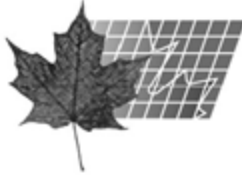


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LE REGISTRAIRE DES MARQUES DE COMMERCE  
THE REGISTRAR OF TRADEMARKS

**Citation: 2021 TMOB 162**

**Date of Decision: 2021-02-09**

**[UNREVISED ENGLISH**

**CERTIFIED TRANSLATION]**

**IN THE MATTER OF AN OPPOSITION**

**Institut national de l'origine et de la  
qualité**

**Opponent**

**and**

**Établissements Rivoire-Jacquemin,  
Société Anonyme**

**Applicant**

**1,727,734 for JURAMAN**

**Application**

INTRODUCTION

[1] The *Institut national de l'origine et de la qualité* (the Opponent) is an agency of the French government responsible for, *inter alia*, defining the *appellations d'origine contrôlées* [controlled designations of origin] that apply to certain French agri-food products such as cheeses, including requirements concerning their geographic origin and production conditions. It opposes registration of the trademark JURAMAN, the subject of application No. 1,727,734 by *Établissements Rivoire-Jacquemin, Société Anonyme* (the Applicant), having a principal office or head office in Montmorot, France, based on the proposed use of the Mark in Canada in

association with the following goods: [TRANSLATION] “cheeses, except blue cheeses” (the Goods).

[2] As my analysis will show, I find that the application ought to be refused.

### THE RECORD

[3] The application for the Mark was filed on May 12, 2015, and claims a priority date based on a corresponding application filed in France on December 12, 2014, under No. 144141484. This application was advertised in the *Trademarks Journal* for opposition purposes on July 13, 2016.

[4] The statement of opposition was originally filed on December 13, 2016, under section 38 of the *Trademarks Act*, RSC 1985, c. T-13 (the Act). I note that the Act was amended on June 17, 2019. All references are to the Act as amended, with the exception of references to the grounds of opposition, which refer to the Act before it was amended [see section 70 of the Act, which provides that section 38(2) of the Act, as it read prior to June 17, 2019, applies to applications advertised before that date].

[5] The statement of opposition was voluntarily amended by the Opponent in response to a motion for an interlocutory decision on the sufficiency of the grounds of opposition originally pleaded, presented by the Applicant concomitantly with the filing of its counter statement. In an official letter dated May 12, 2017, the Registrar of Trademarks granted the Opponent permission to file said amended statement of opposition, while dismissing the Applicant’s application to expunge.

[6] The grounds of opposition pleaded in the amended statement of opposition read as follows:

[TRANSLATION]

9(a) [...] the [Mark] is not registrable under section 12(1)(b) [of the Act] because, whether depicted, written or sounded, either clearly descriptive or deceptively misdescriptive in the French language of the character or quality of the goods or services in association with which it is proposed to be used in Canada, or of the conditions of or the persons employed in their production or of their place of origin.

9(b) [...] the [Mark] is not registrable under section 12(1)(e) [of the Act], as its adoption is prohibited by section 10, since it is so similar that it would likely be mistaken for the *appellation d'origine contrôlée* [AOC] BLUE DE GEX HAUT JURA, associated with goods of the same general class as the [Goods], which [AOC] BLUE DE GEX HAUT JURA has become recognized in Canada as designating the kind, quality, value or place of origin of cheeses in association with which it is used.

9(c) [...] [this application] does not meet the requirements of section 30(i), as the Applicant could not be satisfied that it was entitled to use the [Mark] in Canada in association with the [Goods] since its use in association with [them] is prohibited by section 7(d) [of the Act], as it is a description that is false in a material respect and likely to mislead the public as to the character, quality, geographic origin or mode of production of these goods.

9(d) [...] the [Mark] is not distinctive of the Applicant:

- (i) as it does not actually distinguish the [Goods] in association with which it is used by the Applicant from the goods of third parties, and is not adapted so as to distinguish them; and
- (ii) as it is a description that is false in a material respect and likely to mislead the public as to the character, quality, geographic origin or mode of production of the [Goods] covered by [this application].

