

Federal Court



Cour fédérale

Date: 20241009

Docket: T-657-23

Citation: 2024 FC 1592

Ottawa, Ontario, October 9, 2024

PRESENT: Madam Justice Pallotta

BETWEEN:

THE LITTLE BROWN BOX PIZZA, LLC

Applicant

and

DJB

Respondent

JUDGMENT AND REASONS

I. Background

[1] This is an appeal, made pursuant to section 56 of the *Trademarks Act*, RSC, 1985, c T-13 [TMA], of the Registrar of Trademarks' (Registrar) decision to expunge registration number TMA929431 for PIEOLOGY.

[2] TMA929431 issued on February 19, 2016 and covers use of PIEOLOGY in association with the services set out below. The application for registration was filed based on use and

registration of the trademark in the United States of America with services (1) and proposed use of the trademark with services (2).

(1) Pizza parlors; Restaurant services; Restaurant services featuring pizza, salads, side dishes and desserts; Restaurant services, including sit-down service of food and take-out restaurant services; Restaurant services, namely, providing of food and beverages for consumption on and off the premises.

(2) Restaurant services; restaurant services, namely, providing of food and beverages for consumption on and off the premises.

[3] Section 45 provides for a summary procedure that allows the Registrar to expunge a registration for a trademark that has fallen into disuse: *Miller Thomson LLP v Hilton Worldwide Holding LLP*, 2020 FCA 134 at para 9 [*Hilton FCA*]. At the respondent's request, the Registrar issued a section 45 notice on July 28, 2020 that required the registered owner, The Little Brown Box Pizza, LLC (Owner), to show it had used PIEOLOGY in Canada with each of the registered services in the three-year period preceding the notice, or alternatively, to show special circumstances that would excuse non-use.

[4] In response to the notice, the Owner filed an affidavit of its then chief executive officer, Gregg Imamoto (Imamoto Affidavit). The Imamoto Affidavit explains that the business started out in 2011 as a single-location pizza restaurant in California and grew to operate an international chain of over 140 pizza restaurants serving the Owner's "famous build-your-own pizzas alongside salads, side dishes and desserts in sit-down dining environments and through take-out services". It states that the Owner extensively advertised its services in Canada in association with the PIEOLOGY trademark, including in the three-year period preceding the section 45 notice, and attaches representative screenshots of the Owner's website and social media accounts that were accessible to Canadians. It also states that the Owner advertised to and

sought out franchisees in Canada and attaches a brochure that was provided to potential franchisees. The affidavit attaches media articles from late 2015 and early 2016 and explains that the launch of the PIEOLOGY brand in Canada generated significant buzz and media attention. According to the Imamoto Affidavit, the Owner had been actively pursuing the expansion of its business into Canada but encountered difficulties attracting qualified Canadian franchisees, in part due to the disruption of the COVID-19 pandemic. Negotiations with potential franchisees who submitted applications in July 2020 and February 2021 failed. The Owner was continuing to seek Canadian franchisees.

[5] The Registrar was not satisfied that the Imamoto Affidavit demonstrated use of the PIEOLOGY trademark, within the meaning of sections 4(2) and 45 of the *TMA*, in association with any of the registered services. The Owner argued that its website and social media sites displaying the PIEOLOGY trademark were accessible to Canadians during the relevant period, but the Registrar found that there was no evidence that Canadians actually accessed the sites. Even if they did, the Registrar was not satisfied the Owner was offering and prepared to perform the advertised services in Canada. Canadians might be able to access information about the Owner's services being offered outside of Canada, but that was not sufficient.

[6] The Owner also argued that the brochure was evidence that the registered services were advertised in Canada because franchising services are ancillary restaurant services. The Registrar accepted that "restaurant services" should be given a broad interpretation to include incidental or ancillary services but rejected the Owner's arguments that franchising services are incidental or ancillary to restaurant services, relying on *2277279 Ontario Inc v Checkers Drive-In Restaurants*

Inc, 2020 TMOB 19 at paragraphs 10 and 19-22. The Registrar agreed with the respondent that an ordinary understanding of “restaurant services” would include, at a minimum, the provision of food and beverages rather than steps to open a location where they would be provided: *Pain & Ceballos LLP v Crab Addison, Inc*, 2017 TMOB 158 at para 41.

