



# Canadian Intellectual Property Office

## THE REGISTRAR OF TRADEMARKS

**Citation:** 2025 TMOB 184

**Date of Decision:** 2025-09-11

## IN THE MATTER OF A SECTION 45 PROCEEDING

**Requesting Party:** LJT LAWYERS, LLP / LJT AVOCATS, S.E.N.C.R.L.

**Registered Owner:** Michael Kantaros

**Registration:** TMA960,363 for BAD BOY'S BURGERS

## 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. TMA960,363 for the trademark BAD BOY'S BURGERS (the Mark).

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

### Goods

(1) Prepared food products, namely, burgers, steaks, sandwiches, wraps, hot dogs, pizza, french fries, poutine, onion rings, chicken, pork, fish, souvlaki, gravy, and prepared salads.

(2) Non-alcoholic beverages, namely, soft drinks, milkshakes, fruit juices, coffee, and tea.

- (3) Alcoholic beverages, namely, beer, vodka, whiskey, and wine.
- (4) Ice cream.
- (5) Printed and electronic publications, namely, menus, brochures, pamphlets, flyers, posters, signs, calendars, postcards, and directories.
- (6) Take-out food containers and food storage containers.
- (7) Promotional items, namely, beverage glassware, plush toys, novelty buttons, greeting cards, pens, sport water bottles, coffee mugs, and fridge magnets.

#### Services

- (1) Restaurant services; Food concession stands; Catering services; Delivery of food by restaurants.
- (2) Bar services.
- (3) Operating a website providing information in the fields of restaurants and food concession stands.
- (4) Providing technical assistance in the establishment and operation of restaurant and food concession stand franchises.

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

#### **PROCEEDING**

[4] At the request of LJT LAWYERS, LLP / LJT AVOCATS, S.E.N.C.R.L. (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the Act on September 17, 2024, to Michael Kantaros (the Owner), the registered 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 and Services 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 from September 17, 2021 to September 17, 2024.

[6] The relevant definitions of “use” in the present case are 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.

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] Where the Owner does not show “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 his own affidavit, sworn on February 4, 2025, together with Exhibits 1 to 4.

[9] Neither party filed written representations or requested a hearing.

#### **EVIDENCE AND REASONS FOR DECISION**

[10] In his affidavit, the Owner states that since 2014 he has operated “on-site catering/concession services” at corporate, private and public events through his company, Big Boy’s Burgers Inc. (Big Boy’s). With Big Boy’s, he also operates two websites, namely *badboysburgers.com* and *badboysburgers.ca* [paras 1-3].

[11] The Owner also states that Big Boy’s licenses the use of the Mark in Canada to another of his companies, Big Boys Burgers Inc., which operates

a restaurant chain in Ontario. The Owner confirms that he exerts direct or indirect control over the character or quality of the goods and services offered in association with the Mark [para 4].

[12] According to the Owner, the registered goods are generally sold at events where the on-site catering/concession services are provided in association with the Mark. In addition, he states that the Mark “appeared on apparel for the goods sold during the relevant period”. He also states that the Mark is displayed in the Ontario restaurant [paras 4-5].

[13] In support to his statements of use of the Mark, the Owner provides:

- Exhibit 1 consists of a copy of the first page of the license agreement between the Owner and Big Boy’s. The agreement’s territory covers Canada.
- Exhibit 2 consists of three images of a t-shirt, a hoodie and a cap bearing the Mark.
- Exhibit 3 consists of a representative copy of a menu. The Mark is prominently displayed at the top of the first page. The menu lists several food items, namely burgers, steaks, sandwiches, wraps, hot dogs, French fries, poutine, onion rings, chicken, pork, souvlaki, gravy, and prepared salads. The menu also lists bottled water, milkshakes and an item identified as “drink”. All the food and drink items have prices and some of the food items can be purchased as part of a combo that includes fries and a small drink. The Owner attests that menus were provided to prospective customers during the relevant period [paras 7-8].
- Exhibit 4 consists of a copy of a three-page document issued by Netfirms and entitled “billing information” (the Document). The Owner explains that Netfirms is a web hosting company and states that the Document shows invoices for hosting the websites during the relevant

period. The Document covers several periods between May 10, 2021 and January 10, 2024.

