepared to infer that footballs were sold in association with the Mark *during the relevant period*.

[96] I am also not prepared to infer that rugby balls or volleyballs were sold in association with the Mark during the relevant period. There is no indication in the evidence that the Mark was printed on rugby balls or volleyballs or otherwise associated with such balls at the time of transfer. Although the Mark appears at the bottom of the 2009 product list, it is not clear from the evidence that customers routinely used this list when placing orders. In this respect, I note that the product list invites prospective customers to request a separate *price* list for ordering purposes. In any event, I am not satisfied that display of the Mark at the bottom of the product list is sufficient to provide a notice of association between the Mark and *all* of the products depicted in the list—as opposed to only those products that are depicted bearing the Mark. Indeed, the evidence is that the list was effective at a point in time when at least footballs were not certified for sale in association with the Mark.

[97] In summary, I am only satisfied that the Owner has demonstrated use of the Mark in association with “sports balls, namely, soccer balls ... basketballs” within the meaning of sections 4 and 45 of the Act. I am *not* satisfied that the Owner has demonstrated such use in association with “volleyballs”, “rugby balls” or “footballs”.

Chocolate and Dried Fruit

[98] Ms. Blais attests that La Siembra has been a licensee of the Mark for food goods “continuously since 2011” and uses the Mark for products including chocolate chips, chocolate syrup, cocoa powder and dried coconut. In support, she provides a copy of an invoice from the Owner to La Siembra reflecting sales of “Chocolate”, “Cocoa Syrup”, “Cocoa powder” and “Coconut” in Canada in the third quarter of 2013.

[99] With respect to display of the Mark on such products, Ms. Blais provides October 2015 printouts from the Ten Thousand Villages online store showing Cuisine Camino brand chocolate chips (Exhibit F) and shredded coconut (Exhibit M). She also provides an undated label design for Cuisine Camino cocoa powder (Exhibit L). The Mark is displayed on the depicted packages and label design.

[100] Although Ms. Blais does not explain La Siembra’s relationship to the Cuisine Camino brand, I accept her statements that these three products are the licensee’s. Indeed, the label design references La Siembra Co-operative in Ottawa, Ontario, and includes a “La Siembra” logo.

[101] With respect to the relevant period, Ms. Blais provides a May 2013 archived screen capture from the licensee’s online store, which appears to show the same packages, displaying the Mark in the same manner. As noted by the Requesting Party, the date when the packages were photographed is unknown. Nevertheless, given that the packages appear to be the ones still shown online for chocolate chips and shredded coconut in 2015 (Exhibits F and M) and the one provided to the Owner by the licensee as its label design for cocoa powder (Exhibit L), I am prepared to accept the archived screen capture as evidence of the Mark’s display on those products from at least May 2013.

[102] Furthermore, I find it reasonable to infer that the “Chocolate”, “Cocoa powder” and “Coconut” sales reflected in the exhibited invoice to La Siembra included such chocolate chips, cocoa powder and shredded coconut. With respect to the shredded coconut, I accept Ms. Blais correlation of this product with the registered good “dried fruit”.

[103] However, I am unable to reach a similar conclusion with respect to the registered good “chocolate syrup”. Although “Cocoa Syrup” is among the entries in the Owner’s invoice to La Siembra, there is no evidence that such syrup was sold in association with the Mark—as opposed to one of the other Fairtrade Certification Marks.

[104] Additionally, having distinguished “cocoa” from “cocoa powder” in the subject registration, the Owner must furnish some evidence of use in respect of each of these listed goods. In the present case, in the absence of evidence to the contrary, I am not satisfied that the Cuisine Camino “cocoa powder” product also corresponds to the registered good “cocoa”.

[105] In view of the foregoing, I am only satisfied that the Owner has demonstrated use of the Mark in association with “chocolate chips”, “cocoa powder” and “dried fruit” within the meaning of sections 4 and 45 of the Act. I am *not* satisfied that the Owner has demonstrated such use of the Mark in association with “chocolate syrup” or “cocoa”.

Chocolate Bars and Cereal-based Bars

[106] Ms. Blais attests that La Siembra also uses the Mark for chocolate bars. In support, she furnishes label designs for two Camino products, which I am prepared to accept as a dark chocolate bar and a cereal-based milk chocolate bar. The Mark is displayed on each label. Again, La Siembra Co-operative in Ottawa is referenced on the label designs, and I accept that these are La Siembra’s products.

[107] As noted above, the May 2013 archived screen capture from La Siembra’s online store shows only small strips of what appear to be the chocolate bar packages. Moreover, the visible portions of these packages do not include the area of the label where the Mark is displayed. Nevertheless, what is shown of the product packages is consistent with the exhibited label designs. Moreover, a Fairtrade Certification Mark that appears to be the Mark is discernible on many of the other product packages depicted in the screen capture, and it appears to be the only Fairtrade Certification Mark displayed.