[7] The Registrar then turned to consider whether the Owner had demonstrated special circumstances excusing non-use within the meaning of section 45(3) of the *TMA*. The Registrar did not accept the Owner’s argument that the inherent difficulties in establishing a restaurant franchise in Canada, the fact that promising negotiations with a potential franchisee were cut short, and the effect of the COVID-19 pandemic cumulatively amounted to special circumstances that excused non-use. The Owner had not provided evidence to support its argument that establishing a restaurant franchise in Canada is a substantial undertaking, the evidence indicated that franchise negotiations ended for reasons that post-dated the relevant period, and the Imamoto Affidavit did not explain how the pandemic affected the Owner’s ability to attract qualified Canadian franchisees or why the Owner had not commenced use before the pandemic was declared in March 2020. Furthermore, the Registrar was not satisfied that these circumstances excused the non-use, including because they did not explain the absence of use from the registration date to March 2020. The Owner had not shown that the four-year period of non-use was beyond its control and there was insufficient evidence of a serious intention to resume use of the trademark shortly.

[8] The Owner submits the Registrar erred in finding that the Imamoto Affidavit did not demonstrate use of PIEOLOGY in Canada with restaurant services, or special circumstances excusing non-use for the other registered services.

[9] In any event, the Owner submits that the affidavit of its chief financial officer, Stephen Ostaszewicz (Ostaszewicz Affidavit), filed pursuant to section 56(5) of the *TMA*, fills the evidentiary gaps that the Registrar identified. As the Ostaszewicz Affidavit provides material new evidence, the Court ought to conduct a *de novo* appeal to reach its own conclusions on the issues. The Owner asks the Court to maintain TMA929431 in its entirety on the basis that PIEOLOGY was used with restaurant services during the relevant period, and there were special circumstances that excused non-use for the other registered services.

[10] The respondent did not participate in this appeal.

II. Standard of Review and Issues

[11] The applicable standard of review depends on the nature of the additional evidence filed in this proceeding. Where there is new evidence that would have affected the Registrar's decision materially, the Court undertakes a *de novo* review of issues that relate to such evidence: *Hilton FCA* at para 47; *Clorox Company of Canada, Ltd v Chloretec SEC*, 2020 FCA 76 at para 21 [*Clorox*]; *Seara Alimentos Ltda v Amira Enterprises Inc*, 2019 FCA 63 at para 22 [*Seara*]. Otherwise, the Court reviews the Registrar's decision according to the appellate standards of review set out in *Housen v Nikolaisen*, 2002 SCC 33; *Hilton FCA* at para 48; *Clorox* at paras 22-23.

[12] In assessing whether new evidence would have materially affected the Registrar's decision, the Court considers whether the evidence is "sufficiently substantial and significant" and of probative value: *Clorox* at para 21, citing *Vivat Holdings Ltd v Levi Strauss & Co*, 2005 FC 707 at para 27 and *Tradition Fine Foods Ltd v Group Tradition'l Inc*, 2006 FC 858 at para 58. The test is not whether the new evidence would have changed the outcome: *Seara* at para 23; *Scott Paper Limited v Georgia-Pacific Consumer Products LP*, 2010 FC 478 at para 49. New evidence may be material if it fills gaps or remedies a deficiency identified by the Registrar: *IPack BV v McInnes Cooper*, 2023 FC 243 at para 9; *Shaoguan Risen Trading Corporation Ltd v Dong Phuong Group Partnership*, 2023 FC 748 at para 18. If new evidence merely supplements or confirms the Registrar's findings, then it is not considered material: *Seara* at para 24.

[13] I agree with the Owner that the Ostaszewicz Affidavit provides material new evidence. The Registrar noted a number of deficiencies with the Imamoto Affidavit, including that it did not provide evidence that Canadians accessed the Owner's website and social media sites during the relevant period, or explain how the brochure provided to potential franchisees amounted to advertising of ancillary or incidental restaurant services. The Registrar also found that the Imamoto Affidavit lacked details about the difficulties in establishing a restaurant franchise in Canada and the pandemic's effect on the Owner's ability to attract Canadian franchisees. The Ostaszewicz Affidavit addresses these points.

[14] The Owner's new evidence is not merely repetitive of evidence that was before the Registrar; it remedies deficiencies identified by the Registrar and adds evidence that is sufficiently substantial and significant and of probative value: *Clorox* at para 21. I find the

evidence would have enhanced or clarified the record in a way that may have influenced the Registrar's findings of fact and exercise of discretion in deciding whether the Owner demonstrated that it used PIEOLOGY in Canada with restaurant services during the relevant period, and whether there were special circumstances excusing non-use. Consequently, this Court may "exercise any discretion vested in the Registrar" to decide these issues: *TMA*, s 56(5).

