

Federal Court



Cour fédérale

**Date: 20230602**

**Docket: T-1209-22**

**Citation: 2023 FC 774**

**Ottawa, Ontario, June 2, 2023**

**PRESENT: Associate Chief Justice Gagné**

**BETWEEN:**

**KIVA HEALTH BRANDS LLC**

**Applicant**

**and**

**LIMONEIRA COMPANY and  
ASSOCIATED CITRUS PACKERS INC.**

**Respondents**

**JUDGMENT AND REASONS**

I. Overview

[1] This is a statutory appeal of a decision of the Trademarks Opposition Board [**Board**] in respect of an expungement proceeding involving the trademark “KIVA”, pursuant to sections 45 and 56 of the *Trademarks Act*, RSC 1985, c. T-13. The Applicant, Kiva Health Brands LLC [**KHB**], appeals the Board’s decision to maintain the registration.

[2] The parties agree that the KIVA trademark was in use and thus was not “deadwood”. Rather, the issue before the Court is whether the trademark was used by its owner during the relevant period, and specifically whether the Board erred by taking at face value a change in title, made in the register, after the section 45 notice was sent to the registered owner.

[3] As a preliminary issue, the Court must decide whether the affidavit and evidence filed by the Applicant to address the specific issue of ownership — including evidence of registration and renewal of the KIVA trademark in the United States — is admissible and relevant evidence.

[4] In addition to raising an argument on the merits, the Applicant also raises a reasonable apprehension of bias claim against the hearing officer.

## II. Facts

[5] On October 25, 2019, at the request of KHB, the Registrar of Trademarks issued a section 45 notice to the Respondent, Associated Citrus Packers Inc. [**Associated Citrus**], requiring it to show use of the KIVA trademark from October 2016 to October 2019 [**Relevant period**].

[6] On January 24, 2020 (i.e. one day before its 3-month deadline elapsed), Associated Citrus’s counsel requested a four-month extension until May 25, 2020 to file its evidence of use, indicating that “the Registrant requires additional time to consider the matter fully, to gather the necessary documents and information, and to prepare and file the necessary evidence.” This extension was granted.

[7] In June 2020, the Respondent Limoneira Company [**Limoneira**] filed an affidavit sworn on June 10 by its Vice-President and Company Controller, Greg Hamm, in response to the Registrar's notice. Besides clearly evidencing use of the KIVA trademark by Limoneira in Canada during the Relevant period, Mr. Hamm addresses the issue of ownership in the trademark in the following manner:

6. Limoneira acquired the rights to the trademark KIVA by way of assignment from Associated Citrus Packer, Inc. (the "Registrant"), as a result of Limoneira's **acquisition of the Registrant in 2013**. Specifically, on September 6, 2013, Limoneira entered into an Agreement and Plan of Merger (the "Merger Agreement") with the Registrant. Pursuant to the Merger Agreement, on September 6, 2013, **the Registrant became a wholly owned subsidiary of Limoneira** (the "Merger"). **Through the Merger, Limoneira acquired** all of the assets of the Registrant, including **the rights in the Trademark KIVA around the world**. Now shown to me and marked as Subsection 1 of Exhibit "A" is a copy of the Merger Agreement.

7. Accordingly, although Limoneira has not yet taken steps to record the assignment of the trademark with the Canadian Intellectual Property Office, Limoneira has been the rightful owner of the Trademark KIVA since September 6, 2013.

[Emphasis and underlining added.]

[8] As will be discussed in more detail later, paragraph 6 of the affidavit is carefully drafted because the Merger Agreement itself does not reflect an assignment of the trademark in favour of Limoneira. On the contrary, it reflects a merger between a wholly owned subsidiary of Limoneira and Associated Citrus, the latter surviving the merger as a wholly owned subsidiary of Limoneira. Therefore, and as partly stated in paragraph 6 of Mr. Hamm's affidavit, this is a share transaction and not an asset transaction.

[9] However, what is unstated in the affidavit is that there is no transfer of assets contemplated in this Merger Agreement.

[10] That said on March 14, 2022 (two weeks before the hearing before the Board), the Registrar recorded a transfer of the trademark registration from Associated Citrus to Limoneira. The date of the change of title is shown as September 6, 2013.

[11] The Board hearing was conducted on March 31, 2022, and the decision maintaining the registration followed on April 12, 2022.

