



# Canadian Intellectual Property Office

## **THE REGISTRAR OF TRADEMARKS**

**Citation:** 2023 TMOB 010

**Date of Decision:** 2023-01-18

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

**Requesting Party:** Maple Lodge Farm

**Registered Owner:** Olymel s.e.c.

**Registration:** TMA268,004 for CHICKEN STIX

### **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. TMA268,004 for the trademark CHICKEN STIX (the Mark).

[2] The Mark is registered for use in association with “Breaded rectangular portions of chicken breast” (the Good).

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

## **PROCEEDING**

[4] On October 4, 2021, at the request of Maple Lodge Farm (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the Act to Olymel s.e.c. (the Owner).

[5] The notice required the Owner to show whether the Mark had been used in Canada in association with the Good 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 October 4, 2018 to October 4, 2021 (the Relevant Period).

[6] The relevant definition of “use” in this 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.

[7] In response to the Registrar’s notice, the Owner filed the affidavit of Marie-France Meilleur, sworn at Châteauguay, QC on January 11, 2022.

[8] Only the Requesting Party submitted written representations. No hearing was held.

## **THE OWNER’S EVIDENCE**

[9] Ms. Meilleur is the manager of the Owner’s marks and categories [para 1]. She explains that the Owner operates in the agri-food sector, specializing in meat processing, including breaded chicken breasts [para 5], and that it sells the Good in Canada to food service distributors, such as Gordon Food Service (GFS) and Sysco [para 7].

[10] Ms. Meilleur reported annual sales of the Good by the Owner for the years 2017 to 2021. The value of these sales varies between \$106,000 and \$155,000 per year and a volume of between 10,000 and 15,000 kilograms [para 8].

[11] Ms. Meilleur has provided a photo of a label bearing the Mark for a product identified as [TRANSLATION] “chicken cutlet, breaded, uncooked” [Exhibit 1]. She states that this label was affixed to the Good when sold in Canada by the Owner during the Relevant Period [para 9].

### **ANALYSIS AND REASONS FOR DECISION**

[12] In its written representations, the Requesting Party alleges that the affidavit does not show any commercial transaction or sale of the Product during the Relevant Period and does not provide any evidence in this regard.

[13] However, 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 and that the evidence does not have to be perfect. In fact, the 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]. The burden of proof is light; evidence must only supply facts from which a conclusion of use may follow as a logical inference [see *Diamant* at para 9].

[14] This evidence can be in the form of documentation like invoices, sales reports, but *can also be through clear sworn statements regarding volumes of sales, dollar value of sales*, (emphasis added) or equivalent factual particulars [see, for example, *1471706 Ontario Inc v Momo Design srl*, 2014 TMOB 79]. In this case, the affiant made clear statements regarding the value and volume of sales of the Good in Canada [para 8].

[15] In addition, an affiant’s sworn statements are to be accepted at face value, and statements in an affidavit must be accorded substantial credibility in a section 45 proceeding [*Oyen Wiggs Green & Mutala LLP v Atari Interactive, Inc*, 2018 TMOB 79]. Consequently, I accept the affidavit of Ms. Meilleur regarding the value and volume of sales as evidence of commercial sales transactions of the Product.

[16] Given all the evidence, that is, the sale of the Good in Canada during the Relevant Period [para 8] and the presence of the Mark on the labels used on the packaging [para 8 and Exhibit 1], 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**

[17] 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.

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Martin Béliveau  
Chairperson  
Trademarks Opposition Board  
Canadian Intellectual Property Office

# Appearances and Agents of Record

**HEARING DATE:** No hearing held

## **AGENTS OF RECORD**

**For the Requesting Party:** Ridout & Maybee LLP

**For the Registered Owner:** Robic