Intellectual Property Weekly Abstracts Bulletin – Week of April 24, 2017

April 26, 2017

Trademarks Decisions

Appeal of Motion Striking Claims Concerning Vicarious Liability to a Landlord from Sale of Counterfeit Merchandise Allowed
Louis Vuitton Malletier S.A. v Zekria Wakilzada, 2017 ONSC 2409

The Plaintiffs appealed from the Order of a Master striking out four paragraphs of Louis Vuitton's Statement of Claim. The underlying action involves claims by Louis Vuitton in respect of the advertisement, offering for sale and/or sale of counterfeit Louis Vuitton merchandise at Dr. Flea's Flea Market in Toronto. There are two different types of defendants: those who are vendors who carry on business from various flea market locations; and those that own, operate, supervise and/or control the flea markets from which vendors offer goods for sale to the public. The Plaintiffs submitted that the facts pleaded in the impugned paragraphs are material facts that support what it submits is a novel extension of the theory of vicarious liability to a landlord arising from its tenant's sale of counterfeit merchandise.

The Court allowed the appeal and set aside the Master's order striking out the paragraphs. The Court found that the Master erred in principle when he decided that the impugned paragraphs should be struck out as scandalous. The Court agreed with the Plaintiffs' submission that the necessary elements for a cause of action founded upon vicarious liability are unsettled, and may change depending upon the application of this doctrine and the underlying policy considerations to new situations. On this basis, the Court concluded that it was an error for the Master to decide this question at the pleadings stage.

Industry Updates

CIPO has released a Notice for an upcoming public consultation on the Manual of Patent Office Patent. The Notice indicates that CIPO will be conducting a consultation regarding proposed changes to chapter 17 relating to medical kits from April 24 to May 15, 2017. Visit the CIPO consultations pages starting April 24 to view the consultation documents.

Health Canada has released a Notice — Mandatory use of the Electronic Common Technical Document (eCTD) format.

Health Canada has released a Notice — Prescription Drug List (PDL): Multiple additions.

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