



Andrew Moeser
416-649-1815
amoeser@litigate.com



Natalie Workewych
416-865-2908
nworkewych@litigate.com

February 5, 2026

Not My Lack of Use, Not My Problem

Comité interprofessionnel du vin de champagne v Coors Brewing Company marks the second recent FCA decision addressing how a change in trademark ownership affects whether “special circumstances” exist that excuse non-use of a mark in a section 45 proceeding.

Last fall, the FCA addressed this issue in the *Centric Brands* decision, which we commented on here. In *Centric Brands*, the FCA endorsed what it referred to as “New Owner Jurisprudence,” recognizing that the recent acquisition of a mark can create special circumstances that limit non-use obligations to the post-acquisition period. In *Coors Brewing*, the FCA reinforced this New Owner Jurisprudence, a finding that should be welcomed by companies interested in purchasing or selling marks.

Section 45 Proceedings

Section 45 of the *Trademarks Act* is a summary procedure for removing “deadwood” from the register. Upon the request of a third party (or on the Registrar’s own initiative), the Registrar gives notice under section 45 to the registered owner to demonstrate use of the mark in Canada in the three years immediately preceding the notice (the relevant period). The general rule is that non-use is penalized with expungement of the mark, unless the owner can demonstrate “special circumstances” that excuse non-use.

Background of the Dispute

The appellants in *Coors Brewing* were two French public wine and champagne corporations. The respondent, Coors Brewing Company (Coors), acquired three trademarks from Miller Brewing on October 13, 2016: “The Champagne of Beers,” “Le Champagne des Bières,” and the Miller High Life label and design (the Marks), registered in Canada between the 1970s and 1980s. On April 3, 2017, the Registrar issued notices under section 45(1) at the appellants’ request, requiring proof of use in the three years prior to the notice or an explanation for non-use. Coors filed an affidavit stating it could not confirm use during that period, that the Marks were last used in Canada around 2012, and outlining its intent and investment in marketing the Marks post-acquisition.

As in *Centric Brands*, Coors Brewing mainly concerned the

starting point for the period of non-use in Canada that the new owner of a mark must justify as special circumstances to prevent the mark from being expunged.

The Registrar's Decision

The Registrar upheld the Marks' registration, concluding that recent acquisition can serve as the starting point for the period of non-use to be justified by the registered owner of a mark, though it is not the only factor. The Registrar concluded that Coors' period of non-use should be measured from the acquisition date, as requiring a new owner to account for what in some cases could even amount to decades of non-use by a previous owner would be overly burdensome.

The Federal Court's Decision

The Federal Court affirmed the Registrar's decision, noting that the Registrar chose to follow a line of authority that reflects the practical considerations associated with the acquisition of a mark. In rejecting the idea that section 45 contains a fixed legal rule that determines when the period of non-use begins across all cases, the Federal Court rejected the appellants' position that, in all cases, a registered owner must justify the absence of use of a mark since the date it was last in use.

The FCA's Decision

The *Centric Brands* decision was released while *Coors Brewing* was under reserve by a different FCA panel, prompting supplemental arguments from the parties.

The FCA affirmed the Federal Court's decision, stating that *Centric Brands* settled the issue by authorizing a more flexible reading of section 45 than the appellants advanced. The appellants maintained that *Centric Brands* had no impact on their matter. In their view, the decision dealt only summarily with the New Owner Jurisprudence and in the context of the exceptional circumstances of that case. The appellants also maintained that the FCA's decision in *Centric Brands* departed from fundamental principles of trademark law, including the "use it or lose it" principle, and the principle that a registered owner of a mark who received a notice must justify not only the absence of use of the mark since becoming owner, but also, and above all, the absence of use of the mark since the date it was last in use.

The FCA dismissed the appellants' arguments concerning the lack of impact of *Centric Brands* on the matter, describing it as "clear and unequivocal" that the FCA in *Centric Brands* rejected the notion that the period requiring justification of non-use must start from the mark's last use. Rather, in appropriate circumstances, section 45 could be interpreted to allow the

starting point to be the date of acquisition of the mark, relieving the registered owner of the burden of having to excuse the absence of use prior to its acquisition of the mark. The FCA also reiterated that the FCA in *Centric Brands* expressly recognized the validity of the New Owner Jurisprudence.

The FCA agreed with the Registrar and Federal Court that Coors' continued marketing efforts after the notice date reinforced their intent to use the Marks. While these efforts occurred after the notice, they were consistent with the short period of non-use — from acquisition in October 2016 to the notice in April 2017 — and were understandable given the complexity of the acquisition and the regulatory approvals the respondents were required to obtain before they could use the Marks in association with the relevant goods (beer). The FCA agreed that this demonstrated that Coors intended to resume use promptly and that the brief non-use was due to factors beyond its control, which constituted special circumstances under section 45(3).

Takeaways

By confirming the finding from *Centric Brands*, the FCA has now entrenched the New Owner Jurisprudence, which is a more flexible reading of section 45 that typically only requires new owners to justify a period of non-use starting on the date they acquired the mark. This result should favour entities interested in acquiring marks – even those that have been out of use in Canada for a long time. While the principle of “use it or lose it” still applies, a new owner can now generally focus on using the mark themselves rather than worrying about why the past owner did not use it.