III. Analysis

A. *Did the Owner use PIEOLOGY in Canada in association with restaurant services during the relevant period?*

[15] Although it was not operating PIEOLOGY restaurants in Canada during the relevant period, the Owner submits the evidence shows that it advertised ancillary restaurant services in association with the PIEOLOGY trademark in Canada and to Canadians, and that it offered and was "willing and able" to perform those ancillary restaurant services in Canada: *Smith v Brink, Hudson & Lefever Ltd* (2002), 24 CPR (4th) 281 (TMOB) at para 8. The Owner submits it has two categories of customers—franchisees, and consumers who eat at PIEOLOGY restaurants. The Owner states it used the PIEOLOGY trademark in association with ancillary restaurant services in Canada during the relevant period, in two ways: (i) by advertising the ancillary restaurant services it provides to restaurant franchisees by means of a brochure that was distributed to potential Canadian franchisees and an online website portal for receiving franchise applications; and (ii) by providing ancillary restaurant services to consumers via the PIEOLOGY website and a PIEOLOGY app that was available for download.

[16] The Owner contends the Registrar erred by adopting a restrictive interpretation of "restaurant services" that requires the provision of food and beverages. This is tantamount to

requiring an actual restaurant in operation, and contrary to the jurisprudence that use of a trademark with a primary service can be supported through incidental and ancillary services: *Hilton FCA*; *Dollar General Corporation v 2900319 Canada Inc*, 2018 FC 778 [*Dollar General*]; *TSA Stores, Inc v Registrar of Trade-Marks*, 2011 FC 273 [*TSA Stores*]. Relying on this Court's decision in *Hilton Worldwide Holding LLP v Miller Thomson*, 2018 FC 895 at paragraph 72, the Owner submits that the question of whether franchising services are ancillary to restaurant services must be considered from both the consumer's perspective and the Owner's perspective as a restaurant franchisor. The Owner argues that it considers services that would enable franchisees to operate PIEOLOGY restaurant locations to be integral to its restaurant services, and it considers such services to be "restaurant services".

[17] I accept that services should be liberally construed, and that "restaurant services" do not necessarily require the operation of a restaurant in Canada. However, each case is decided on its own facts: *Hilton FCA* at paras 107, 118. In this case, I find the evidence does not establish that the Owner's distribution of a brochure to potential Canadian franchisees or the Owner's online portal amounted to use of the PIEOLOGY trademark with ancillary restaurant services within the meaning of subsection 4(2) of the *TMA*.

[18] First, I am not persuaded that restaurant services encompass the kind of services that are described in the brochure for potential franchisees. The brochure refers to "operational support" and lists things like leadership training, safety audits, and operations manuals and videos. The Ostaszewicz Affidavit explains that the Owner's franchisees need these services to operate PIEOLOGY restaurants. It states that franchisees are contractually obliged to follow the

procedures and specifications in the Owner's operations manuals and they pay the Owner for training on topics such as food preparation, handling, and safety. However, in my view, the evidence does not establish that the kind of operational support described in the franchise brochure, when considered from the public's perspective and the Owner's perspective, falls within the scope of "restaurant services". The Owner argues that it considers services that enable franchisees to operate PIEOLOGY restaurant locations to be integral to its restaurant services, and it considers such services to be "restaurant services", but the Ostaszewicz Affidavit does not explicitly say so and the argument is not supported by the evidence. More importantly, the Ostaszewicz Affidavit does not explain why services that would enable franchisees to operate restaurant locations are encompassed within an ordinary commercial understanding of the registered term "restaurant services": *Hilton FCA* at para 85.

[19] Furthermore, mere advertising of services in Canada will not constitute use in association with services: *Hilton FCA* at para 7. Use in association with services requires that the services must be effectively offered to Canadians or performed in Canada: *Dollar General* at para 13, citing *UNICAST SA v South Asian Broadcasting Corporation Inc*, 2014 FC 295 at para 46. I do not agree with the Owner's submission that it was "willing and able" to perform the services described in the franchise brochure in Canada during the relevant period. The Owner only offers operational support and training to franchisees who have committed to open a restaurant by signing a franchise agreement. The Owner does not offer such services to members of the Canadian public generally or to potential franchisees who express interest in opening a PIEOLOGY restaurant location.

