

**Château-Gai Wines Ltd (*Applicant*) v. Attorney General of Canada
(*Respondent*)**

Jackett P.—Ottawa, November 18, 19, 20, 21, 1969; March 3, 4, 1970—
April 16, 1970.

Trade marks—International law—Evidence—Trade agreement with France—Provision for protection of appellations of origin of wine—Appellation of origin not a trade mark—Expungement from register—Whether trade agreement in force—Acceptance of certificate by Secretary of State for External Affairs—Trade Marks Act s. 26—Canada-France Trade Agreement Act, 1933, c. 31.

Under a 1933 trade agreement, which was given the force of law by the *Canada-France Trade Agreement Act* 1933, c. 31, each country agreed to insure respect within its territory for the other country's appellations of origin of wine if registered with the former country's "competent services". In 1934 in purported pursuance of this agreement entry was made in Canada's Trade Marks Register, at the request of Canada's Under-Secretary of State, of the word "champagne" in respect of wine in the name of the French government.

Held, granting an application under s. 56(1) of the *Trade Marks Act*, the entry must be struck out, but without affecting any validity its registration might have for purposes of the trade agreement.

1. The entry was not a "trade mark" within the contemplation of the *Unfair Competition Act*, 1932 (the statute in force when it was registered).

2. The *Canada-France Trade Agreement Act*, 1933, could not be read as authorizing or requiring registration of appellations of origin in the Trade Marks Register. However, under s. 5 of the *Department of State Act*, R.S.C. 1927, c. 70, the Secretary of State as Registrar-General of Canada had authority to register various specified classes of documents "and all other instruments requiring registration", and it might be that the entry in the Trade Marks Register in 1934 was a valid carrying out of Canada's responsibilities under the 1933 trade agreement.

3. The court should accept as conclusive a certificate by the Secretary of State for External Affairs that France and Canada had agreed that the trade agreement would enter into force on June 10, 1933, and that they have regarded it as having come into force on that day. The court should do so even if the agreement on its proper interpretation imposed as a condition precedent to its coming into force the exchange of formal ratifications, and there had been no such exchange.

APPLICATION to strike out entry in Trade Marks Register.

Harold G. Fox, Q.C., and *J. Martineau, Q.C.*, for applicant.

G. W. Ainslie, Q.C., and *J. E. Smith* for respondent.

JACKETT, P.—This is an application under section 56 of the *Trade Marks Act* for an order directing that "the whole of the entry in the Trade Mark Register . . . relating to registration no. N.S. 2709, Register 7, registered June 10th, 1933, by Le Gouvernement de la République Française" be struck out.

Having regard to the unusual circumstances leading up to the "entry" in question, I propose to defer referring to the "reasons" on which the applicant bases its application until I have set out in some detail the principal events that occurred prior to the "Registration" in question.

Before turning to a recital of such events, however, I should mention that, while the registrant, being a sovereign power, is not a party to this application, the court did cause the proceedings to be brought to the attention of the Deputy Attorney General of Canada with the suggestion that, as a matter of courtesy, they might be brought to the attention of the Government of the French Republic and that, while such action was taken more than two years before the commencement of the hearing of this application, neither the Government of the French Republic nor the Attorney General of Canada had, prior thereto, intervened in the matter. However, counsel instructed by the Attorney General of Canada did appear during the first part of the hearing as *amici curiae* and were very helpful to the court on the issues upon which they undertook to assist the court. Subsequently, after an adjournment, the Attorney General of Canada was granted leave to appear as a party, and, as such a party, has opposed the application.

The events leading up to the "registration" in question can be regarded as commencing with the signing of a trade agreement between His Majesty in right of Canada and the President of the French Republic on May 12, 1933. That agreement contained detailed provisions concerning the customs tariff treatment and internal tax treatment to be accorded by each of the parties to the agreement to goods originating in the country of the other and, in addition, contained an article dealing with another type of protection to be accorded by each party to goods originating in the country of the other. That article (Article 11) reads as follows:

Each of the High Contracting Parties agrees to protect within its territorial limits, the natural or manufactured products of the other Party against all forms of dishonest competition, particularly with regard to the use, for commercial purposes, of false indications relative to the place of origin, nature, kind or substantial qualities of goods.

