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Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2023 TMOB 062

Date of Decision: 2023-03-31

IN THE MATTER OF A SECTION 45 PROCEEDING

Requesting Party: Mehrabi Law Office

Current Owner: H & R Import-Export also trading as Pardis Food

Registration: TMA807,809 for Pasteurized & design

INTRODUCTION

[1] This decision involves a summary expungement proceeding under section 45 of the *Trademarks Act*, RSC 1985, c T-13 (the Act) with respect to registration No. 807,809 for the trademark Pasteurized & design (the Mark), which is reproduced below:



[2] The Mark is registered for use in association with the following goods (the Goods):

- (1) Beans and peas, namely, red lentils, green lentils.
- (2) Spices, namely, shallots.
- (3) Jams and preserves, namely, quince preserve, rose petal jam, sour cherry preserve, carrot preserve, fig preserve, cucumbers pickled, garlic pickled, shallots pickled, mixed vegetables pickled, egg plants pickled.
- (4) Syrups, namely, sour cherry syrup.
- (5) Pastes and molasses, namely, pomegranate paste.
- (6) Dried vegetables and plants, namely, sabzi ghormah (dehydrated dried vegetables), sabzi polo (dehydrated dried vegetables), subzi kookoo (dehydrated dried vegetables), sabzi aash (dehydrated dried vegetables).
- (7) Rose water, willow water, shahtareh water.
- (8) Fruit juices, namely, sour grape juice, lime juice.
- (9) Pure honey, pure honey with comb.
- (10) Sugar cubes.

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

PROCEEDING

[4] At the request of Mehrabi Law Office (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the Act on November 12, 2021, to H & R Import-Export, also trading as Pardis Food (the Owner), the current owner of the Mark.

[5] The notice required the Owner to show whether the Mark was used in Canada in association with each of the Goods at any time within the three-year period immediately preceding the date of the notice and, if not, the date when it 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 November 12, 2018 to November 12, 2021.

[6] The relevant definition of “use” in the present case is set out in section 4 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] Where the owner has not shown “use”, the registration is liable to be expunged or amended, unless there are special circumstances that excuse the absence of use.

[8] In response to the Registrar’s notice, the Owner furnished the affidavit of Ali Ebadian, sworn on June 10, 2022 together with Exhibits A to F-4.

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

EVIDENCE SUMMARY

[10] In his affidavit, Mr. Ebadian identifies himself as Corporate Treasurer of the Owner, an Ontario distributor and wholesaler of a variety of imported food [paras 1 to 2].

[11] Mr. Ebadian states that the Owner orders its products from producers and suppliers located in the Middle East, India and Africa. He attests that these producers and suppliers are in charge of preparing and packaging the products bearing the Mark

under the Owner's specifications, control and direction. He also states that the products are shipped to Canada where they are sold through the Owner's warehouse located in Ontario [paras 6 to 8].

[12] Mr. Ebadian generally states that the Owner used the Mark in association with the Goods in Canada during the relevant period [para 5]. In support of this statement, Mr. Ebadian provides images of labels [Exhibits E-1 to E-20] and photographs of some of the Goods [Exhibits F-1 to F-4], all displaying the Mark. Mr. Ebadian states that the images and photographs are representative of the labels used and products sold by the Owner during the relevant period [paras 10 and 11]. He describes the labels and photographs shown in these exhibits as corresponding to:

- (1) Beans and peas, namely, red lentils, green lentils.
- (2) Spices, namely, shallots.
- (3) Jams and preserves, namely, quince preserve, [...] sour cherry preserve, carrot preserve, [...] cucumbers pickled, garlic pickled, [...] mixed vegetables pickled, egg plants pickled.
- (4) Syrups, namely, sour cherry syrup.
- (5) Pastes and molasses, namely, pomegranate paste.
- (6) Dried vegetables and plants, namely, sabzi ghormah (dehydrated dried vegetables), sabzi polo (dehydrated dried vegetables), subzi kookoo (dehydrated dried vegetables), sabzi aash (dehydrated dried vegetables).
- (7) Rose water, willow water, shahtareh water.
- (10) Sugar cubes.

