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LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADEMARKS

Citation: 2021 TMOB 101

Date of decision: 2021-05-25

[UNREVISED ENGLISH

CERTIFIED TRANSLATION]

IN THE MATTER OF SECTION 45 PROCEEDINGS

9326-3044 Québec inc.

Requesting Party

and

Les Celliers Jean d'Alibert, société anonyme

Registered Owner

TMA871,862 for CUVÉE BALTHAZAR

Registrations

and

TMA871,863 for LE PETIT BALTHAZAR

INTRODUCTION

[1] This is a decision involving two summary expungement proceedings under section 45 of the *Trademarks Act*, RSC 1985, c. T-13 (the Act) with respect to registration Nos. TMA871,862 and TMA871,863 for the trademarks CUVÉE BALTHAZAR and LE PETIT BALTHAZAR (collectively the Marks), respectively, currently owned by Vins Balthazard Inc. (the Owner).

[2] The Marks are registered for use in association with the following goods: [translation] “wine”.

[3] For the reasons that follow, I conclude that the two registrations ought to be maintained.

PROCEEDINGS

[4] For each of the registrations, at the request of 9326-3044 Québec inc. (the name of which has since been changed to Groupe Le Balthazar inc.) (the Requesting Party), the Registrar of Trademarks sent a notice under section 45 of the Act. The notices, dated May 8, 2018, were sent to the owner of the Marks at the time, namely *Les Celliers Jean d'Alibert, société anonyme* (CJA).

[5] The notices required that CJA show whether the Marks had been used in Canada in association with each of the goods in the registrations at any time within the three-year period immediately preceding the date of the notices and, if not, the date when each of the Marks was last in use and the reason for the absence of such use since that date. In this case, the relevant period for showing use of each of the Marks is May 8, 2015 to May 8, 2018.

[6] The relevant definition of “use” in this case is set out in section 4(1) of the Act:

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. The evidence in a section 45 proceeding need not be perfect; indeed, a registered owner need only establish a *prima facie* case of use within the meaning of sections 4 and 45 of the Act [see *Diamant Elinor Inc v 88766 Canada Inc*, 2010 FC 1184]. This burden of proof is light; evidence must only supply facts from which a conclusion of use may follow as a logical inference [*Diamant, supra*, at para 9].

[8] In response to the Registrar’s notice, CJA filed two affidavits of Philippe Lauret, President of the CJA Board, solemnly affirmed on July 25, 2018.

[9] Both parties filed written representations and attended the hearing.

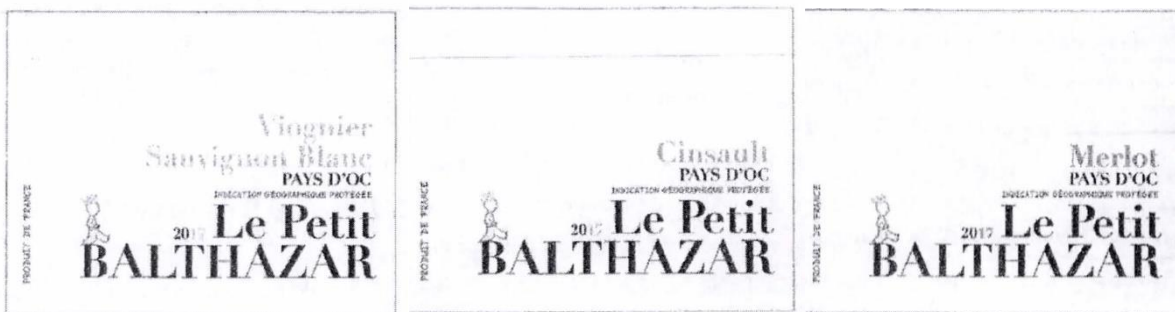
OVERVIEW OF THE EVIDENCE ON RECORD

[10] In his affidavits, Mr. Lauret explains that CJA is a company founded in 1978 that bottles and sells wine. He asserts that CUVÉE BALTHAZAR and LE PETIT BALTHAZAR wines were [translation] “sold regularly and continuously during the relevant period to the *Société des alcools du Québec* and *Tannin Fine Wines Limited*”. According to Mr. Lauret, CJA’s clients then offered the wine in question for sale to Canadian consumers.

