

Date: 20071017

Docket: T-642-06

Citation: 2007 FC 1070

BETWEEN:

DELL INC.

Plaintiff

and

**9153-3141 QUEBEC INC.
(C.O.B. AS MS MARKETING)**

Defendant

ASSESSMENT OF COSTS - REASONS

**Charles E. Stinson
Assessment Officer**

[1] The Court, having noted the Defendant in default, allowed with costs this action concerning trade-mark infringement and passing off. I issued a timetable for written disposition of the assessment of the Plaintiff's bill of costs. Counsel for the Plaintiff initially responded to the timetable by asserting that he was simply seeking the Court's approval of the bill of costs further to a default judgment. I issued supplemental directions asserting that paragraph 7 of the default judgment left costs to be assessed and that the timetable would stand being part of the ordinary process of assessment of costs which unfolds on notice to the party liable to pay costs.

[2] The Defendant did not file any materials in response to the Plaintiff's materials. My view, often expressed in comparable circumstances, is that the *Federal Courts Rules* do not contemplate a litigant benefiting by having an assessment officer step away from a neutral position to act as the litigant's advocate in challenging given items in a bill of costs. However, the assessment officer cannot certify unlawful items, i.e. those outside the authority of the judgment and the tariff. I examined each item claimed in the bill of costs and the supporting materials within those parameters.

[3] Certain items warrant my intervention in view of my expressed parameters above as I feel that the Plaintiff cannot establish entitlement thereto notwithstanding the absence of objections from the Defendant. The bill of costs claims a second and/or third counsel fee for certain services such as item 1 (preparation of statement of claim). The practice is that item 1 is a global allowance regardless of the number of counsel involved unless the Court directs otherwise, which did not occur here. The bill of costs claims item 21(a) (preparation of motion). Item 4 should have been used as item 21(a) applies only to motions made during appeals to the Federal Court of Appeal. In *Air Canada v. Canada (Minister of Transport)*, [2000] F.C.J. No. 101 (A.O.), I considered the circumstances for allowing item 28, claimed several times here. I find that the record does not support any allowances. I think that the Plaintiff could reasonably argue in the circumstances for a number of counsel fee items totally 26 units (\$120.00 per unit) plus GST, which I allow in these

circumstances plus claimed disbursements of \$1,544.49. The Plaintiff's bill of costs, presented at \$6,950.49, is assessed and allowed at \$4,851.69.

"Charles E. Stinson"
Assessment Officer

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-642-06

STYLE OF CAUSE: DELL INC. v. 9153-3141 QUEBEC INC.
(C.O.B. AS MS MARKETING)

**ASSESSMENT OF COSTS IN WRITING WITHOUT PERSONAL APPEARANCE OF
THE PARTIES**

REASONS FOR ASSESSMENT OF COSTS: CHARLES E. STINSTON

DATED: October 17, 2007

WRITTEN REPRESENTATIONS:

Mr. R. Aaron Rubinoff

FOR THE PLAINTIFF

n/a

FOR THE DEFENDANT

SOLICITORS OF RECORD:

Perley-Robertson, Hill & McDougall LLP

FOR THE PLAINTIFF

n/a

FOR THE DEFENDANT