



# Canadian Intellectual Property Office

## **THE REGISTRAR OF TRADEMARKS**

**Citation:** 2025 TMOB 268

**Date of Decision:** 2025-12-23

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

**Requesting Party:** NewAgco Inc.

**Registered Owner:** BASF SE

**Registration:** TMA260613 for LIBREL

#### **INTRODUCTION**

[1] At the request of NewAgco Inc. (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the *Trademarks Act*, RSC 1985, c T-13 (the Act) on August 9, 2024, to BASF SE (the Owner), the registered owner of registration No. TMA260613 for the trademark LIBREL (the Mark).

[2] The Mark is registered in association with the following goods:

(1) Chemical products for use in agriculture, horticulture and forestry, fertilisers, manures (natural and artificial), and plant nutrients.

[3] The notice required the Owner to show whether the Mark was used in Canada, as defined in section 4(1) of the Act, in association with the goods 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 it

was last in use and the reason for the absence of use since that date. In this case, the relevant period for showing use is August 9, 2021 to August 9, 2024.

[4] 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 [*Miller Thomson LLP v Hilton Worldwide Holding LLP*, 2020 FCA 134 at paras 9-10]. The evidentiary threshold that the registered owner must meet is quite low [*Performance Apparel Corp v Uvex Toko Canada Ltd*, 2004 FC 448]. The burden on the owner in a section 45 proceeding is not a stringent one and a *prima facie* case of use will suffice for the purposes of section 4 of the Act [*Sport Maska Inc v Bauer Hockey Corp*, 2016 FCA 44 at para 55; *Brouillette Kosie Prince v Great Harvest Franchising Inc* (2009), 77 CPR (4th) 247 (FC)]. This burden of proof is light; evidence must only supply facts from which a conclusion of use may follow as a logical inference [per *Diamant Elinor Inc v 88766 Canada Inc*, 2010 FC 1184 at para 9].

[5] In response to the Registrar’s notice, the Owner furnished the affidavit of Allison Gallinger, sworn on January 9, 2025. Both parties submitted written representations and were represented at a hearing.

### **SUMMARY OF THE OWNER’S EVIDENCE**

[6] Allison Gallinger is a Regulatory Product Manager at BASF Canada Inc. (BASF Canada), a subsidiary of the Owner. She is responsible notably for the registration of “LIBREL products under the *Fertilizers Act in Canada*” [paras 1-2].

[7] Ms. Gallinger states that BASF Canada and the Owner work together and “regularly cooperate to ensure the distribution and sale in Canada” of agricultural products [para 4]. Ms. Gallinger explains that the Owner is:

a world-renowned expert in the field of chemical products based on its decades-long involvement with the production of such products (including the registered goods) that it manufactures and sells in various jurisdictions including Canada [para 8].

[8] Ms. Gallinger provides a document that she states was used to market the registered goods when they were sold in Canada during the relevant period. She states that the Mark and “name BASF of the Registered Owner” appear on the document [para 10, Exhibit AG-2]. The document prominently features “Librel®Fe-LO”. Ms. Gallinger explains that:

[...] this document confirms that the LIBREL registered goods are for “acid soils, foliar feeding and hydroponic solutions” (in other words they are “plant nutrients”). The document also describes the registered goods as being an “EDTA chelated iron preparation for use only on agricultural and horticultural crops” (meaning chemical products for use in agriculture, horticulture and forestry). The product can also fall under the heading of “fertilizer” as it has its registration number under the *Fertilizers Act* and its use includes correcting iron deficiency in acid soils, foliar application and for supplying iron in nutrient solutions below pH 6.5. It is also considered a micronutrient under the *Fertilizers Act* [para 11].

[9] Ms. Gallinger provides a representative invoice dated during the relevant period showing a sale in Canada, by BASF Canada, of several tons of product identified as “Librel®Fe-LO” [Exhibit AG-3]. She explicitly states that BASF Canada “distributes and sells such goods on behalf of the Registered Owner that remains the source of such goods and has ultimate and decisive control over them” [para 12].

[10] Ms. Gallinger also provides a photograph of a label “affixed to the LIBREL registered goods when they are sold” [para 13, Exhibit AG-4]. She explains that such a label was on the goods which were the subject of the invoice. She states that the label shows notably the “name BASF of the Registered Owner”. I note that the label clearly displays “Librel®Fe-LO”.

## **ANALYSIS**

[11] The Requesting Party submits that the Owner's evidence contains numerous inconsistencies and ambiguities. For example, the Requesting Party argues that the invoice and product specification sheet provided do not, in and of themselves, demonstrate that they refer to the Owner as stated in Ms. Gallinger's affidavit, as they refer only to "BASF". It also argues that Ms. Gallinger's affidavit incorporates language relating to control of the character and quality of the goods, which it submits, indicates a possible license, and that the product documentation shows that the goods are "imported by" BASF Canada, indicating that BASF Canada is distributing the products on its own account and not for the Owner.

[12] I consider that the Requesting Party is, in large part, speculating as to various circumstances not established by evidence, and suggesting that the Registrar find ambiguity or inconsistency accordingly. This approach is inconsistent with the scope and purpose of section 45 proceedings wherein (i) the evidence must be considered as a whole rather than focusing on individual pieces of evidence [see *Kvas Miller Everitt v Compute (Bridgend) Limited* (2005), 47 CPR (4th) 209 (TMOB)]; (ii) an affiant's statements are to be accepted at face value and accorded substantial credibility [*Oyen Wiggs Green & Mutala LLP v Atari Interactive, Inc*, 2018 TMOB 79 at para 25]; and (iii) ambiguity in evidence should be resolved in an owner's favour, without, however, reducing the owner's burden [*McDowell v Laverana GmbH & Co KG*, 2016 FC 1276; *Sea Tow Services International, Inc v Trademark Factory International Inc*, 2021 FC 550 at para 40].