[11] In his affidavit concerning registration No. TMA871,862, Mr. Lauret reproduced models of labels used on bottles of BALTHAZAR CUVÉE wine as sold in Canada by CJA during the relevant period, including the following labels:



[12] In his affidavit concerning registration No. TMA871,863, Mr. Lauret did the same for the labels used on the bottles of LE PETIT BALTHAZAR wine, including the following labels:



[13] Mr. Lauret attached to each of his affidavits copies of invoices dated during the relevant period. I note that these invoices indicate the sale of several hundred half cases (containing

6 bottles) and cases (containing 12 bottles) of wine by CJA to customers in Canada, namely the *Société des alcools du Québec* and *Tannin Fine Wines Ltd.*

[14] I also note that, in the body of the invoices, the goods sold are designated by descriptions including the Marks such as: “IGP Pays d’Oc Viognier Blanc Cuvée Balthazar 6*75 cl”, “IGP Pays d’Oc Syrah Rouge Cuvée Balthazar”, “Pays d’Oc IGP Cinsault Rose Le Petit Balthazar 6x75 cl Stelvin LUX”, “Pays d’Oc IGP Merlot Rouge Le Petit Balthazar 12x75 cl” (emphasis added).

PRELIMINARY REMARKS

[15] At the hearing, the Requesting Party asked that paragraphs 25 and 26 of the Owner’s written representations be set aside, as they refer to facts related to the role of a wine bottler that were not submitted as evidence. I am of the view that these paragraphs are more in the nature of an argument than facts. Regardless, and as will be seen from my analysis, these paragraphs have no impact on my decision. I therefore do not feel the need to discuss this any further.

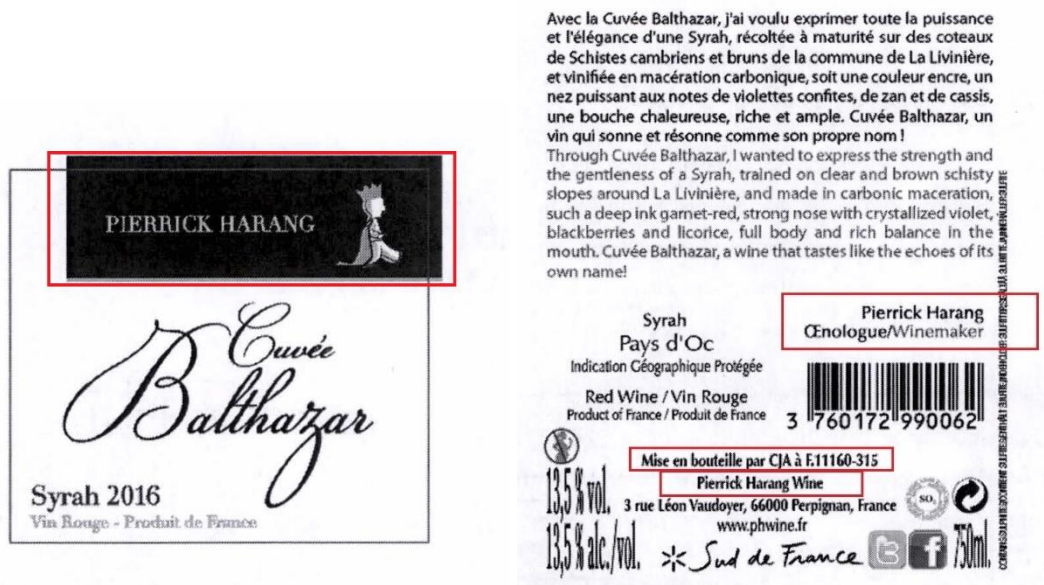
ANALYSIS AND REASONS FOR DECISION

[16] First, there is no doubt that the evidence shows the sale of wine by CJA in Canada during the relevant period in association with each of the Marks. Indeed, the evidence establishes on the one hand that bottles of wine were sold by CJA and, on the other hand, that the Marks appear on the labels of the bottles sold and in the body of the invoices.