[7] In support of its opposition, the Opponent submitted an affidavit from Jennifer Dyal, a legal assistant and team lead from the firm representing the Opponent in this proceeding, sworn on January 17, 2018, and its exhibits JHD-1 to JHD-9 (the Dyal affidavit), and an affidavit by Van Khai Luong, a paralegal employed by the same firm, also sworn on January 17, 2018, and its exhibits VKL-1 to VKL-3 (the Luong affidavit). Ms. Dyal and Ms. Luong were not cross-examined on their respective affidavits.

[8] The Applicant chose not to submit any evidence.

[9] Only the Opponent filed written representations and made representations at the hearing in this case. At the hearing, the Opponent voluntarily withdrew the grounds of opposition pleaded in paragraphs 9(b) and 9(d)(ii) of its amended statement of opposition.

#### ANALYSIS

#### **The burden incumbent on the parties**

[10] It is initially up to the Opponent to establish that its opposition is well-founded. The Opponent must ensure that each of its grounds of opposition is properly pleaded and meet the

initial evidentiary burden by establishing the facts on which it bases each one. Once that initial evidentiary burden has been met, it is up to Applicant to establish, on a balance of probabilities, that no grounds of opposition prevent the registration of the Mark [*John Labatt Ltd v Molson Companies Ltd* (1990), 30 CPR (3d) 293 (FCTD); and *Dion Neckwear Ltd v Christian Dior, SA et al.* (2002), 20 CPR (4th) 155 (FCA)].

#### Non-registrability of the Mark under section 12(1)(b) of the Act

[11] As noted above, the Opponent alleges that the Mark is not registrable under the provisions of section 12(1)(b) of the Act because:

[TRANSLATION]

[...] whether depicted, written or sounded, either clearly descriptive or deceptively misdescriptive in the French language of the character or quality of the goods or services in association with which it is proposed to be used in Canada, or of the conditions of or the persons employed in their production or of their place of origin.

[12] I find that the wording of this ground is vague and uncertain, in that it is not clear from reading it what clearly descriptive or deceptively misdescriptive element it is referring to. That said, I must assess this ground of opposition based on the evidence on record [*Novopharm Ltd v AstraZeneca AB* (2002), 21 CPR (4th) 289 (FCA)].

[13] In light of this evidence and what the Opponent indicates in its written representations submitted at the hearing, I understand that the Opponent argues that the Mark is clearly descriptive or deceptively misdescriptive of the persons who produce the Goods and that it is deceptively misdescriptive of the place of origin of the Goods.

#### *General principles*

[14] The relevant date that applies to a ground of opposition where a trademark is clearly descriptive or deceptively misdescriptive is the date on which the application was filed [*General House Wares Corp v Fiesta Barbeques Ltd* (2003), 28 CPR (4th) 60 (FC)], in this case on May 12, 2015.

[15] The issue as to whether a trademark is clearly descriptive or deceptively misdescriptive must be considered from the point of view of the average purchaser of the goods associated with

that trademark. The word “character” means a feature, trait or characteristic of the product, while the word “clearly” means “easy to understand, self-evident or plain” [*Drackett Co of Canada Ltd v American Home Products Corp* (1968), 55 CPR 29 (Ex Ct)]. The mark must not be dissected into its component elements and carefully analyzed but must be considered in its entirety as a matter of immediate impression [*Wool Bureau of Canada Ltd v Registrar of Trademarks* (1978), 40 CPR (2d) 25 (FCTD); *Atlantic Promotions Inc v Registrar of Trademarks* (1984), 2 CPR (3d) 183 (FCTD)]. In other words, the trademark must not be considered in isolation, but rather in its full context in conjunction with the subject goods and services [*Ontario Teachers’ Pension Plan Board v Canada (Attorney General)* (2012), 99 CPR (4th) 213 (FCA)]. Finally, one must apply common sense in making the determination about descriptiveness [*Neptune SA v Canada (Attorney General)* (2003), 29 CPR (4th) 497 (FCTD)].