[20] In my view, the facts of this case are similar to *Markus Cohen Law Office v Cheesecake Factory Inc* (2003), 29 CPR (4th) 277 at 282, [2003] TMOB No 44, where the Registrar held that exploring sites for Canadian restaurants and working with a Canadian broker did not amount to providing a service, as no service (ancillary or otherwise) was being offered to anyone. During the relevant period, the Owner was seeking franchisees to open a PIEOLOGY restaurant location in Canada. According to the Ostaszewicz Affidavit, the Owner was ready to provide and would have provided operational support to such franchisees. However, there were no Canadian franchisees in the relevant period. No members of the Canadian public were in a position to receive a material benefit from the support services described in the franchise brochure: *Hilton FCA* at paras 112-115, 117.

[21] The Owner states that use of a trademark anywhere along the distribution chain is sufficient: *Société Nationale des Chemins de Fer Français SNCF v Venice Simplon-Orient-Express* (2000), 9 CPR (4th) 443, [2000] FCJ No 1897 (Fed TD) at paras 10-12. In this case, however, there was no chain of distribution during the relevant period for the services in question. The services would only be offered and provided to franchisees while their franchise agreements were in place, and no franchise agreements were in place.

[22] I reach similar conclusions regarding the online portal accessible via the PIEOLOGY website during the relevant period. The online portal provided a way to submit a franchise inquiry form, with an option for downloading a brochure. The associated webpage displayed the PIEOLOGY trademark and described certain benefits of a PIEOLOGY franchise including “support”, but in my view, it did not advertise ancillary restaurant services that were available to

be performed in Canada. Assuming the downloadable brochure described operational support for franchisees, it did not constitute use of the PIEOLOGY trademark with ancillary restaurant services within the meaning of subsection 4(2) of the *TMA*, for the reasons given above.

[23] Turning to the second group of customers, the Owner submits it provided ancillary restaurant services to Canadian consumers during the relevant period through the PIEOLOGY website and mobile app. The Ostaszewicz Affidavit demonstrates that several thousand unique users in Canada visited the PIEOLOGY website during the relevant period, and at least one Canadian downloaded the PIEOLOGY mobile app. Together, the website and mobile app permitted consumers to review the Owner's menu, look up restaurant locations in the US, pre-plan customized pizzas, save favourite pizzas for future ordering, and receive news about the Owner's latest product offerings. The Owner submits this is no different from the situation in *TSA Stores*, where a certain level of interactivity between the trademark owner's website and consumers located in Canada was sufficient to show that a benefit was received, even though no product could be ordered from the website.

[24] I agree with the Owner that there appears to be no basis for distinguishing *TSA Stores*. In that case, the owner's website allowed users to find stores in the US. The "Help Me Choose Gear" and shoe finder features were found to be "akin to visiting a bricks and mortar store and benefiting from a discussion with a knowledgeable salesperson", and to provide a benefit to Canadians: *TSA Stores* at paras 19-21. The Court reached a similar conclusion in *Dollar General*. As the Owner points out, in that case the Court found that the DOLLAR GENERAL website provided a level of interactivity and benefit to Canadians because it allowed Canadians to browse

products, access flyers and coupons, and add or remove items from a shopping cart. The display of DOLLAR GENERAL on the website was found to constitute use of the trademark in Canada even though items on the website were priced in US dollars and the Owner did not deliver to Canada—customers had to pick up their purchase at a US address, or arrange for a third party shipping agent to receive the purchase in the US and deliver it to Canada.

[25] The Owner describes the PIEOLOGY restaurant chain model as serving highly customizable, “build your own” pizzas. “Build your own” customization is integral to the Owner’s restaurant services model and not merely a tangential aspect of its restaurant services—according to the Ostaszewicz Affidavit, it was one of the “innovations driving growth”. The PIEOLOGY trademark was displayed on the Owner’s website and mobile app during the relevant period and, similar to TSA Stores, the ability to customize pizzas provided a level of interaction and a service that can be considered akin to visiting a bricks and mortar PIEOLOGY restaurant.

[26] During the relevant period, the Owner was taking steps to expand PIEOLOGY restaurants into Canada and building its brand through social media. Considering the evidence as a whole, I am satisfied that the Owner’s online advertising during the relevant period was intended to target Canadian consumers.

[27] The burden to prove use in a section 45 proceeding is not a heavy one: *Spirits International BV v BCF SENCRL*, 2012 FCA 131 at para 8 [*Spirits International*]. An owner’s evidence must only supply facts from which a conclusion of use may flow as a logical inference:

Cosmetic Warriors Limited v Riches, McKenzie & Herbert LLP, 2019 FCA 48 at para 10. An affidavit or statutory declaration will suffice if it provides a factual description of the use of the impugned trademark demonstrating that the requirements for use under section 4 of the *TMA* are met: *Spirits International* at para 8.