[13] With respect to the sales in Canada, Mr. Ebadian explains that due to the significant number of different products and brand names, the Owner utilizes inventory codes to identify the brand names. In particular, he explains that the Owner's goods are identified in the invoices with the codes YEK and/or 1&1 (the Codes). In support, he provides numerous invoices issued by the Owner to addresses in Canada [Exhibits D-1 to D-98]. Except for Exhibits D-82, D-85, D-94 and D-96, they are all dated during the

relevant period. Mr. Ebadian attests that the products identified with the Codes on the invoices refer to the sale of: “mint water”, “rose water”, “willow water”, “pomegranate paste”, “sour grape juice”, “lime juice”, “quince jam”, “quince preserve”, “quince syrup”, “cherry jam”, “cherry preserve”, “cherry syrup”, “carrot preserve”, “sabzi ghormah (dehydrated dried vegetables)”, “honey”, “cucumber pickled”, “garlic pickled”, “mixed vegetable pickled”, “fruit juice”, “dried vegetables”, “mixed vegetables”, and “egg plant pickled” [para 9].

REASONS FOR DECISION

[14] It is well established that the evidentiary threshold that the registered owner must meet in a section 45 proceeding is quite low [*Performance Apparel Corp v Uvex Toko Canada Ltd*, 2004 FC 448 at para 38] and that reasonable inferences can be made from the evidence provided [see *Eclipse International Fashions Canada Inc v Shapiro Cohen*, 2005 FCA 64]. Nevertheless, sufficient facts must still be provided to permit the Registrar to arrive at a conclusion of use of the trademark in association with *each* of the goods specified in the registration during the relevant period [*John Labatt Ltd v Rainier Brewing Co* (1984), 80 CPR (2d) 228 (FCA); and *Sharp Kabushiki Kaisha v 88766 Canada Inc* (1997), 72 CPR (3d) 195 (FCTD)].

[15] In the present case, there is clear evidence that some of the Goods bore the Mark and were sold in Canada during the relevant period. For the Goods listed below along with their respective exhibits, Mr. Ebadian provides representative images of labels and/or photographs of the products bearing the Mark and he clearly correlates them with the products listed in the invoices. Given that these Goods appear more than once in the invoices, for brevity purposes, I refer only to one representative invoice below.

Goods (3): Jams and preserves, namely, quince preserves [Exhibits E-3 and D-53], sour cherry preserve [Exhibits E-4 and D-10], carrot preserve [Exhibits E-5 and D-36], cucumbers pickled [Exhibits E-6, F-1 and D-29], garlic pickled [Exhibits E-7, F-2 and D-71], mixed vegetables pickled [Exhibits E-8 and D-97], and egg plants pickled [Exhibits E-9 and D-33];

Goods (4): Syrups, namely, sour cherry syrup [Exhibits E-20 and D-80];

Goods (5): Pastes and molasses, namely, pomegranate paste [Exhibits E-10, F-4 and D-58];

Goods (6): Dried vegetables and plants, namely, sabzi ghormah [Exhibits E-11 and D-87];

Goods (7): rose water [Exhibits E-15 and D-41] and willow water [Exhibits E-16 and D-86].

[16] With respect to “sugar cubes” [Goods (10)], while Mr. Ebadian does not correlate this product with any of the invoices, I note that among all the “sugar cubes” listed in the invoices, some are identified as “Pardis sugar cubes”. Absent any written or oral representations from the Requesting Party to convince me otherwise and based on the evidence as a whole, I find it reasonable to infer that the sugar cubes shown in one of the images, which clearly bears the Mark [Exhibit E-18], are those that are identified by an abbreviation of the Owner’s trading name (“Pardis”) in the invoices [Exhibits D-2, D-3, D-5, D-39, D-43, D-50, and D-58].

[17] In view of all the above, I am satisfied that the Owner has demonstrated use of the Mark in association with the following goods:

(3) Jams and preserves, namely, quince preserve, [...] sour cherry preserve, carrot preserve, [...] cucumbers pickled, garlic pickled, [...] mixed vegetables pickled, egg plants pickled.

(4) Syrups, namely, sour cherry syrup.

(5) Pastes and molasses, namely, pomegranate paste.

(6) Dried vegetables and plants, namely, sabzi ghormah (dehydrated dried vegetables) [...].

(7) Rose water, willow water [...].

(10) Sugar cubes.

[18] In contrast, the evidence does not sufficiently demonstrate use of the Mark in association with *each* of the remaining Goods. In this respect, per *John Labatt* and

Sharp, supra, having distinguished its various goods in the registration, absent evidence to the contrary, the Owner was required to produce separate evidence for *each* of them.

