

Federal Court



Cour fédérale

Date: 20260625

Docket: T-5221-25

Citation: 2026 FC 866

Toronto, Ontario, June 25, 2026

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

CONSTELLATION BRANDS U.S. OPERATIONS, INC.

Applicant

and

THE VINEYARD HOUSE, LLC

Respondent

REASONS AND ORDER

I. Overview

[1] The Applicant, Constellation Brands U.S. Operations, Inc. [Constellation] is appealing a decision [Decision] of the Trademarks Opposition Board [Board] and brings this motion for leave to adduce additional evidence on the appeal pursuant to subsection 56(5) of the *Trademarks Act*, RSC 1985, c T-13 [*Trademarks Act*]. The Respondent, The Vineyard House, LLC [TVH] opposes the motion.

[2] For the more detailed reasons that follow, I find that the proposed evidence fails to meet the test for leave established in *Products Unlimited, Inc v Five Seasons Comfort Limited*, 2026 FC 48 [*Products Unlimited*] whether by reason of its relevance, admissibility, or materiality and taking into account Constellation’s failure to explain why certain marketing evidence was not produced earlier.

II. Facts

A. *The parties*

[3] Constellation is the United States-based subsidiary of Constellation Brands, Inc., a leading international producer and marketer of beer, wine and spirits.

[4] In the 1960s, Constellation’s predecessor, Robert Mondavi Winery [Mondavi] acquired the “To Kalon Vineyard,” which was the original vineyard of H.W. Crabb, one of the first vintners in Napa County, California. Constellation adopted Mr. Crabb’s trademark TO KALON [the TO KALON Mark], which had fallen into disuse, as well as the trademarks H.W.C. and HWC. The three marks are collectively referred to as the Constellation Marks.

B. *The TVH trademark applications and Constellation’s oppositions*

[5] TVH filed trademark applications on December 3, 2018, for CRABB’S HALTER VALLEY (application no. 1,933,684), and H.W. CRABB (application no. 1,933,686) [collectively, the Applications].

[6] Constellation opposed the Applications [collectively, the Oppositions] asserting six grounds of opposition: (i) non-distinctiveness; (ii) deceptive misdescriptiveness; (iii) bad faith; (iv) non-entitlement to register; (v) no use or proposed use; and (vi) non-entitlement to use.

[7] At the heart of Constellation's objections is its view that TVH's Applications seek to promote a non-existent historical connection to H.W. Crabb and the To Kalon Vineyard, which association is Constellation's alone to make. The parties' dispute was the subject of a trial in the United States.

C. *The Decision*

[8] On October 30, 2025, the Board dismissed both Oppositions. It found that Constellation had not met its initial evidentiary burden to establish the facts underlying all six grounds of opposition. In the Board's view, success on each of the grounds of opposition required a finding that consumers would draw a false association between TVH and either Constellation, or Mr. Crabb's original vineyard. The Board found that Constellation had not shown that the Constellation Marks had acquired a "significant, substantial" reputation in Canada. The Board identified problems with Constellation's evidence related to its sales and promotional activities in Canada and its evidence of third-party advertising and marketing which Constellation relied on to show its promotion of its association with H.W. Crabb.

D. *The Appeal and proposed new evidence*

[9] Constellation has appealed the Decision in respect of the Board's findings on the grounds of non-distinctiveness, deceptive misdescriptiveness and non-entitlement to register [Appeal].

[10] Constellation seeks leave to file the Affidavit of Eugene Mlynczyk affirmed on February 23, 2026 [Mlynczyk Affidavit] on the Appeal. Eugene Mlynczyk is the National Fine Wine Ambassador of Principle Fine Wines, the luxury team within Arterra Wines Canada [Arterra]. Arterra is the sole agent responsible for the management and distribution of Constellation's wine portfolio in Canada.