[16] The purpose of the prohibition in section 12(1)(b) of the Act is to prevent any single trader from monopolizing a term that gives a clear description or is common to the trade, thereby placing legitimate traders at a disadvantage [*Canadian Parking Equipment Ltd v Canada (Registrar of Trademarks)* (1990), 34 CPR (3d) 154 (FCTD); *e-Funds Ltd v Toronto-Dominion Bank* (2007), 61 CPR (4th) 475 (TMOB)]. To be considered deceptively misdescriptive, a trademark must mislead the public. The prohibition aims to prevent the public from making a mistake [*Atlantic Promotions, supra*].

[17] In the case of a trademark that is claimed to be clearly descriptive of the place of origin of the goods associated with it, the mark would be deemed to give a clear description of the place of origin if it consists of a geographic name and if the goods are from the place designated by that geographic name [*MC Imports Inc v AFOD Ltd*, 2016 FCA 60]. A trademark is deceptively misdescriptive if it consists of a geographic name and if the products are not from the place designated by that geographic name, such that an ordinary consumer would be misled into the belief that the goods associated with that mark are from the place designated by that geographic name [*MC Imports Inc, supra*].

#### *The Opponent’s evidence*

[18] The main purpose of the Dyal and Luong affidavits is to introduce as evidence various excerpts from dictionaries and other publications available in Canada that refer to the Jura

region, or cheeses, including cheeses from the Jura region, and to demonstrate the availability of cheeses in Canada from the Jura region that bear terms such as “Crémeux du Jura”, “Jura montagne” and “Affiné dans le Jura”.

[19] In particular, I note the following.

[TRANSLATION]

i) Dictionary definitions [Exhibit VKL-11]

*The New Lexicon Webster’s Encyclopedic Dictionary of the English Language  
Canadian Edition 1998 :*

- JURA: a department (...) in E. France (Franche-Comté) Chief town: Lons-le-Saunier.
- JURA: a range of rugged, wooded mountains in E. France and W. Switzerland, [...]. Occupations: dairy farming, forestry, light industries.

*Le Petit Larousse 2010*

- JURA : n.m. chaîne de montagnes de France et de Suisse, qui se prolonge en Allemagne par des plateaux calcaires [...]. L’orientation et l’altitude expliquent l’abondance des précipitations, favorables à l’extension des forêts et des prairies. Aussi, l’exploitation forestière et les produits laitiers (fromages) constituent les principales ressources, complétées par le tourisme et surtout par de nombreuses petites industries (horlogerie, lunetterie, travail du bois, matières plastiques, etc.) [...].
- JURA : n.m. dép. de la Région Franche-Comté. [...] L’exploitation de la forêt, l’élevage bovin (fromages) et, localement, le vignoble [...] y constituent les ressources essentielles. [...].

[Emphasis added]

ii) Articles published on Canadian newspaper websites discussing the Jura region and some of its cheeses [Exhibits VKL-12 and VKL-14]

- Anne Desjardins, “Le Jura français a tout pour séduire”, (September 24, 2010) (*Le Soleil*, Voyage section):

*Ses spécialités de niche comprennent [...] et ses merveilleux fromages d'appellation que sont le Comté, le Morbier, le Bleu de Gex ou le Mont d'or, [...]*

- Anne Desjardins, “Le fromage devenu modèle” (October 25, 2010) (Le Soleil):

*Mais l'Hercule est désormais un fromage unique, aussi québécois que le comté est un fromage jurassien...*

*L'histoire du comté est fascinante. Il est le premier fromage d'appellation d'origine contrôlée de France avec 1 250 000 meules fabriquées chaque année dans les montagnes du massif du Jura, dans l'est de la France.*

- Sue Riedl, “Perfection on a platter,” (December 17, 2008) (*The Globe and Mail*, Life section):

It would be an oversight to discuss cheese and the holidays without tempting the palate with a winter classic originating in the Jura mountains along the Swiss-French border, Vacherin Mont d'Or, packed in a bark box, is a true splurge.

