

Federal Court



Cour fédérale

Date: 20131018

Docket:T-290-13

Citation: 2013 FC 1051

[UNREVISED ENGLISH CERTIFIED TRANSLATION]
Montréal, Québec, October 18, 2013

PRESENT: Richard Morneau, Prothonotary

BETWEEN:

PINNACLE ESTATES INC.

Plaintiff/Defendant by counterclaim

and

BEAM INC.

and

BEAM CANADA INC.

Defendants/Plaintiffs by counterclaim

and [SeparatorNameF]

WHITE ROCK DISTILLERIES INC.

Defendant

and [SeparatorNameF]

JIM BEAM BRANDS CO.

Plaintiff by counterclaim

REASONS FOR ORDER AND ORDER

[1] I have read the motion records filed and heard counsel on a motion by various corporations (hereafter collectively the Constellation Group) to be granted leave, under Rule 109 of the *Federal Courts Rules* (the Rules), to intervene, with essentially all the rights as one of the parties, in an unfair competition action for the tort of passing off committed by the plaintiff.

[2] The plaintiff, the defendants/plaintiffs by counterclaim Beam Inc. and Beam Canada Inc., and the plaintiff by counterclaim Jim Beam Brands Co. (hereafter collectively the defendants Beam) object to this intervention.

[3] The defendant White Rock Distilleries Inc. takes no position on the motion under review.

[4] Other than the present case before the Federal Court, the plaintiff is currently involved in various proceedings in other fora regarding the “Pinnacle” trade-mark (sometimes the Mark).

[5] The following table provides an overview of all these proceedings and the parties involved in them:

Docket No.	Parties	Proceeding
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#1	500-17-073133-129 (Superior Court)	Plaintiff v Constellation Group	Homologation of a transaction regarding the transfer of a right concerning the Mark
#2	500-17-075052-129 (Superior Court)	Plaintiff v Defendants Beam	Injunction to prevent use of the Mark in Quebec (stayed pending a decision of the Federal Court)
#3	2013 TMOB 153 (Trade-marks Opposition Board)	Constellation Group v Plaintiff	Opposition to a registration concerning the Mark
#4	Present case before Federal Court T-290-13	Plaintiff v Defendants Beam and White Rock Distilleries Inc.	Action in passing off

[6] Probably because the plaintiff's initial statement of claim before the Federal Court contained allegations regarding proceedings #1 and #3, above, the Constellation Group filed a motion record to intervene in the present case on August 22, 2013.

[7] However, on August 29, 2013, the plaintiff amended its statement of claim by withdrawing all of the allegations relating to proceedings #1 and #3 (the withdrawn allegations).

[8] The Constellation Group maintained its motion, however, amending it to take these changes into account.

Analysis

[9] Rule 109 reads as follows:

109. (1) The Court may, on motion, grant leave to any person to intervene in a proceeding.

(2) Notice of a motion under subsection (1) shall

(a) set out the full name and address of the proposed intervenor and of any solicitor acting for the proposed intervenor; and

(b) describe how the proposed intervenor wishes to participate in the proceeding and how that participation will assist the determination of a factual or legal issue related to the proceeding.

(3) In granting a motion under subsection (1), the Court shall give directions regarding

(a) the service of documents; and

(b) the role of the intervenor, including costs, rights of appeal and any other matters relating to the procedure to be followed by the intervenor.

[Emphasis added.]

109. (1) La Cour peut, sur requête, autoriser toute personne à intervenir dans une instance.

(2) L'avis d'une requête présentée pour obtenir l'autorisation d'intervenir :

a) précise les nom et adresse de la personne qui désire intervenir et ceux de son avocat, le cas échéant;

b) explique de quelle manière la personne désire participer à l'instance et en quoi sa participation aidera à la prise d'une décision sur toute question de fait et de droit se rapportant à l'instance.

(3) La Cour assortit l'autorisation d'intervenir de directives concernant :

a) la signification de documents;

b) le rôle de l'intervenant, notamment en ce qui concerne les dépens, les droits d'appel et toute autre question relative à la procédure à suivre.

[Je souligne.]

[10] In *Canadian Union of Public Employees (Airline Division) v Canadian Airlines International Ltd*, [2000] FCJ No 220 (the *CUPE* decision), the Federal Court of Appeal

reiterated the relevant factors to apply when assessing any motion to intervene, at paragraphs 8 and 9:

8 It is fair to assume that in order to grant the intervention the motions Judge would have considered the following factors which were advanced by both the appellants and PSAC as being relevant to her decision:

- i. Is the proposed intervener directly affected by the outcome?
- ii. Does there exist a justiciable issue and a veritable public interest?
- iii. Is there an apparent lack of any other reasonable or efficient means to submit the question of the Court?
- iv. Is the position of the proposed intervener adequately defended by one of the parties to the case?
- v. Are the interests of justice better served by the intervention of the proposed third party?
- vi. Can the Court hear and decide the cause on its merits without the proposed intervener?