Each of the High Contracting Parties agrees to insure within its territorial limits, respect for the appellations of origin of wine, agricultural or other products of the other Party, which shall have been registered by the latter with the competent services of the other Party.

There shall only be accepted for registration, under the conditions of the present Article, names which are recognized and protected as appellations of origin which have not become public property within the territory of the Party which gives notice thereof.

Appellations of origin shall be registered without charge by each of the High Contracting Parties with the competent services of the other Party.

Appellations of origin thus registered shall not, in any case, be used commercially for the purpose of describing goods other than those which have a definite right to such names.

This prohibition shall apply to every form of competition contrary to honest usages in industrial and commercial matters and of such a nature as to create a confusion with the products of a competitor.

The agreement, which was signed on behalf of the respective parties by plenipotentiaries appointed for the purpose, was described in the opening paragraph as a "provisional agreement" and contained an article (Article 16) by which it was agreed

- (a) that the "present agreement" shall be "ratified" and that the ratifications shall be exchanged at Ottawa as soon as possible, and
- (b) that "It" (presumably the "present agreement") shall come into force on the date which the Parties shall fix by joint agreement.

Finally, the agreement contained a provision (Article 17) which stated that it was concluded for one year from the date of its coming into force and might be rescinded by three months' notice before the date of its termination, and that it might be extended by tacit consent, each of the parties reserving the right to rescind it at any time to take effect three months thereafter.

On the same day that this agreement was signed, May 12, 1933, the French Minister to Canada, Mr. C. A. Henry, sent to the Canadian authorities a note stating that, notwithstanding the provisions of Article 16 of the Agreement, the Government of the Republic, having the power to apply the agreement provisionally before ratification by the President of the Republic, would be in a position to make use of that power as soon as the Government of Canada was itself in a position to enforce the agreement.

Royal assent was given on May 23, 1933, to a Canadian statute, *The Canada-France Trade Agreement Act, 1933*.¹ The provisional agreement that had been signed on May 12, 1933 was set out in a schedule to that statute and the statute itself contained substantive provisions, by which

- (a) it approved the agreement set out in the schedule and enacted that that agreement "shall have the force of law" notwithstanding the provisions of any law in force in Canada (section 2),
- (b) it provided that, while the "agreement" is "in force", the products mentioned in the agreement that are imported into Canada from French territories in the manner provided in the agreement shall be admitted into Canada at the rates of duties provided in the agreement (section 3), and
- (c) it authorized the Governor in Council, notwithstanding any law in force in Canada, to
 - (i) make such appointments,
 - (ii) establish such offices,
 - (iii) make such orders and regulations, and
 - (iv) do such acts and things,
as are deemed necessary to carry out the provisions and intent of the agreement (section 4).

Finally, the statute contained a provision to the effect that it, i.e. the statute, should come into force on a day to be fixed by proclamation of the Governor in Council (section 5).

¹ S. of C. 1933, c. 33.

Following royal assent to *The Canada-France Trade Agreement Act, 1933*, there was an exchange of correspondence between the Canadian authorities and the French authorities beginning with a letter dated May 27, 1933, from Dr. O. D. Skelton on behalf of the Secretary of State for External Affairs to the French chargé d'affaires in Canada and ending with a letter from the chargé d'affaires to the Secretary of State for External Affairs dated June 8, 1933. Leaving aside the portions of these letters dealing with possible ways of implementing the trade agreement that were not ultimately adopted, the following would appear to be the portions of the various letters that are relevant to the issues raised in these proceedings:

(a) On May 27, 1933, Dr. Skelton wrote, in part:

In the event that you are not in a position to exchange ratifications in the near future, the Canadian Government, in order to carry out what I understand is the mutual desire of the two Governments to bring the Trade Agreement into force at the earliest possible date, would be prepared to conclude a joint agreement by an exchange of notes to the effect that the Trade Agreement shall come into force on a given date, for example the 1st day of June, 1933. In that event, the Act of Parliament respecting this Agreement would be proclaimed, and all of the provisions would immediately become effective. It is understood that your Government would take action under its appropriate powers to give full effect to the Trade Agreement and that when your Government is in a position to do so, ratifications will be exchanged. The operation and effect of the Trade Agreement would then be related back to the agreed date, and the period for both Parties to the Trade Agreement would extend for one year from that date. In these circumstances, the actual result would be that the operation of the Trade Agreement would be provisional on both sides until the exchange of ratifications, because the failure to ratify on the part of either of the high contracting parties would terminate the arrangement.

