

Federal Court



Cour fédérale

Date: 20100630

Docket: T-1203-08; T-1204-08; T-1205-08

Citation: 2010 FC 719

Ottawa, Ontario, June 30, 2010

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

**THE MINISTRY OF COMMERCE AND INDUSTRY
OF THE REPUBLIC OF CYPRUS**

Applicant

and

**LES PRODUCTEURS LAITIERS DU CANADA,
AGROPUR COOPÉRATIVE AGRO-ALIMENTAIRE
AND INTERNATIONAL CHEESE COUNCIL OF CANADA**

Respondents

REASONS FOR ORDER AND ORDER

[1] These are three different appeals by the Applicant, The Ministry of Commerce and Industry of the Republic of Cyprus, under section 56 of the *Trade-Marks Act* (R.S.C. 1985, c. T-13; the “Act”) from three decisions by the Registrar of Trade-Marks (the “Registrar”) dated April 29, 2008. The decisions allowed the oppositions of the respondents les Producteurs Laitiers du Canada (“Producteurs Laitiers”), Agropur Coopérative Agro-Alimentaire (“Agropur”) and the International Cheese Council of Canada (“Cheese Council”) by dismissing the Applicant’s application for

registration of the certification mark of HALLOUMI cheese (application No. 795,511, the “Mark”).

On September 4, 2008, the respondent Agropur withdrew from these proceedings.

[2] In accordance with a decision by Prothonotary Richard Morneau dated August 24, 2009, these three cases were heard together. Accordingly, a copy of these reasons will be placed in each of dockets T-1203-08, T-1204-08 and T-1205-08.

I. Facts

[3] On or about October 23, 1995, the Applicant filed an application to register the Mark in association with cheese on the basis of an allegation that the Mark had been used in Canada since October 19, 1995. This application for registration was published in the *Trade-marks Journal* on November 28, 2001.

[4] Since a certification mark was involved, the standard for which the use of the Mark was intended was described as follows in the *Trade-marks Journal*:

The use of the certification mark is intended to indicate that the specific wares listed above in association with which it is used are of the following defined standard: the defined standard prescribes that the cheese is produced only in Cyprus using the historic method unique to that country, namely: traditionally, it has been produced from sheep’s and/or goat’s milk. In case of mixtures, cow’s milk is also allowed. Raw materials which are used for its production include rennin, mint leaves and salt. See file for information about quality characteristics, chemical characteristics and maturation.

[5] Following the publication of the Mark, a number of oppositions were filed. On March 8, 2002, Les Producteurs Laitiers and Agropur filed statements containing four grounds of

opposition, which the Registrar forwarded to the Applicant on May 21, 2002. Then, on April 4, 2002, the Cheese Council filed a statement of opposition containing five grounds, which the Registrar forwarded to the Applicant on April 30, 2002. Since that statement essentially incorporates the other two respondents' grounds, it is helpful to reproduce it here:

1. Pursuant to Section 38(2)(a) of the Act . . . the Application does not comply with the provisions of Section 30 of the Act, and specifically:

(a) The Application does not comply with Section 30(a), because no licensee of the Applicant has used HALLOUMI as a certification mark in Canada since the date set out in the Application, namely October 19, 1995, or, if HALLOUMI was used as a certification mark, such use has ceased;

(b) The Application does not comply with Section 30(f) of the Act, because the Application does not set out particulars of the defined standard that the use of the certification mark HALLOUMI is intended to indicate;

(c) The Application does not comply with Section 30(f) of the Act, because the Applicant cannot state that it is not engaged in the manufacture or sale of the wares in association with which the certification mark is used in Canada;

2. Pursuant to Sections 38(2)(b) and 12(1)(b) of the Act, HALLOUMI is not a registrable trade mark, because it is clearly descriptive of the character of the wares associated with the mark.

3. Pursuant to Sections 38(2)(b) and 12(1)(c) of the Act, HALLOUMI is not a registrable trade mark, because it is the name, in a language, of the goods associated with the trade mark;

4. Pursuant to Sections 38(2)(b), 12(1)(e) and 10 of the Act, the adoption of HALLOUMI as a trade mark is prohibited, because HALLOUMI has by ordinary and *bona fide* commercial usage become recognized in Canada as designating a kind or quality of cheese.

5. Pursuant to Sections 2 and 38(2)(d) of the Act, HALLOUMI is incapable of functioning as a certification mark in Canada, namely a mark used for the purpose of distinguishing or so as to distinguish wares of a defined standard with respect to character, quality, working conditions, class of producers or area of production, because HALLOUMI has been used in Canada prior to the Applicant's date of first use, namely October 19, 1995, and subsequently, by persons not licensed by the Applicant, to describe cheeses which do not meet the standards set out in the Application.

[6] On May 28, 2002, the Applicant filed a counter statement of opposition in support of its application for registration in which it denied each of the respondents' grounds of opposition.

[7] On February 23, 2003, les Producteurs Laitiers and Agropur filed their opposition evidence. The Cheese Council did the same on December 24, 2002, and January 28, 2003. The Applicant filed its evidence in support of its application for registration on June 23, 2004.

[8] All of the Applicant's and respondents' deponents were cross-examined, and their testimony was filed with the Registrar of Trade-Marks. Each party submitted written arguments and requested a hearing, which was scheduled jointly for the three oppositions for April 2, 2008.

[9] Two weeks before the hearing, on March 18, 2008, les Producteurs Laitiers and the Cheese Council filed a motion to amend their last ground of opposition. The proposed amendment sought to add the following to the last ground of opposition:

More particularly, it was admitted by Yannakis Pittas in his June 21, 2004 affidavit filed as part of the Applicant's evidence, that the Applicant does not itself license others to use the HALLOUMI certification mark in accordance with the defined standard but that

such licenses of use are granted by third parties, namely the Minister of Health and/or the Department of Veterinary Services of the Minister of Agriculture and Natural Resources.

[TRANSLATION]

Applicant's Record (T-1205-08), tab 114.

The amendment proposed by Les Producteurs Laitiers was similar in every respect: see Applicant's Record (T-1203-08), tab 30.

[10] The motion was put over for adjudication at the hearing, which took place on April 2 before Mr. Jean Carrière, member of the Trade-marks Opposition Board and the Registrar's delegate under section 63(3) of the Act. The Applicant, les Producteurs Laitiers and the Cheese Council were present at the hearing and made submissions; however, Agropur was not represented.

[11] At the outset, the Registrar refused to amend the respondents' last ground of opposition because the motion was filed late with no explanation. However, he allowed the oppositions dated April 29, 2008, in part, thereby refusing the Applicant's application for registration.