9 She also must have had in mind rule 109 of the *Federal Court Rules, 1998*, and specifically paragraph 2 thereof which required PSAC to show in the application before her how the proposed intervention "... will assist the determination of a factual or legal issue related to the proceeding".

[Footnotes omitted.]

[11] First, it should be noted that, even if one admitted for discussion purposes that the allegations that were withdrawn from the initial statement of claim could be of some interest for the ends sought by the Constellation Group, the fact remains that these allegations no longer exist and that the Court must examine the present dispute between the plaintiff and the defendants Beam as it stands according to an analysis of the pleadings between these parties.

[12] This aspect is relevant as it is known that any intervenor must take the proceeding as it stands between the parties that are already involved. In fact, as noted in *Maurice v Canada (Minister of Indian Affairs and Northern Development)* (2000), 183 FTR 45, at paragraph 11, intervenors cannot, as a result of their status, raise aspects that have not already been raised by the existing parties:

[11] It is common ground that an intervenor takes the pleadings and record as it finds them. While an intervenor may bring new viewpoints and special knowledge to a proceeding, the intervenor may not litigate new issues (*Yale Indian Band v. Aitchelitz Indian Band* (1998), 151 F.T.R. 36 (Proth.)). I am confident that counsel for the applicant is well aware of the role that intervenors are allowed to play, and that the applicant will not seek to expand the parameters of the claim, which indeed, in any event, it may not do.

[13] As pointed out by the defendants Beam at paragraph 29 of their written submissions, the present case before the Federal Court is limited to the following aspects:

29. The only factual and legal issues raised by the Amended Statement of Claim are therefore whether goodwill attaches to the Plaintiff's DOMAINE PINNACLE & DESSIN unregistered trade-mark, whether the Defendants have made misrepresentations to the public through their use of the PINNACLE trade-mark in association with vodka or gin and, in the affirmative, whether the Plaintiff has suffered damages as a result.

[14] The Court, like the parties that oppose this motion, cannot see how, within a framework that solely involves the existing parties to the case, the Constellation Group can—contrary to and in addition to the parties already involved—concretely assist the determination of a factual or legal issue related to the proceeding (subsection 109(2) of the Rules).

[15] Moreover, the involvement of the Constellation Group in proceedings #1 and #3 (see paragraph 5, above) is not relevant for the purposes of the present proceeding, nor is there a risk of conflicting decisions, on the basis of the following written submissions made by the defendants Beam at paragraphs 37 and 46:

37. Moreover, as this is an action in passing off based on an unregistered trade-mark, it is irrelevant whether the Plaintiff is entitled to the registration of its DOMAINE PINNACLE & DESSIN trade-mark which is being opposed [proceeding #3] or whether it is the owner of Canadian Trade-mark Registration No. TMA683,119 for the trade-mark PINNACLES on the basis of the alleged assignment [proceeding #1].
- ...
46. There are therefore currently three distinct proceedings in front of three distinct tribunals for the determination of three distinct issues. It is impossible that these tribunals reach contradictory conclusions.

[16] The Court therefore concludes that the Constellation Group does not satisfy any of the factors set out in the *CUPE* decision or subsection 2 of Rule 109.

[17] More specifically, regarding the interests of justice, the Court notes that the great majority of the examinations for discovery have already been completed, and the scale of the Constellation Group's intervention may well make the case more cumbersome. It is likely that the trial, the length of which has already been set at five (5) days, would be extended and would have to be rescheduled for a later date if the Constellation Group were allowed to intervene.

[18] For these reasons, the Constellation Group's motion is dismissed, with costs in favour of the plaintiff and the defendants Beam.

ORDER

THE COURT ORDERS that the Constellation Group's motion be dismissed, with costs in favour of the plaintiff and the defendants Beam.

“Richard Morneau”

Prothonotary

Certified true translation
Johanna Kratz, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-290-13

STYLE OF CAUSE: PINNACLE ESTATES INC.
v
BEAM INC. and BEAM CANADA INC.
and
WHITE ROCK DISTILLERIES INC.
and
JIM BEAM BRANDS CO.

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: OCTOBER 15, 2013

**REASONS FOR ORDER AND
ORDER:** PROTHONOTARY MORNEAU

DATED: OCTOBER 18, 2013

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