[14] It is well established that the evidence in a section 45 proceeding need not be perfect. A registered owner need only establish a *prima facie* case of use within the meaning of sections 4 and 45 of the Act. The burden of proof to be met 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].

[15] In the present case, the evidence allows me to infer that the Owner used the Mark in association with some but not all the Goods and Services. I will analyze them in reverse order.

### ***The Services***

[16] The Owner's business includes the provision of food at events. In view of the territory covered by the license agreement, I accept that on-site catering services were to be performed in Canada. Further, in view of the Owner's business, I accept that food concession stands were installed in order to provide on-site catering services in Canada. As the Owner states that menus bearing the Mark were given to prospective customers during the relevant period, I accept that customers accessed the menu at on-site events in Canada during such period.

[17] The Owner's business also includes the provision of food at the restaurant in Ontario. Although not expressly stated, I find it reasonable to conclude that the menu was also consulted by customers in that restaurant during the relevant period. Bearing in mind that in certain cases the statements of services may contain "overlapping and redundant terms in the sense that the performance of one service would necessarily imply the performance of another" [*Gowling Lafleur Henderson LLP v Key Publishers*

*Co*, 2010 TMOB 7 at para 15; *Provent Holdings Ltd v Star Island Entertainment, LLC*, 2014 TMOB 178 at para 22; and *GMAX World Realty Inc v RE/MAX, LLC*, 2015 TMOB 148 at para 69], I accept that the provision of restaurant services necessarily encompasses or at least overlaps with the delivery of food by restaurants.

[18] In addition, I find it reasonable to interpret the Owner's assertion that the Mark "appeared on apparel for the goods sold during the relevant period" as meaning that the licensees' employees wore the clothing and accessories in evidence to promote Services (1) in association with the Mark at the Ontario restaurant and at on-site events in Canada during the relevant period.

[19] I am therefore satisfied that the Owner has demonstrated that he advertised and, at a minimum, was willing and able to perform the Services (1) in association with the Mark in Canada during the relevant period [*Wenward (Canada) Ltd v Dynaturf Co* (1976), 28 CPR (2d) 20 (TMOB)].

[20] In contrast, I find the evidence insufficient with respect to Services (2), (3) and (4).

[21] First, the evidence is silent with respect to Services (2) and (4). Nothing in the evidence allows me to infer that the Owner advertised or provided either bar services or technical assistance in the establishment and operation of restaurant and food concession stand franchises.

[22] As for Services (3), in the absence of any evidence of the content of the Owner's websites, such as screen shots, I am unable to conclude that the Owner's websites provided information in the fields of restaurants and food concession stands. In this regard, I note that although the Owner includes the URL links to his websites, section 45(2) of the Act is clear that

the Registrar “shall not receive any evidence other than the affidavit or statutory declaration”. As a result, I cannot consult the URL links included in the evidence [see *Relativity Media LLC v Dandrade Designs Inc*, 2016 TMOB 109; *Smart & Biggar LLP v MMG Management Consulting Inc*, 2021 TMOB 190; and *BCF SENCRL/BCF LLP v Kazar Group Spółka z ograniczona odpowiedzialnoscia*, 2024 TMOB 51].

[23] Moreover, I note that the Document is *prima facie* hearsay. While the summary nature of section 45 proceedings means that concerns regarding hearsay can go to weight rather than admissibility of the evidence, even if I were to give some weight to the Document, it provides no information as to the websites’ content.

### ***The Goods***

[24] It has been held that, in a restaurant context, display of a trademark on signage such as menus is generally sufficient to provide the requisite notice of association between the Mark and the food and beverage ordered at the restaurant [see *Oyen Wiggs Green & Mutala v Aimers* (1998), 86 CPR (3d) 89 (TMOB); and *Goubuli Group Co., Ltd. v Qiang Zhang*, 2017 TMOB 123].

[25] In this case, the Mark was displayed on the menus from which customers would order their food and beverages and on the employees’ clothing serving at the Ontario restaurant and at on-site events during the relevant period. As such, I am satisfied that the customers perceived the Mark as identifying the food and beverage served by the Owner’s licensees.

