



LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADEMARKS

Citation: 2022 TMOB 166

Date of Decision: 2022-08-25

IN THE MATTER OF A SECTION 45 PROCEEDING

Pitblado LLP

Requesting Party

And

Punjab Trading Inc.

Registered Owner

TMA689,498 for SOHNA

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. TMA689,498 for the trademark SOHNA (the Mark).

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

(1) Food products, whether dried, preserved, packaged or processed. Namely: Spices, chutney, pastes, beans, peas, lentils, split peas, sugar, wheat flour, corn flour, rice flour, pulse flour, flour blends, pickles, rice, canned fruit, oils, dried fruit and nuts, gum, tea, fruit juices, fruit pulp, milk products, ghee, butter, ice cream, frozen vegetables, ready to eat curries, canned curries, khakra, namkeens, peanut brittle, sweetmeats, fried pulses,

pappadams, frozen vegetables, frozen curries, chapattis, stuffed chappatis, cookies, and rusks. (the Goods)

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

THE PROCEEDING

[4] On January 29, 2020, at the request of Pitblado LLP (the Requesting Party), the Registrar of Trademarks issued a notice pursuant to section 45 of the Act to Punjab Trading Inc. (the Owner). The notice required the Owner to show whether the Mark was used in Canada in association with the goods 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 January 29, 2017 and January 29, 2020 (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 Mr. Rakesh Sharma, Managing Director for the Owner, sworn on August 30, 2021.

[7] Only the Owner submitted written representations and no oral hearing was held.

THE OWNER'S EVIDENCE

[8] Mr. Sharma explains that the Owner is based in Ontario and is a manufacturer and distributor of South Asian foods in Canada since 1975. The Owner operates under the name "ptifoods" and owns several trademarks, including SOHNA. Mr. Sharma states that the Owner has more than 1000 customers in Canada [paras 1 to 3] and that they are typically South Asian

specialty stores, traditional grocery stores, supermarkets and general discount stores [para 7]. Mr. Sharma states that the Owner has generated in excess of \$3 million in revenues with respect to the Goods sold in Canada during the Relevant Period [para 8].

[9] Mr. Sharma also states the Mark has been used with the Goods since early 1999, including the Relevant Period [para 5]. He adds that the Mark is displayed on the Goods packaging, purchase orders and invoices [paras 6 and 7].

[10] In support, Mr. Sharma attaches the following relevant exhibits to his affidavit:

- Exhibit A: photographs of product packages and containers bearing the Mark for the following products: spices, chutney, pastes, peas/lentils, beans, wheat flour, corn flour, rice flour, pulse flour, rice, oils, gum, tea, fruit juices, fruit pulp, ghee/butter, peanut brittle, and cookies. Mr. Sharma states that the photographs of sample packaging is representative of how the Mark was displayed on the Goods sold in Canada during the Relevant Period [para 6].
- Exhibit B: Copies of invoices from “ptifoods” to Canadian customers displaying the Mark in association with individual products, as well as purchase orders from Canadian customers to the Owner displaying the Mark in association with individual products, all from the Relevant Period for the following products: Spices, pastes, beans, split peas, sugar, wheat flour, rice flour, flour blend, rice, canned fruit, oils, gum, tea, fruit juices, fruit pulp, frozen vegetables, ready to eat curries, canned curries, namkeens, peanut brittle, fried pulses, frozen curries, chapattis, stuffed chappatis, cookies, and rusks.

ANALYSIS AND REASONS FOR DECISION

[11] While 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 all 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 most, but not all, of the goods listed in the registration.

[12] As Mr. Sharma states that the Owner has generated in excess of \$3 million in revenues with respect to the Goods sold in Canada during the Relevant Period, and given the photographs of products bearing the Mark (Exhibit A) and the invoices and purchase orders to and from Canadian customers provided from the Relevant Period (Exhibit B), 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 for the following goods: spices, chutney, pastes, beans, peas, lentils, split peas, sugar, wheat flour, corn flour, rice flour, pulse flour, flour blends, rice, canned fruit, oils, gum, tea, fruit juices, fruit pulp, ghee, butter, frozen vegetables, ready to eat curries, canned curries, namkeens, peanut brittle, fried pulses, frozen curries, chapattis, stuffed chappatis, cookies, and rusks.

[13] For the remaining seven goods; namely, pickles, dried fruits and nuts, milk products, ice cream, khakra, sweetmeats and pappadams; there is no mention of any of these in the Owner's affidavit nor written representations aside from repeating the Goods listed in the registration. In the absence of evidence showing use of the Mark for these seven products within the meaning of sections 4 and 45 of the Act, or special circumstances to justify the absence of use, these goods will be deleted from the registration.

DISPOSITION

[14] Pursuant to the authority delegated to me under section 63(3) of the Act, the registration will be amended to delete the following goods in compliance with the provisions of section 45 of the Act:

pickles, dried fruits and nuts, milk products, ice cream, khakra, sweetmeats and pappadams

[15] The statement of goods will now read as follows:

(1) Food products, whether dried, preserved, packaged or processed. Namely: spices, chutney, pastes, beans, peas, lentils, split peas, sugar, wheat flour, corn flour, rice flour, pulse flour, flour blends, rice, canned fruit, oils, gum, tea, fruit juices, fruit pulp, ghee, butter, frozen vegetables, ready to eat curries, canned curries, namkeens, peanut brittle, fried pulses, frozen vegetables, frozen curries, chapattis, stuffed chappatis, cookies, and rusks.

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

Bereskin & Parr LLP/S.E.N.C.R.L., s.r.l.

For the Registered Owner

Pitblado LLP

For the Requesting Party