II. Impugned decisions

[12] In the three impugned decisions, the Registrar rejected out of hand the grounds of opposition set out in paragraphs 1b) and c), 2 and 3 of the Cheese Council's statement of opposition (see paragraph 5 of these reasons) or their equivalent in the two other statements. These grounds were dismissed because the respondents did not argue them, either in writing or orally, and thus did not discharge their initial burden of establishing the facts on which they based their opposition. The Registrar took the opportunity to specify, based on the evidence before him, that the word

“halloumi” is derived from the Greek word “halmi”, which means “salty”; therefore, paragraphs 12(1)(b) and (c) were not applicable to this case.

[13] Furthermore, the opponents put forward three other arguments to support their claim that the Mark had not been used as alleged in the application and had not been used as a certification mark (ground 1a) of the Cheese Council’s statement or the equivalent in the two other statements). First, they stated that there was no evidence that the Mark had been used by licensees of the Applicant from the alleged date of first use. Second, the opponents argued that there was no evidence that the cheese sold in Canada was manufactured in accordance with the defined standards in the application. Last, they took the position that the Applicant was not the authority that issued licences to the producers of wares bearing the Mark and, therefore, could not claim that the Mark was used by these licensees.

[14] Despite the opponents’ lack of evidence on these issues, the Registrar admitted that an opponent to an application for registration may rely on the Applicant’s evidence to argue compliance issues since the information the opposing party needs to meet its initial burden of proof is in the hands of the Applicant most of the time.

[15] On the basis of the Applicant’s evidence, in particular, the affidavits of Mr. Yannis Pittas, co-owner of a dairy located in Cyprus; Mr. Eric Moscalhlaidis, owner of an American distribution company that imports cheese from Cyprus bearing the Mark and redistributes it in Canada; and various Canadian retailers, the Registrar was satisfied with the use of the Mark and the

manufacturing standards applied to Halloumi cheese in Cyprus. However, he found that the Applicant did not discharge its initial burden of proving that it was in fact the authority that issued licences authorizing the use of the Mark in association with the wares. Relying specifically on Mr. Pittas' affidavit, the Registrar concluded that it was the Ministry of Health in collaboration with the Department of Veterinary Services of the Ministry of Agriculture, Natural Resources and the Environment that issued licences authorizing the use of the Mark in association with the wares. He wrote the following in this regard:

It would appear that various Ministries of the Republic of Cyprus are involved in the supervision of the manufacture and exportation of cheese bearing the Mark and have different responsibilities depending on the stage reached in the manufacturing or exportation of the Wares. It might be that ultimately, under the parliamentary structure of the Republic of Cyprus, the Applicant delegated its authority to the Ministries of Health and of Agriculture, Natural Resources and the Environment but we have no evidence to support such [*sic*] hypothesis.

[16] Accordingly, the Registrar concluded that the opponents had met their initial burden and that any "use" of the Mark in Canada could not be deemed to be use by the Applicant under subsection 23(2) of the Act because the evidence established that the users of the Mark did not obtain their right to use the Mark from the Applicant itself but from another governmental body. Since the Applicant was not the Republic of Cyprus but a specific ministry, the ground of opposition 1(a) should be accepted.

[17] The second ground of opposition that the Registrar accepted dealt with the registrability of the Mark. The respondents argued that the Mark was not registrable because it had by ordinary and

bona fide commercial usage become recognized in Canada as designating a type of cheese, thereby contravening section 10 and paragraph 12(1)(e) of the Act (ground of opposition (4) cited above).

[18] After stating that the relevant date of reference for determining this ground of opposition was the date of the Registrar's decision, he noted the consensus that the particular characteristic of the cheese bearing the Mark that is manufactured in Cyprus is that it does not melt when exposed to heat during cooking. The cheese manufactured in Canada bearing a visual or phonetically similar mark such as HALLOUM, HALLOOM, HALOUMI or HALOMI does not have this characteristic.

[19] Having said that, the Registrar pointed out that no one could obtain the monopoly over a term or word under pretext that it is a certification mark if the mark has been used extensively in Canada by others prior to the relevant date such that it has become recognized in Canada as designating the kind, quality, value, or place of origin of the wares. Based on those principles, he reviewed the respondents' evidence in this regard.

[20] The Registrar concluded that the evidence filed by les Producteurs Laitiers and Agropur did not establish that the Mark had become recognized in Canada by ordinary and *bona fide* commercial usage as designating a type of cheese. However, in his view, the Cheese Council's evidence was conclusive on this point.

[21] The Cheese Council filed the packaging or photos of packaging from cheese purchased in various cities in Quebec and in Ottawa bearing inscriptions such as LE BÉDOUIN, HALLOOM,

CLIC HALLOOM, DORÉ-MI or HALOUMI. The packaging indicates that these products originated from various sources: Les Produits Phoenicia Inc. of Montréal (HALLOOM); La Fromagerie Polyethnique Inc. of St-Robert, Quebec (LE BÉDOUIN HALOUMI), Clic Import Export (CLIC HALLOOM), Les Aliments Karine Inc. of Montréal (HALLOOM), Saputo Cheese Division Fromage (Canada) (DORÉ-MI) and Fromagerie Marie Kadé of Boisbriand, Quebec (HALLOOM).

[22] However, representatives from Produits Phoenicia Inc. and Fromagerie Polyethnique swore affidavits that were entered in evidence. They stated that they had been selling cheese designated as HALLOOM, HALOUMI, or LE BÉDOUIN since 1995 and filed documents from their company, some dating back to August 2002, confirming sales of cheese designated by one of those names. Other affidavits and cross-examinations showed that the name HALLOUMI is used in Canada to designate a kind of cheese.

[23] On this evidence, the Registrar found that the word HALLOUMI could not be used as a trade-mark in Canada. The Registrar rejected the argument that the evidence revealed that the words HALLOOM, HALOUMI or HALLOUM were used rather than the Mark HALLOUMI to identify a type of Mediterranean cheese, noting that section 10 of the Act is aimed at both the adoption or use of a mark “ . . . so nearly resembling that mark as to be likely to be mistaken therefor”. He wrote the following in this regard:

There is a close resemblance between HALLOUMI on [*sic*] one hand and HALOUMI, HALLOUM and HALLOOM on the other hand. Moreover they all appear on cheese packaging and as mentioned above in some instances they are substituted one for the

other. Under these circumstances I fail to see how the Applicant could get the exclusive use of the Mark in Canada where the evidence shows that there has been bona fide commercial usage of the Mark or similar terms such that it is recognized in Canada as designating a kind of cheese. Therefore I maintain the fourth ground of opposition.