[108] In the circumstances, although the evidence is not strong, I am prepared to accept the exhibited label designs as being representative of the manner in which the Mark was displayed in association chocolate bars and cereal-based bars in 2013.

[109] Furthermore, I find it reasonable to infer that the “Chocolate” sales reflected in the Owner’s invoice to La Siembra included such chocolate bars and cereal-based chocolate bars.

[110] On balance, I am satisfied that the Owner has demonstrated use of the Mark in association with “chocolate bars” and “cereal-based bars” within the meaning of sections 4 and 45 of the Act.

Fruit Drinks and Fruit Juices

[111] Ms. Blais attests that La Siembra also uses the Mark for fruit drinks and fruit juices. In support, she provides a copy of an invoice from the Owner to La Siembra in respect of “Drink Powder” and “Juice” in Canada for the third quarter of 2012. Although Ms. Blais does not expressly link the licensing fee “structure” based on volume or value of sales to this particular invoice, I accept it as another invoice for licence fees based on product sales.

[112] With respect to display of the Mark on such products, Ms. Blais provides screen capture images from a May 2012 Facebook post promoting the licensee’s fruit juice. Although the images are not clear, I am satisfied that the Fairtrade Certification Mark displayed on the depicted juice cartons appears to be the Mark.

[113] In the circumstances, I find it reasonable to infer that the “Juice” sales reflected in the Owner’s invoice to La Siembra included fruit juices and that the depicted label is representative of how the Mark was displayed in association such products at the time.

[114] However, having distinguished “fruit drinks” from “fruit juices” in the subject registration, the Owner must furnish some evidence of use in respect of each of these listed goods. In the present case, although the exhibited invoice contains an entry for “Drink Powder”, the only images depicting a fruit beverage are of the aforementioned Camino *juice*, which, moreover, appears to be sold in liquid form. I am not prepared to infer from this evidence that any fruit drink *powders* would have displayed the same Fairtrade Certification Mark in the same manner.

[115] In view of the foregoing, I am only satisfied that the Owner has demonstrated use of the Mark in association with “fruit juices” within the meaning of sections 4 and 45 of the Act. I am *not* satisfied that the Owner has demonstrated such use in association with “fruit drinks”.

Tea and Hot Chocolate

[116] Ms. Blais attests that Just Us! Coffeehouse has been a licensee of the Owner “continuously since prior to the Relevant Period” and uses the Mark for tea and hot chocolate. She provides an undated image of the Mark displayed on two boxes of tea, which she attests was received from the licensee, as well as photographs from the licensee’s 2013 Facebook posts showing the Mark displayed on packages of tea and hot chocolate in a retail setting.

[117] However, the Facebook posts are not particularly probative. Again, it is insufficient merely to assert that goods were advertised or made available for purchase. In the absence of details on the retail channels through which the depicted products were being sold, I am not prepared to infer that any particular product shown online was actually sold in Canada in the normal course of trade during the relevant period.

[118] In the circumstances, I am not satisfied that the Owner has demonstrated use of the Mark in association with “tea” or “hot chocolate non-alcoholic beverage” within the meaning of sections 4 and 45 of the Act.

Sugar and Molasses

[119] The Owner furnished a copy of an invoice to Wholesome Sweeteners as evidence of sales of kilograms of “sugar” in Canada during the relevant period. Furthermore, Ms. Blais provides, as Exhibit S to her affidavit, an image of Wholesome Sweeteners’ sucanat sugar on a store shelf, in a bilingual bag displaying the Mark. The image shows the product’s price tag, which is dated in the relevant period. Accordingly, I accept this image as representative of the Mark’s display on sugar sold by the licensee in Canada during the relevant period.

[120] Ms. Blais also provides, as Exhibit R, a printout showing the licensee’s molasses offered for sale online by Ten Thousand Villages, in a bottle displaying the Mark. Although the screen capture was taken after the relevant period, Ms. Blais attests to having personal knowledge that

“this same molasses was offered in the same manner during the Relevant Period”. I therefore also accept the depicted bottle as representative of labeling from the relevant period.

[121] I note that Ms. Blais specifically correlates the exhibited invoice to Wholesome Sweeteners for “sugar” sales with the sucanat product, but not with the molasses product. Nevertheless, given Ms. Blais’ personal knowledge that the molasses product was offered online during the relevant period by Ten Thousand Villages, who she also attests operates 37 stores in Canada, I find it reasonable to infer that possession of such molasses goods was at least transferred from the licensee to Ten Thousand Villages in Canada during the relevant period. Again, as section 4 of the Act contemplates a chain of transactions occurring between the manufacturer and the ultimate consumer, I am prepared to accept such a transfer from the licensee to the online retailer in this case as a transfer in the normal course of trade.