(b) On June 3, 1933, the French chargé d'affaires wrote, in part:

(Translation) But on account of the rather long delay which is required in France for legislative sanction of commercial agreements, my Government regret to be unable presently to proceed with the exchange of ratifications.

Fully appreciating, however, the intentions of the Canadian Government, my Government abandon the proposal of a partial enforcement as was put forth in our recent correspondence and ask me to propose to Your Excellency a complete application as from the 10th of this month which will mark the date at which the period of validity will commence. My Government point out that it has always without inconvenience had recourse to such a procedure of a provisional putting into force; this can be done under our legislation without awaiting the approval of Parliament. This is why we have always contemplated a prompt putting into force as from the 1st of this month and, at all events, it is impossible to wait for the exchange of ratifications to take place which cannot be achieved before the session of the French Chambers in November.

As regards the commencement of the one year period of validity, my Government considers that under Article 16 and 17 it is well provided as to the date of the complete putting into force.*

(c) On June 6, 1933, the Acting Secretary of State for External Affairs wrote, in part:

I have the honour to acknowledge receipt of your communication No. 22 of June 3rd respecting the Trade Agreement between Canada and France signed on May 12th, 1933. I note that your Government, while not in a position to

* Where a translation has been put before the Court in the material that has been filed, I am using it. Where the correspondence has been put before the Court in French only, I quote it in French.

effect the exchange of ratifications before the session of the French Chambers in November next, is prepared to bring the whole Agreement into force as from June 10th. The Canadian Government concurs in this arrangement and I have the honour to inform you that an Order-in-Council has been passed today bringing the Agreement into force on the part of Canada on June 10th. It is understood that, in accordance with the provisions of Article 17, the period of one year for which the Agreement was concluded will begin to run from that date.

On June 6, 1933, the Governor in Council made an order (P.C. 1103) reciting a report that it had been arranged with the French Government that the trade agreement in question was to be brought into force on June 10, 1933, and ordering that, pursuant to section 5 of "*An Act respecting a certain Trade Agreement between Canada and France*", a proclamation issue declaring that that statute "shall come into force and take effect on the 10th day of June, 1933".

On February 27, 1934, the French Minister in Canada wrote to the Secretary of State for External Affairs concerning the registration of appellations of origin of French wines, in part, as follows:

D'Ordre de mon Gouvernement j'ai l'honneur de faire parvenir, ci-joint, à Votre Excellence, en trois exemplaires, une liste des appellations d'origine concernant les vins français.

Je serais très obligé à Votre Excellence si Elle voulait bien communiquer cette liste aux Services compétents du Dominion du Canada, en vue de son enregistrement, et conformément aux dispositions de l'art. 11 de l'arrangement commercial du 10 juin 1933. Cette procédure permettra d'éviter, à l'avenir, toute contestation relative à l'emploi des appellations dont il s'agit, dans le commerce canadien.

In the long "liste des appellations d'origine concernant les vins français" referred to therein, there appeared the word "Champagne" under the heading "Appellations Diverses".

On June 5, 1934, the Minister wrote to the Secretary of State for External Affairs, in part, as follows:

D'ordre de mon Gouvernement, et comme suite à ma lettre No. 3, du 27 février, j'ai l'honneur de faire parvenir, ci-joint, à Votre Excellence le texte de la loi du 6 Mai 1919 modifiée par la loi du 22 Juillet 1927, dont l'article 17 définit l'appellation d'origine «Champagne».

Mon Gouvernement me prie d'attirer l'attention du Gouvernement Canadien sur le fait que cette appellation n'est applicable qu'aux vins récoltés et *entièrement manipulés* dans les limites de la Champagne viticole. Il en résulte que, seuls, les vins mousseux expédiés de France en bouteilles peuvent avoir droit à l'appellation d'origine «Champagne».

Copies of these two letters (despatches) apparently came into the hands of the Under Secretary of State and were sent by him to the Acting Commissioner of Patents under cover of a letter dated September 14, 1934, reading as follows:

You have already taken note of the communication from the French Minister at Ottawa, dated February 27th, 1934, concerning appellations of origin relating to French wines. I enclose two copies of this despatch. Under Article 11 of the Canada-France trade agreement, approved by the Canada-France Trade Agreement Act, 1933, 23-24 George V. Chapter 31, these appellations of origin are to be registered without charge with the competent Department of the other party.

