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THE HUMAN SIDE OF CORPORATE BUSINESS

The Case of White International Management Inc.: Ordinary and yet... extraordinary!

(Part 2)

By Richard S. Gareau, Attorney-at-Law

In Part 1, we looked at the main facts that led to the Quebec Court of Appeal decision in the case of *White International Management Inc. (White) and Gestion Finance Tamalia (GFT) vs. 9041-8351 Québec inc.*⁽¹⁾. The case dealt with the registration of extraprovincial companies under the Quebec Legal Publicity Act⁽²⁾. Part 1 can be viewed on our web site. (www.crac.com, issue of August /September 2002).

Part 2

Actually, if we base ourselves solely on the *Ratio decidendi* of this decision, nothing much has changed. A plaintiff need only allege and establish the financial benefits in favor of the foreign trade-mark owner in its relationship with the sub-franchisee. This would give effect to the legal presumption in Section 6 of the L.P.A., and thus registration by the trade-mark owner is again required. Back to square one!

Luckily, the decision does not end there. After a lengthy and somewhat strenuous exercise to justify why registration was not required, the court then raised very briefly, another motive, one that is far simpler and justifiable: the Superior Court's decision to suspend the order was not exercised judicially. Of course! Defendant should have explained how plaintiff's failure to register, caused him prejudice or inconvenience. Questioned at trial, defendant could not answer. In the presumably urgent context of an interlocutory injunction, defendant's failure on this point speaks for itself.

The other interesting thing about this argument is that it can apply to local entities faced with the same objection. Will the *Obiter* some day become *Ratio*? Bets are open!

But wait! There is more.

There is something even more amazing about this case and that is the strategy chosen by the appellant White. They could have resolved the issue cheaply and quickly by simply proceeding with registration under the Legal Publicity Act (Quebec), for the meagre sum of \$374 (Can!), with a turn-around of maximum a few days. Instead, White chose to "invest" thousands of dollars in an appeal (which they could have easily lost), with the added consequence of postponing the order for interlocutory injunction against defendant by five months!

cont'd on page 2



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

This tells us two things. The first, is that the “weight loss” industry in Quebec is in great health. The second, is that the owner(s) of the Bahamian company (White), comfortably settled against the palm trees of its “haven/paradise”, prefers remaining in the shade rather risking too much exposure by filing a declaration of registration in Quebec, which requires, among other things, the names of principal shareholders. Information that certain agencies would possibly greet with a little too much warmth...

As I said,
fascinating!



We invite your comments!

If you have comments regarding this story or the decision rendered by the Court of Appeal, I would like to read them. If possible I will try to share them with other readers in a subsequent issue of our newsletter, or perhaps on our web site, with permission of course. My coordinates are rsgareau@crac.com. Please include your name, and phone number. Thank you.

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

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

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Certificate of Dissolution	2 - 3 weeks	2 - 3 days
Notice of Change (Federal) or Amending Declaration (Quebec)	2 - 3 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	2 - 3 weeks	—
Declaration of Registration	*1 - 2 weeks	—
Annual Declaration	*2 - 3 weeks	—
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There are exceptions though: Since April 1st, 2001, a business is no longer required to file

its annual declaration for the year in which it was registered (Section 26 of the L.P.A.).

Also, as of January 1st, 2002, the first required annual declaration is free of government fees (Section 11 of the Regulation). However, if said annual declaration is filed late, late filing fees will apply (50% of regular fees).

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A new baby!



Mrs. Rosanna D'Aloé (Corporate Department) is the proud mother of a lovely baby girl. Briana was born on May 14th. We extend our warmest wishes to Rosanna and her husband Enzo.

Food for Thought

Minds are like parachutes
– they only function
when open.

**Thomas Dewar,
Chemist & Physicist**