

Date: 20110517

Docket: T-9-09

Citation: 2011 FC 568

BETWEEN:

SCOTT PAPER LTD.

Applicant

and

**GEORGIA-PACIFIC CONSUMER
PRODUCTS LP**

Respondent

**REASONS FOR ORDER WITH RESPECT TO
AWARD OF COSTS AGAINST SUCCESSFUL PARTY**

O'KEEFE J.

[1] At the conclusion of the hearing of this matter, I gave the parties timelines in which to make submissions on whether the applicant's filing of the Rogers affidavit before me should attract an order of costs against it as the affidavit could have been filed before the Registrar. This was the only costs issue on which I sought submissions.

[2] Submissions were filed by the parties.

[3] I have reviewed the submissions of both parties in relation to this issue and I am of the view that costs should not be awarded against the applicant as a result of filing the Rogers affidavit. I did not allow the appeal because of the material contained in the Rogers affidavit. I note from my decision that I concluded that Georgia-Pacific had failed to discharge its evidentiary burden with respect to the respondent's mark's reputation (non-distinctiveness). As well, I note that there was no cross-examination on the affidavit and no evidence in response was filed so as to incur additional costs.

[4] I agree with the applicant that only the cost consequences of the affidavit were to be the subject of the submissions. However, the applicant's letter of May 7, 2010 includes further submissions on costs. Based on this fact, I believe it would be fair to give the respondent an opportunity to make submissions on costs and the applicant an opportunity to reply.

[5] The respondent shall have one week to file its submissions and the applicant shall have one week in which to reply.

“John A. O’Keefe”

Judge

Ottawa, Ontario
May 17, 2011

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-9-09

STYLE OF CAUSE: SCOTT PAPER LTD.

- and -

GEORGIA-PACIFIC CONSUMER
PRODUCTS LP

SUBMISSIONS IN WRITING AND CONSIDERED AT OTTAWA, ONTARIO

REASONS FOR ORDER: O'KEEFE J.

DATED: May 17, 2011

APPEARANCES:

Kevin Sartorio	FOR THE APPLICANT
Matthew J. Diskin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Gowling Lafleur Henderson LLP Toronto, Ontario	FOR THE APPLICANT
Heenan Blaikie LLP Toronto, Ontario	FOR THE RESPONDENT