[24] Finally, the last ground of opposition accepted by the Registrar dealt with the Mark's lack of distinctiveness. Regarding that ground of opposition, the respondents needed only to show that, at the relevant date, i.e. the date the statement of opposition was filed, a confusingly similar trade-mark had become sufficiently known to negate the distinctiveness of the mark applied for. The Registrar dismissed this ground in the oppositions filed by les Producteurs Laitiers and Agropur for want of sufficient evidence; however, he ruled that the Cheese Council's evidence was more substantial and allowed this ground of opposition in that docket.

[25] The Registrar indicated that most of the Cheese Council's evidence on the use of the term "HALLOUM" or "HALLOOM", discussed under the registrability ground of opposition, was subsequent to the relevant date. However, the Registrar accepted this ground because of the evidence provided by the Applicant itself that the Mark had been used in Canada by entities that had not been licenced by the Applicant itself, as discussed in the review of the first ground of opposition alleging that the application did not comply with the provisions of section 30 of the Act.

[26] On August 4, 2009, the Applicant filed notices of application in this Court appealing the Registrar's decisions in the three dockets that are the subject of this proceeding, based on the grounds of opposition that were maintained. As subsection 56(5) of the Act permits, the Applicant

entered as additional evidence two affidavits of Mr. Aristos Constantine, Trade Commissioner for the Republic of Cyprus in New York, sworn November 19, 2008, and January 15, 2009. I will return to these affidavits in my analysis below.

III. Issues

[27] This appeal raises the following three issues:

- A. What is the appropriate standard of review for decisions by the Registrar?
- B. Did the Registrar err by finding that the application for registration did not comply with the requirements of section 30 and paragraph 38(2)(a) of the Act?
- C. Did the Registrar err in his findings on the registrability of the Mark under paragraphs 38(2)(b) and 12(1)(e) and section 10 of the Act?

IV. Analysis

A. *What is the Appropriate Standard of Review for Decisions by the Registrar?*

[28] There is no disagreement among the parties about the appropriate standard of review on appeal from decisions by the Registrar of Trade-marks. Generally, questions of fact or law that are within the Registrar's expertise are reviewable against the reasonableness standard; in other words, this Court will only intervene if the Registrar's decision is clearly wrong. However, it is different where additional evidence is filed with the Court and the evidence is relevant insofar as it fills a gap or remedies deficiencies identified by the Registrar. In that case, the Court may come to its own conclusion and will apply the standard of correctness. However, this will only occur where the fresh evidence is substantial and adds to what has already been submitted; if the fresh evidence is repetitive and does not enhance the probative value of the evidence already adduced, the standard of reasonableness will continue to apply. The following passage from the decision of

Justice Marshall Rothstein for the majority in *Molson Breweries v. John Labatt Ltd.*, [2000] 3 F.C. 145 (C.A.), at paragraph 51, summarizes the situation well:

Having regard to the Registrar's expertise, in the absence of additional evidence adduced in the Trial Division, I am of the opinion that decisions of the Registrar, whether of fact, law or discretion, within his area of expertise, are to be reviewed on a standard of reasonableness *simpliciter*. However, where additional evidence is adduced in the Trial Division that would have materially affected the Registrar's findings of fact or the exercise of his discretion, the Trial Division judge must come to his or her own conclusion as to the correctness of the Registrar's decision.

See also: *Christian Dior, S.A. v. Dion Neckwear Ltd.*, 2002 FCA 29, [2002] F.C.J. No. 95, at para.8; *Canadian Tire Corp. v. Accessoires d'Autos Nordiques Inc.*, 2007 FCA 367, [2007] F.C.J. No. 1555 at paras. 29-30; *Shell Canada Ltd. v. P.T. Sari Incofood Corp.*, 2008 FCA 279, [2008] F.C.J. No. 1320 at paras. 27-29; *Minolta-QMS, Inc. v. Tsai*, 2006 FC 1249, [2006] F.C.J. No. 1574 at paras.25-27.

[29] On the other hand, the jurisprudence seems to recognize situations where the standard of correctness applies even in the absence of fresh evidence. This will happen where the issue is purely legal and does not involve facts or the Registrar's expertise. By way of illustration, reference may be made to *Telus Corp. v. Orange Personal Communications Services Ltd.*, 2005 FC 590, [2005] F.C.J. No. 722 at paragraph 41 (affirmed at 2006 FCA 6, [2006] F.C.J. No. 14) and *Big Apple Ltd. v. BAB Holdings Inc.*, 2002 FCT 72, [2002] F.C.J. No. 89 at paragraphs 7-8, where identifying the burden of proof that the parties must meet and determining the relevant date for deciding a ground of opposition were reviewed on the correctness standard.

[30] Accordingly, with these principles in mind, I will examine the arguments raised by the Applicant as well as the fresh evidence filed in this Court.

B. Did the Registrar Err by Finding that the Application for Registration Did Not Comply with the Requirements of Section 30 and Paragraph 38(2)(a) of the Act?

[31] In its written representations, the Applicant submitted that the Registrar erred by accepting the arguments presented orally by the les Producteurs Laitiers and the Cheese Council and thus maintaining the ground of opposition based on paragraph 38(2)(a) and 30 of the Act in Agropur's opposition even though it had chosen to not be represented at the hearing. The Applicant contended that the arguments presented by the two other parties were not before the Registrar in Agropur's opposition record and that the Registrar could not consider them in making his decision.

[32] This argument appears to me to be without merit because the Registrar's decision did not rely on the evidence submitted by any of the opponents but on testimony provided by the Applicant itself. As previously mentioned, the relevant paragraph in the Applicant's application for registration states:

The applicant has granted a license to use the certification mark in association with all the specific wares listed hereafter that meet the defined standard set out below, and the certification mark has been used by the licensee in Canada accordingly in association with such wares.

[33] The exact wording of this ground of opposition in Agropur's statement reads as follows:

[TRANSLATION]

1. The opponent bases its opposition on section 38(2) of the Act, i.e. that the application for registration under opposition does not comply with the requirements of section 30 of the Act in that:

(a) The Mark was not used as stated in the application; as well, it was not used as a certification mark.