[28] The Owner's evidence in this case could have been clearer. Nonetheless, I find the Owner has provided sufficient evidence to demonstrate that it used the PIEOLOGY trademark in association with restaurant services in Canada during the relevant period.

B. *Has the Owner demonstrated special circumstances excusing non-use with any of the remaining registered services?*

[29] The Owner states that the remaining registered services are narrower than restaurant services, and require a bricks and mortar location in Canada for provision of food and beverage.

The remaining registered services are:

- (1) Pizza parlors; Restaurant services featuring pizza, salads, side dishes and desserts; Restaurant services, including sit-down service of food and take-out restaurant services; Restaurant services, namely, providing of food and beverages for consumption on and off the premises.
- (2) [R]estaurant services, namely, providing of food and beverages for consumption on and off the premises.

[30] The Owner concedes that it did not use PIEOLOGY in Canada in association with the above services during the relevant period, but submits that the non-use should be excused due to special circumstances.

[31] The Owner does not dispute that the Registrar stated the correct test for determining whether special circumstances excuse the non-use of a trademark: *Canada (Registrar of Trade Marks) v Harris Knitting Mills Ltd (1985)*, 4 CPR (3d) 488, [1985] FCJ No 226 (FCA) [*Harris Knitting Mills*]. The first part of the test considers why the trademark was not used during the relevant period and whether the reasons constitute special circumstances. If so, the next part considers whether the special circumstances excuse the absence of use, taking into account the length of non-use, whether the reasons for non-use were beyond the owner's control, and whether the owner seriously intended to resume use shortly.

[32] The Owner submits the Ostaszewicz Affidavit explains the challenges involved in expanding internationally into Canada, the failed negotiations with potential franchisees, and the pandemic's negative impact on the restaurant industry and franchisees' willingness to open a restaurant during a public health crisis. The Owner argues that the circumstances described in the Ostaszewicz Affidavit, in the aggregate, should be considered "special". According to the Owner, the same approach was taken in *Life Maid Right – 2799232 Ontario Inc and Maid Right, LLC*, 2022 TMOB 104 at para 28 [*Maid Right*], where the Registrar recognized that franchisee recruitment takes time and purchasing a franchise is a complex matter. The Registrar found these were among the factors that put non-use of the MAID RIGHT trademark beyond the control of the owner alone: *Maid Right* at paras 27-30.

[33] The Owner submits that the circumstances described in the Ostaszewicz Affidavit should excuse non-use of the PIEOLOGY trademark. The respondent initiated the section 45 request four and a half years after the trademark was registered, which is a relatively short period

considering it can take up to two years to negotiate contracts and open franchise locations. The Owner was a start-up when the trademark was registered and international expansion was foreseeable but not imminent. Following unsuccessful negotiations with a potential franchisee in 2016, the Owner's search was hampered by the small pool of Canadian candidates with sufficient sophistication and financing. The Owner argues it has a serious intention to resume use shortly. It has continuously sought potential franchisees in Canada and one of its most pressing business goals is to open a Canadian location.

[34] I find the Owner has not established special circumstances that excuse non-use of the PIEOLOGY trademark in Canada with the remaining registered services.

[35] The absence of trademark use is generally penalized by expungement; to avoid expungement, the absence of use must be due to special circumstances that excuse it: *Harris Knitting Mills* at para 10; *Scott Paper Limited v Smart & Biggar*, 2008 FCA 129 at paras 22-23. Special circumstances are circumstances not found in most cases of non-use and they must be the reason for non-use: *Ibid*.

[36] While I accept that operating a franchise and expanding internationally takes time and effort, the circumstances that amounted to "special circumstances" in *Maid Right* are distinguishable. In that case, the registered owner had acquired the MAID RIGHT trademark as well as the previous owner's franchise business during the relevant period, and the owner negotiated and signed a franchise agreement prior to the end of the relevant period. The Registrar concluded that the recent acquisition of the trademark in conjunction with the steps required to

recruit and sign a new franchisee to bring the trademark back into use in Canada were special circumstances not found in most cases: *Maid Right* at para 30. In this case, there was no change in title and no evidence that the Owner signed a Canadian franchise agreement or was in negotiations as of the date of the Ostaszewicz Affidavit, July 26, 2023.

