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Court File No.:

**FEDERAL COURT**

B E T W E E N:

**OLDE CANADA 1817 INC.**

Applicant

- and -

**BORDEN LADNER GERVAIS LLP**

Respondent

APPLICATION UNDER section 56 of the *Trademarks Act*, R.S.C. 1985, c. T-13 and rule 300(d) of the *Federal Courts Rules* SOR/98-106

**NOTICE OF APPLICATION**

**TO THE RESPONDENT:**

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Dated: October \_\_, 2024

Issued By: \_\_\_\_\_

(Registry Officer)

Address of local office:  
180 Queen Street West  
Suite 200  
Toronto, ON M5V 3L6

**TO: BORDEN LADNER GERVAIS LLP**  
200 Burrard Street, Suite 1200  
P.O. Box 48600  
Vancouver, British Columbia  
V7X 1T2

**AND TO: REGISTRAR OF TRADEMARKS**  
Canadian Intellectual Property Office  
Place du Portage I  
50 Victoria St., Room C-114  
Gatineau, Quebec J8X 3X1

## APPLICATION

**THIS APPLICATION** is an appeal, pursuant to section 56 of the *Trademarks Act*, RSC 1985, c T-13 (the “**Act**”) and rule 300(d) of the *Federal Courts Rules* SOR/98-106 (the “**Rules**”) from the decision of the Registrar of Trademarks (the “**Registrar**”) dated August 7, 2024 (the “**Decision**”), in respect of proceedings under section 45 of the *Act*, which ordered that registration no. TMA695213 (the “**Registration**”) for the trademark BLOCKHOUSE (the “**Mark**”) be expunged.

### RELIEF SOUGHT:

1. The applicant, Olde Canada 1817 Inc., (the “**Applicant**”) makes an application for:
  - a. an Order setting aside the Decision of the Registrar expunging the Registration;
  - b. an Order directing the Registrar to maintain the Registration in its entirety, pursuant to Section 45(5) of the *Act*;
  - c. the Applicant’s costs of this application on the highest allowable scale, if this application is contested; and
  - d. such further and other relief as counsel may advise and to this Honourable Court seems just and reasonable.

### THE GROUNDS FOR THE APPLICATION ARE:

2. The Applicant is a Canadian corporation organized and subsisting under the laws of the Province of Ontario.

3. The Applicant is the owner of the Registration which has been registered since 2007.
4. The Applicant acquired the Registration from its original owner, Innovators, Inc., on December 31, 2016.
5. At the request of the respondent, Borden Ladner Gervais LLP, the Registrar issued a notice (the “**Notice**”) under section 45 of the *Act* on December 13, 2022 to the Applicant which required the Applicant to file evidence of use of the Mark in Canada in association with the goods specified in the Registration during the period from December 13, 2019 to December 13, 2022 (the “**Relevant Period**”).
6. On July 13, 2023 and in response to the Notice, the Applicant filed the Affidavit of Mark Barnes, the Managing Director of the Applicant, sworn on July 13, 2023, with attached exhibits (the “**Barnes Affidavit**”).
7. On November 7, 2023, the Applicant served and filed its written representations.
8. A hearing was held on May 21, 2024. The Applicant attended the hearing and made representations.
9. On August 7, 2024, the Registrar issued the Decision, which stated that, *inter alia*, that by reason of there being no evidence of use of the Mark during the Relevant Period, and that special circumstances had not been demonstrated to excuse the non-use, the Registration was ordered to be expunged pursuant to Sections 45 and 63(3) of the *Act*.

10. For at least the following reasons, the Applicant respectfully submits that the Registrar erred, in both fact and law, by:
  - a. concluding that the relevant date for assessing the length of non-use of the mark begin from the date of registration;
  - b. concluding that the non-use of the mark during the Relevant Period was as a result of voluntary business decisions rather than circumstances beyond the control of the Applicant; and
  - c. concluding that the Applicant's evidence with respect to its intention to commence use of the mark with "beer" did not demonstrate intention to use the mark with "brewed alcoholic beverages namely ... ale, lager, pilsner, draft, [and] wheat beer", all of which are merely types of the broader good "beer".
11. In view of the errors committed by the Board Member, the Decision ought to be set aside and the Registration maintained in its entirety.

**THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:**

12. The pleadings and proceedings herein;
13. The files maintained by the Registrar in respect of the section 45 proceeding that is the subject of this appeal and in respect of the Registration;
14. Additional affidavit evidence and supporting documents pursuant to section 56(6) of the Act, and as may be served by the Applicant in accordance with Rule 306 of

the *Rules*. The additional evidence contemplated by the Applicant would have materially affected the Decision, had it been before the Registrar at the time of the Decision; and

15. Such further materials as counsel may advise and this Court may permit.

**THE APPLICANT REQUESTS**, pursuant to rule 317 of the *Rules* and section 60 of the *Act*, that the Registrar send to the Registry of the Federal Court all documents in the possession of the Registrar's Office, or copies of those documents certified by the Registrar in relation to the matters in question in this proceeding, and, in particular, the following: the file of the Registrar for the Registration, including all documents in respect of the section 45 proceeding in question.

**DATED** at Toronto, Ontario this 2nd day of October 2024.



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