



# Canadian Intellectual Property Office

## THE REGISTRAR OF TRADEMARKS

**Citation:** 2024 TMOB 027

**Date of decision:** 2024-02-16

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

## IN THE MATTER OF A SECTION 45 PROCEEDING

**Requesting Party:** BCF S.E.N.C.R.L./BCF LLP

**Registered Owner:** Château Mont Sainte-Anne Inc.

**Registration:** TMA879,330 for BISTRO NORDIK

### INTRODUCTION

[1] This decision relates to a summary expungement proceeding commenced under section 45 of the *Trademarks Act*, RSC 1985, c T-13 (the Act) in respect of registration No. TMA879,330 for the trademark BISTRO NORDIK (the Mark). The Mark is reproduced below:

**BISTRØ NORDIK**  
NOUVELLE CUISINE NORDIQUE

[2] The Mark is registered in association with “restaurant services.”

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

### **THE PROCEEDING**

[4] At the request of BCF S.E.N.C.R.L./BCF LLP (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the Act on March 28, 2023, to Château Mont Sainte-Anne Inc. (the Owner), the registered owner of the Mark.

[5] The notice required the Owner to show whether the Trademark was used in Canada in association with each of the goods and services 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 Trademark 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 from March 28, 2020 to March 28, 2023.

[6] The relevant definition of “use” is set out in section 4 of the Act as follows:

4(2) A trademark is deemed to be used in association with services if it is used or displayed in the performance or advertising of those services.

[7] In response to the Registrar’s notice, the Owner filed the sworn statement of Henri Roy, the Owner’s president and owner, sworn on February 13, 2023, to which was attached exhibits HR-1 to HR-4.

[8] Neither party submitted written representations and no hearing was held

### **SUMMARY OF OWNER'S EVIDENCE**

[9] While I have reviewed all the evidence, this summary focuses specifically on the parts that are relevant to my conclusions.

[10] In his statement, Mr. Roy states that the Mark has been used by the Owner “currently” for more than ten years. More specifically, he states that for more than three years, the Mark has been shown on the main display at the entrance of the Château Mont Sainte-Anne Hotel Complex on du Beau-Pré Blvd, Quebec. Mr. Roy

explains that this complex belongs to the “DELTA HOTEL MARRIOTT” hotel chain (the Chain). He also states that the Mark appears at the entrance to the restaurant and on its menus [paras 3 to 5].

[11] In support of his assertions of use of the Mark in association with restaurant services, Mr. Roy attached to his statement as Exhibit HR-1 a photograph showing a sign (the Sign) located near the Chain’s hotel building. The upper part of the Sign identifies the Chain followed by the words “Mont Sainte-Anne – Resort & Centre des congrès.” The lower part of the Sign shows a variation of the Mark without the words “new Nordic cuisine.” This variation is preceded by the word “Spa” and an ampersand.

[12] As Exhibit HR-2, Mr. Roy attached four photographs showing two menus bearing the Mark as recorded on their cover pages. The first menu includes a choice of starters, “main courses,” and desserts, while the second menu includes a breakfast selection. Mr. Roy also included four photographs, corresponding to a “happy hour” menu and a “Desserts - Nordik Coffees and Digestives” menu (collectively, the Happy Hour and Coffees menus). These menus bear the same variation of the Mark described above on their cover pages.

[13] Finally, Mr. Roy attached as Exhibit HR-4 an eight-page article, published in *The Globe and Mail* on October 26, 2022, entitled “Family winter escape plan: Quebec City & Mont-Sainte-Anne.” Under the title “Where to eat,” I read:

Le Bistro Nordik is located in the Delta and is great if you are staying in the hotel and don’t want to bundle up after a long day of skiing.

#### **PRELIMINARY REMARKS REGARDING THE VARIATION OF THE MARK**

[14] With respect to the presentation of the Mark, the photographs of the Sign and Happy Hour and Coffees menus show the Mark without the words “new Nordic cuisine.” In my view, such an omission does not cause the Mark to lose its identity [*Canada (Registrar of Trade-marks) v Cie Internationale pour l’informatique CII Honeywell Bull SA*, 1985 CanLII 5537, 4 CPR (3d) 523 (FCA); *Pizzaiolo Restaurants Inc v Les Restaurants La Pizzaiolle Inc*, 2016 FCA 265]. In this regard, I am of the view that the

dominant elements of the Mark as registered are the words “BISTRO,” whose letter “O” is written with a slash, and “NORDIK.” These words are written with a larger font size and are read first. In addition, I find that the words “new Nordic cuisine” can be considered descriptive when they are associated, as in this case, with restaurant services.

[15] Since the dominant elements of the Mark as registered have been preserved, I consider that the Sign and Happy Hour and Coffees menus bear an acceptable variation of the Mark [*Promafil Canada Ltd v Munsingwear Inc*, 1992 CanLII 12831, 44 CPR (3d) 59 (FCA)].

### **ANALYSIS AND REASONS**

[16] It is well established that there is no particular type of evidence that must be provided in a section 45 proceeding and the evidence need not be perfect [see *Lewis Thomson & Son Ltd v Rogers, Bereskin & Parr* (1988), 21 CPR (3d) 483 (FCTD)]. A registered owner need only establish a *prima facie* case of use within the meaning of sections 4 and 45 of the Act and 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 Elinor Inc. v 88766 Canada Inc.*, 2010 FC 1184 at para 9].

[17] In this case, Mr. Roy’s assertions that the Mark has been displayed on du Beau-Pré Blvd and on the restaurant’s various menus for more than three years are corroborated by photographs of the Sign and the abovementioned menus.

[18] In view of the photograph of the Sign and its contents, I find that it has informed the Owners’ clients and people who pass by on the road that the restaurant bearing the Mark was inside the Chain’s hotel.

[19] With respect to the various menus in evidence, I find it reasonable to conclude that they were placed inside the restaurant. More important, I find it reasonable to conclude that Canadians, hotel guests or simple visitors could choose meals by reading one of these menus.

[20] Thus, the evidence as a whole leads me to conclude that the Owner used the Mark in the advertisement of its services and that it was, at a minimum, ready and able to perform them in accordance with the Act [see *Wenward (Canada) Ltd v Dynaturf Co* (1976), 28 CPR (2d) 20 (TMOB)].

[21] Furthermore, I accept the third-party document (*The Globe and Mail* article) as it supports the statements of use of the Mark in Canada during the relevant period, thereby supporting my conclusion [see *Shift Law v Jefferies Group, Inc*, 2014 TMOB 277 at para 18].

[22] For all these reasons, I am satisfied that the Owner has established use of the Mark in association with its restaurant services within the meaning of sections 4(2) and 45 of the Act.

### **DECISION**

[23] 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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Maria Ledezma  
Hearing Officer  
Trademarks Opposition Board  
Canadian Intellectual Property Office

Certified translation  
Daniel Lépine

# Appearances and Agents of Record

**DATE OF HEARING:** No hearing held

## **AGENTS OF RECORD**

**For the Requesting Party:** BCF S.E.N.C.R.L./BCF LLP

**For the Registered Owner:** Serge Fournier (FCA Légal s.e.n.c.r.l.)