[12] In support of its Application before the Court, the Applicant filed the affidavit of Sandra Ortiz to address both the issue of bias (paras 2-9 and exhibits A-G) and the issue of ownership of the trademark (paras 10-13 and exhibits H-J). The Respondent contests the admissibility and relevance of the latter part of the affidavit [**Impugned evidence**] and filed an interlocutory motion to strike it from the record.

[13] Associate Judge Trent Horne dismissed the Applicant's motion, referring the issue of relevance and admissibility of the Impugned evidence to the judge hearing the merits.

### III. Decision under review

[14] The decision under review is reported as *Kiva Health Brands LLC v Limoneira Company*, 2022 TMOB 68. It was rendered on April 12, 2022 by Member Robert A. MacDonald.

[15] The Member canvasses case-law establishing the Registrar's discretion to review the state of the register, and pertaining to the scope and purpose of section 45 of the *Trademarks Act*. He draws from this that section 45 is meant to provide a simple, summary and expeditious procedure for removing "deadwood" from the register, that it is sufficient for the registered owner to establish a *prima facie* case, and that the burden of proof is light [paras 7-9].

[16] The Member first finds that Mr. Gregg Hamm's affidavit evidence shows use of the KIVA trademark in Canada during the Relevant period, noting that the requesting party had conceded this much during the hearing [para 14].

[17] Turning to the issue of ownership of the KIVA trademark, the Member finds the Registrar's recordal of Limoneira as the registered owner was dispositive of the ownership issue [para 16]. The Member cites previous decisions of the Board in support of the proposition that a change of title recorded by the Registrar "must be accepted *prima facie*." The Member further notes that it is well-established that section 45 proceedings are not intended to determine substantive rights such as ownership, and that such issues are properly resolved through expungement proceedings under section 57 of the *Trademarks Act*. Thus, the Member maintains the registration, having been satisfied that Limoneira was the owner of the KIVA trademark and that its use in Canada within the Relevant period was established [paras 19-20].

IV. Issue and Standard of Review

[18] This appeal raises the following issues:

- A. *Is the Impugned evidence admissible, and if so, is it relevant?*
- B. *Did the Member err by relying on the recordal of the change of title instead of assessing the Merger Agreement?*
- C. *Did the Member trigger a reasonable apprehension of bias?*

[19] The parties agree that an appellate standard of review applies where there is a statutory right of appeal, such as under section 56 of the *Trademarks Act* (*Clorox Company of Canada, Ltd v Chlorotec S.E.C*, 2020 FCA 76 at paras 22-23). Per *Housen v Nikolaisen*, 2002 SCC 33, the applicable standard is therefore that of palpable and overriding error for questions of fact and mixed fact and law, and correctness for questions of law.

[20] The question as to whether there is a reasonable apprehension of bias is a matter of procedural fairness that should be reviewed under a standard akin to that of correctness; the question is whether the procedure was fair having regard to all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

[21] The question as to whether the Merger Agreement should have been considered by the Member is a question of law for which the applicable standard is correctness. However, the question of whether Limoneira ought to have been regarded as the owner of the KIVA trademark

(i.e. the construction of the assignment) is a question of mixed fact and law to which the palpable and overriding error standard applies.

V. Analysis

A. *Is the Impugned evidence admissible, and if so, is it relevant?*

[22] The Applicant argues that the Impugned evidence, which relates to a KIVA trademark registration in the United States, is admissible.

[23] Although the Applicant acknowledges that typically parties are not allowed to file new evidence in appeal of a section 45 decision, it argues that the requesting party may do so in special circumstances, namely where there is a real possibility that evidence before the Board is incorrect.

[24] The Applicant relies on *Benson & Hedges (Canada) Ltd v Kiewel-Pelissier Breweries Ltd No .1*) 5 CPR (2d), 212, 1972 CarswellNat 457 [*Benson & Hedges*]. In that decision, the Federal Court of Canada – Trial Division found that the requesting party should be allowed to submit evidence where there appears from the requesting party’s affidavit evidence to be a “strong possibility” that a material statement made in the sole evidence before the Board is entirely false or does not disclose the true facts (*Benson & Hedges*, paras 7-9).