[13] Considering the evidence as a whole, I find that the Owner, via its distributor BASF Canada, has sold tons of the "Librel®Fe-LO" product in Canada in the normal course of trade during the relevant period. I also find that the product displayed the Mark at the time of its transfer.

[14] The question remains, however, which goods specified in the registration should be maintained in view of such sales. Both parties submit that the registration specifies four products: (1) Chemical products for use in agriculture, horticulture and forestry; (2) fertilisers; (3) manures (natural and artificial); and (4) plant nutrients.

[15] The Requesting Party submits that the law is clear that an owner must demonstrate use with each of the goods specified in a registration, citing *John Labatt Ltd v Rainier Brewing Co* (1984), 80 CPR (2d) 228 (FCA) (*Rainier Brewing*). It argues that if the registration is to be maintained at all, it should be only in respect of "plant nutrients" as "Ms. Gallinger uses positive language and first describes the LIBREL product as 'plant nutrients'" [Requesting Party's Written Submissions, para 22].

[16] While the Owner acknowledges that the evidence does not establish use or special circumstances excusing absence of use of the Mark in association with products for use in forestry or any manures, it submits that the evidence clearly shows that the Librel®Fe-LO product can correspond equally to chemical products for use in agriculture and horticulture, plant nutrients and fertilizers, as explained by Ms. Gallinger.

[17] In this regard, the Owner submits that in *Rainier Brewing*, the Federal Court of Appeal stated that:

Specification of the wares other than beer suggests, in the absence of proof to the contrary, that each is indeed different in some degree from the others and from "beer" itself, as otherwise the words "ale, porter, stout, malt beverages, malt syrup and malt extracts are superfluous" [*Rainier Brewing* at page 236 – Owner's emphasis].

[18] The Owner argues that this is precisely a case where such "proof to the contrary" has specifically and explicitly been adduced in Ms. Gallinger's statements as well as in the product documentation sheet. In this regard,

the Owner cites the decision of *Fasken Martineau DuMoulin LLP v Zoe International Distributing Inc*, 2025 TMOB 49, where the Registrar accepted the evidence of use of a trademark with “electronic vaporizers for use as an alternative to traditional cigarettes” to also show use of the Mark with “electronic cigarettes for use as an alternative to traditional cigarettes”.

[19] I note that there are other instances where, based on the specific circumstances of the case, the evidence provided and the nature of the goods in question, the Registrar considered that evidence of use of a trademark with one product served to maintain other products specified in the registration without running afoul of *Rainier Brewing*, particularly where the product had several functions or uses [see for example *McCarthy Tetrault LLP v Habitat International S.A.*, 2022 TMOB 039; *88766 Canada Inc v Freedom Scientific BLV Group, LLC*, 2019 TMOB 129; *Barrette Legal Inc v Cloudbees, Inc*, 2024 TMOB 134; *Jeanne Lanvin (une société anonyme) v Ascendia Brands (Canada) Ltd*, 2010 TMOB 58; *Gowling WLG (Canada) LLP v Pelican International Inc*, 2016 TMOB 144].

[20] I consider this to also be such a case, given notably the evidence of the specialized nature of the product, of its various purposes and uses, and of the non-mutually exclusive nature of the descriptions in the registration [*Sharp Kabushiki Kaisha v 88766 Canada Inc* (1997), 72 CPR (3d) 195 (FCTD) at paras 14-16].

[21] As such, considering the evidence as a whole, I find that the Owner has demonstrated use of the Mark *per* sections 4(1) and 45 of the Act in association with the goods: “Chemical products for use in agriculture, horticulture”, “fertilisers” and “plant nutrients”. I arrive at this conclusion keeping in mind that, in section 45 proceedings, an owner need only establish a *prima facie* case of use; that a statement of goods should be granted a reasonable interpretation [see *ConAgra Foods, Inc v*

*Fetherstonhaugh & Co* (2002), 23 CPR (4th) 49 (FCTD)]; that one is not to be astutely meticulous when dealing with the language used in the specification of goods [*Aird & Berlis LLP v Levi Strauss & Co*, 2006 FC 654 at para 17]; that care must be had not to inadvertently and inappropriately broaden the scope of the registered goods [*Fasken Martineau Dumoulin LLP v GENTEC*, 2021 TMOB 56]; and that each case is to be decided on its own facts [*Heenan Blaikie LLP v Sports Authority Michigan Inc*, 2011 FC 273 at para 16].

[22] As acknowledged by the Owner, however, I find that the evidence does not demonstrate use or special circumstances excusing the absence of use of the Mark in association with products for use in forestry or with manures. They will therefore be deleted from the registration.

#### **DISPOSITION**

[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 amended to delete the goods "[...]forestry," and "manures (natural and artificial),".

[24] The amended statement of goods will read as follows: "Chemical products for use in agriculture, horticulture and fertilisers and plant nutrients".

Emilie Dubreuil  
Member  
Trademarks Opposition Board  
Canadian Intellectual Property Office

# Appearances and Agents of Record

**HEARING DATE:** 2025-10-07

## **APPEARANCES**

**For the Requesting Party:** David Reive

**For the Registered Owner:** Barry Gamache

## **AGENTS OF RECORD**

**For the Requesting Party:** David M. Reive

**For the Registered Owner:** Robic Agence PI S.E.C./ Robic IP Agency LP