



# Canadian Intellectual Property Office

## **THE REGISTRAR OF TRADEMARKS**

**Citation:** 2023 TMOB 154

**Date of Decision:** 2023-08-31

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

**Requesting Party:** Borden Ladner Gervais LLP

**Registered Owner:** Pure Hothouse Foods Inc.

**Registration:** TMA898,016 for BUMBLES

### **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. TMA898,016 for the trademark BUMBLES (the Mark).

[2] The Mark is registered for use in association with “packaged tomatoes, namely tomato packages containing grape tomatoes” (the Goods).

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

## **THE PROCEEDING**

[4] At the request of Borden Ladner Gervais LLP (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the Act on August 1, 2022 to the registered owner of the Mark, Pure Hothouse Foods Inc. (the Owner).

[5] The notice required the Owner to show whether the Mark was used in Canada in association with each of the goods listed in the registration 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 August 1, 2019 to August 1, 2022 (the Relevant Period).

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

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 furnished the affidavit of Chris Veillon, affirmed on October 31, 2022, with corresponding Exhibits A to D.

[8] No written representations were filed, and no hearing was requested.

## **THE EVIDENCE**

[9] Mr. Veillon is the Chief Marketing Officer of the Owner. He states that since as early as March 4, 2015, the Mark has been displayed on the packaging of the Goods, which have been sold in Canada continuously since that time, including throughout the Relevant Period [para 6]. Mr. Veillon states that the Goods are delivered, and have been delivered throughout the Relevant Period, to clients in packaging displaying the Mark [para 11]. Exhibit A consists of photographs of packaging for the Goods displaying

the Mark which are representative of the packaging used throughout the Relevant Period [para 6].

[10] Mr. Veillon explains that in the normal course of trade, the Owner provides its clients with sell-sheets and product catalogues that provide information relating to the Goods; clients refer to this material in placing orders. Exhibit B consists of a sampling of product catalogues and sell-sheets displaying the Mark that are representative of the sell-sheets and product catalogues used throughout the Relevant Period [para 7].

[11] Clients also have access to product information for the Goods on the Owner's website located at *www.pure-flavor.com*. Exhibit C consists of screenshots of archived webpages depicting the Mark on the Owner's website from October 20, 2020 to June 22, 2020 that are representative of the Owner's website as it appeared throughout the Relevant Period [para 8]. Mr. Veillon states that throughout the Relevant Period, he and his staff frequently directed clients to the product catalogues, sell-sheets and the Owner's website as promotional tools for the Goods and that customers (retailer, food services, end consumer) use these tools to research the Goods prior to, during, and post purchase.

[12] Mr. Veillon states that in the normal course of trade, the Owner provides its clients with an invoice following the ordering of products, on the date on which the products are shipped. When the Goods are ordered, a description such as "Specialty Tomato Bumbles 12x1 pt #1 MEX" or "Specialty Tomato Top Seal 15x1ptBumble #1 MEX A" is included on the invoice, along with the quantity, price, and total amount [para 10]. Exhibit D consists of a sampling of ten invoices dated between October 29, 2020 and October 28, 2021 wherein the Goods were purchased that are representative of invoices issued throughout the Relevant Period [para 10].

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

[13] In reviewing the Veillon affidavit, I note that the exhibited product packaging for the Goods (at Exhibit A) displays the Mark as registered. Further, the exhibited invoices (at Exhibit D), all fall within the Relevant Period, include reference to "Bumble" in the

product descriptions as detailed above, and feature (partially redacted) Canadian addresses in the “Sold To” and “Ship To” subject fields.

[14] In view of the exhibited packaging for the Goods and reference to the Goods in the invoices issued during the Relevant Period, I am satisfied that the Owner has demonstrated use of the Mark in association with the Goods within the meaning of sections 4 and 45 of the Act.

**DISPOSITION**

[15] 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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Jennifer Galeano  
Member  
Trademarks Opposition Board  
Canadian Intellectual Property Office

# Appearances and Agents of Record

**HEARING DATE:** No hearing held

## **AGENTS OF RECORD**

**For the Requesting Party:** Borden Ladner Gervais LLP

**For the Registered Owner:** MBM Intellectual Property Law LLP