[11] The Mlynczyk Affidavit is attached as an exhibit to an affidavit from Kenneth L. Wilton [Wilton Affidavit] who is a partner at the U.S. law firm that acts as U.S. counsel for Constellation and advises Constellation regarding trademark matters in Canada. The Wilton Affidavit sets out the background to the Oppositions and explains that the Mlynczyk Affidavit was not filed in connection with those proceedings because of concerns over the disclosure of commercially sensitive information without a confidentiality order.

[12] TVH cross-examined Mr. Wilton on his affidavit on April 13, 2026.

III. Preliminary Issue

[13] Constellation seeks to designate portions of paragraphs 15 and 24 of the Mlynczyk Affidavit as "Confidential – Solicitors' Eyes Only" and Exhibits C, D and H to the Mlynczyk

Affidavit as “Confidential Information” to be filed and treated as confidential information, along with any portions of transcripts or motion materials reflecting these paragraphs of the Mlynczyk Affidavit.

[14] Amongst the various elements of the test for the grant of a confidentiality or protective order, is the requirement that the moving party show that the requested order is necessary to prevent a serious risk of disclosure of sensitive commercial information that has never previously been disclosed (*Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 at paras 53-54). The moving party’s evidence must be clear and not based on speculation (*Crocs Canada, Inc v Double Diamond Distribution Ltd*, 2022 FC 1445 at para 11 citing *SSN v Canada (Citizenship and Immigration)*, 2022 FC 1189 at para 4). Constellation’s evidence falls short of this standard.

[15] The Wilton Affidavit confirms that the redacted sales information referred to at paragraph 24 of the Mlynczyk Affidavit is treated by Constellation as commercially sensitive information. However, even if I were to accept this evidence from Mr. Wilton as external counsel to Constellation (as opposed to having direct evidence from Constellation), this evidence is insufficient. The sales information came from Arterra’s business records and there is no evidence from Mr. Mlynczyk or any other employee of Arterra, that confirms that Arterra has treated this information as confidential.

[16] There is also no evidence that speaks to the confidential nature of the information at paragraph 15 and Exhibits C, D and H and the treatment of this information as confidential by

Constellation and Arterra. In the case of Exhibits C and D, there is also no evidence of any obligations of confidence that were imposed on members of the public who received the information. In the absence of any indication on the face of the documents that the information was to be treated as confidential, there is simply no basis to support a Rule 151 order sealing the information from public view.

IV. Issue

[17] The only issue raised on this motion is whether Constellation should be granted leave to file the Mlynczyk Affidavit pursuant to subsection 56(5) of the *Trademarks Act*.

[18] In assessing a request to file additional evidence on appeal pursuant to subsection 56(5) of the *Trademarks Act*, the Court should consider whether the interests of justice favour granting leave on the basis of all relevant factors including: (A) the relevance, credibility and admissibility of evidence; (B) the materiality of the evidence; (C) the circumstances surrounding the delay in filing the evidence; and (D) the prejudice to the opposing party (*Products Unlimited* at paras 29-30).

V. Analysis

[19] What follows is my assessment of the *Mlynczyk Affidavit* under the factors recognized in *Products Unlimited*.

A. *The Reasonableness of the excuse for the delay in filing the Mlynczyk Affidavit*

[20] I start with the factor of delay, as the Respondent takes the position that this factor is determinative.

[21] The Wilton Affidavit adequately explains why Constellation did not previously file the sales figures and volumes contained in the Mlynczyk Affidavit and why Constellation did not produce sales information from Arterra, as an unaffiliated third party. However, in its written and oral submissions, the Applicant's explanations for the delay in filing the Mlynczyk Affidavit expanded from a concern over the production of sales information belonging to Constellation and Arterra, to include a concern over confidentiality over the marketing materials that are referred to and attached to it. Counsel for the Applicant also submitted that the delay was due to the Board's unexpected finding on the relevant date for the ground of non-entitlement to register. There is, however, no evidence to support these submissions.

