Intellectual Property Weekly Abstracts Bulletin — Week Of August 15

August 17, 2016

Trademark Decisions

Registrar's finding of confusion for Mark "Irresistibles" is upheld on appeal
Julia Wine Inc. v. Les marques metro, S.E.N.C., (Les marques métro/metro Brands S.E.N.C.), 2016 FC 738

Julia Wine Inc, appealed a decision of the Registrar rejecting its application to register the trademark "Irresistibles" after the Respondent, Les Marques Métro Inc., filed a statement of opposition.

The Registrar had found that there was a risk of confusion between the Mark and the Respondent's mark. While the mark had a relatively low degree of inherent distinctiveness because it was a common adjective, the extent to which the Respondent's mark had become known in Ontario and Québec clearly favoured the Respondent. The Registrar also dismissed the Applicant's argument to the effect that wine was a type of ware that was distinct from the Respondent's products since wines could be considered a natural extension of the range of products marketed by the Respondent. Finally, the Registrar found that the Applicant did not discharge its burden of proving that it was satisfied that it was entitled to use the Mark at the time the application for registration was filed, pursuant to paragraph 30(*i*) of the Act.

On appeal to the FC, the Court found that the additional evidence filed by the Application did not affect the Registrar's findings and, therefore, proceeded to apply the standard of review of reasonableness. The Court noted that the Registrar's analysis was meticulous and detailed and her reasoning was supported by knowledge of the case law that is relevant to the issues raised. Given that the Registrar's findings on confusion and on compliance with paragraph 30(*i*) of the Act were based on the evidence and fell within a range of possible and acceptable outcomes, the Court dismissed the appeal.

Other Industry News

The Patent Appeal Board recently allowed claims to non-exemplified humanized antibodies. BLG's summary of the Board's decision and its practical effect on antibody patent applications can be found here.

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Expertise

Intellectual Property, Copyright, Licensing, Patents, Trademarks

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