Intellectual Property Weekly Abstracts Bulletin — Week Of March 21

March 23, 2016

Trademark Cases

Summary judgment for trademark infringement, passing off and other allegations is upheld on appeal

Michaels v. Michaels Stores Procurement Company, Inc., 2016 FCA 88

The Federal Court of Appeal has upheld a default judgment against the appellants, where findings of trademark infringement, passing off, depreciation of goodwill and communication of false and misleading statements were established.

The Court of Appeal held that the decision to proceed with the merits of the motion was discretionary, and the discretion was reasonably exercised. Despite having notice of the motion, the appellants did not file a responding motion record nor did they cross-examine on the affidavits.

The corporate defendant did not retain counsel or seek relief from Rule 120 of the *Federal Courts Rules*. The decision to require the compliance with the *Rules* was upheld, as was the decision to not allow the personal defendant to give oral evidence on return of the motion. The remedies that were awarded were upheld as being reasonable and within the Court's jurisdiction.

Lastly, the Court of Appeal refused to accept what was characterized as an aid to argument, but that the panel described as a fresh 30 page memorandum of argument that had not been delivered to respondent's counsel.

Patent Cases

Appeal of a decision to not bifurcate a s.8 action and infringement counterclaim dismissed

Teva Canada Limited v. Janssen Inc., 2016 FC 318

The appeal of a Prothonotary's decision to refuse to bifurcate liability and quantification of an action comprising a claim pursuant to section 8 of the *PM(NOC) Regulations* and a patent infringement counterclaim has been dismissed.

The Court found that although one could have arrived at the opposite conclusion, to find fault with the Prothonotary's process would amount to a reweighing of the evidence, subverting the high degree of deference owed to a discretionary decision of a Prothonotary.

By

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