[19] With respect to the remaining goods in Goods (6), although they may be identified on the invoices, their descriptions are either not specific enough to clearly correlate to a specific Good, or they are not identified by the Owner's Codes. In this respect, I note that while "sabzi ghormah" is identified as "YEK GHORME SABSI" [Exhibits D-19, D-78, D-81, and D-87], other "dried vegetables and plants" are simply identified as "YEK dried vegetables" [Exhibits D-81, D-83, D-89 and D-91]. In these circumstances, I am not able to clearly determine that "sabzi polo", "subzi kookoo", and "sabzi aash" were sold. Further, while "sabzi polo", "subzi kookoo" and "sabzi aash" are listed in the invoices [Exhibits D-9, D-94 and D-2, respectively], none of them are identified with the Owner's Codes or in a way that such an inference is possible. Thus, for the Owner to maintain its registration for these three "dried vegetables and plants", it had to show transfers otherwise than by reference simply to "YEK dried vegetables". Furthermore, I note that the label described as "sabzi polo" [Exhibit E-12] actually shows the same "sabzi ghormah" image [Exhibit E-11].

[20] In the absence of further particulars from Mr. Ebadian with respect to the three "dried vegetables and plants" specified above, I am not prepared to accept that "sabzi polo", "subzi kookoo" and "sabzi aash" were sold in Canada during the relevant period.

[21] With respect to Goods (8) and (9), although Mr. Ebadian provides invoices showing sales of these Goods in Canada during the relevant period, he does not provide any representative images and/or photographs displaying the Mark on them and demonstrating the required notice of association at the time of transfer.

[22] With respect to the remaining Goods for which the Owner provides evidence of the display of the Mark, the invoices either do not identify these Goods or do not identify them with the Owner's Code. For example, neither "shahtareh water" [Goods 7] nor "shallots" [Goods 3] are listed in the invoices and "shallots pickled" [Goods 3] is not identified with the Owner's Code [Exhibit D-98]. As for Goods (1), while some invoices

include “Yek cooked lentil” [Exhibits D-74, D-80, D-83], the images in the evidence clearly show uncooked lentils [Exhibit E-1 and E-2]. In any event, the invoices’ descriptions are not specific enough to clearly determine that red and green lentils were sold.

[23] Further, Mr. Ebadian neither provides other documents nor clear sworn statements regarding volumes of sales, dollar value of sales, or equivalent factual particulars as evidence of transfer [see *1471706 Ontario Inc v Momo Design srl*, 2014 TMOB 79].

[24] Finally, I note that the evidence is completely silent with respect to “rose petal jam” and “fig preserve” [Goods 3].

[25] In view of all the above, I am not satisfied that the Owner has demonstrated use of the Mark in association with the Goods set out below within the meaning of sections 4 and 45 of the Act.

Goods (1) Beans and peas, namely, red lentils, green lentils.;

Goods (2) Spices, namely, shallots;

Goods (3) [...] rose petal jam, [...], fig preserve, [...] shallots pickled [...];

Goods (6) [...], sabzi polo (dehydrated dried vegetables), subzi kookoo (dehydrated dried vegetables), and sabzi aash (dehydrated dried vegetables);

Goods (7) [...] shahtareh water;

Goods (8) Fruit juices, namely, sour grape juice, lime juice; and

Goods (9) Pure honey, pure honey with comb.

[26] As the Owner has not provided any evidence of special circumstances excusing the absence of use of the Mark with respect to the Goods specified above, these Goods will be deleted from the registration.

DISPOSITION

[27] 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 amended to delete:

- (1) Beans and peas, namely, red lentils, green lentils.
- (2) Spices, namely, shallots.
- (3) [Jams and preserves, namely...], rose petal jam, [...], fig preserve, [...], shallots pickled [...];
- (6) [Dried vegetables and plants, namely...], sabzi polo (dehydrated dried vegetables), subzi kookoo (dehydrated dried vegetables), sabzi aash (dehydrated dried vegetables).
- (7) [...], shahtareh water.
- (8) Fruit juices, namely, sour grape juice, lime juice.
- (9) Pure honey, pure honey with comb.

[28] Consequently, the amended statement of goods will read as follows:

- (3) Jams and preserves, namely, quince preserve, sour cherry preserve, carrot preserve, cucumbers pickled, garlic pickled, mixed vegetables pickled, egg plants pickled.
- (4) Syrups, namely, sour cherry syrup.
- (5) Pastes and molasses, namely, pomegranate paste.
- (6) Dried vegetables and plants, namely, sabzi ghormah (dehydrated dried vegetables).
- (7) Rose water, willow water.
- (10) Sugar cubes.

Maria Ledezma
Hearing Officer
Trademarks Opposition Board
Canadian Intellectual Property Office

Appearances and Agents of Record

No hearing held

AGENTS OF RECORD

For the Requesting Party: Esmaeil Mehrabi (Mehrabi Law Office)

For the Registered Owner: Darryl Joseph Bilodeau (DB Business
Law/TRADEMARK Central)