Court File No. T- -26

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FILED / DÉPOSÉ
FEDERAL COURT
COUR FÉDÉRALE
January 15, 2026
15 janvier 2026
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FEDERAL COURT

BETWEEN:

BAYERISCHE MOTOREN WERKE AKTIENGESELLSCHAFT

Applicant

– and –

BENOÎT & CÔTÉ INC

Respondent

NOTICE OF APPLICATION

(Appeal Pursuant to Section 56 of *The Trademarks Act* R.S.C. 1985, c. T-13 and Rule 300 of the *Federal Courts Rules* as amended)

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.

Issued on: January 23, 2026

Issued by: Meron Zenebe (Registry Officer)

Address of Local Office: Toronto Local Office / Bureau local de Toronto 180 Queen St. W., Suite 200 /180, rue Queen O., Bureau 200 Toronto, Ontario M5V 3L6

Dated: January 15, 2026

Issued by_____
Local Registrar

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

TO: **The Administrator**
Federal Court

AND TO: **BENOÎT & CÔTÉ INC**
300-560 Boul Crémazie E
Montréal
QUEBEC
H2P1E8

AND TO: **The Registrar of Trademarks**
Canadian Intellectual Property Office
50 Victoria Street, Phase 1, Fourth Floor
Gatineau, QC, K1A 0C9

Served Via the Federal Court Registry
Pursuant to Rule 133 of the Federal Court Rules

APPLICATION

This Application is an appeal pursuant to section 56 of the *Trademarks Act* and Rule 300(d) of the *Federal Courts Rules* from a decision of the Registrar of Trademarks (the "Registrar") issued November 12, 2025 ("Expungement Notice"), pursuant to section 45 of the *Trademarks Act*, RSC 1985, c T-13 ("*Act*") giving notice that registration No. TMA575042 ("the Registration") for the trademark MINI & Design (the "Mark") would be expunged for failure to file evidence in response to a Notice pursuant to section 45 dated June 30, 2025 ("Section 45 Notice") unless a Notice of Appeal is filed with this Federal Court.

The Section 45 Notice was never received by the Applicant and, as a result, it was completely unaware of the requirement to file evidence of use. The Expungement Notice itself was received at the Applicant's premises on January 7, 2026 but did not come to the attention of the responsible individual until January 15, 2026.

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The Applicant Makes Application For:

1. An Order pursuant to section 56(1) of the *Act* granting the Applicant a retroactive extension of time in which to make this application *nunc pro tunc* to January 12, 2026, or to such other date as necessary to permit this application to proceed.

2. An Order pursuant to section 56(5) of the *Act* granting leave to adduce evidence concerning use of the Mark, the circumstances surrounding receipt of the Expungement Notice and lack of receipt of the Section 45 Notice, all within 5 months from the date of filing date of this Notice of Application as would be the typical timeline to file such evidence had the Section 45 Notice been received by the Applicant upon its issuance by the Registrar.

3. An Order pursuant to section 56 of the *Act* allowing this appeal and setting aside the Decision of the Registrar to expunge the Registration, thereby maintaining the Registration in relation to the goods and services in use and as set out in the Registration.

4. Such further and other relief as this Honourable Court may permit.

The Grounds of the Application are as Follows:

1. The Registrar issued the Section 45 Notice on June 30, 2025.

2. Pursuant to the Section 45 Notice, the Applicant was required to show use of the Mark in Canada in association with the Goods and Services listed in the Registration in the three year period immediately preceding the date of the Section 45 Notice (the "Relevant Period").

3. The Applicant is resident in Germany, and no Canadian Agent was appointed for the Registration. The Applicant never received the Section 45 Notice following its issuance by the Registrar and, as a result, was unaware of any requirement to file evidence of use.

4. The Applicant received the November 12, 2025 Expungement Notice on January 7, 2026, but it did not come to the attention of the responsible individual until January 15, 2026, a mere 3 days after the end of the standard two month deadline to appeal the Expungement Notice pursuant to s. 56(1) of the *Act*.

5. The reasons for why the Section 45 Notice was never received by the Applicant, and why the Expungement Notice was only received by the Applicant some 7 weeks after issuance, are unknown to the Applicant, but could potentially be the result of labour disruptions at Canada Post during that time frame.

6. In any event, the Applicant has acted with urgency in filing this Notice of Application on the same day that it became aware of the Expungement Notice, and the requested extension of time set out in this Notice of Application has been sought in a timely manner.

7. The Mark was and is in use by the Applicant in Canada in association with goods and services set out in the Registration. Had the Section 45 Notice come to the Applicant's attention in the normal course, it would have filed evidence of use of the Mark. The Applicant would have had three months from the date of the Section 45 Notice to file such evidence, in addition to a two month extension of time that would have been available to the Applicant to file that evidence upon request to the Registrar. As such, and in the present circumstances where the Section 45 Notice has only belatedly come to the Applicant's attention on January 15, 2026, the Applicant requests a five month period from that date in which to gather, prepare, and adduce its evidence in this Application pursuant to s. 56(5) of the *Act*.

The Application Will Be Supported By The Following Material:

1. A certified copy of the file for trademark registration no. TMA575042 maintained by the Registrar in respect of the Mark, including the Section 45 proceeding.

2. Such further and other supporting affidavits and exhibits as the Applicant may serve and file pursuant to Rules 306 and 309 of the *Federal Courts Rules* and s. 56(5) of the *Act* and this Honourable Court permits; and

3. Such further and other documents as this Applicant may tender and the Court may permit.

Request for Material in the Possession of Tribunal:

The Applicant hereby requests, pursuant to s. 60(1) of the *Trademarks Act* and Rules 317 and 318 of the *Federal Courts Rules*, that the Registrar send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the Registrar to the Registry and the Applicant:

1. The files for trademark registration no. TMA575042 maintained by the Registrar in respect of the Mark, including the Section 45 proceeding.

Date: January 15, 2026

Per: Kelly Gill
GOWLING WLG (CANADA) LLP
1 First Canadian Place
100 King Street West, Suite 1600
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M5X 1G5

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