- Joanne Kates, “Full of beans for little Mogette”, (February 21, 2009), (*The Globe and Mail*, Life section):

The French onion soup, for instance [...]. Its broth is flavoured yet delicate, while its roof is made with perfectly melted (not overcooked) cheese from the Jura.

- Joanne Kates, “Le Migneron Charlevoix cheese” (October 13, 2009) (*The Globe and Mail*):

He began by making Münster in Alsace, but it was in the Jura region that he discovered the fruitière model of cheese making and brought it to Quebec.

- Andrew Brenner, “Jura Mountains are a skier’s paradise”, (January 30, 2015), (*Toronto Star*, Travel section):

This tiny village is home to an excellent fruitière where Comté cheese, emblematic of the Jura, is made.

- John Leigester and Andrew Dampf, “Taste of the Tour: Cheese in a box and Brel’s favoured wine”, (July 7, 2017), (*Vancouver Sun*, Travel section):

Mont d'Or cheese, made at an altitude of 700 metres (2,300 feet) or higher in the Jura mountains, can best be described as fondue in a box.

Compte, a hard cheese from the Jura, can appear like a poor cousin to gooey, more pungent French cheeses.

- iii) Various excerpts from guides and books consulted at the *Bibliothèque et archives nationales du Québec* [exhibits VKL-15, VKL-16, JD-1, JD-2] that refer to the Jura region and some of its cheeses, including: *Le Guide des fromages* (2000), *Cheeses of the World* (2001), *The World Encyclopedia of Cheese* (2002), *The Finest Selection – World Cheese Book* (2009), *Cheese Primer* (1996), *Guide Michelin : Franche-Comté, Monts du Jura, Bugey* (2015), etc.
- iv) Pages from the sites of Canadian cheese producers concerning certain cheeses for which the description mentions “Jura” [Exhibit VKL-17] :
- La Fromagerie Hamel (site updated on August 25, 2017):
 

Comté is the result of a centuries-old cheese tradition in the Jura massif.

[...]

The name of the cheese is the name of the small village of Haut-Jura where production of Morbier began in 1875.
  - IGA and Sobeys supermarkets (printouts dated October 2017) advertising or describing the following cheeses:
    - “Le Crémeux du Jura” cheese
    - Comté cheese: “[...] Comté cheese is produced in the Jura mountains [...]”
  - *Cheese Boutique* (printout dated October 2017):
    - Bleu de Gex ([...] *Aged in the Jura Mountains* [...])
- v) Photographs of cheeses and their packaging taken during tours in October 2017 at cheese producers in Montréal that sell cheeses bearing terms such as “Crémeux du Jura”, “Jura Montagne” and “Affiné dans le Jura/*Ripened in the Jura*” [Exhibits JD-3 to JD-6]
- vi) Excerpts of pages published online showing Jura cheeses [Exhibit VKL-20]:



- “Des kiwis et des hommes”, description of the broadcast presented on television on June 17, 2010, by Radio-Canada.
- “Ain – Gastronomie”, published in 2017 by the Association Québec-France Haute Yamaska.

[20] In this respect, I acknowledge that some of these publications or advertisements are from after the filing date of this application. That said, I am not necessarily prepared to ignore them, in that I am prepared to agree with the Opponent that this evidence is consistent with the other evidence on record concerning the Jura region and more specifically its cheeses.

*The Opponent’s position*

[21] In its written representations on section 12(1)(b) of the Act, cited at the hearing, the Opponent essentially raised three arguments.

[22] First, the Opponent argued that the Mark is clearly descriptive of the persons who produce the Goods for the following reasons:

[TRANSLATION]

35. The Mark consists of two distinct elements:

- a) The “JURA” element, which refers, in both English and French, to the mountainous region of Jura on the French-Swiss border, recognized in Canada for its cheeses;
  - Luong Affidavit, Exhibit VKL-11
- b) The element “MAN,” which means “male” or “individual” in the English language and which is also well known in the French language to have the same meaning.
 