I also enclose two copies of a despatch from the French Minister, dated 5th June, 1934, concerning the appellation of origin of «Champagne». Since we have only one copy of the text of the law enclosed with the French Minister's despatch of the 5th June, I am able to send you only one copy of the text.

On October 23, 1934, an entry was made in the Register of Trade Marks kept pursuant to *The Unfair Competition Act*, Chap. 38 of the Statutes of Canada of 1932. This entry commences with a certificate that was signed by J. T. Mitchell, Acting Commissioner of Patents as "Le Registraire", and that reads as follows:

Enregistrée subordonnement et en vertu de la loi sur la concurrence déloyale, 1932, 22-23 George V, chapitre 38, ce 23^e jour d'octobre 1934, à Ottawa.

The entry is headed—

"Trade Mark No. N.S. 2709 REGISTER 7"

As "Registrant", it shows "Le Gouvernement de la République Française" with "Address: Paris, France." Under the heading "Date of Registration" appears the date "le 10 juin 1933", but nothing appears after the heading "Date of First Use". In the space where there is room to show the "Application Serial No. ", there is a cross-reference to the Trade Mark Branches file "C.G. 8100", which is the file "relatif aux enregistrements d'appellations d'origine effectués au nom du Gouvernement de la République Française." No date is given as the date of filing of application. In the space provided for "Mark" appears the word "Champagne", and in the space provided for "Wares" appears the word "Vins". After the heading "Other actions affecting rights in Registration" appears the following statement:

Enregistré en exécution de l'article 11 du Pacte Commercial entre le Canada et la France lequel entrain en vigueur le 10 juin 1933, par proclamation parue le 9 juin 1933.

Finally, there are two stamps on the entry showing that it was renewed on June 10, 1948, under section 50 of *The Unfair Competition Act* and on June 10, 1963, under section 45 of the *Trade Marks Act*.²

The entry so made in October, 1934 in the Register of Trade Marks is the one that the applicant is now asking this court to order struck out of the present Trade Marks Register.

The amended statement of facts filed by the applicant in connection with the originating application, after alleging that the Government of the French Republic caused to be registered a trade mark consisting of the word "*Champagne*" for use in association with wines, bearing registration number N.S. 2709, Register 7, and that such registration purported to be made "under authority of Article 11 of the Canada-France Trade Agreement

² It should be noted at this point that the register kept under *The Unfair Competition Act* forms part of the register kept presently under the *Trade Marks Act*. See section 26(3) of the latter Act.

which came into force on June 10th, 1933", alleges (paragraph 4) that the Canada-France Trade Agreement never came into force and (paragraph 5) that the entry as it appears on the Register of Trade Marks of the trade mark "Champagne" does not, at the date of the originating notice, accurately express or define the existing rights of the person appearing to be the registered owner of the mark. The reasons given (paragraph 4) for the contention that the Trade Agreement never came into force are—

- (a) it was not ratified and ratifications were not exchanged at Ottawa,
- (b) the high contracting parties did not fix a date for its coming into force by joint agreement as provided in Article 16, and
- (c) the statute providing that the agreement should have the force of law notwithstanding the provisions of any law in force in Canada "did nothing more than give support and authority to the said agreement in accordance with its terms".

Detailed reasons are then given for the applicant's contention that the "entry" under attack did not, at the date of the originating notice, accurately express or define the existing rights of the person appearing to be the registered owner of the "mark" as a mark registered under *The Unfair Competition Act*.

This is an application made by originating notice under section 56(1) of the *Trade Marks Act*, which reads as follows:

56. (1) The Exchequer Court of Canada has exclusive original jurisdiction, on the application of the Registrar or of any person interested, to order that any entry in the register be struck out or amended on the ground that at the date of such application the entry as it appears on the register does not accurately express or define the existing rights of the person appearing to be the registered owner of the mark.

In the *Trade Marks Act*, the word "register" is used to mean the register kept under section 26 of that Act (section 2(n)), and the register kept under *The Unfair Competition Act* forms a part of that register (section 26(3)).