[122] On balance, I am satisfied that the Owner has demonstrated use of the Mark in association with both “sugar” and “molasses” within the meaning of sections 4 and 45 of the Act.

Chocolate Milk

[123] Ms. Blais attests that Galerie au Chocolat has been a licensee of the Owner since June 2011. She provides a copy of the Owner’s invoice to Galerie au Chocolat for license fees in respect of “chocolate” sales during the relevant period and also provides a contemporaneous image of the licensee’s “au lait milk” product package, which bears the Mark.

[124] However, although Ms. Blais correlates the “au lait milk” product with the registered good “chocolate milk”, this correlation appears to be inconsistent with the package itself, which is labelled “MILK CHOCOLATE”. Moreover, the appearance of this package—and of the two packages flanking it—is more consistent with packaging for solid chocolate bars than with packaging for chocolate milk. Given this inconsistency, and in the absence of an explanation from the Owner, I am not prepared to take Ms. Blais’ correlation of the depicted product to “chocolate milk” at face value.

[125] As there is no other evidence purporting to show how the Mark was displayed in association with this registered good during the relevant period, I am not satisfied that the Owner

has demonstrated use of the Mark in association with “chocolate milk” within the meaning of sections 4 and 45 of the Act.

Other Registered Goods

[126] The evidence does not show the Mark being displayed on or otherwise associated with any of the other registered goods, nor is there any evidence of such goods being sold or otherwise transferred in Canada during the relevant period.

DISPOSITION

[127] In summary, I am only satisfied that the Owner has demonstrated use of the Mark in association with “coffee”, “body soap bars”, “deodorant soaps”, “lip balms”, “shea butter”, “hand creams”, “clothing for ... infants, namely, ... sleepwear”, “fresh flowers”, “green foliage accompanying fresh flowers in a bouquet”, “soccer balls”, “basketballs”, “chocolate chips”, “cocoa powder”, “dried fruits”, “chocolate bars”, “cereal-based bars”, “fruit juices”, “sugar” and “molasses” within the meaning of sections 4 and 45 of the Act.

[128] As the Owner furnished no evidence of special circumstances excusing non-use of the Mark in association with the remaining goods, the registration will be amended accordingly.

[129] [44] In view of all of the foregoing, pursuant to the authority delegated to me under section 63(3) of the Act and in compliance with section 45 of the Act, the registration will be amended to delete the following goods:

- (1) Body and personal care products, namely, skin care preparations, laundry liquid soap, laundry powdered soap, laundry liquid detergent, kitchen and bathroom cleaning liquids, all purpose cleaning preparations; hand soap bars, hand soap liquid; ... body soap liquid, ... shea oil, cocoa oil, ... hand lotions, body lotion, ... cocoa butter, exfoliating cream.
- (2) Clothing for men, women, children[; Clothing for ... infants, namely,] shirts, pants, ... shorts, dresses; cloth towels; bed linens; canvas shopping bags
- (3) [Sports balls, namely,] ... volleyballs, ... rugby balls, footballs.

(4) [Chocolate products, namely,] chocolate syrup, ... chocolate bonbons, ... hot chocolate non-alcoholic beverage, ... chocolate protein powder; condiments, namely, jams; vanilla syrup; flavoring, namely, syrup; baked goods, namely, cookies, gingerbread, muffins, cakes; candy; ... chocolate milk, sweet flavoured milk, tea, tea-based beverages, carbonated drinks, fruit drinks and ... ; milk-based desserts, namely, ice-creams; frozen non-dairy desserts, namely, hemp-based ice-cream; ... cocoa; ... quinoa; quinoa pasta; quinoa noodles; quinoa soup; rice; honey; herbs and spices for cooking purposes....

[130] The amended statement of goods will be as follows:

- (1) Body soap bars, deodorant soaps, lip balms, hand creams, shea butter.
- (2) Clothing for infants, namely, sleepwear; fresh flowers; green foliage accompanying fresh flowers in a bouquet.
- (3) Sports balls, namely, soccer balls, basketballs.
- (4) Chocolate products, namely, chocolate chips, chocolate bars, cocoa powder; cereal-based bars; non-alcoholic beverage, namely, fruit juices; coffee; sugar; molasses; dried fruits.

Oksana Osadchuk
Hearing Officer
Trade-marks Opposition Board
Canadian Intellectual Property Office

**TRADE-MARKS OPPOSITION BOARD
CANADIAN INTELLECTUAL PROPERTY OFFICE
APPEARANCES AND AGENTS OF RECORD**

HEARING DATE No Hearing Held

AGENTS OF RECORD

Fasken Martineau Dumoulin LLP

FOR THE REGISTERED OWNER

Robinson Sheppard Shapiro S.E.N.C.R.L./L.L.P.

FOR THE REQUESTING PARTY