[17] However, the Requesting Party submits that this evidence is not sufficient to maintain the registrations in question. More specifically, it claims that [translation] “the control of the characteristics or quality of the wares in association with which [*sic*] the trademark is registered must be the responsibility of the trademark owner to be considered to use the mark” (emphasis in the original) and that CJA did not exercise any such control since it merely bottled the wine produced by a third party.

[18] In support of its claims, the Requesting Party notes the statement by Mr. Lauret that [translation] “CJA is a company that bottles and sells wine”. It also notes that the Owner of the Marks is not specifically identified on the labels, which only bear the statement [translation]

“Bottled by CJA...” and identify winemaker Pierrick Harang and the company Pierrick Harang Wine (see the red boxes on the CUVÉE BALTHAZAR wine labels, for example):



[19] The Requesting Party submits that this evidence, indicating that CJA did not make the wine it sold, raises the question of CJA’s control over the quality of that wine. According to the Requesting Party, the concept of quality control is fundamentally linked to the objective of consumer protection contained in the Act and must be taken into consideration when determining whether a trademark is used. Therefore, given the absence of any allegation of such control by the Owner, the sales submitted as evidence could not validly constitute use of the Marks by CJA.

[20] At the hearing, the Requesting Party based its position on recent Federal Court statements (in the context of a section 45 proceeding) regarding the [translation] “fundamental purpose of protection” under the Act, including that a trademark “is a guarantee of origin and inferentially, an assurance” of quality and that trademark law “is, in that sense, consumer protection legislation” [see *Hilton Worldwide Holding LLP v Miller Thomson*, 2018 FC 895, at para 71, citing *Mattel, Inc v 3894207 Canada Inc*, 2006 SCC 22, at para 2].

[21] I find that, in reality, in raising the issue of the winemaker, the Requesting Party questions the right of the Owner (and its predecessor in title, CJA) to the registrations. However, it is well established that section 45 proceedings are not intended to determine substantive issues

such as ownership, distinctiveness, descriptiveness or abandonment of a registered trademark [see *United Grain Growers Ltd v Lang Michener*, 2001 FCA 66; *Philip Morris Inc v Imperial Tobacco Ltd* (1987), 13 CPR (3d) 289 (FCTD)].

[22] Moreover, contrary to the submissions by the Requesting Party, I have no reason to believe that the decision in *Hilton* introduced an additional requirement or otherwise altered the content of proceedings under section 45 of the Act. The only issue in these proceedings is—and remains—whether the registered trademark was used in Canada in respect of the wares specified in the registration in the three-year period immediately preceding the date of the notice under that section [*United Grain Growers v Lang Michener, supra*]. Apart from the control required by section 50 of the Act, which is required when an owner seeks to benefit from the use of its trademark by a licensee, control of the characteristics or quality of the products associated with said mark is not an issue. Thus, the issue of whether the Owner made the wine itself and the nature of any relationship between the Owner and the winemaker is an issue that is beyond the scope of these proceedings.

[23] In closing, I note that the fact that the Owner (or CJA) is not identified on bottles of wine as the owner of the Marks is also irrelevant, as there is no such requirement in the Act.

DISPOSITION

[24] In view of the foregoing, I am of the view that the Marks were used in association with the registered goods within the meaning of sections 4 and 45. Accordingly, 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 registrations will be maintained.

Eve Heafey
Hearing Officer
Trademarks Opposition Board
Canadian Intellectual Property Office

Certified translation
Gerald Woodard

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

HEARING DATE 2021-04-22

APPEARANCES

Pascal Lauzon For the Registered Owner

Jean-Philippe Mikus For the Requesting Party

AGENTS OF RECORD

BCF S.E.N.C.R.L./BCF LLP For the Registered Owner

Fasken Martineau DuMoulin LLP For the Requesting Party