What I have to decide, therefore, is whether the entry, which appears in the Register of Trade Marks kept under section 26 of the *Trade Marks Act*, of the word "*Champagne*" in respect of the wares "wine", should be "struck out or amended" on the ground that at the date these proceedings were launched the register did not accurately express or define the existing rights of the person appearing as the registered owner.

As I see it, there are only three possible ways of supporting the validity of the entry under attack. They are

- (a) that it is an entry that was duly made under and in accordance with *The Unfair Competition Act* and the registration of which has not become "invalid" by virtue of any provision in the *Trade Marks Act*,

- (b) that it is an entry legally appearing on the register kept under the *Trade Marks Act*, even though it does not meet the requirements of that statute, by virtue of the provisions of *The Canada-France Trade Agreement Act, 1933*,
- (c) that it is a registration of an appellation of origin duly made, by the Government of the French Republic with the "competent" Canadian "services", under the authority of *The Canada-France Trade Agreement Act, 1933*, and depends for its legal effect and status exclusively on the latter statute.

In these proceedings under section 56 of the *Trade Marks Act*, as I read that provision, this court has authority to decide whether the "entry" under attack is properly on the "register" kept under the *Trade Marks Act*, either by reason of the general provisions of the trade mark legislation or by reason of some special direction or authority in the *Canada-France Trade Agreement Act, 1933*, but it has no authority to decide that the entry is not a valid registration under the provisions of the *Canada-France Trade Agreement Act, 1933*.

In the first place, I am of the view that the entry in question does not represent, and was never intended by any person involved to represent, a registration of a "trade mark" as contemplated by the *Unfair Competition Act*, and that it was not, and is not, such a registration.

Quite clearly, what the Government of France sought was the registration of an "appellation of origin" so that it would have the protection afforded by the *Canada-France Trade Agreement Act, 1933*. It was not, at any time, seeking the registration of the word "Champagne" as a "trade mark" within the meaning of the *Unfair Competition Act, 1932*. No argument was addressed to me for regarding the entry as such a registration and I cannot myself envisage one that is worthy of being discussed.

It follows that the presence of the entry under attack in the Trade Marks Register cannot be supported by reference to section 26(3) of the *Trade Marks Act* read with the *Unfair Competition Act*.

The next question is whether the validity of the entry, as an entry in the Trade Marks Register, can be supported by reference to the *Canada-France Trade Agreement Act, 1933*.

It will be recalled that, by its amended statement of facts, the applicant took the position that the 1933 statute did no more than "give support and authority to the said trade agreement in accordance with its terms" and that the agreement never came into force.

- (a) because it was not ratified, and
- (b) because the parties did not fix a date for its coming into force by joint agreement as provided by Article 16.

The Attorney General of Canada took the position that the trade agreement that was entered into between Canada and France in 1933, and that is given the effect of law by the *Canada-France Trade Agreement Act, 1933*, did come into force; and, in support of that position, relied on two certificates, *viz*,

1. a certificate signed by the Secretary of State for External Affairs on November 10, 1967, reading as follows:

I, PAUL MARTIN, Secretary of State for External Affairs in the Government of Canada, hereby certify as follows:

On May 12, 1933, a Trade Agreement between Canada and France was signed at Ottawa. The agreement was given parliamentary approval and force of law in Canada by Act of the Canadian Parliament, 23-24 George V, Chapter 31. This Act was brought into force on June 10, 1933, pursuant to Privy Council Order 1103 of June 6, 1933. The agreement was given force of law in France by Decree of the Council of Ministers dated June 8, 1933 and published on June 9, 1933, in the "Journal officiel de la République française".

The exchange of instruments of ratification contemplated by Article 16 of the agreement did not take place. However, by a note dated June 3, 1933 from the French Chargé d'affaires to the Acting Secretary of State for External Affairs of Canada and a note in reply of June 6, 1933 from the Acting Secretary of State for External Affairs of Canada to the French Chargé d'affaires it was agreed between the two countries that the Trade Agreement would enter into force on Saturday, June 10, 1933, and in their subsequent exchanges and practice, the two countries have regarded the agreement as having come into force as of June 10, 1933.

Attached to this certificate are true copies of the 1933 Trade Agreement and the 1935 Protocol thereto as well as copies of all the relevant exchanges of an official and public nature which took place between the two governments in connection with this agreement during the period 1933 to 1937, the year in which the agreement was last amended.

