

Federal Court



Cour fédérale

Date: 20250113

Docket: T-1282-24

Citation: 2025 FC 68

Ottawa, Ontario, January 13, 2025

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

CAPRICE HOLDINGS LIMITED

Applicant

and

**WEST GEORGIA LOUNGE HOLDING
CORP.**

Respondent

JUDGMENT AND REASONS

(Delivered from the Bench at Virtual hearing, on December 18, 2024)

I. Overview

[1] Caprice Holdings Limited [the Applicant] brings this expungement proceeding under section 57 of the *Trademarks Act*, RSC, 1985, c T-13 [the *Act*], for an order striking Trademark Registration No. 1,164,102 for the trademark “IVY” [the IVY Registration or the IVY Mark] from the Trademarks Register.

[2] The IVY Registration is registered in association with nightclub services, bar services, operation of pubs, and restaurant services and held by West Georgia Lounge Holding Corp. [the Respondent]. The Respondent filed the IVY Registration on October 31, 2019. It matured to registration on February 8, 2023.

[3] The Applicant seeks declarations that the IVY Registration is invalid and does not accurately express or define the existing rights of the Respondent; as well an order directing the Trademarks Registrar to expunge the IVY Registration from the Trademarks Register.

[4] The Respondent was served with this Application but has not responded or filed any materials. The Respondent did not appear at the hearing.

[5] I will grant this Application for the reasons that follow.

II. Preliminary Issues

A. *Was the Respondent properly served?*

[6] The Applicant's affidavit of service swears that the Notice of Application was personally delivered to Philip Chua (Director of the dissolved Respondent Corporation) on June 17, 2024.

[7] Subparagraph 30(1)(a)(i) of the *Federal Courts Rules*, SOR/98-106 indicates that personal service on a corporation is effected by leaving a document with a director of the corporation. Further, paragraph 130(1)(c) provides another option, which is service compliant

with the rules of the province in which the service is being affected. In this case, the Applicant has complied with the service requirements for dissolved corporations as listed in paragraph 346(1)(b) and subparagraph 346(2)(b)(i) of the British Columbia *Business Corporations Act*, SBC 2002, Ch 57.

[8] I find that the Applicant properly served the Notice of Application upon the Respondent. The Respondent chose not to file a Notice of Appearance or to take part in the hearing. This Application will proceed in the absence of the Respondent.

B. *Does the Applicant have standing to bring this Application under subsection 57(1) of the Act?*

[9] This Court has jurisdiction under subsection 57(1) of the *Act* to order the expungement of a trademark from the Register upon Application by any person interested.

[10] I find that the Applicant meets the description of a “person interested” under section 2 of the *Act*, which includes “any person who is affected or reasonably apprehends that he may be affected by any entry in the register, or by any act or omission or contemplated act or omission under or contrary to this Act...” This is a low threshold to establish standing (see *Advanced Purification Engineering Corporation (APEC Water Systems) v iSpring Water Systems, LLC*, 2022 FC 388 at para 13 [*Advanced Purification*]).

[11] As discussed below, the Applicant seeks to register two trademarks similar to the IVY Mark. The Register’s examiner for the Applicant’s trademark applications cited the

Respondent's IVY Registration as a basis for objection. Therefore, the Respondent's IVY Registration poses an obstacle to the registration of the Applicant's marks. I find the Applicant to have standing to bring this Application. It is a person interested under the *Act*.

C. *Should the Respondent's IVY Registration be struck from the Register of Trademarks because it is abandoned?*

[12] As stated in section 19 of the *Act*, a registered trademark is presumed to be valid (*Yiwu Thousand Shores E-Commerce Co Ltd v Lin*, 2021 FC 1040 at para 24 [*Yiwu*]). The onus of proving otherwise is on the party seeking to expunge the registration.

[13] The Respondent's use (or lack thereof) of the IVY trademark is the determinative issue for the Applicant's subsection 18(1) invalidity submissions.

[14] Paragraph 18(1)(c) of the *Act* provides that the registration of a trademark is invalid if "the trademark has been abandoned." The jurisprudence has established two requirements for striking a trademark on this basis: (1) the trademark is not in use in Canada and (2) the trademark owner demonstrates an intention to abandon it (*Advanced Purification* at para 46).

[15] An owner's failure to use the mark over a long period of time may establish an inference that the owner intended to abandon the trademark (*Advanced Purification* at para 47; *Iwasaki Electric Co Ltd v Hortilux Schreder BV*, 2012 FCA 321; *Friedrich Geldbach GmbH v M Geldbach (Shanxi) Flange & Fittings Co, Ltd*, 2019 FC 1301 at para 39 [*Friedrich Geldbach*]). For instance, in *Advanced Purification*, Justice McDonald found that a sufficiently "long period

of time” was less than two years (i.e., from 2018 until the notice of application was served in November 2019) (*Advanced Purification* at paras 48-50). In *Friedrich Geldbach*, Justice Southcott – in an unopposed application – found that the three-and-a-half-year period between the time of the respondent’s trademark registration and the filing of the applicant’s evidence on non-use was “sufficiently lengthy” (*Friedrich Geldbach* at paras 40-41).

