Intellectual Property Weekly Abstracts Bulletin — Week Of April 18

April 20, 2016

Trademark Decisions

MASTER TRANSMISSION held to likely be confused with MISTER TRANSMISSION mark
Responsive Brands Inc. v. 2248003 Ontario Inc., 2016 FC 355

Responsive Brands, the owner of the MISTER TRANSMISSION mark, has successfully maintained an action for infringement of its mark against the Defendant.

The Defendant used the trade and business names MASTER TRANSMISSION and MASTER TRANSMISSION & DRIVELINE. The Plaintiff alleged these names were confusingly similar to its mark and infringed it, as well as alleging passing off and depreciation of goodwill.

It was stated that the Defendant had previously worked for the Plaintiff and had sought approval to establish a new franchise location in the Huntsville, ON area, but they never put together a formal franchise application. The Defendant subsequently opened up an independent transmission repair shop.

After a review of the evidence, the Court held that there was insufficient evidence that any consumer had actually been confused or misled since the Defendant opened its business. The evidence of confusion was described as coming from individuals other than potential purchasers of transmission services: courier drivers, tow-truck operators and a third party parts supplier.

Nevertheless, despite the lack of evidence of actual confusion, the Court found there was a likelihood of confusion between the Plaintiff's trademarks and the Defendant's trade and business names.

The other claims were unsuccessful.

In the end, the Court ordered an interim and permanent injunction restraining the Defendant from further infringement, and ordered that the quantification issues be decided in a separate proceeding.

Patent Decisions

Quia timet claim not struck from patent infringement suit
Gilead Sciences, Inc. v. Teva Canada Limited, 2016 FC 31

We previously reported on the appeal of a refusal to strike out a statement of claim, which was dismissed, during the week of April 4, 2016. In the previously published *Gilead Sciences, Inc. v. Teva Canada Limited*, 2016 FC 336, the Court had dismissed Teva Canada Limited's appeal from the Prothonotary's Order declining to strike out Gilead's Statement of Claim in its entirety. The Prothonotary struck some of the pleadings, but allowed the action to continue on the basis of amended allegations of a likely future (*quia timet*) infringement.

The original underlying decision has now been published by the Court as 2016 FC 31.

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Expertise

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