[22] Constellation also emphasizes that it filed its evidence before the Registrar at a time when parties were permitted to file evidence on appeal as of right under the old subsection 56(5). Mr. Wilton states that between the time of filing the Oppositions in December 2021 and April 2022 and the filing of its evidence in December 2022 and May 2024, he did not know that leave would be required to adduce additional evidence on appeal. Constellation relies on Justice McHaffie's statement in *Products Unlimited* suggesting that flexibility will be required in the legislative transition to a new rule requiring leave (*Products Unlimited* at paras 29, 36).

[23] TVH takes the position that the mere fact that the underlying Board proceeding took place before the amendment to subsection 56(5) came into force is not, on its own, sufficient to justify granting leave. An additional explanation is required and where none is provided, the Court should deny leave.

[24] I agree that Justice McHaffie's comments in *Products Unlimited* were not intended as a "free pass" for litigants who filed their evidence under the old subsection 56(5) of the *Trademarks Act* (*Products Unlimited* at para 29). Still, given the transition issue that this case presents, which includes the fact that Constellation filed its evidence before the issuance of the *Products Unlimited* decision establishing the test for leave, I am of the view that the interests of justice require that I not treat Constellation's failure to explain its delay in producing the new marketing evidence as determinative. However, this factor does weigh against the grant of leave for the marketing evidence for which no explanation for delay has been provided.

B. *The relevance, credibility and admissibility of the proposed evidence*

[25] TVH objects to paragraphs 3-7, 28, and Exhibits A and B of the Mlynczyk Affidavit on the basis that the evidence is not relevant and is inadmissible opinion evidence.

[26] Paragraphs 3-6 of the Mlynczyk Affidavit provide Mr. Mlynczyk's expertise and professional designations in the wine industry. Attached as Exhibit A is an excerpt from the website for the Institute of Masters of Wine of which he is a member and Exhibit B is a copy of the Code of Conduct that he is required to adhere to as a Master of Wine. Paragraph 7 concludes that, "[a]s a result of my extensive training, education, and teaching, I have a deep knowledge of

the Canadian and global wine industry, the Canadian wine market, and Canadian wine consumers.”

[27] These paragraphs provide a foundation for paragraph 28 of the Mlynczyk Affidavit, which states:

Based on my knowledge of the Canadian market and experience as a Master of Wine, I believe and understand that Canadian wine enthusiasts are aware of H.W. Crabb and understand the association between H.W. Crabb and the To Kalon Vineyard. This is due continuously telling the story of Mr. Crabb and To Kalon, be it through the sale of wines that display “H.W. Crabb” on the label in Canada for many years, the Wine Events given by me discussing Robert Mondavi, the Robert Mondavi Winery, and the connection between the To Kalon Vineyard and H.W. Crabb, the repeating of the story in newspapers and trade magazines, and the numerous wine professionals who have learned about that association and in turn have relied on that story to explain and sell wines to Canadian consumers.

[28] I agree with TVH that paragraph 28 of the Mlynczyk Affidavit is inadmissible opinion evidence providing inferences and opinion from the fact evidence and as such, cannot be given by a fact witness (*White Burgess Langille Inman v Abbott and Haliburton Co*, 2015 SCC 23 at para 14). It follows that paragraphs 3-7 and Exhibits A and B are not relevant.

C. *The materiality of the proposed evidence*

[29] TVH objects to the remainder of the Mlynczyk Affidavit on the basis that paragraphs 10-27 and Exhibits C, D, E, F, G, H, I and J of the Mlynczyk Affidavit are not material.

[30] The Court’s assessment of the materiality of new evidence on a motion under new subsection 56(5) of the *Trademarks Act* considers whether the evidence is sufficiently substantial and significant such that it could have had a material effect on the underlying decision (*Products Unlimited* at para 29 citing *Seara Alimentos Ltda v Amira Enterprises Inc*, 2019 FCA 63 at paras 23-25 [*Seara*]). It does not entail an assessment of whether the new evidence would have led the Board to come to a different conclusion (*Products Unlimited* at para 29).