[25] The Applicant acknowledges that the subsequent decisions *Plough (Canada) Ltd v Aerosol Fillers Inc*, 1980 CanLII 2739 (FCA), [1981] 1 FC 679 [*Plough*], and *Osler, Hoskin &*

*Harcourt v Canada (Hearing Officer of Trade Marks)*, 1997 CanLII 5927 (FC), [1997] FCJ No. 1671 [*Osler*] hold otherwise. However, it argues that following the reasoning of *Plough* and *Osler* here would produce absurd results and hence conflict with the statutory interpretation principle that a legislature does not intend to produce absurd consequences. According to the Applicant, if these cases were followed, the Court would be left with only incorrect evidence upon which to base its determination of use; this would perpetuate the “deadwood” registrations in the register which the provision is meant to prevent.

[26] The Applicant submits the Impugned evidence meets the threshold for admissibility, namely through its significance, probative value and reliability (citing *Vass v Leaf Inc*, 2022 FC 1192 at para 27). In its eyes, the Impugned evidence squarely contradicts Mr. Hamm’s statement that through the Merger, Limoneira acquired “the rights in the Trademark KIVA around the world.” According to the Impugned evidence, Associated Citrus is the registered owner of the KIVA trademark in the United States.

[27] Finally, the Applicant relies on subsection 56(5) of the *Trademarks Act*, arguing it contains no express limitation on a requesting party filing evidence.

[28] On the other hand, the Respondent submits it is black-letter law that the requesting party in a section 45 proceeding cannot file evidence at any stage. It cites *Plough* and *Osler*, noting that *Benson & Hedges* predates these cases and has not been followed since. In *Plough*, the Federal Court of Appeal stated:

[18] Before parting with the matter, I should mention the affidavit filed by the respondent on the appeal to the Trial Division. In my



view, evidence submitted by the party at whose instance the subsection 44(1) notice was sent is not receivable on the appeal from the Registrar any more than it would have been receivable before the Registrar.

[Emphasis added]

[29] Even if the Appellant were allowed to file evidence, the Respondent argues that the Impugned evidence should be struck as being clearly irrelevant. It argues that since trademarks are territorial, there is nothing unusual about two distinct companies owning identical trademarks in the U.S. and in Canada, and that evidence tending to show who might own a U.S. trademark registration is irrelevant.

[30] Turning to this first issue, I agree with the Applicant that the Impugned evidence contradicts Limoneira's evidence that through the Merger, it acquired the KIVA trademark around the world.

[31] However, I agree with the Respondent that the case law is quite clear on the subject. All Federal Court and Federal Court of Appeal jurisprudence postdating the *Benson & Hedges* decision rejects the idea that the requesting party, who may or may not have a personal interest in the outcome of the proceeding, could file evidence or cross-examine the registered owner's affiant(s). That is true both at the Board level and on appeal before this Court. What section 56(5) of the *Trademarks Act* allows for is additional evidence filed by the registered owner in the appeal (*Plough, Osler, Berg Equipment Co (Canada) Ltd v Meredith & Finlayson*, 1991 CarswellNat 335, [1991] FCJ No. 1318, at paras 5-7).

[32] That said, even if the Impugned evidence was admissible, its relevance would be limited to contradicting the claim that in September 2013, Associated Citrus had assigned its right in the KIVA U.S. trademark in favour of Limoneira. And that has very limited relevance to the issues that were before the Board, namely:

- i. Whether the KIVA trademark was used in Canada in association with fresh citrus fruits during the Relevant Period, and;
- ii. Whether the recordal made in March 2022 — with retroactive effect to September 2013 — was sufficient evidence of the change in ownership of the trademark at the time the section 45 notice was sent.

[33] For the above reasons, I will therefore disregard the Impugned evidence.

B. *Did the Member err by relying on the recordal of the change of title instead of assessing the Merger Agreement?*

[34] In its decision, the Member acknowledged that the only real issue to be dealt with was that of the ownership of the Canadian KIVA trademark at the time the section 45 notice was sent, and during the Relevant period. It disposed of the issue as follows:

[16] Limoneira submits that I do not need to assess the Merger Agreement since the recordal of the change of title on March 14, 2022, with the date of the change of title shown as September 6, 2013, is dispositive of the matter. I agree.

[17] As noted in *True Software* at para 23, once the change of title was recorded by the Registrar on March 14, 2022 with the change of title shown as September 6, 2013, “it must be accepted *prima facie*” [see also *Barrette Legal Inc. v 1811350 Alberta Ltd*, 2019 TMOB 80 at paras 12 to 17; *College of Podiatric Surgeon of British Columbia v North America School of Podology Inc.*, 2020 TMOB 62 at para 25]. Consequently, I accept Limoneira was the owner of the Mark during the Relevant Period.