[34] It is clear that the representations made at the hearing by counsel for les Producteurs Laitiers and the Cheese Council undoubtedly supported the ground of opposition based on section 30 and paragraph 38(2)(a) by drawing the Registrar's attention to the passages in Mr. Pittas' affidavit stating that the Applicant was not the authority that issued the licences to use the Mark. The fact remains that the Registrar had before him all the evidence needed to make that finding. The evidence existed in all three dockets because, again, it came from the Applicant itself. In those circumstances, it was open to him (and I would even say he was required) to make the finding he did on this point in the three dockets.

[35] On the other hand, the Applicant took the position that the Registrar erred by considering the oral representations by les Producteurs Laitiers and the Cheese Council that were exactly to the same effect as the amendment they had tried unsuccessfully to make to their ground of opposition based on section 2 and paragraph 38(2)(d) of the Act. The Applicant noted that the Registrar not only agreed to hear these representations but also accepted them in his final decisions in that he maintained the grounds of opposition based on paragraphs 39(2)(a), 30(b) and 38(2)(d) and section 2 of the Act. In doing so, the Registrar prejudiced the Applicant by permitting indirectly what he had refused when he dismissed the motion to amend the grounds of opposition.

[36] If we ignore the amendment that the Registrar dismissed and the oral representations to the same effect, the Applicant continues, the grounds of opposition relied on by the respondents were not set out in sufficient detail to enable the Applicant to respond, as required by paragraph 38(3)(a) of the Act. According to the Applicant, the grounds of opposition based on paragraphs 38(2)(a), 30(b) and 38(2)(d) and on section 2 of the Act do not deal at all, even indirectly, with the substance of the amendment that the Registrar dismissed. By not referring to subsection 23(2) of the Act or to the Mark's lack of distinctiveness based on the fact that the licences had been granted by a ministry other than the Applicant, it was taken by surprise and could not introduce before the Registrar the affidavit of Mr. Constantine that it filed in this Court.

[37] Even if the appropriate standard of review is correctness because these are questions of law that do not fall within the Registrar's particular expertise, as the Applicant maintains, I cannot accept its arguments essentially for the reasons stated above in relation to the first ground raised by the Applicant.

[38] I would like to specify at the outset that the respondents' argument that the amendment sought only clarified the ground of opposition based on subsections 38(2)(d) and 2(d) of the Act appears unconvincing to me. Accepting it would result in form prevailing over substance. It goes without saying that the Registrar would also have concluded that the amendment was late had the respondents tried to introduce it in their opposition based on subsections 38(2)(a) and section 30 of the Act.

[39] That being said, les Producteurs Laitiers and the Cheese Council were entitled to argue that the authority responsible for issuing the licences to use the Mark in association with cheese manufactured in accordance with the established standard was not the Applicant but another ministry of the Cypriot government, even in the absence of a formal amendment to the grounds of opposition. In deciding that the Applicant had met its burden of demonstrating that its application for registration complied with the requirements of section 30 of the Act, the Registrar was required to consider the precise wording that the opponents had used in their statement of opposition.

[40] The first ground of opposition based on subsection 38(2) and section 30 specified that the Mark had not been used “as a certification mark”. The certification mark provisions are found in sections 23 to 25 of the Act. As provided in subsection 23(1) of the Act, a certification mark may be adopted and registered only by a person who is not engaged, *inter alia*, in the manufacture or sale of wares with which the Mark is used. On the other hand, subsection 23(2) provides that only the owner of a certification mark may authorize others to use the mark in association with wares that meet the defined standard; in that case, the use of the mark will be deemed to be use by the owner.

[41] It is therefore clearly apparent from these two subsections of section 23 that the identity of the authority that had the power to authorize the use of the Mark in association with cheese manufactured in accordance with the established standard was at the very heart of the requisite conditions for determining whether the Mark had been used in Canada as a certification mark. The Applicant was required to establish that it or persons it had authorized had used the Mark in Canada in association with cheese manufactured in accordance with the standard. To the extent that the

Applicant could not establish that it had the power to authorize certain producers to use the Mark, it could not benefit from the presumption in subsection 23(2).

[42] Accordingly, the Applicant cannot contend that the respondents' arguments took it by surprise. The issue of whether it had the legal authority to issue licences to use the Mark was inherent in its application for registration and in the concept of a certification mark. It was therefore not necessary to specifically mention in the grounds of opposition that the Applicant did not have the authority to issue licences to use the Mark. By maintaining that the Applicant's application for registration did not comply with section 30 of the Act because the Mark was not used as stated in the application for registration and that it was not used as a certification mark, it appears to me that the respondents complied with subsection 38(3)(a) of the Act and provided sufficient details to the Applicant to enable it to reply to this ground of opposition. This is particularly true since this flaw in the Applicant's application was evident to the Registrar from simply reading the evidence it submitted, specifically the affidavit of Mr. Pittas; in this context, it was open to the respondents to draw the Registrar's attention to this issue at the hearing. In doing so, they were not raising a new ground; they were only clarifying one of the grounds they had argued.

[43] That being so, the Applicant filed with this Court two uncontradicted affidavits of Mr. Aristos Constantine, Trade Commissioner for the Republic of Cyprus in New York. These affidavits clearly were intended to explain the internal operation of the Cypriot government in terms of the responsibility for monitoring the use of the Mark and thus were aimed at filling the gaps identified by the Registrar in this regard (see excerpts from the decision at paragraph 15).

[44] In my view, Mr. Constantine's affidavits clearly constitute additional evidence that could have had an impact on the Registrar's findings, and as such, the Court is justified in drawing its own conclusions from them as to the correctness of the Registrar's decision. Accordingly, the standard of review on this issue is correctness.

[45] The evidence shows without any ambiguity that the laws of the Republic of Cyprus designate the Ministry of Commerce and Industry (the Ministry) as the ministry responsible for monitoring the use of the certification mark Halloumi in association with cheese. However, the Ministry delegated the responsibility for monitoring compliance with the manufacturing standards for Halloumi cheese to the Ministry of Health and the public servants in the Department of Veterinary Services. These entities are not legally distinct from the Ministry but are all part of the Government of the Republic of Cyprus. The following paragraphs from Mr. Constantine's affidavit are, in my view, the most relevant to respond to the questions the Registrar raised in his decision:

7. The purpose of the present Affidavit is therefore to confirm that it is indeed the Ministry of Commerce and Industry of the Republic of Cyprus (hereinafter referred to as "The Ministry") that is the authority that has been designated within the Government of Cyprus to be responsible for the supervision of the use of the certification mark **HALLOUMI** in association with cheese.