[31] In deciding whether to allow new evidence to be considered on appeal, the purpose of new subsection 56(5) should be kept in mind: the amendment is intended to promote efficiency and finality in the appeal process (*Products Unlimited* at paras 27-28) and in my view, therefore requires this Court to view what constitutes “significant and substantial” with rigour in keeping with its new gate-keeping function. To be material, new evidence must add something of significance to the evidence that was originally before the decision maker and it must assist the Court in making its ultimate assessment (*Seara* at para 24, *Trademark Building Products Inc v Window World International, LLC*, 2026 FC 251 at para 9).

[32] The Applicant submits that the Mlynczyk Affidavit is material because it fills the perceived evidentiary gaps in the evidence identified in the Decision. This was recognized as a valid basis for admitting new evidence under the old version of subsection 56(5) of the *Trademarks Act* (*Centric Brands Holding LLC v Stikeman Elliott LLP*, 2024 FC 204 at para 25). However, for the reasons that follow, I find that the remainder of the Mlynczyk Affidavit, repeats the same deficiencies identified by the Board in Constellation’s initial evidence.

(1) Sales of products displaying the Constellation Marks

[33] The Board held that Constellation's evidence did not allow the Board to draw any meaningful conclusions regarding the number of wines branded with the Constellation Marks that were purchased by Canadians as of the material dates of Constellation's grounds of opposition.

[34] Constellation seeks to fill this evidentiary gap with paragraph 24 of the Mlynczyk Affidavit, which provides evidence regarding Canadian sales of 12-bottle cases of TO KALON VINEYARD CO. wine between 2021 and 2025. This information is stated to be taken from Mr. Mlynczyk's review of Arterra's business records, which are not attached. Paragraphs 17-23 describe the launch of the TO KALON VINEYARD CO. brand and Mr. Mlynczyk attaches representative images of labels at Exhibits E, F and G, which display the TO KALON Mark and describe the connection between H.W. Crabb and the To Kalon Vineyard.

[35] At paragraph 25 and attached as Exhibit H to the Mlynczyk Affidavit is evidence of a Notice to Purchase issued to Constellation by the Liquor Control Board of Ontario [LCBO] on August 27, 2021, listing TO KALON VINEYARD CO.'s Highest Beauty wines with Arterra named as the Canadian agents for Constellation.

[36] I agree with TVH's objections to the materiality of this evidence.

[37] First, without a breakdown by year, this sales information is meaningless for the purposes of the Oppositions: three of the five years in the 2021-2025 period are after both material dates for Constellation's non-distinctiveness ground of opposition (December 16, 2021 and April 20, 2022); and all five years are after the material date for Constellation's non-entitlement grounds of opposition (December 3, 2018).

[38] Second, while the Notice to Purchase bears a date that could be relevant to the non-distinctiveness ground of opposition, I cannot agree with Constellation's characterization of this notice as evidence of "shipments." Nor does Mr. Mlynczyk's statement that the Notice to Purchase is representative of the way cases of these wines "would be purchased" by the LCBO, constitute evidence of actual sales to Canadian consumers.

[39] This evidence is not sufficiently significant, substantial or probative to meet the test for materiality. I find that the lack of precision in the sales evidence in paragraphs 24 and 25, renders it of little assistance to the Board in determining the extent of the use of the Constellation Marks or their acquired distinctiveness (*Clorox Company of Canada, Ltd v Chloretec S.E.C.*, 2020 FCA 76 at para 31). Without this sales evidence, paragraphs 17-23 and Exhibits E, F, G and H, lack probative value and there is no explanation as to why this evidence could not have been provided to the Board.

