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THE HUMAN SIDE OF CORPORATE BUSINESS

The Case of White International Management Inc.: Ordinary and yet... extraordinary! (Part 1)

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I must say, the law holds many surprises. Even after 18 years of practice, there are still cases that amaze me. A wonderful thing, really. Take for instance the recent case of *White International Management Inc. (White) and Gestion Finance Tamalia (GFT) v. 9041-8351 Québec Inc.*⁽¹⁾. This Quebec Court of Appeal decision deals with the obligation for an extra-provincial corporation to register in Quebec under the Legal Publicity Act⁽²⁾. You will see: extraordinary!

The Facts

It begins with an extra-provincial corporation (White) whose head office is in the Bahamas. White is the owner of a registered trade-mark in Canada, CENTRE DE SANTÉ MINCEUR, which means basically "Centre for Thinness Health". By way of a verbal agreement, White granted an

exclusive distribution and franchise right to GFT (co-appellant), who managed approximately 100 sub-franchises in Quebec. One of the said sub-franchisees was the respondent, 9041-8351 Québec Inc. One day, the sub-franchisee put an end to its relationship with GFT to pursue its own business using a name/trade-mark that was, according to White, confusing with its registered trade-mark. The appellants therefore requested an interlocutory and permanent injunction order against the sub-franchisee. The respondent then filed a motion for security for costs (Sec. 65 of Quebec Code of Civil Procedure) and a *motion for the suspension of proceedings until such time as White was registered under the Legal Publicity Act* (Sec. 100). It is worth noting that although White was not registered, co-appellant GFT was.

cont'd on page 2

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Details on page 3

The Case of White... (cont'd)

Decision

The Quebec Superior Court found that the motion for suspension was justified since White did in fact “exercise commercial activities” in Quebec pursuant to Sections 2(5) and 6 of the Act. This decision, rendered on July 5th, 2001, suspended the interlocutory injunction. An appeal was filed.

Five months later, the Quebec Court of Appeal ruled in favour of White and GFT. This lifted the suspension on the interlocutory injunction. As *obiter dictum*, the court stated that the right to suspend proceedings is not automatic but is subject to the court’s discretion. Said discretion was found to have not been exercised judiciously.

Comments on the Decision

The appeal decision appears to exempt extra-provincial entities from having to register in Quebec in cases where they are owners of a registered trade-mark in Canada used by a licensee. Is this good news? From the perspective of a multinational company, absolutely. This is one less “irritant” to contend with. It is hard to see who might find this objectionable. Information on trade-mark owners is already made public (though to a lesser extent) on the Canadian Trade-marks Register. This being said, the decision does not seem to stand on very solid ground: indeed, the court refused to infer that White was earning royalty revenues from its Quebec franchisor, GFT. Why ignore such an obvious fact? Because it was not expressly mentioned in the written pleadings? Or perhaps because this was the only way to avoid triggering the registration requirement under Section 6 of the Legal Publicity Act? Is this a flaw in the decision that can benefit a defendant in the future? But wait, this case reveals something even more amazing...

Look for Part 2 in our next issue...

- 1) Quebec Court of Appeal, 500-09-011278-017, January 11, 2002 - REJB 2002-27570
- 2) *An Act respecting the legal publicity of sole proprietors, partnerships and legal persons*, R.S.Q., c. P-45.

Turnaround Schedule for Corporate Services as of August 1st, 2002

SERVICES	PROVINCIAL	FEDERAL
TaxExpress™ (GST / QST / QDAS)	2 - 3 days	3 - 5 days
Name Search with Reservation	*24 hours	24 hours
Name Search without Reservation	3 hours	—
Certificate of Incorporation (Paper Filing)	*5 - 6 days	2 days
Certificate of Incorporation (Incoweb™ Electronic Filing)	*5 - 6 days	6 - 8 hours
Certificate of Amendment	*10 - 11 days	2 days
Certificate of Continuation, of Continuance or of Amalgamation	*1 week	3 - 6 days
Certificate of Dissolution	1 - 2 weeks	2 - 3 days
Notice of Change (Federal) or Amending Declaration (Quebec)	3 - 4 weeks	2 - 3 days
Letters Patent for Non-Profit Corporation	*1 week	25 days
Attestation / Certificate of Good Standing and Certificate of Compliance	*24 hours	48 hours
Revival	—	3 - 6 days
Initial Declaration	1 - 2 weeks	—
Declaration of Registration	*1 - 2 weeks	—
Annual Declaration	*1 - 2 weeks	—
Revocation of Striking-Off (s. 54 L.P. Act)	*1 - 2 weeks	—

The turnaround times may vary slightly according to each file () = Priority service available.*

Food for Thought

***There are two ways to live your life.
One is as though nothing is a miracle.
The other is as though everything is a miracle.***

Albert Einstein

A New Member Joins our Team

We are pleased to announce the arrival of Me Francis St-Louis who will be in charge of our Corporate Services Department. Me St-Louis will be replacing Me Franca Sucapane who will be on maternity leave for the next 12 months. We extend our sincerest best wishes to her and her husband.



What's new . . .

Memo to our clients

Industry Canada has indicated that corporate forms dating prior to legislative changes of November 24th, 2001, will no longer be accepted in the near future.

The Inspector General's Office (IGIF) has advised that its corporate forms have been changed. However, the old forms will be accepted until at least January 2003.

In both cases, new forms are available on our Internet site (www.crac.com). For users of the INCOWEB™ system, the forms in PDF format have been updated.



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