9. Pursuant to the Cyprus Standards and Control of Quality Laws of 1975 to 1996 (section 9), the Minister heading the Ministry was the only authority within the Government of Cyprus responsible for the designation, issuance and publication of the compulsory Standards for **HALLOUMI** cheese and for the appointment of officers authorized to control and/or inspect the proper implementation of said compulsory Standards. . . . As we will see hereafter, the Department of Veterinary Services of the Ministry of Agriculture, Natural Resources and the Environment (hereinafter "The Veterinary Services") and the Public Health Services of Department of Medical and Public Health Services of the Ministry of Health (hereinafter

“the Public Health Services”) were afterwards appointed by the Minister heading the Ministry, under the Cyprus Standards and Control of Quality Laws of 1975 to 1996 to monitor, only, the implementation and compliance of the compulsory Standards for HALLOUMI cheese.

22. As it can be seen from the above, both the Veterinary Services and the Public Health Services control and certify the compliance with legal requirements that apply to all food products or animal food products and not specifically to HALLOUMI cheese. One has to understand that a producer of HALLOUMI cheese could have received the relevant authorizations and licenses from the Public Health Services and/or the Veterinary Services, but would still not be entitled to use any longer the certification mark **HALLOUMI** because while his production facilities respect sanitary requirements and he is allowed to export his specific products, the cheese that it produces, can no longer qualify as **HALLOUMI** cheese because one or the other of the production criteria referred to in the Standards, is not respected.

23. As regards the compulsory Standards for the production of **HALLOUMI** cheese, the primary legal competence both for the issuing of the Standards and supervising the controls for compliance therewith belongs to the Minister heading the Ministry. The Veterinary Services and the Public Health Services have competences in that respect only as a result of appointments made by the said Minister, to act on his behalf.

[46] These allegations, which rely on the relevant legislation and regulations attached to Mr. Constantine’s affidavit, appear to fully respond to the questions posed by the Registrar in his reasons. Again, the respondents did not see fit to cross-examine Mr. Constantine, and therefore his testimony must be accepted as true. Consequently, I am of the view that the additional evidence justifies allowing the Applicant’s appeal in the three dockets as regards the ground of opposition based on section 30 of the Act. This evidence is also sufficient to overturn the Registrar’s finding in the Cheese Council’s docket on the distinctiveness of the Mark (sections 38(2)(d) and 2 of the Act)

since this finding was based on the same lack of evidence about the authority monitoring the use of the Mark.

C. Did the Registrar Err in His Findings Regarding the Registrability of the Mark Under Paragraphs 38(2)(b) and 12(1)(e) and Section 10 of the Act?

[47] The Applicant took the position that the Registrar erred by ruling that the relevant date for purposes of determining whether the Mark could be registered under paragraphs 38(2)(b) and 12(1)(e) was the date of the Registrar's decision. While acknowledging that the Applicant itself had pleaded this date in its written representations before the Registrar, its counsel noted that a decision of this Court issued the day after the hearing before the Registrar called into question the choice of that date. He also argued that the Court of Appeal decision that was the leading case in this matter until that decision was issued dealt with oppositions where paragraph 12(1)(e) was invoked in conjunction with section 9(1)(n)(iii), not in conjunction with section 10, as in this case.

[48] In my view, these arguments cannot succeed for a number of reasons. First, I note that the Applicant does not mention this ground at all in its notice of appeal from the Registrar's decision. However, rule 301 clearly states in subsection (e) that the Applicant must set out a complete and concise statement of the grounds intended to be argued in support of its application, including a reference to any statutory provision or rule to be relied on. Even a careful review of the notice of application does not afford a basis for inferring this ground by implication, as the Applicant argues. In such circumstances, the jurisprudence of the Court is clear: an Applicant will be precluded from making an argument that has not been pleaded in the notice of application (see, for example

AstraZeneca AB v. Apotex Inc., 2006 FC 7, [2006] F.C.J. No. 46, at paragraphs 17-18). This argument by the Applicant must therefore be dismissed on that ground alone.

[49] In any event, the Applicant's argument could not succeed even if the Court agreed to consider it. The Court of Appeal decision that is the leading case on this point states that the relevant date is that of the Registrar's decision and makes no distinction as to whether the ground of opposition is based on paragraph 9(1)(n)(iii) or section 10: see *Canadian Olympic Assn. v. Olympus Optical Co.* (1991), 38 C.P.R. (3d) 1 (F.C.A.), pp. 3-4. However, Justice Sean Harrington's comments in *Scotch Whisky Assn. v. Glenora Distillers International Ltd.*, 2008 FC 425, [2008] F.C.J. No. 872, which counsel for the Applicant relies on to argue that the Court of Appeal decision is no longer good law, seems much too cryptic to me to be interpreted in this way. At the very most, Justice Harrington stated that it was not necessary for him to discuss this issue to dispose of the case before him:

The additional evidence is such that it is not necessary to ponder over the relevant date for determining whether the proposed trade-mark is clearly descriptive or deceptively misdescriptive or exactly when a mark had become recognized by ordinary and bona fide commercial usage.

[50] In my view, this comment is clearly insufficient to claim that the Court of Appeal decision in *Olympus Optical*, above, should no longer be followed, particularly since this Court is bound by a decision of the Court of Appeal until that Court itself has re-evaluated it.

[51] On the merits, the Applicant argued that the Cheese Council had not met its initial evidentiary burden before the Registrar. Its counsel took the position that the Registrar relied only

on some cheese packaging that four witnesses obtained in five retail stores in Quebec and Ottawa after asking for “halloumi” cheese, and on the sales figures of a cheese manufacturer that sells almost all its cheese to a supplier that re-sells 40% of it to only one company. The Applicant also submitted that the evidence did not establish whether the inscriptions on the packaging (LE BÉDOUIN, HALLOOM, CLIC HALLOOM, DORÉ-MI, HALOUMI) were used as a trade-mark or a type of cheese. Last, the Applicant contended that the Registrar erred in admitting the testimony on cross-examination of two of its witnesses who stated that the term “Halloum“ or “Halloumi” describes a type of cheese; this, according to the Applicant, shows a misapprehension of section 10 of the Act and of the concept of a certification mark as defined in section 2 of the Act.

[52] First of all, it should be noted that the Applicant did not submit any additional evidence on this ground of opposition; consequently, and in accordance with the remarks made earlier in paragraph 28 of these reasons, the appropriate standard of review is reasonableness.

[53] However, it is settled law that an opponent has only an initial evidentiary burden: at most, it must introduce sufficient evidence to support a *prima facie* finding that there is a factual basis for the ground of opposition. Where an opponent satisfies this initial burden, it is up to the person applying to register a mark to persuade the Registrar that the grounds of opposition should not impede its application: see, for example, *Institut National des Appellations D'Origine v. Vincor (Québec) Inc.* (2003), 32 C.P.R. (4th) 279 (T.M.O.B.).