(2) Promotion of the Constellation Marks and awareness of the historical association

[40] The Board found that Constellation's evidence relating to the promotion of the Constellation Marks in Canada did not support Constellation's claim that its promotion activities

had reached an appreciable number of Canadians such that it could conclude that the average Canadian wine consumer would be aware of the various connections between Constellation, the To Kalon Vineyard and H.W. Crabb.

[41] The Mlynczyk Affidavit seeks to fill this evidentiary gap and provides evidence that Arterra promoted the Constellation Marks in Canada at various wine events, through a certification program and media and advertising.

(a) *Promotion of the Constellation Marks at wine events*

[42] At paragraphs 9-13 of the Mlynczyk Affidavit, Mr. Mlynczyk advises that he explained the connection between the To Kalon Vineyard and H.W. Crabb at various wine events in Canada between November 2015 and October 2023 and that H.W. Crabb's name was displayed on materials made available to the attendees.

[43] Mr. Mlynczyk states that these events were attended by "various" unidentified provincial liquor board staff, restaurant sommeliers, wine buyers, trade experts, wine connoisseurs and wine consumers.

[44] Attached as Exhibit C are representative menus, tasting mats and educational materials from events described as "training sessions, master classes, and dinners" held in October 2023, May 2018 and November 2017. The materials show the promotion of the association between H.W. Crabb and To Kalon and their link to Constellation and Mondavi.

[45] The problem with this evidence is that Mr. Mlynczyk provides no indication of how many people attended those events. I agree with TVH that without this detail, this evidence is not material as it could not assist the Board in finding that a non-trivial number of Canadian consumers attended these events.

(b) *Promotion of the Constellation Marks through the TO KALON certification program*

[46] The Board considered evidence from Chad Harding [Harding Affidavit], who is Constellation's General Manager, Sales – Canada, who described how Constellation, Mondavi and its licensees promoted the historical connection to H.W. Crabb through the "TO KALON certification program." The Board was critical of Mr. Harding's reference to "many" Canadians having participated in the program, and the attached two website printouts of reports from Canadian participants. The Board considered the reports to be hearsay and in the absence of "a specific or even approximate number" of attendees, it could only be taken to show that two Canadians attended the program.

[47] At paragraphs 14 and 15 of the Mlynczyk Affidavit, Mr. Mlynczyk states that he helped host the "To Kalon Certification" program. He references one particular training event, "To Kalon On the Road" certification program held in October 2019 in Montreal and Toronto. He says the event was attended by "dozens" of local media, buyers and sommeliers who would have learned about the history of the To Kalon Vineyard and its association with H.W. Crabb. Attached as Exhibit D to the Mlynczyk Affidavit is a document with the names of Canadian attendees to the Kalon certification training in Napa between 2013 and 2019.

[48] TVH submits that this evidence is still defective as it tells the Board nothing about the numbers of “average purchasers of the goods in question” (as distinct from experts such as sommeliers) who were in attendance and from whose impression the assessment of confusion and distinctiveness are made (*Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27 at para 40, *MC Imports Inc v AFOD Ltd*, 2016 FCA 60 at para 55).

[49] I agree that this evidence is not substantial or significant enough to have the potential to alter the Board’s conclusions. Exhibit D identifies six individuals—two sommeliers and one Master Sommelier—and unnamed “buyers” from Loblaws, the SAQ, the LCBO and Co-Op. The evidence lacks precision: for three of the four buyers, it refers only to “[s]everal participants during the years,” and for the fourth, it provides no number at all. The dates are similarly imprecise, using terms such as “roughly” and “circa.” This evidence, while probative of the issue of whether the Constellation Marks are known to Canadians, could not assist in a cogent determination of the number of attendees at the certification program and what portion of the “dozens” of attendees referred to by Mr. Mlynczyk were average wine consumers and purchasers.