2. a certificate signed by the Secretary of State for External Affairs on December 18, 1969, reading as follows:

I, Mitchell Sharp, Secretary of State for External Affairs in the Government of Canada, refer to the certificate of the Honourable Paul Martin, of 10 November 1967, and the documents attached thereto, which certificate and documents I have been advised have been filed with the Exchequer Court of Canada. With reference to the treaty between Canada and France referred to in the schedule to Chapter 31 of 23-24 Geo. V, which had been brought into force by the exchange of notes referred to in the certificate of the Honourable Paul Martin, and by the subsequent Acts of Canada and France, I certify that while the instruments of ratification referred to in Article 16 of the treaty were not exchanged, the treaty was ratified by the exchange of notes and the conduct of the parties.

In my view, the certificate by Her Majesty's Secretary of State for External Affairs for Canada that "it was agreed between the two countries that the trade agreement would enter into force on Saturday, June 10, 1933", and that "the two countries have regarded the agreement as having come into force as of June 10, 1933" should be accepted by this court as conclusive that the agreement did come into force as a binding international agreement at that time. In principle, as it seems to me, a question, whether of fact or law or both, as to whether an international agreement between

Canada and another country has come into force between Canada and another sovereign power so as to create international rights and obligations, must be determined, in case of doubt, in the same way as

- (a) a question as to whether a person is a foreign sovereign power,
- (b) a question as to what persons must be regarded as constituting the effective government of a foreign territory.
- (c) a question as to whether a particular place must be regarded as being in Canada or as being under the authority of a foreign sovereign authority,
- (d) a question as to whether Canada is at peace or at war with a foreign power, or
- (e) a question as to whether a person in Canada is entitled to diplomatic privileges as being an ambassador of a foreign power or a member of the entourage of such an ambassador.

All such questions are questions within the realm of responsibility of the executive arm of government and, being questions on which the state should speak with one voice, they are questions with regard to which the courts should accept from the appropriate minister of the Crown a certificate as to Canada's position. In my opinion, this view of the law is well settled by such cases as *Taylor v. Barclay*,³ *Mighell v. Sultan of Johore*,⁴ *Foster v. Globe Venture Syndicate Ltd.*,⁵ *Aksionairnoye Obschestvo A. M. Luther v. James Sogor & Co.*,⁶ *Duff Development Co., v. Government of Kelantan*,⁷ *The Fagernes*,⁸ *Engelke v. Musmann*,⁹ *Government of the Republic of Spain v. S. S. Arantzazu Mendi*,¹⁰ *Sayce v. Ameer Ruler Sadig Mohammad Abbasi Bahawalpur State*,¹¹ and *Carl Zeiss Stiftung v. Rayner & Keeler Ltd. (No. 2)*.¹²

The result is that, even if I were of the view that the exchange of formal ratifications as contemplated by the first paragraph of Article 16 of the Canada-France Trade Agreement of 1933 was, on a proper interpretation of the agreement in accordance with the applicable principles of international law, a condition precedent to bringing the agreement into force, I would nevertheless feel constrained to accept the official view of the Canadian Government that the agreement had been brought into force without any such exchange of ratifications. Having said that, I should add that, if I did have the task of interpreting the agreement myself, I should, as I view the matter presently, have to conclude that the exchange of ratifications was not

³ (1828) 2 Simon's Reports 213.

⁴ [1894] 1 Q.B. 149.

⁵ [1900] 1 Ch. 811.

⁶ [1921] 3 K.B. 532.

⁷ [1924] A.C. 797 (H.L.).

⁸ [1927] P. 311 (C.A.).

⁹ [1928] A.C. 433 (H.L.).

¹⁰ [1939] A.C. 256 (H.L.).

¹¹ [1952] 2 Q.B. 390.

¹² [1966] 3 W.L.R. 125 (H.L.).

a condition precedent to bringing the agreement into force and that, on the material that has been put before the Court, Canada and France did fix a date for its coming into force by joint agreement as provided by Article 16.

I come then to the question whether Article 11 of the Canada-France Trade Agreement of 1933 required or authorized the registration of "Champagne" as an appellation of origin in the Trade Marks Register kept under the *Unfair Competition Act*.