[54] To meet this initial burden in its opposition based on subsections 38(2)(b) and 12(1)(e) and section 10 of the Act, the Cheese Council had to demonstrate that the Mark (or any other mark “so nearly resembling that mark as to be likely to be mistaken therefor”, to use the language of section 10) was used extensively in Canada by others prior to the relevant date to designate a type of cheese, and that the Mark had an accepted definition or meaning in the industry: see *Sealy Canada Ltd. v. Simmons I.P. Inc.* (2005), 47 C.P.R. (4th) 296, at paragraphs 35 to 37 (T.M.O.B.).

[55] I believe that the Registrar correctly identified the respondent’s burden of proof and, after carefully reviewing the evidence, I am also of the view that the facts before him supported his finding that, at the date he issued his decision, the Mark had become recognized in Canada as designating a type of cheese. In his reasons, he pointed out that, in order to satisfy its burden of proof, the respondent had to adduce “sufficient evidence” to demonstrate that the Mark had become recognized in Canada, and also noted that “one would not be able to obtain the monopoly over a term or word under pretext that it is a certification mark if such mark has been used extensively in Canada” by others prior to the relevant date. In my view, this method of dealing with the evidence complies in all aspects with the state of the law on this subject.

[56] The Cheese Council established that it was possible to procure cheese from various sources whose packaging bore the names HALLOOM, HALLOUM or HALOUMI in different cities in Quebec and in Ottawa in 2002 and 2003. The Cheese Council also adduced evidence that a number of Canadian producers have sold substantial quantities of cheese designated as HALLOOM in

Canada since 1995. Finally, a number of stakeholders in the industry testified that the term “halloumi” designated a type of cheese and was used generically.

[57] In my view, the Registrar’s decision was reasonable in light of the evidence that was before him. The Cheese Council discharged its initial burden, which consisted of establishing that the term “halloumi” or terms so nearly resembling it as to be likely to be mistaken therefor, was used extensively in Canada by others to designate a type of cheese. On the basis of that evidence, it was open to the Registrar to find that the term “halloumi” could not be used exclusively by one person or entity. His decision, to quote *Dunsmuir v. New Brunswick*, 2008 SCC 9 (at paragraph 47), fell within a range of “possible, acceptable outcomes which are defensible in respect of the facts and law.”

[58] In this Court, the Applicant attempted to challenge the Registrar’s assessment by objecting to the geographic area in which the Mark is recognized and by minimizing the sales figures. As mentioned previously, the applicable criterion is not quantitative but qualitative. What the opponents had to establish was that the term “halloumi” had by ordinary and *bona fide* commercial usage become extensively recognized in the industry. Again, the evidence before the Registrar permitted him to maintain this ground of opposition.

[59] On the other hand, les Producteurs Laitiers also took the position that the Registrar erred in dismissing the same ground of opposition in its docket. I agree with the respondent that it could rely on the Applicant’s appeal from the decision to submit all the arguments of fact or law against the

Registrar's reasons. Indeed, the respondent itself could not appeal the decision since an appeal can only address the impugned decision, not the underlying reasons for it: see *Rogerville v. Canada (The Public Service Commission Appeal Board)*, 2001 FCA 142, [2001] F.C.J. No. 692; *GKO Engineering v. Canada*, 2001 FCA 73; [2001] F.C.J. No. 369, *Canada (Attorney General) v. Pépin*, 2006 FC 950, [2006] F.C.J. No. 1209.

[60] That being said, I believe that the Registrar could reasonably conclude that the evidence adduced in that docket was not sufficient to establish that the Mark had by ordinary and *bona fide* commercial usage become recognized in Canada as designating a type of cheese. The Registrar carefully examined the evidence submitted by les Producteurs Laitiers and explained why, in his view, it was inadequate to support its submissions that the Mark infringed section 10 of the Act. Moreover, I note that counsel for this respondent did not vigorously argue this ground at the hearing before this Court. In short, there is nothing that would justify the Court's intervention in this regard.

[61] In conclusion, I would allow the Applicant's appeals in les Producteurs Laitiers docket (T-1203-08) and the Agropur docket (T-1204-08), in light of the additional evidence it submitted showing that the application for registration complied with sections 38(2)(a) and 30(b) of the Act. I would also allow the Applicant's appeal on the same basis in the Cheese Council docket (T-1205-08). However, in that docket, the Applicant's appeal with respect to the registrability of the Mark is dismissed. Since one ground of opposition is sufficient to have the Applicant's application for registration dismissed, this application for registration cannot be reinstated.

ORDER

THE COURT ORDERS that the appeals in dockets T-1203-08 and T-1204-08 are allowed and the appeal in docket T-1205-08 is dismissed. The Applicant is entitled to costs in docket T-1203-08, and the respondent International Cheese Council of Canada is entitled to costs in docket T-1205-08. Since the respondent Agropur Coopérative Agro-Alimentaire withdrew from the proceedings, there will be no costs in docket T-1204-08.

“Yves de Montigny”

Judge

Certified true translation
Mary Jo Egan, LLB

ANNEX: RELEVANT STATUTORY PROVISIONS OF THE TRADE-MARKS ACT

2. In this Act,

2. Les définitions qui suivent s'appliquent à la présente loi.

...

[...]

“distinctive”, in relation to a trade-mark, means a trade-mark that actually distinguishes the wares or services in association with which it is used by its owner from the wares or services of others or is adapted so to distinguish them;

« distinctive » Relativement à une marque de commerce, celle qui distingue véritablement les marchandises ou services en liaison avec lesquels elle est employée par son propriétaire, des marchandises ou services d'autres propriétaires, ou qui est adaptée à les distinguer ainsi.

...

[...]

“certification mark” means a mark that is used for the purpose of distinguishing or so as to distinguish wares or services that are of a defined standard with respect to

« marque de certification »
Marque employée pour distinguer, ou de façon à distinguer, les marchandises ou services qui sont d'une norme définie par rapport à ceux qui ne le sont pas, en ce qui concerne :

(a) the character or quality of the wares or services,

a) soit la nature ou qualité des marchandises ou services;

(b) the working conditions under which the wares have been produced or the services performed,

b) soit les conditions de travail dans lesquelles les marchandises ont été produites ou les services exécutés;

(c) the class of persons by whom the wares have been produced or the services performed, or

c) soit la catégorie de personnes qui a produit les marchandises ou exécuté les services;

(d) the area within which the wares have been produced or the services performed,

d) soit la région à l'intérieur de laquelle les marchandises ont été produites ou les services

from wares or services that are not of that defined standard;

10. Where any mark has by ordinary and bona fide commercial usage become recognized in Canada as designating the kind, quality, quantity, destination, value, place of origin or date of production of any wares or services, no person shall adopt it as a trade-mark in association with such wares or services or others of the same general class or use it in a way likely to mislead, nor shall any person so adopt or so use any mark so nearly resembling that mark as to be likely to be mistaken therefor.

