



LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADEMARKS

Citation: 2022 TMOB 161

Date of Decision: 2022-08-19

IN THE MATTER OF A SECTION 45 PROCEEDING

Barrette Legal Inc.

Requesting Party

And

Fincas Patagonicas S.A.

Registered Owner

TMA815,576 for Zolo

Registration

INTRODUCTION

[1] This is a decision involving a summary expungement proceeding under section 45 of the *Trademarks Act*, RSC 1985, c T-13 (the Act) with respect to registration No. TMA815,576 for the trademark Zolo (the Mark).

[2] The Mark is registered for use in association with the following good: Wine (the Good)

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

THE PROCEEDING

[4] On May 17, 2021, at the request of Barrette Legal Inc. (the Requesting Party), the Registrar of Trademarks issued a notice pursuant to section 45 of the Act to Fincas Patagonicas S.A. (the Owner). The notice required the Owner to show whether the Mark was used in Canada in association with the good 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 Mark 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 is between May 17, 2018 and May 17, 2021 (the Relevant Period).

[5] The relevant definition of use in the present case is set out in section 4(1) of the Act as follows:

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.

[6] In response to the Registrar's notice, the Owner submitted the affidavit of Ms. Patricia Victoria Freuler, CEO for the Owner, sworn on September 23, 2021.

[7] No party submitted written representations and no oral hearing was held.

THE OWNER'S EVIDENCE

[8] Ms. Freuler explains that the Owner is based in Argentina and owns and operates vineyards and wineries [para 1] and produces a variety of organic wines sold under the Mark [para 6].

[9] Ms. Freuler states that the Owner has sold wine in Canada since 2007 to the "Société des alcools du Québec" (SAQ) [para 8]. Ms. Freuler provides several invoices from the Owner to the SAQ from the Relevant Period [para 12].

[10] In support, Ms. Freuler attaches the following relevant exhibits to her affidavit:

- Exhibit “A”: An image of a wine label bearing the Mark for an organic Cabernet Sauvignon produced by the Owner. Ms. Freuler states that the label is representative of labels used on the wine bottles sold in Canada during the 2018-2021 period [para 7].
- Exhibit “D” and “E”: Several invoices from the Owner to the SAQ for “Zolo Organic Cabernet Sauvignon” from the Relevant Period delivered in Montreal. Ms. Podiak states that invoices are printed in hard copies and accompanies the Good in addition to being sent by email [para 12].

ANALYSIS AND REASONS FOR DECISION

[11] Although the threshold for establishing use in in the context of section 45 proceedings is 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 Canada (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 trademark in association with the goods specified in the registration during the relevant period [*John Labatt Ltd v Rainier Brewing Co* (1984), 80 CPR (2d) 228 (FCA)]. In this case, the evidence establishes that the Mark has been used in Canada by the Owner during the Relevant Period with the good list in the registration.

[12] Given that the Owner has shown sales of the Good in Canada during the Relevant Period and that the Mark was displayed on the bottles of wine and invoices accompanying the Good, I am satisfied that the Owner has shown use of the Mark in Canada within the meaning of sections 4 and 45 of the Act.

DISPOSITION

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

Martin Béliveau
Chairperson
Trademarks Opposition Board
Canadian Intellectual Property Office

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

HEARING DATE No Hearing Held

AGENTS OF RECORD

Heidi Jensen (Jenson IP)

For the Registered Owner

Barrette Legal Inc.

For the Requesting Party