Man: A human being, a person.

  - English definition of the word “man,” The New Shorter Oxford English Dictionary

Medicine-man: A witch practising rites of passage in non-industrial societies  
 One-man-show: Variety show where the artist is alone on stage  
 Self-made-man: A person who has created his or her own success  
 Stunt-man: Synonymous with the French word *cascadeur*

  - Definitions translated from the Larousse dictionary online (larousse.fr)

36. In the English language, the addition of the suffix “-MAN” to a geographical name is used to describe a person who is from or lives in that region. For example, Chinaman

refers to a man from China, Irishman refers to an individual from Ireland and Frenchman refers to an individual from France.

As 2<sup>nd</sup> element of combination, a person, especially a male, having a specified nationality, place of origin, abode, or education, profession, occupation, or interest; a person, especially a male, using or skilled in the use of a specified implement; a person, especially a male, associated with something specified or described as something specified.

- English definition of the word “man”, The New Shorter Oxford English Dictionary

Chinaman: a Chinese man

Frenchman: a man of French birth or nationality

Irishman: a man of Irish birth or descent.

- English definitions of the words “Chinaman”, “Frenchman” and “Irishman”, The New Shorter Oxford English Dictionary

37. The Mark as a whole, consisting of the terms “JURA” and “MAN”, therefore refers to men or individuals from the Jura region.

38. However, the wording of the application is not limited concerning the identity of the persons producing the cheeses covered by the application and therefore covers cheese manufactured by men in Jura.

39. The Applicant’s headquarters are in the Jura region, in the commune of Montmorot, in France, as seen in the Application.

40. The Mark is therefore clearly descriptive of the persons who produce the goods covered by the Application.

[23] Second, the Opponent argues that the Mark is deceptively misdescriptive of the persons who produce the Goods for the following reasons:

[TRANSLATION]

45. As indicated, the Mark as a whole, consisting of the terms “JURA” and “MAN”, refers to men or individuals from the Jura region.

46. The application is not limited to goods produced by people in the Jura region.

47. Since the application therefore also covers cheeses made by people who are not from the Jura region, the mark is deceptively misdescriptive.

48. However, [...] the Jura region and the know-how of its residents are known in Canada for their [*sic*] cheese [*sic*], produced for hundreds of years using a distinctive method and with specific ingredients and a particular recipe.

49. Canadian consumers who see the JURAMAN Mark used in association with cheese therefore expect the cheese in question to be produced by individuals from Jura who have specific and recognized know-how.

50. The Mark is therefore deceptively misdescriptive of the persons who produce the Goods covered by this Application.

[24] Finally, the Opponent argues that the Mark is deceptively misdescriptive of the geographic origin of the Goods for the following reasons:

[TRANSLATION]

52. The JURA component is the dominant element of the Mark: it is the first element of the Mark, accounts for two thirds of the syllables and is the most striking element. [...]

53. Canadian consumers know that, in English and in French, the word JURA refers to the mountainous Jura region known for its cheeses. [...]

54. The statement of the Goods covered by the Application is not limited to cheeses specifically from the Jura region and the Application therefore includes cheeses that are not from that region.

55. The Mark is therefore deceptively misdescriptive of the geographic origin of the Goods covered by the Application.

56. Moreover, as established above, Canadian consumers are well aware that the Jura region is known for its cheeses and consumers who see the JURA component used in association with cheese therefore expect a cheese from the Jura region.

57. The Mark is therefore deceptively misdescriptive about the geographic origin of the Goods covered by the Application.

