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

**Citation: 2020 TMOB 92**

**Date of decision: 2020-07-31**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

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

**Fetherstonhaugh & Co.**

**Requesting Party**

**and**

**9351-8264 Québec Inc.**

**Registered Owner**

**TMA573,186 for  
PEPPETTE & Design**

**Registration**

[1] On March 23, 2018, at the request of Fetherstonhaugh & Co. (the Requesting Party), the Registrar issued a notice under section 45 of the *Trademarks Act*, RSC 1985, c T-13 (the Act) to 9351-8264 Québec Inc. (the Owner), registered owner of registration No. TMA573-186 for the trademark PEPPETTE & Design reproduced below (the Mark):



[2] The Mark consists of a circle containing, from top to bottom, the words “SAUCISSON PRÊT À MANGER • READY TO EAT SAUSAGE” in an arc; laurel leaves surround a small circle; the word “PEPPETTE” in large letters in a horizontal band; and the word “ROMA” in italics. The small circle between the laurel leaves contains a star, in the centre of which is an even smaller circle. The contents of the smaller circle are difficult to read, but the registration includes a description of the Mark that reads as follows: [translation] “In the smallest circle, inside the laurel leaves, is the word ROMA and the drawing of a quadruped mammal.”

[3] The Mark is registered in association with the following goods: “sausages” (the Goods).

[4] The Section 45 notice required the Owner to provide an affidavit or sworn statement showing that the Mark was used in association with the Goods in Canada at any time between March 23, 2015 and March 23, 2018 (the relevant period), and if not, indicating the date on which the Mark was last used and the reasons for the absence of use since that date.

[5] It should be noted that, at the start of the relevant period, the registration was owned by the Groupe Ramacieri Inc. (Groupe Ramacieri), and that corporation transferred it to the Owner on December 31, 2016, as evidenced by the Register of Trademarks, in which the transfer was recorded on August 17, 2017.

[6] Section 4(1) of the Act sets out the relevant definition of “use” in association with goods:

4(1) A trademark 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.

[7] 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. Thus, the level of evidence required to establish the use of the mark is low [*Performance Apparel Corp v Uvex Toko Canada Ltd*, 2004 FC 448, 31 CPR (4th) 270]. The registered owner only has to adduce *prima facie* evidence of the use of the Mark within the meaning of sections 4 and 45 of the Act [see *Diamant Elinor Inc v 88766 Canada Inc*, 2010 FC 1184, 90 CPR (4th) 428 at para 2].

[8] In response to the Registrar's notice, the Owner filed an affidavit made on June 12, 2018, by Sylvia Ramacieri, one of the directors of the Owner. Only the Owner filed written representations; no hearing was held.

#### THE EVIDENCE

[9] In her affidavit, Ms. Ramacieri explains that the Owner and its sister company Roma Food Products Ltd. (Roma Food Products) are wholly owned subsidiaries of the parent company, Groupe Ramacieri. Ms. Ramacieri states that she is a director of Roma Food Products and of the Owner and Groupe Ramacieri, and is the principal shareholder of Groupe Ramacieri. In support, as exhibits SR-1, SR-2 and SR-3 of her affidavit, she filed copies of Quebec enterprise register record sheets pertaining to the Owner, Groupe Ramacieri and Roma Food Products, respectively.

[10] Ms. Ramacieri explains that the Mark is used under licence by Roma Food Products, a manufacturer of food, including deli meats, sausages and dried sausages sold under various trademarks, including the Mark. Ms. Ramacieri confirms that, as a director of the Owner and Roma Food Products (and director and majority shareholder of Groupe Ramacieri), she directly oversees all activities of those companies and, in that context, as representative of the Owner, she directly controls the quality of the sausages sold under the Mark, as well as advertising carried out and how the Mark is used.