(c) *Promotion of the Constellation Marks through media and advertising*

[50] The Board considered three media articles attached to the Harding Affidavit but concluded that they did not allow it to draw any meaningful conclusions as to how the articles contributed to the reputation of the Constellation Marks. The publications were dated 2013 and 2016 and the Board noted there was no evidence of any media content referring to the Constellation Marks or the historical connection between H.W. Crabb and the To Kalon

Vineyard for more than five years preceding the material dates for the non-distinctiveness ground of opposition. While the Board was prepared to infer substantial circulation in respect of articles from the Vancouver Sun and the Toronto Sun, it was not prepared to do so for a third article from the website “www.winesinniagara.com” absent evidence as to how many Canadians visit the site.

[51] Paragraphs 26-27 of the Mlynczyk Affidavit seek to fill this evidentiary gap. Mr. Mlynczyk has attached a brand booklet from 2025 as Exhibit I, which was purportedly sent to “several Canadian consumers,” and an article from Decanter magazine from 2016 is attached as Exhibit J. The Mlynczyk Affidavit states that the booklet is “representative of the way the connection between H.W. Crabb and To Kalon has been advertised and promoted to consumers in Canada since 2019.”

[52] I agree with TVH that neither of these materials could have reasonably affected the Board’s conclusion on the reputation of the Constellation Marks or the awareness of Canadian wine consumers regarding the connection between H.W. Crabb and the To Kalon Vineyard as of the material dates.

[53] First, the brand booklet is dated years after any of the material dates in the Oppositions. Mr. Mlynczyk’s statement that the exhibits are representative of brand booklets from before the material dates in the Oppositions is insufficient. The statement that a document is “representative” without evidence as to the basis upon which the affiant is able to draw this conclusion, or why the other materials are not being produced, lacks sufficient credibility to

advance the evidence for determination on the merits of the Appeal. Further, Mr. Mlynczyk's statement that "several" Canadians received this booklet renders the evidence of little assistance in determining whether the Constellation Marks were known by Canadian wine consumers to any significant degree.

[54] Second, the Decanter magazine article suffers from the same deficiencies that the Board identified with the earlier media evidence: the article is dated, there is no evidence as to how many Canadians would have accessed the articles and the magazine is not sufficiently well-known to infer substantial circulation.

[55] I therefore conclude that paragraphs 10-27 and Exhibits C, D, E, F, G, H, I and J of the Mlynczyk Affidavit are not material.

D. *Prejudice*

[56] TVH asserted that granting leave to allow the Mlynczyk Affidavit would cause it prejudice by delaying its right to the registration of the TVH Marks. I agree with Constellation that delay is inherent in the scheme for Oppositions. Prejudice has therefore not factored into my decision to grant or deny leave.

VI. Conclusion

[57] Based on my consideration of the factors in *Products Unlimited*, I find that it is not in the interest of justice to grant leave to Constellation to file the Mlynczyk Affidavit on the Appeal. Constellation's motion is dismissed as is its request for a Rule 151 order.

VII. Costs

[58] TVH requested \$10,000 in costs if it was entirely successful. Constellation requested \$7,100 (based on an alluded to Bill of Costs calculated using the middle of Column II of Tariff B) in the event that it was entirely successful and no costs in the event of divided success.

[59] Based on its success, I am awarding TVH costs in the amount of \$7,100, plus its disbursements in any event of the cause.

ORDER in T-5221-25

THIS COURT ORDERS that:

1. The motion is dismissed;
2. Constellation's request for an order pursuant to Rule 151 of the *Federal Courts Rules*, SOR/98-106, is dismissed.
3. Costs are awarded to The Vineyard House in the amount of \$7,100, plus disbursements in any event of the cause.

"Allyson Whyte Nowak"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-5221-25

STYLE OF CAUSE: CONSTELLATION BRANDS U.S. OPERATIONS,
INC. v THE VINEYARD HOUSE, LLC

PLACE OF HEARING: HELD BY WAY OF ZOOM VIDEOCONFERENCE

DATE OF HEARING: JUNE 11, 2026

REASONS AND ORDER: WHYTE NOWAK J.

DATED: JUNE 25, 2026

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