Intellectual Property Weekly Abstracts Bulletin — Week of January 23, 2017

January 25, 2017

Trademarks Related Decisions

Defendant and others found to have shown cause as to why they should not be held in contempt of court
ASICS Corporate v. 9153-2267 Québec inc., 2017 FC 5

This decision considered whether the Defendant, its President, its Vice-present (referred to collectively as the "Two Individuals") and a corporate third party should be held in contempt of court for allegedly breaching a Default Judgment. The Default Judgment stated that the Defendant had infringed the Plaintiff's trademarks rights, and enjoined the Defendant, and others, from using or infringing the trademarks. The Default Judgment also awarded the Plaintiff $43,500 in damages for past infringement, together with costs payable forthwith. The matter was bifurcated and the Hearing against the corporate third party was scheduled for January 11, 2017.

As a preliminary issue, the Court had to determine whether to exclude an affidavit of the Defendant's President and the transcript of the cross-examination on that affidavit. The affidavit had been submitted for another motion (namely the corporate third party's motion opposing execution of the Writ of Seizure and Sale), and the cross-examination had taken place before the Affiant was made aware of the issuance of the Show Cause Order. The Court granted the request to exclude the transcript from the present Hearing and the bifurcated Hearing, as the Plaintiff proceeded to cross-examine before informing him of the issuance of the Show Cause Order. The affidavit was not excluded, but was only admissible for the later bifurcated Hearing since the Plaintiff preferred to precede with the within Hearing before the matter had been resolved. The right to protection against self-incrimination set forth in the *Charter* does not extend to a corporation. The Court noted that this finding, together with the fact that the Affidavit was not compelled testimony, were dispositive of the issue regarding the admissibility of the Affidavit in the later Hearing.

The Court ultimately concluded that the Defendant and the Two Individuals had shown cause why they should not be held to be in contempt of court. Apart from the non-payment of the damages, the Court found that the Plaintiff's evidence did not establish beyond a reasonable doubt that they had breached the terms of the Default Judgment

after the date upon which they were served with the Judgment. As to the non-payment of the damages, the Court concluded that the Plaintiff had not established that its efforts to obtain payment have been such that the Court should exercise its discretion. In addition, the Plaintiff failed to adduce evidence that the Defendant had refused to pay the damage award. The Court was unable to conclude that the Plaintiff had endeavoured to enforce a judgment for payment of damages in the ordinary way and been unsuccessful.

Supreme Court Updates

Teva Canada Limited v. Pfizer Canada Inc. (F.C.) (Civil) (By Leave) (37162)

The Supreme Court dismissed the application for leave to appeal from the judgment of the Federal Court of Appeal in 2016 FCA 161 (our summary here).

Industry News

The Canadian Intellectual Property Office (CIPO) has announced changes to six industrial design office practices:

- Applications for protection of computer-generated animated designs
- Colour as a registrable feature of an industrial design
- Time limits to respond to office actions
- The search to assess the originality of an application where there is a priority claim
- The issuance of notices of possible refusal
- Delaying the registration of an application

CIPO has stated that these changes will improve service to clients, reduce administrative burden, and modernize our practices to align with international norms. An overview of the changes is provided here.

Health Canada has released a Notice: Health Canada recommendations for implementation of the ICH Harmonised Guideline for Elemental Impurities (Q3D) for new and marketed products.

By

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