

## Certification Marks: Decision Affirmed by Court of Appeal

An [earlier blog](#) discussed a Federal Court decision, agreeing with a decision of the Registrar of Trade-marks and preventing the registration of a certification mark, HALLOUMI, in association with cheese. In [The Ministry of Commerce and Industry of the Republic of Cyprus v. International Cheese Council of Canada](#), the Federal Court of Appeal affirmed the decision.

The *Trade-marks Act* defines a certification mark as a type of trademark and sets up a specific regime for its adoption and registration by a person not engaged in the manufacture, sale, leasing or hiring of the wares or services in question, who wishes to license others to use the marks. With wares a certification mark is intended to signify character or quality, working conditions, the class of persons producing the wares or the area they are produced.

The opponent successfully established that HALLOUMI could not be registered pursuant to section 12(1)(b) of the *Trade-marks Act*, which precludes registration of a mark contrary to section 10, namely a mark that has by ordinary and *bona fide* usage become recognized in Canada as designating, among other things, a kind of wares. The evidence established such usage with regards to the cheese at issue.

On appeal to the Court of Appeal, the Cyprus Ministry of Commerce and Industry argued that the relevant date for an opposition based on section 10 was other than the date of the Registrar's decision and that the judge had failed to apply the proper burden of proof and assess the evidence. However, none of these arguments succeeded and the registration was not allowed.