[18] Further, it is well established that section 45 proceedings are not intended to determine substantive rights such as ownership [see *United Grain Growers Ltd v Lang Michener*, 2001 FCA 66; *Philip Morris Inc v Imperial Tobacco Ltd*, (1987) 13 CPR (3d) 289 (FCTD)]. Such issues are resolved through expungement proceedings under section 57 of the Act [*Miller Thompson LLP v Hilton Worldwide Holding LLP*, 2020 FCA 134 at para 9]

[35] On that note — and without assessing neither Mr. Hamm’s affidavit nor the Merger Agreement — the Member was satisfied that Limoneira was the owner of the KIVA Trademark during the Relevant period.

[36] I carefully reviewed the jurisprudence on which the Member based his finding that he did not have to go any further than the register.

[37] First, in *True Software Scandinavia AB v Ontech Technologies Inc, also trading as Ontech Telecom*, 2018 TMOB 40, the Board confirms that an assignment — between the affiant doing business under the name Ontech and the affiant’s company — may be valid even if not registered. It also confirms the validity of a *nunc pro tunc* assignment that was filed and accepted by the Registrar. In doing so, the Board stated the following:

24. In the present case, [the affiant]’s assertions, together with the Registrar’s subsequent receipt and recordal of the assignment, lead me to conclude that the assignment at issue occurred on November 22, 2011, and was simply not recorded at that time. Consequently, I accept that Ontech Technologies Inc. was the owner of the Mark during the relevant period for the purposes of these proceedings.

[38] The Board looked at the evidence provided by the registered owner and satisfied itself that there was in fact an assignment of rights in the trademark. More specifically, it concluded

that there was nothing in the evidence that on its face called into question the affiant's sworn statements with respect to ownership of the Mark (*True Software*, at para 22).

[39] In *Barrette Legal Inc v 1811350 Alberta Ltd*, 2019 TMOB 80, the register was updated after a section 45 notice was sent to record an assignment that occurred before the section 45 notice was sent. The requesting party argued that the evidence submitted by the assignee could not be considered because it was not registered as the owner of the mark during the relevant period. Furthermore, the date on the assignment document in question was handwritten and there was a discrepancy between the affidavit and the assignment document's identification of the assignee as a Canadian corporation, rather than an Alberta corporation. The Board disagrees with the requesting party and finds that there is no requirement that an assignment be recorded and that an unrecorded successor in title may successfully respond to a section 45 notice, as long as the Registrar is satisfied that this party was, in fact, the owner of the trademark during the relevant period. Although the Board states that an assignment recorded by the Registrar must be accepted *prima facie*, it nevertheless considered the assignment documents and satisfied itself that the assignee was, in fact, the owner of the trademark during the Relevant period.

[40] In *College of Podiatric Surgeon of British Columbia v North American School of Podology Inc*, 2020 TMOB 62, the same factual situation occurred; an assignment of rights in the mark was recorded after a section 45 notice was sent. In the evidence filed by the assignee in response to the section 45 notice was a March 2018 document entitled Confirmatory Assignment, the assignor stated that as of November 24, 2013, it did "sell, assign and set over absolutely unto [assignee] its successors and assigns, all its rights, title and interest in and to the

trade-mark of the Assignor in Canada [...] for the trade-mark C.POD, together with the goodwill associated therewith". At issue in that case was not the fact that an assignment occurred, but rather the date on which it occurred. The requesting party took issue with the fact that it was backdated. First, the Board reiterates that an assignment may be valid even if not registered with the Registrar. By assessing both the statement made by the assignee and the Confirmatory Assignment, the Board is satisfied that the assignment did occur at the time it says it occurred.

The Board adds the following:

27 In any event, given Mr. Smith's position as Chief Executive Officer of both the Owner and the Registrant during the relevant period, I accept that Mr. Smith was the controlling mind of both entities such that the existence of an oral license and the requisite control with respect to any use of the Mark by the Owner can reasonably be inferred. [Citations omitted.]

[41] Again, in spite of the assignment having been recorded by the Registrar at the time the decision was issued, the Board did assess the evidence that was filed by the registered owner.