*Is the mark clearly descriptive or deceptively misdescriptive of the persons who produce the Goods?*

[25] As the Opponent noted at the hearing, there is very little jurisprudence on the meaning to be assigned to section 12(1)(b) in terms of the persons who produce the goods. Most decisions relate to the use of the word “engineer”(e.g., *Canadian Council of Professional Engineers v. John Brooks Co Ltd*, 2004 FC 586, in which BROOKS BROOKS SPRAY ENGINEERING was deemed to be unregistrable because it incorrectly suggested that the services in question in that case were rendered by engineers). The Registrar stated the following in *Wal-Mart Stores Inc v. Tough Stuff Distributors, Inc* (1999), 1 CPR (4th) 271 (TMOB):

In my view, it is not the intention of s. 12(1)(b) to prevent the registration of trade-marks that may describe the feelings or states of being of the persons employed in the production of the wares with which the trade-mark is to be used. Rather, in my view, this part of Section 12(1)(b) was designed to prevent the registration of trade-marks that clearly describe the character of persons employed in the production of the applied for

wares eg. the word POTTER would not be registrable for the ware “pottery” nor would the word BAKER be registrable for the ware “bread”.

[26] In the case at hand, I find that the fact that the Mark does not consist as such of a dictionary word, but rather an invented word is not a determining factor in itself, as that does not necessarily mean that the word has no meaning and does not give a description.

[27] Similarly, the fact that the Applicant has its headquarters in the commune of Montmorot in France and that the evidence shows that that commune is in the Jura region [see in particular the geographic map of Jura reproduced in *Le Petit Larousse*, Exhibit VKL-11 attached to the Luong affidavit] is immaterial. In this respect, I would add that the evidence on record does not allow me to determine the place of origin of the Goods covered by this application and that nothing can be inferred in this respect simply because they specifically exclude [TRANSLATION] “blue cheeses”, the type of cheese included in the AOC “Bleu de Gex Haut-Jura” [see the specification for that AOC, Exhibit VKL-10].

[28] Rather, we must ask how the Mark will be perceived by the average consumer when used in association with the Goods. It is therefore important, in my view, to determine the meaning to be assigned to the first part of the Mark, consisting of the element “JURA”, which, I agree with the Opponent, is the dominant element of the Mark.

[29] In *Shell Canada Limited v P.T. Sari Incofood Corporation*, 2008 FCA 270, concerning the trademark JAVACAFE, the Federal Court of Appeal stated the following on the issue of whether an average Canadian Francophone would know that there is an island called Java or that that island produces coffee:

[29] Against this background, it cannot be said that the new evidence pertaining to the word “java” in the French language provides no new information or is otherwise immaterial. It seems clear that had the Registrar been apprised of the fact that the word “java” in the French language is also understood to be an island known for its production of coffee, she would have asked herself (as she did with respect to the meaning of which she was apprised) whether, given this meaning, the mark JAVACAFE is to an average French-speaking Canadian descriptive of a place that produces coffee as a matter of first impression. It is also clear that she would have answered this question in the affirmative because, when regard is had to this other meaning, the combination of the word JAVA with CAFE lends itself to no other conclusion.

[30] I do not believe that additional evidence (in the form of a survey or other such evidence) is required in order to come to this conclusion. While, the word “java”, when used in isolation, can evoke more than one meaning in the French language such that a survey might be required in order to identify the meaning that comes to mind to the average French-speaking Canadian as a matter of first impression, no such issue arises when the word JAVA is used together with CAFE as in the proposed mark JAVACAFE.

[30] The new evidence concerning the word “java” discussed by the Federal Court of Appeal consisted of entries from dictionaries and encyclopedias, all indicating that the word “java”, in addition to designating a dance in the French language, is also generally known as an Indonesian island renowned for its production of coffee. Excerpts from a French book on the history of the coffee trade also make the same association.

[31] Comparing the new evidence in the JAVACAFE case to that of this case, I find that the Opponent has discharged its initial evidentiary burden of presenting sufficient evidence in support of its allegation that the use of the word JURA in the context of the Goods covered by this application refers to the mountainous Jura region known for its cheeses.