12. (1) Subject to section 13, a trade-mark is registrable if it is not

...

(e) a mark of which the adoption is prohibited by section 9 or 10;

23. (1) A certification mark may be adopted and registered only by a person who is not engaged in the manufacture, sale, leasing or hiring of wares or the performance of services such as those in association

exécutés.

10. Si une marque, en raison d'une pratique commerciale ordinaire et authentique, devient reconnue au Canada comme désignant le genre, la qualité, la quantité, la destination, la valeur, le lieu d'origine ou la date de production de marchandises ou services, nul ne peut l'adopter comme marque de commerce en liaison avec ces marchandises ou services ou autres de la même catégorie générale, ou l'employer d'une manière susceptible d'induire en erreur, et nul ne peut ainsi adopter ou employer une marque dont la ressemblance avec la marque en question est telle qu'on pourrait vraisemblablement les confondre.

12. (1) Sous réserve de l'article 13, une marque de commerce est enregistrable sauf dans l'un ou l'autre des cas suivants :

[...]

e) elle est une marque dont l'article 9 ou 10 interdit l'adoption;

23. (1) Une marque de certification ne peut être adoptée et déposée que par une personne qui ne se livre pas à la fabrication, la vente, la location à bail ou le louage de marchandises ou à l'exécution

with which the certification mark is used.

de services, tels que ceux pour lesquels la marque de certification est employée.

(2) The owner of a certification mark may license others to use the mark in association with wares or services that meet the defined standard, and the use of the mark accordingly shall be deemed to be use thereof by the owner.

(2) Le propriétaire d'une marque de certification peut autoriser d'autres personnes à employer la marque en liaison avec des marchandises ou services qui se conforment à la norme définie, et l'emploi de la marque en conséquence est réputé en être l'emploi par le propriétaire.

(3) The owner of a registered certification mark may prevent its use by unlicensed persons or in association with any wares or services in respect of which the mark is registered but to which the licence does not extend.

(3) Le propriétaire d'une marque de certification déposée peut empêcher qu'elle soit employée par des personnes non autorisées ou en liaison avec des marchandises ou services à l'égard desquels cette marque est déposée, mais auxquels l'autorisation ne s'étend pas.

(4) Where the owner of a registered certification mark is an unincorporated body, any action or proceeding to prevent unauthorized use of the mark may be brought by any member of that body on behalf of himself and all other members thereof.

(4) Lorsque le propriétaire d'une marque de certification déposée est un organisme non constitué en personne morale, une action ou procédure en vue d'empêcher l'emploi non autorisé de cette marque peut être intentée par tout membre de cet organisme en son propre nom et pour le compte de tous les autres membres.

30. An applicant for the registration of a trade-mark shall file with the Registrar an application containing

30. Quiconque sollicite l'enregistrement d'une marque de commerce produit au bureau du registraire une demande renfermant :

- | | |
|---|--|
| <p>(a) a statement in ordinary commercial terms of the specific wares or services in association with which the mark has been or is proposed to be used;</p> | <p>a) un état, dressé dans les termes ordinaires du commerce, des marchandises ou services spécifiques en liaison avec lesquels la marque a été employée ou sera employée;</p> |
| <p>(b) in the case of a trade-mark that has been used in Canada, the date from which the applicant or his named predecessors in title, if any, have so used the trade-mark in association with each of the general classes of wares or services described in the application;</p> | <p>b) dans le cas d'une marque de commerce qui a été employée au Canada, la date à compter de laquelle le requérant ou ses prédécesseurs en titre désignés, le cas échéant, ont ainsi employé la marque de commerce en liaison avec chacune des catégories générales de marchandises ou services décrites dans la demande;</p> |
| <p>(c) in the case of a trade-mark that has not been used in Canada but is made known in Canada, the name of a country of the Union in which it has been used by the applicant or his named predecessors in title, if any, and the date from and the manner in which the applicant or named predecessors in title have made it known in Canada in association with each of the general classes of wares or services described in the application;</p> | <p>c) dans le cas d'une marque de commerce qui n'a pas été employée au Canada mais qui est révélée au Canada, le nom d'un pays de l'Union dans lequel elle a été employée par le requérant ou ses prédécesseurs en titre désignés, le cas échéant, et la date à compter de laquelle le requérant ou ses prédécesseurs l'ont fait connaître au Canada en liaison avec chacune des catégories générales de marchandises ou services décrites dans la demande, ainsi que la manière dont ils l'ont révélée;</p> |
| <p>(d) in the case of a trade-mark that is the subject in or for another country of the Union of a registration or an application for registration by the applicant or the applicant's named</p> | <p>d) dans le cas d'une marque de commerce qui est, dans un autre pays de l'Union, ou pour un autre pays de l'Union, l'objet, de la part du requérant ou de son prédécesseur en titre</p> |

predecessor in title on which the applicant bases the applicant's right to registration, particulars of the application or registration and, if the trade-mark has neither been used in Canada nor made known in Canada, the name of a country in which the trade-mark has been used by the applicant or the applicant's named predecessor in title, if any, in association with each of the general classes of wares or services described in the application;

(e) in the case of a proposed trade-mark, a statement that the applicant, by itself or through a licensee, or by itself and through a licensee, intends to use the trade-mark in Canada;

(f) in the case of a certification mark, particulars of the defined standard that the use of the mark is intended to indicate and a statement that the applicant is not engaged in the manufacture, sale, leasing or hiring of wares or the performance of services such as those in association with which the certification mark is used;