[42] As to the case law the Board cites in support of the proposition that section 45 proceedings are not intended to determine substantive rights such as ownership, I would first note that none of those decisions are on point here. The issues in these cases were rather:

- whether the mark was used to distinguish the registered owner's goods or services (*United Grain Growers Ltd v Michener*, 2001 FCA 66);
- whether the mark was abandoned (*Philip Morris Inc v Imperial Tobacco Ltd* (1987), 13 CPR (3d) 289 (FCTD)), or;
- issues arising between competing commercial interests (*Miller Thompson LLP v Hilton Worldwide Holding LLP*, 2020 FCA 134).

[43] In other words, a section 45 proceeding is one meant to assess the use of a trademark, not its validity or whether it should have been registered in the first place.

[44] But there is more; the question here is not to determine the ownership of the Kiva trademark. It is whether there is some evidence that the trademark was used by its owner during the Relevant period. A negative answer to that question will not determine ownership in the trademark but might rather lead the Board to conclude that a bald unilateral assertion of ownership by an alleged assignee is just not sufficient — just as a bald assertion that a trademark was used is not sufficient.

[45] In *Star-Kist Foods Inc v Canada (Reg. of T.M.)*, [1988] FCJ No. 233, 20 CPR (3d) 46 (FCA), the Federal Court of Canada – Appeal Division stated that the Board had to review an assignment/merger agreement purporting to be *nunc pro tunc* and to rule on its effective date. I agree with the Respondent that that decision is not on point either. In that case, the evidence showed an assignment *nunc pro tunc*, whereby a document signed *after* a section 45 notice was sent, purported to confirm an assignment made during the Relevant period. That being said, I do view the Court's following comments as having some relevance here:

7. Transactions post-dating the issue of a s. 44 notice may properly be viewed with some scepticism, and when the true circumstances are peculiarly within the knowledge of one party, he should bring that evidence forward. It is unreal and unfair to lay the onus on another who, in the scheme of things, has no power to compel production of evidence.

[Emphasis Added.]

[46] I view this as another indication that the evidence of an alleged assignment has to be assessed by the Board; the Board should look at the quality of the evidence adduced by the party(ies) knowledge of the true circumstances, i.e. the assignee and the assignor.

[47] In the case before me, it is troublesome that the assignor, who was the registered owner at the time the section 45 notice was sent, and who requested a delay to respond to the notice, remained silent afterward.

[48] I agree with the Respondent that section 45 affidavits are to be afforded substantial credibility (*Ogilvy Renault v Compania Roca-Radiadores S.A.* 2008 CarswellNat 776 at para 14). However, and as indicated above, the Merger Agreement filed in support of Mr. Hamm's affidavit contradicts the single paragraph in said affidavit dealing with ownership.

[49] The Respondent notes that the Applicant's entire argument rests on the premise that the Merger Agreement does not appear to contain an assignment of the KIVA trademark. It points out however, that Mr. Hamm's affidavit does not state that Limoneira acquired the rights in the trademark KIVA by way of the Merger Agreement. Rather it states "Through the Merger, Limoneira acquired [the rights]". The Respondent argues that the terms "Merger Agreement" and "Merger" have separate defined meanings in the affidavit and that no claim is made that the Merger Agreement itself transferred the assets.

[50] With respect, the Respondent is playing with words; "Merger" in the affidavit is understood as being the fact that "on September 6, 2013, the Registrant became a wholly owned

subsidiary of Limoneira”. This does not evidence an assignment of rights or transfer of assets between the affiliate and the parent company.

[51] The Respondent also argues that, in any event, “the Merger Agreement as filed is incomplete – the Board did not have the entirety of the agreement before it.” While that is technically true, it is also true that the Board had the table of contents of the Merger Agreement before it and nothing there indicates that it contains a transfer or an assignment of assets. In addition to the section entitled “The Merger”, it contains the regular Representations and Warranties found in a share transaction. Section 3.13 of the Merger Agreement refers to the Disclosure Schedule that sets forth a list of all intellectual property owned by Associated Citrus (the new affiliate) and its subsidiary; Associated Citrus thereby represents that they are all valid and in full force. No assignment is foreseen. If the entirety of the Merger Agreement or any ancillary document signed at the time of the merger had contained an assignment of the KIVA trademark, it seems to me it would have been filed.

[52] If there was a verbal assignment of the KIVA trademark, it seems to me Mr. Hamm’s affidavit would have referred to said agreement and it would have been corroborated by an affidavit of a representative of Associated Citrus who was the registered owner at the time the section 45 notice was sent. No such evidence was presented to the Board, despite Associated Citrus having requested and received a 3-month extension, in part for the explicit purpose of preparing and filing the necessary evidence.



