



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

**Citation: 2018 TMOB 108**

**Date of Decision: 2018-09-28**

**IN THE MATTER OF A SECTION 45 PROCEEDING**

**Barrette Legal Inc.**

**Requesting Party**

**and**

**Miguel Torres, S.A.**

**Registered Owner**

**TMA191,189 for TORRES**

**Registration**

[1] At the request of Barrette Legal Inc. (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 May 13, 2016 to Miguel Torres, S.A. (the Owner), the registered owner of registration No. TMA191,189 for the trade-mark TORRES (the Mark).

[2] The Mark is registered for use in association with the goods “Wine and brandy, both of Spanish origin.”

[3] The notice required the Owner to furnish evidence showing that the Mark was in use in Canada, in association with the goods specified in the registration, at any time between May 13, 2013 and May 13, 2016. If the Mark had not been so used, the Owner was required to furnish evidence providing the date when the Mark was last used and the reason for the absence of such use since that date.

[4] 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.

[5] It is well established that the purpose and scope of section 45 of the Act is to provide a simple, summary and expeditious procedure for removing “deadwood” from the register. As such, the evidentiary threshold that the registered owner must meet is quite low [*Performance Apparel Corp v Uvex Toko Canada Ltd*, 2004 FC 448, 31 CPR (4th) 270].

[6] In response to the Registrar’s notice, the Owner furnished the affidavit of its Legal Representative, Antonio Pajares Acedo, sworn on December 9, 2016, in Spain. Only the Owner filed written representations; a hearing was not held.

#### THE OWNER’S EVIDENCE

[7] In his affidavit, Mr. Acedo states that the Owner is a wine-grower and wine and brandy producer and exporter. He states that the Owner sells its products in several Canadian provinces, to alcohol retailers directly and, through Canadian distributors, to provincial liquor control boards and other vendors who in turn sell to Canadian consumers. He names four “current Canadian distributors” of the Owner’s products, covering nine provinces and one territory. Mr. Acedo confirms that this “commercial chain from vintner to distributor to liquor control agency or board to consumers, hotels, restaurants and such (who then sell on to consumers)” is the Owner’s normal course of trade.

[8] With respect to use of the Mark, Mr. Acedo states that it appears on all wine and brandy products sold by the Owner in Canada. He provides annual Canadian sales figures for “only a portion of [the Owner’s] wine and brandy products bearing the [Mark]” for the years 1993 to 2015.

[9] In support, he attaches, as Exhibit A to his affidavit, over three dozen invoices from the Owner to various provincial liquor control boards. The invoices are dated from 2013 to 2016, the

majority being from the relevant period. Each invoice displays the Mark in its upper left-hand corner and Mr. Acedo confirms that the invoices accompanied the products when they were sold to Canadian distributors.

[10] Mr. Acedo attests that each of the invoiced products displays the Mark on its product label. In addition, most of the product descriptions in the invoices begin with “TORRES”—for example, “TORRES SANGRE DE TORO” or “TORRES - TORRES 10 IMPERIAL BRANDY”. Each of these products is further described as a wine or brandy of Spain.

[11] Mr. Acedo also attaches, as Exhibit B to his affidavit, 16 pages containing photographs of labels. Three of the photographs show the labels affixed to bottles of wine; the rest show the labels in isolation. Mr. Acedo attests that the same or similar labels would have been displayed on wine and brandy products sold in Canada by the Owner during the relevant period.

[12] Also included in Exhibit B are four photographs of wine bottles and boxes of wine bottles on display in a retail setting. Mr. Acedo states that these photographs “also demonstrate use of the TORRES mark on product boxes, displayed in stores”. Indeed, TORRES is displayed on some of the depicted boxes, in a band along the bottom of the box. I note that many of these boxes have had their front panels removed in order to serve as display stands; in these cases, the TORRES strip has been left in place, such that the Mark is displayed directly in front of the wine bottles in the box.

[13] With respect to the label photographs, I note that each depicted label is for one of various specific brands of wine, brandy or liqueur—for example, “TORRES 10” imperial brandy or “SANGRE DE TORO” red wine. Similar labels appear on some of the bottles in the photographs of store displays.

[14] On most of the labels, the Mark is prominently displayed in large block lettering that stands out from the rest of the label’s text. For example, one of the labels displays “TORRES®” in a band at the top of the label, a shield design below the band, and “TORRES 10®” below that. Another label displays, from the top down, TORRES® in large, blue-grey, block letters; the shield design in red; a small, black “50 aniversario”; and a large, red “Sangre do Toro” in calligraphic script.

### ANALYSIS

[15] Mr. Acedo makes a clear assertion of use of the Mark in association with the registered goods in Canada during the relevant period. His assertion is supported by images of the Mark displayed on labels that he attests are representative of the labels affixed to the goods sold in Canada during the relevant period, and by invoices showing sales of such goods to provincial liquor control boards during the relevant period.

[16] In view of the foregoing, I am satisfied that the Owner has demonstrated use of the Mark in association with the registered goods within the meaning of sections 4(1) and 45 of the Act.

### DISPOSITION

[17] Accordingly, 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 maintained.

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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**

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No Hearing Held

**AGENTS OF RECORD**

Aventum IP Law LLP

FOR THE REGISTERED OWNER

Barrette Legal Inc.

FOR THE REQUESTING PARTY