(g) the address of the applicant's principal office or place of business in Canada, if any, and if the applicant has no

désigné, d'un enregistrement ou d'une demande d'enregistrement sur quoi le requérant fonde son droit à l'enregistrement, les détails de cette demande ou de cet enregistrement et, si la marque n'a été ni employée ni révélée au Canada, le nom d'un pays où le requérant ou son prédécesseur en titre désigné, le cas échéant, l'a employée en liaison avec chacune des catégories générales de marchandises ou services décrites dans la demande;

e) dans le cas d'une marque de commerce projetée, une déclaration portant que le requérant a l'intention de l'employer, au Canada, lui-même ou par l'entremise d'un licencié, ou lui-même et par l'entremise d'un licencié;

f) dans le cas d'une marque de certification, les détails de la norme définie que l'emploi de la marque est destiné à indiquer et une déclaration portant que le requérant ne pratique pas la fabrication, la vente, la location à bail ou le louage de marchandises ou ne se livre pas à l'exécution de services, tels que ceux pour lesquels la marque de certification est employée;

g) l'adresse du principal bureau ou siège d'affaires du requérant, au Canada, le cas échéant, et si le requérant n'a ni bureau ni

office or place of business in Canada, the address of his principal office or place of business abroad and the name and address in Canada of a person or firm to whom any notice in respect of the application or registration may be sent, and on whom service of any proceedings in respect of the application or registration may be given or served with the same effect as if they had been given to or served on the applicant or registrant himself;

(h) unless the application is for the registration only of a word or words not depicted in a special form, a drawing of the trade-mark and such number of accurate representations of the trade-mark as may be prescribed; and

(i) a statement that the applicant is satisfied that he is entitled to use the trade-mark in Canada in association with the wares or services described in the application.

38. (1) Within two months after the advertisement of an application for the registration of a trade-mark, any person may, on payment of the prescribed fee, file a statement of opposition with the Registrar.

(2) A statement of opposition

siège d'affaires au Canada, l'adresse de son principal bureau ou siège d'affaires à l'étranger et les nom et adresse, au Canada, d'une personne ou firme à qui tout avis concernant la demande ou l'enregistrement peut être envoyé et à qui toute procédure à l'égard de la demande ou de l'enregistrement peut être signifiée avec le même effet que si elle avait été signifiée au requérant ou à l'inscrivant lui-même;

h) sauf si la demande ne vise que l'enregistrement d'un mot ou de mots non décrits en une forme spéciale, un dessin de la marque de commerce, ainsi que le nombre, qui peut être prescrit, de représentations exactes de cette marque;

i) une déclaration portant que le requérant est convaincu qu'il a droit d'employer la marque de commerce au Canada en liaison avec les marchandises ou services décrits dans la demande.

38. (1) Toute personne peut, dans le délai de deux mois à compter de l'annonce de la demande, et sur paiement du droit prescrit, produire au bureau du registraire une déclaration d'opposition.

(2) Cette opposition peut être

may be based on any of the following grounds:

fondée sur l'un des motifs suivants :

(a) that the application does not conform to the requirements of section 30;

a) la demande ne satisfait pas aux exigences de l'article 30;

(b) that the trade-mark is not registrable;

b) la marque de commerce n'est pas enregistrable;

(c) that the applicant is not the person entitled to registration of the trade-mark; or

c) le requérant n'est pas la personne ayant droit à l'enregistrement;

(d) that the trade-mark is not distinctive.

d) la marque de commerce n'est pas distinctive.

56. (1) An appeal lies to the Federal Court from any decision of the Registrar under this Act within two months from the date on which notice of the decision was dispatched by the Registrar or within such further time as the Court may allow, either before or after the expiration of the two months.

56. (1) Appel de toute décision rendue par le registraire, sous le régime de la présente loi, peut être interjeté à la Cour fédérale dans les deux mois qui suivent la date où le registraire a expédié l'avis de la décision ou dans tel délai supplémentaire accordé par le tribunal, soit avant, soit après l'expiration des deux mois.

(2) An appeal under subsection (1) shall be made by way of notice of appeal filed with the Registrar and in the Federal Court.

(2) L'appel est interjeté au moyen d'un avis d'appel produit au bureau du registraire et à la Cour fédérale.

(3) The appellant shall, within the time limited or allowed by subsection (1), send a copy of the notice by registered mail to the registered owner of any trade-mark that has been referred to by the Registrar in the decision complained of and to every other person who was

(3) L'appellant envoie, dans le délai établi ou accordé par le paragraphe (1), par courrier recommandé, une copie de l'avis au propriétaire inscrit de toute marque de commerce que le registraire a mentionnée dans la décision sur laquelle porte la plainte et à toute autre personne

entitled to notice of the decision.

qui avait droit à un avis de cette décision.

(4) The Federal Court may direct that public notice of the hearing of an appeal under subsection (1) and of the matters at issue therein be given in such manner as it deems proper.

(4) Le tribunal peut ordonner qu'un avis public de l'audition de l'appel et des matières en litige dans cet appel soit donné de la manière qu'il juge opportune.

(5) On an appeal under subsection (1), evidence in addition to that adduced before the Registrar may be adduced and the Federal Court may exercise any discretion vested in the Registrar.

(5) Lors de l'appel, il peut être apporté une preuve en plus de celle qui a été fournie devant le registraire, et le tribunal peut exercer toute discrétion dont le registraire est investi.

59. (1) Where an appeal is taken under section 56 by the filing of a notice of appeal, or an application is made under section 57 by the filing of an originating notice of motion, the notice shall set out full particulars of the grounds on which relief is sought.

59. (1) Lorsqu'un appel est porté sous le régime de l'article 56 par la production d'un avis d'appel, ou qu'une demande est faite selon l'article 57 par la production d'un avis de requête, l'avis indique tous les détails des motifs sur lesquels la demande de redressement est fondée.

(2) Any person on whom a copy of the notice described in subsection (1) has been served and who intends to contest the appeal or application, as the case may be, shall file and serve within the prescribed time or such further time as the court may allow a reply setting out full particulars of the grounds on which he relies.

(2) Toute personne à qui a été signifiée une copie de cet avis, et qui entend contester l'appel ou la demande, selon le cas, produit et signifie, dans le délai prescrit ou tel nouveau délai accordé par le tribunal, une réplique indiquant tous les détails des motifs sur lesquels elle se fonde.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1203-08, T-1204-08 and T-1205-08

STYLE OF CAUSE: FOR THE RESPONDENTS, LES PRODUCTEURS
LAITIERS DU CANADA and INTERNATIONAL
CHEESE COUNCIL OF CANADA

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: April 19, 2010

**REASONS FOR ORDER
AND ORDER BY:** de MONTIGNY J.

DATED: June 30, 2010

APPEARANCES:

François Guay	FOR THE APPLICANT
François Grenier Catherine Daigle	FOR THE RESPONDENTS, LES PRODUCTEURS LAITIERS DU CANADA and INTERNATIONAL CHEESE COUNCIL OF CANADA

SOLICITORS OF RECORD:

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