The Oasis case: When juice turns to vinegar – The impact of social media on justice

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Two Lassonde companies (hereinafter Lassonde), holders of the OASIS trade-mark used mainly to identify fruit juices, instituted legal proceedings against Oasis d'Olivia Inc., requesting that the Quebec Superior Court order it to stop using the OLIVIA'S OASIS trade-mark for soap, and to pay exemplary and punitive damages.

Lassonde also opposed the registration of the OLIVIA's OASIS trade-mark before the Canadian Intellectual Property Office.

Lassonde lost before the Superior Court, which found that there was no likelihood of confusion between the two trade-marks and condemned Lassonde's abuse of procedure, ordering it to reimburse Oasis d'Olivia's legal fees and to pay $25,000 as punitive damages.

Lassonde appealed the question of legal fees and punitive damages to the Quebec Court of Appeal, where the decision of the Superior Court was quashed because there was no evidence of abuse of procedure.

After analyzing Lassonde's behavior in this case, the absence of explicit intimidation, and in view of the fact that the exercise of two concurrent remedies is common practice in trade-mark matters, the Court of Appeal was not convinced that there was an abuse of procedure. The Court added that the legal question at the heart of the debate must not have been obvious considering that the trial judge wrote a 50-paragraph judgment after 5 days of trial and a long deliberation.

Following the Court of Appeal's decision, the press, closely followed by social media, seized on the matter and expressed such dissatisfaction that Lassonde decided to retreat and to reimburse Oasis d'Olivia Inc.'s legal fees.

The following reflections stem from these events:

1. A trade-mark owner must exercise judgment to identify the situations where he should take action and those where he should refrain from acting. When an owner analyzes this question, he must take

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into account his chances of success, the importance of the problem and the future impact on his rights, etc., and he must also explore the possible impact of such an action on his reputation. This consideration is not new but is increasingly important now that social media can spread information around the world instantly.

2. The Court of Appeal stressed that legal action was justified as a means to strengthen Lassonde's identification to its trade-mark. We add that a trade-mark owner who does not react when his rights are violated can see his rights undermined and even nullified in certain circumstances.

3. Article 54.1 of the Québec Code of Civil Procedure states that an action may be deemed improper if it is clearly unfounded. Given that the trade-marks in question have significant differences as far as the phonetic, visual and semantic aspects are concerned, that the term OASIS has a meaning in ordinary language, that no one can own this term, that the protagonists sold their products for different purposes and to different clients, that their products were not found side by side in the same establishments and that there was no overlapping of distribution niches, we question the legal basis for the action.

4. It may be difficult to show an abuse of procedure. One cannot unduly interfere with access to our legal system.

5. The duration of the trial is not indicative of abuse but depends on the efforts deployed by both parties. The long decision could be explained by the fact that the analysis of the likelihood of confusion requires the examination of several criteria and considerations, which has no bearing on whether or not the conclusion could be easily predicted.

6. Social media can react to situations in an unfair manner although there is no question that their impact is powerful. The opinions expressed on social media do not necessarily take into account the rules of law and evidence, and may even be contrary to law. Social media can lead to other types of abuse such as, for instance, when contributors are moved by their degree of sympathy for the parties involved more than by a consideration for their legal rights.

7. Properly used, social media may be an interesting tool for whoever wants to gather information to assert their rights, to identify those who have received similar demand letters and those who decide not to sue or not to defend themselves for lack of sufficient economic means, and thus, social media may assist in gathering broad evidence of abuse of procedure.

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