[11] Ms. Ramacieri explains that the sausages marketed under the Mark are first sold by Roma Food Products to various food markets and grocery stores in Canada, who then sell them to retail consumers. She stated that, during the relevant period, sausages in packaging bearing the Mark were sold in this way in various sizes: 500 grams, 300 grams, 250 grams, 150 grams and 100 grams. In her affidavit, as exhibits SR-4 and SR-5 respectively, she includes a photograph of the 500 gram packaging and a photograph of such packaging [translation] "as it would typically be seen in a grocery store in Canada during the relevant period." The photographs show vacuum-packed sausages with the Mark prominently displayed. Ms. Ramacieri confirms that the packaging of the sausages sold under the Mark during the relevant period were consistent with these specifications.

[12] Finally, as Exhibit SR-6, Ms. Ramacieri filed a representative sampling of invoices issued by Roma Food Products to various food markets and grocery stores during the relevant period. She explains that, on these invoices, the sausages sold under the Mark are identified either as [translation] “Roma deli peppette,” “vacuum-sealed peppette” or “dried peppette.” Indeed, Exhibit SR-6 includes more than 20 invoices from Roma Food Products to various businesses in Quebec and Ontario. the invoices are dated between January 6, 2016 and March 23, 2018, two-thirds of which are after December 31, 2016, the date on which the registration was transferred to the Owner. Each invoice shows the sale of one or more [translation] “Roma deli peppette” (150 g, 250 g or 300 g), “vacuum-sealed peppette” (500 g) or “dried peppette” (100 g) products.

#### ANALYSIS

[13] From my review of Ms. Ramacieri’s affidavit, I find that the Owner has demonstrated its use of the Mark in Canada in association with the Goods during the relevant period.

[14] The invoices included in Ms. Ramacieri’s affidavit show sales of the Goods in Canada during the relevant period by Roma Food Products, in the normal course of trade, as described by Ms. Ramacieri. I accept that the [translation] “Roma deli peppette,” “vacuum-sealed peppette” and “dried peppette” goods invoiced correspond to the Goods for which the packaging bears the Mark as illustrated in exhibits SR-4 and SR-5. In view of Ms. Ramacieri’s statement that, as a director of the Owner and Roma Food Products and as a representative of the Owner, she directly controls the quality of the Goods sold by Roma Food Products under licence, I find that its use of the Mark is deemed equivalent to a use by the Owner under section 50(1) of the Act – at least after the Owner’s acquisition of the registration in question on December 31, 2016.

[15] Finally, although other verbal elements, in smaller letters, are close to the Mark on the packaging shown in exhibits SR-4 and SR-5—such as [translation] “SMOKE FLAVOUR,” “NATURAL SHEEP INTESTINES,” and their French equivalents—, I find that the Mark stands out from these descriptive elements. Thus, when I apply the principles set out in *Canada (Registrar of Trade-marks) v Cie Internationale pour l’informatique CII Honeywell Bull, SA* (1985), 4 CPR (3d) 523 (FCA); *Nightingale Interloc Ltd v Prodesign Ltd* (1984), 2 CPR (3d) 535

(TMOB); and *Loro Piana SPA v Canadian Council of Professional Engineers*, 2009 FC 1096, 2009 CarswellNat 3400, I find this is a use of the Mark as registered.

[16] I am therefore satisfied that the Owner has demonstrated use of the Mark in association with the Goods within the meaning of sections 4 and 45 of the Act.

DECISION

[17] In view of the above, and pursuant to the authority delegated to me under section 63(3) of the Act and in compliance with the provisions of section 45 of the Act, the registration will be maintained in the Register.

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Oksana Osadchuk  
Member  
Trademarks Opposition Board  
Canadian Intellectual Property Office

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| Certified translation |
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| Gerald Woodard |
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**TRADEMARKS OPPOSITION BOARD  
CANADIAN INTELLECTUAL PROPERTY OFFICE  
APPEARANCES AND AGENTS OF RECORD**

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No hearing held

**AGENTS OF RECORD**

BCF S.E.N.C.R.L./BCF LLP

FOR THE REGISTERED OWNER

Smart & Biggar IP Agency Co.

FOR THE REQUESTING PARTY