[53] If the identity of the person having used a trademark during the Relevant period had no bearing on a section 45 proceeding, there would be no reason to interfere with the Board's decision. I do not think that is the case.

[54] In my view, the Board erred when it refused to consider the evidence filed by Limoneira in assessing who the real owner of the KIVA trademark was at the time the section 45 notice was sent and during the Relevant period. For this reason alone, the Board's decision will be set aside and the file sent back to the Board for a new determination by a different member.

C. *Did the Member trigger a reasonable apprehension of bias?*

[55] The evidence shows that in March 2019, Mr. MacDonald was a partner at Gowling WLG, and represented a third party whose interests were conflicting with those of KHB relating to the KIVA trademark. Although KHB did not ask the Member to recuse himself, it states that he should have done so on his own initiative in order to avoid creating a reasonable apprehension of bias.

[56] Considering my previous finding, it is not necessary for me to address this issue. I will nevertheless do so in case my decision does not survive an appeal.

[57] There is a strong presumption that administrative decision-makers will decide matters impartially (*Colel Chabad Lubavitch Foundation of Israel v Canada (National Revenue)*, 2022 FCA 108 at para 37). It is also known that these issues should be raised at the earliest practical

opportunity (*Hennessey v Canada*, 2016 FCA 180 at para 21 [*Hennessey*]). Yet, in this case, the issue was not raised before the Member.

[58] The only evidence of the Member's involvement in the case concerning the third party is a letter that was addressed to him by previous counsel for KHB. Yet there is no evidence that that letter was indeed sent. In addition, the third party's trademark application in question was filed by a different Gowling WLG partner and the statement of opposition KHB filed against the third party's application lists a different Gowling WLG employee as the recipient. Had the Member been confronted with this issue, he could have provided the relevant information as to whether there was in fact a conflict of interest.

[59] Additionally, the Board appears to have a policy in place to address conflicts; if the Applicant had raised the issue before the Member, instead of waiting after being unsuccessful, it could have been properly decided using the policy as a guide.

[60] In my view, the Applicant waited too long to raise the issue. While the Applicant did, at the hearing, provide the helpful context that the identity of the presiding Member only became known on the single hearing day itself, the Applicant's own evidence suggests that it would have had, at that point, the information to shortly thereafter raise the issue. The hearing was held on March 31, 2022 and the Board's decision was rendered on April 12, 2022. This gave the Applicant 12 days (8 business days) in which to further research and raise its reasonable apprehension of bias claim. In the absence of any information from the Applicant indicating why this was not possible, the Applicant is taken to have waived its right to raise a reasonable

apprehension of bias against the Member. It is certainly not a matter to be raised only after receiving an unfavourable decision (*Hennessey*, at para 21).

VI. Conclusion

[61] Since I am of the view that it was an error for the Member not to properly assess the alleged assignment of rights in the KIVA trademark registered after the section 45 notice was sent, the Member's decision will be set aside and the expungement proceeding will be remitted to the Board for a new determination by a different member.

[62] At the outset of the hearing, the parties asked for the opportunity to provide additional written submissions on costs. They will have two weeks from the date of these reasons to provide their submissions not exceeding two pages.

**JUDGMENT in T-1209-22**

**THIS COURT’S JUDGMENT is that:**

1. The Applicant’s Application is granted;
2. The decision of the Trademark Opposition Board dated April 12 2022, is set aside and the Expungement Proceeding is remitted to the Trademark Opposition Board for a new determination by a different member;
3. The parties have two weeks from the date of these reasons to provide the Court with their written submissions on cost, not exceeding two pages.

“Jocelyne Gagné”  
\_\_\_\_\_  
Associate Chief Justice

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1209-22

**STYLE OF CAUSE:** KIVA HEALTH BRANDS LLC v LIMONEIRA  
COMPANY and ASSOCIATED CITRUS PACKERS  
INC.

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** MARCH 1, 2023

**JUDGMENT AND REASONS:** GAGNÉ A.C.J.

**DATED:** JUNE 2, 2023

**APPEARANCES:**

Ariel Breitman  
Andy Chow  
FOR THE APPLICANT

Reagan Seidler  
FOR THE RESPONDENTS

**SOLICITORS OF RECORD:**

MLT Aikins LLP  
Calgary, Alberta  
FOR THE APPLICANT

Smart & Biggar LLP  
Toronto, Ontario  
FOR THE RESPONDENTS