[37] The Ostaszewicz Affidavit explains that the need to find local suppliers and a preference for contracting with larger franchisees who can operate multiple locations are hurdles a restaurant franchisor faces when opening locations outside of its home jurisdiction. However, I am not satisfied these hurdles amount to special circumstances. Furthermore, I note that the Owner did open locations outside the US, the first being a location in Mexico that opened in 2018. As of the date of the Imamoto Affidavit, April 2, 2021, the Owner also had restaurants in China and Spain.

[38] The Owner has not provided a persuasive reason why the COVID-19 pandemic constituted a special circumstance in this case. The pandemic accounted for five months of the three-year relevant period and does not explain why the PIEOLOGY trademark was not used with the remaining services since 2016. Furthermore, while the Owner states it was not until autumn 2022 that the pandemic abated enough to attract Canadian franchisees, the Owner received franchise applications from promising candidates in July 2020 and February 2021, and pursued negotiations with them.

[39] Even accepting that one or more of the circumstances amount to special circumstances, I am not satisfied that they excuse non-use of the PIEOLOGY trademark with the remaining services.

[40] The period of non-use is significant—more than seven years as of the date of the Ostaszewicz Affidavit. Although the Ostaszewicz Affidavit states that the Owner's intention is to open a franchise in Canada as soon as possible, there is no evidence that use would commence shortly. There is no evidence that the Owner is in negotiations for a Canadian franchise or that it has even identified a promising franchisee candidate. According to the Ostaszewicz Affidavit, negotiations with potential franchisees usually take around one year to complete, and once a franchise agreement is signed, it takes an additional 9-12 months to open the restaurant location.

[41] I do not accept the Owner's argument that the circumstances it describes were beyond its control. The allegedly small pool of potential franchisees reflects the Owner's preference for negotiating with large franchisees who are able to operate multiple locations. Indeed, the Ostaszewicz Affidavit explains that the Owner changed its strategy during the relevant period, to target smaller potential franchisees as well. The Owner operates a franchising business with over 115 locations, including outside the US. I am not satisfied that the need to identify local sources of necessary food ingredients and restaurant equipment provides a reason for non-use that now extends beyond seven years.

[42] Taking into account the length of non-use, whether the reasons for non-use were beyond the owner's control, and whether the owner had a serious intention to resume use shortly, I am

not satisfied that the Owner has demonstrated special circumstances excusing non-use of the PIEOLOGY trademark with the remaining services covered by registration number TMA929431.

IV. **Conclusion**

[43] The evidence presented on appeal establishes that registration number TMA929431 for PIEOLOGY should be maintained in association with restaurant services. The appeal is therefore allowed and the Registrar's decision expunging TMA929431 will be set aside.

[44] The Owner has not shown use or special circumstances that would excuse non-use for the remaining registered services. Consequently, TMA929431 will be amended to delete "Pizza parlors; Restaurant services featuring pizza, salads, side dishes and desserts; Restaurant services, including sit-down service of food and take-out restaurant services; Restaurant services, namely, providing of food and beverages for consumption on and off the premises" from services (1) and "restaurant services, namely, providing of food and beverages for consumption on and off the premises" from services (2).

[45] The Owner seeks costs. The respondent submits that costs should be borne by the Owner.

[46] I am not satisfied that I should exercise discretion to award the Owner costs of this proceeding. The respondent did not participate and the Owner conceded that the Court could not have set aside the Registrar's decision based solely on the parties' consent. Furthermore, since I

have determined that TMA929431 should be amended to delete many of the registered services, the Owner was only partly successful. In my view, the Owner should bear its own costs.

JUDGMENT IN T-657-23

THIS COURT'S JUDGMENT is that:

1. The appeal is allowed in part, without costs.
2. The Registrar's decision expunging TMA929431 is set aside.
3. TMA929431 shall be amended to delete "Pizza parlors; Restaurant services featuring pizza, salads, side dishes and desserts; Restaurant services, including sit-down service of food and take-out restaurant services; Restaurant services, namely, providing of food and beverages for consumption on and off the premises" from services (1) and "restaurant services, namely, providing of food and beverages for consumption on and off the premises" from services (2). TMA929431 is otherwise maintained

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

A. Kelly Gill
Reed Taubner
FOR THE APPLICANT

No one appearing
FOR THE RESPONDENT

SOLICITORS OF RECORD:

Gowling WLG (Canada) LLP
Barristers and Solicitors
Toronto, Ontario
FOR THE APPLICANT

DJB Lawyers
Barristers and Solicitors
Montréal, Quebec
FOR THE RESPONDENT