[26] Further, bearing in mind that the evidence in a section 45 proceeding need not be perfect, as a whole, I find that the Owner has provided sufficient particulars about the context of sales to allow me to conclude that transfers

in the normal course of trade actually occurred in Canada during the relevant period with respect to the following items in Goods (1) and (2).

(1) Prepared food products, namely, burgers, steaks, sandwiches, wraps, hot dogs, [...], french fries, poutine, onion rings, chicken, pork, [...], souvlaki, gravy, and prepared salads.

(2) Non-alcoholic beverages, namely, soft drinks, milkshakes, [...].

[27] In particular, with respect to the beverages other than milkshakes listed in the menu, I find it reasonable to conclude that “drinks” correlate with “soft-drinks” in Goods (2).

[28] As for the remaining Goods (1) and (2), namely “pizza” and “fish” in Goods (1) and “fruit juices, coffee, and tea” in Goods (2), as well as Goods (3), (4) and (7), the evidence is completely silent.

[29] With respect to “menus” in Goods (5), I find it reasonable to interpret the Owner’s statement that menus were provided to prospective customers as meaning that they were provided for customers to select among the items listed therein. In my view, this statement does not mean that “menus” were provided as objects of trade in and of themselves, during the relevant period [see e.g. *Canada Goose Inc v James*, 2016 TMOB 145 at para 31]. As for the remaining Goods (5), similar to Goods (3), (4) and (7) the evidence is silent with respect to display of the Mark and transfers in Canada during the relevant period.

[30] As for Goods (6), absent representations from the Requesting Party and in view of my finding with respect to the Goods (1) and (2) listed above at paragraph 26, I accept that take-out food containers and food storage containers were provided to customers attending on-site events.

[31] In view of all the above, I am not satisfied that the Owner has demonstrated use of the Mark in association with Services (2), (3) and (4)



as set out in sections 4(2) and 45 of the Act. Similarly, I am not satisfied that the Owner has demonstrated use of the Mark in association with the Goods listed below pursuant to sections 4(1) and 45 of the Act.

(1) [...], pizza, [...], fish, [...].

(2) [...], fruit juices, coffee, and tea.

(3) Alcoholic beverages, namely, beer, vodka, whiskey, and wine.

(4) Ice cream.

(5) Printed and electronic publications, namely, menus, brochures, pamphlets, flyers, posters, signs, calendars, postcards, and directories.

(7) Promotional items, namely, beverage glassware, plush toys, novelty buttons, greeting cards, pens, sport water bottles, coffee mugs, and fridge magnets.

[32] As the Owner has not provided any evidence of special circumstances excusing the absence of use of the Mark in association with these Goods and Services, the registration will be amended accordingly.

### **DISPOSITION**

[33] In view of all the foregoing, 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 the following Goods and Services:

Goods

(1) [...], pizza, [...], fish, [...].

(2) [...], fruit juices, coffee, and tea.

(3) Alcoholic beverages, namely, beer, vodka, whiskey, and wine.

(4) Ice cream.

(5) Printed and electronic publications, namely, menus, brochures, pamphlets, flyers, posters, signs, calendars, postcards, and directories.

(7) Promotional items, namely, beverage glassware, plush toys, novelty buttons, greeting cards, pens, sport water bottles, coffee mugs, and fridge magnets.

#### Services

(2) Bar services.

(3) Operating a website providing information in the fields of restaurants and food concession stands.

(4) Providing technical assistance in the establishment and operation of restaurant and food concession stand franchises.

[34] The amended statement of Goods and Services will read as follows:

#### Goods

(1) Prepared food products, namely, burgers, steaks, sandwiches, wraps, hot dogs, french fries, poutine, onion rings, chicken, pork, souvlaki, gravy, and prepared salads.

(2) Non-alcoholic beverages, namely, soft drinks, milkshakes.

(6) Take-out food containers and food storage containers.

#### Services

(1) Restaurant services; Food concession stands; Catering services; Delivery of food by restaurants.

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:** LJT LAWYERS, LLP / LJT AVOCATS, S.E.N.C.R.L.

**For the Registered Owner:** No agent appointed