By the second paragraph of Article 11, each of the "parties" agreed to insure within its territory respect for the appellations of origin of wine of the other "which shall have been registered by the latter with the competent services of the other". That is, Canada agreed to insure respect for appellations of origin of wine of France which have been "registered" by France with the "competent services" of Canada.¹³ By the fourth paragraph of Article 11, it is agreed that "appellations of origin shall be registered without charge by each of the . . . parties with the competent services of the other party". Mr. Ainslie argues that there must be a "competent service" because section 2 of the statute gave these provisions the force of law. Accepting that submission for purposes of argument, I do not, however, think that there is an implied direction or authority that the registration be entered on the Trade Marks Register, the contents of which are, and were, very specifically regulated by statute in such a way that only "trade marks" and transactions with regard thereto were to be registered therein.¹⁴

In my view, there was provision for miscellaneous registrations such as those contemplated by the 1933 statute in section 5 of the *Department of State Act*, R.S.C. 1927, c. 189, which provided *inter alia* that the Secretary of State "shall be the Registrar General of Canada" and that, "as such", he should "register" various specified classes of documents "and all other instruments requiring registration". It may well be, it is not for me to decide, that what the Under Secretary of State, and the Commissioner of Patents under his direction, did in connection with the registration of "Champagne" was a valid carrying out of Canada's responsibilities under the 1933 Trade Agreement by virtue of the authority conferred by section 5 of the *Department of State Act*.

¹³ These provisions have been applied in an action in the Superior Court of Quebec in which the applicant in these proceedings is a defendant. See *Institut National des Appellations d'Origine des Vins et Eaux-de-vie et al. v. Chateau-Gai Wines Ltd.*, (1969) 57 C.P.R. 93, I understand that the judgment in that case is under appeal.

¹⁴ See section 22 of the *Unfair Competition Act*, 1932, which reads—

22. (1) There shall be kept under the supervision of the Registrar a register of trade marks in which, subject as hereinafter provided, any person may cause to be recorded any trade mark he has adopted, and notifications of any assignments, transmissions, disclaimers and judgments relating to such trade mark.

(2) The register shall specify the date upon which each of the trade marks recorded therein was registered, and shall contain an abstract of the statements contained in the applications for the registration of such marks respectively, and of any documents deposited with such applications, or filed with the Registrar subsequent to the making of the applications and affecting the right to such trade marks respectively.

and section 26 of the *Trade Marks Act*, which reads, in part:

26. (1) There shall be kept under the supervision of the Registrar a register of trade marks and of transfers, disclaimers, amendments, judgments and orders relating to and of registered users of, each registered trade mark.

(2) The register shall show, with reference to each registered trade mark, the following:

- (a) the date of registration;
- (b) a summary of the application for registration;
- (c) a summary of all documents deposited with such application or subsequently thereto and affecting the rights to such trade mark;
- (d) particulars of each renewal;
- (e) particulars of each change of name and address; and
- (f) such other particulars as this Act or the Regulations require to be entered thereon.

(3) The register kept under *The Unfair Competition Act, 1932*, or the *Unfair Competition Act*, chapter 274 of the Revised Statutes of Canada, 1952, forms part of the register kept under this Act and, subject to subsection (2) of section 43, no entry made therein, if properly made according to the law in force at the time it was made, is subject to be expunged or amended only because it might not properly have been made pursuant to this Act.

There being no specific direction by or under the 1933 Act or the trade agreement that registrations of appellations of origin be entered on the Trade Marks Register which was designed by Parliament for quite a different purpose, and there being specific statutory provision for the registration of "other instruments requiring registration", I cannot read the 1933 Act as authorizing the registration in the Trade Marks Register of appellations of origin.

It would indeed be contrary to the public interest, I should have thought, to allow an entry to remain on the Trade Marks Register so that it appears to indicate that the protection of the trade mark legislation attaches to the use of a particular word when the rights arising from the registration are conferred by other legislation and are quite different in kind.

My conclusion is, therefore, that the entry in question must be "struck out" of the Trade Marks Register in the sense that it must be removed therefrom but that the judgment must be so worded as to make it quite clear that it has no effect on any validity that the registration may have for the purposes of the *Canada-France Trade Agreement Act, 1933*.

I will leave it to counsel for either party to move for judgment under Rule 172(1)(b). There will be no provision regarding costs in the judgment.