[16] “Use” of a trademark, as referred to in the *Act*, and in association with services, is defined in subsection 4(2) as “used or displayed in the performance or advertising of those services.”

[17] The Applicant states that it owns a number of trademarks including an international collection of restaurants and bars that operate under the marks “IVY,” “IVY ASIA,” and “IVY COLLECTION.” The Applicant applied on February 24, 2021, for the Canadian trademark “IVY ASIA,” and on February 18, 2022, for the Canadian trademark “IVY.” The Respondent’s IVY Registration was cited as the basis for objection in the Examiner’s Reports issued October 14, 2022, and October 26, 2022. This was a surprise to the Applicant as it was not aware of the Respondent’s trademark application until after the opposition period had closed.

[18] The Respondent previously operated a lounge called the IVY Rose Lounge or IVY Lounge [the Lounge] in what had been the Trump Hotel at 1161 West Georgia St, Vancouver, British Columbia.

[19] The Respondent opened the Lounge on March 9, 2020, but was evicted by its landlord on March 21, 2021. It challenged its lease termination and eviction but the Supreme Court of British

Columbia denied its request for an injunction (see *Ivy Lounge West Georgia Limited Partnership v TA F&B Limited Partnership*, 2021 BCSC 997). In short, the Court’s denial was based on several complaints regarding the Lounge’s clientele and repeated violations of public health protocols. Additionally, the police had informed the landlord of 43 calls regarding the operation of the Lounge since June 2020. Those police calls involved reports of weapons, bar watch checks, assaults, fights, breach of the peace, and organized crime.

[20] In support of this Application, the Applicant retained a private investigator who filed an affidavit with extensive evidence of due diligence into the Respondent’s ownership and use of the IVY Mark. Searches showed that the Respondent was dissolved and struck from the British Columbia Corporate registry for failure to file annual reports. The Company Summary indicates that the last annual report from the corporation was filed on October 28, 2019, and that it was dissolved on January 29, 2024.

[21] The private investigator also confirmed that the Lounge – previously operating under either the “IVY Rose Lounge” or “Ivy Lounge” – is permanently closed. All websites and social media accounts related to that business have been removed or are inactive. All phone numbers associated with the business have been disconnected or re-assigned. The investigator found no other nightclubs, bars, pubs, or restaurants in Canada using the name, nor any attempt by the Respondent to re-commence use of the IVY Mark.

[22] The private investigator did find two currently active partnerships associated with the Respondent: “Ivy Lounge West Georgia Limited Partnership” and “Ivy Lounge General

Partnership.” While the British Columbia company register lists these partnerships as “active,” the investigator attests that “I am aware from my past work as an investigator and researcher that it is the responsibility of [the] partnership to report to the BC Registry if the partnership dissolves, otherwise the partnership will be reported as ‘Active.’”

[23] Further internet searches related to the Respondent show news articles dated June 2021 or earlier discussing the above eviction and allegations of misconduct.

[24] I find the evidence before me to be reliable and I am satisfied that the Respondent has undertaken no commercial activities or use of the IVY Mark since early 2021.

[25] The relevant date to assess abandonment is the date of this Application: August 20, 2024 (*Yiwu* at para 45). Therefore, the Respondent has not used the IVY trademark for three and a half years. Based on the jurisprudence cited above, this is a sufficiently long period of time to infer an intention to abandon.

[26] The Applicant has overcome the presumption of validity. I find the IVY Registration invalid because the Respondent has abandoned the IVY Mark.

III. Costs

[27] At the hearing, the Applicant indicated they were not seeking costs.

JUDGMENT in T-1282-24

THIS COURT'S JUDGMENT is that:

1. Pursuant to subsection 57(1) of the *Trademarks Act*, I declare that the Canadian Trademark Registration No. 1,164,102 does not accurately express or define the existing rights of the Respondent.
2. The Respondent's Canadian Trademark Registration No. 1,164,102 for the trademark "IVY" is declared invalid and void.
3. The Registrar of Trademarks shall strike Canadian Trademark Registration No. 1,164,102 from the Register of Trademarks.
4. No costs are awarded.

"Glennys L. McVeigh"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1282-24

STYLE OF CAUSE: CAPRICE HOLDINGS LIMITED v WEST GEORGIA
LOUNGE HOLDING CORP.

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: DECEMBER 18, 2024

JUDGMENT AND REASONS: MCVEIGH J.

DATED: JANUARY 13, 2025

APPEARANCES:

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