[32] I am also prepared to accept that the “MAN” element, meaning [TRANSLATION] “male” or “individual” in English, is also well known in the French language for the same meaning when used as a suffix. In addition to the definitions from the online *Larousse* dictionary (*larousse.fr*) cited as examples by the Opponent, we can think here of many other examples, such as the words “gentleman,” “barman,” “cameraman,” “ombudsman,” “jazzman,” “tennisman,” “superman,” etc. that are also defined in French-language dictionaries such as *Le Petit Larousse 2010* [see *Tradall S.A. v Devil’s Martini Inc*, 2011 TMOB 65, which provides that the Registrar may take judicial notice of dictionary definitions].

[33] In this respect, I will add that I do not understand why the ground of opposition, as worded, only refers to the clearly descriptive or deceptively misdescriptive character of the Mark in French, rather than in French and/or English. Regardless, in my view, this does not justify considering only the average unilingual Francophone consumer and excluding the average bilingual consumer in this analysis. In this respect, I feel it is appropriate to include here the comments by the Registrar in *Canadian Dental Hygienists’ Association/L’Association canadienne des hygiénistes dentaires v Canadian Dental Association/L’Association Dentaire Canadienne*, 2001 TMOB 8:

49. In my view, Parliament could not have intended that a mark which was clearly descriptive or deceptively misdescriptive in one of Canada's official languages could be registrable as long as its equivalent translation in Canada's other official language was also part of the mark. Further, in my view, Parliament could not have intended that only the average English purchaser or the average French purchaser be considered when assessing the issue under s. 12(1)(b), especially when the average purchaser is assumed to be functionally bilingual under other sections in the Act. Finally, I do not consider that it was the intention of Parliament to permit marks that, while perhaps not clearly descriptive or deceptively misdescriptive as a whole to a unilingual English consumer or unilingual French consumer, are clearly descriptive or deceptively misdescriptive as a whole to the average bilingual consumer.

[34] In light of the above, I find that the Opponent has met its initial evidentiary burden of demonstrating that the Mark as a whole, consisting of the terms "JURA" and "MAN," designates men or individuals from the Jura region.

[35] I must therefore determine whether the Applicant has met its legal onus of demonstrating on a balance of probabilities that the Mark is not clearly descriptive or deceptively misdescriptive of the persons who produce the Goods.

[36] With no evidence or submissions from the Applicant, I find that the Applicant has not met its legal onus.

[37] In particular, as the wording of the application is not limited to the identity of the persons who produce the cheeses covered by the application and thus covers cheese produced by men in Jura, I agree with the Opponent that the Applicant has not met its legal onus of demonstrating that the Mark is not clearly descriptive or deceptively misdescriptive of the persons who produce the Goods covered by the Application.

[38] Similarly, since the application is not limited to goods produced by persons from the Jura region and since the application therefore also covers cheeses produced by persons not from the Jura region, I agree with the Opponent that the Applicant has not discharged its legal onus of showing that the Mark is not deceptively misdescriptive of the persons who produce the Goods.

[39] I therefore maintain the ground of opposition based on the clearly descriptive and deceptively misdescriptive character of the Mark under section 12(1)(b) of the Act in respect to the persons who produce the Goods.

Other grounds of opposition

[40] As I have already refused the application for two parts of the ground of opposition based on section 12(1)(b) of the Act, I will not consider the other grounds of opposition.

DISPOSITION

[41] Pursuant to the authority delegated to me under section 63(3) of the Act, I refuse the application pursuant to section 38(12) of the Act.

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Annie Robitaille  
Member  
Trademarks Opposition Board  
Canadian Intellectual Property Office

Certified translation  
Gerald Woodard

**TRADEMARKS OPPOSITION BOARD  
CANADIAN INTELLECTUAL PROPERTY OFFICE  
APPEARANCES AND AGENTS OF RECORD**

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**HEARING DATE** 2020-11-23

**APPEARANCES**

Ekaterina Tsimberis and Olivier Jean-Lévesque FOR THE OPPONENT

No one appearing FOR THE APPLICANT

**AGENTS OF RECORD**

Smart & Biggar, LLP FOR THE OPPONENT

ROBIC FOR THE APPLICANT