

Date: 20091130

Docket: A-132-09

Citation: 2009 FCA 348

**CORAM: BLAIS C.J.
NOËL J.A.
LAYDEN-STEVENSON J.A.**

BETWEEN:

ADVANCE MAGAZINE PUBLISHERS INC.

Appellant

and

FARLEYCO MARKETING INC.

Respondent

Heard at Toronto, Ontario, on November 30, 2009.

Judgment delivered from the Bench at Toronto, Ontario, on November 30, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

NOËL J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on November 30, 2009)

NOËL J.A.

[1] We are unable to conclude that Russell J. committed any of the errors alleged by the appellant. With respect to the issue of confusion, we agree with the application judge that there is no factual foundation for the proposition that the appellant has expanded the scope of its GLAMOUR mark by having licensed this mark to third parties (reasons of the application judge, paragraph 114).

[2] While the affidavit Susan Goodall does establish that third parties use the appellant's magazine and website to advertise their own products, it does not go beyond this.

[3] As to the issue of the applicable date in relation to subsection 16(3) of the *Trade-mark Act*, R.S.C. 1985, c. t-13, it has not been demonstrated that the application judge's conclusion depended on evidence which post-dates December 16, 2003.

[4] The appeal will be dismissed with costs.

“Marc Noël”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-132-09

(AN APPEAL FROM THE ORDER OF THE HONOURABLE MR. JUSTICE RUSSELL OF THE FEDERAL COURT, DATED FEBRUARY 12, 2009, FROM COURT FILE DOCKET NO. T-1490-07)

STYLE OF CAUSE: ADVANCE MAGAZINE
PUBLISHERS INC. v. FARLEYCO
MARKETING INC.

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 30, 2009

**REASONS FOR JUDGMENT OF
THE COURT BY:** (BLAIS C.J., NOËL & LAYDEN-
STEVENSON JJ.A.)

DELIVERED FROM THE BENCH BY: NOËL J.A.

APPEARANCES:

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Brian W. Gray FOR THE RESPONDENT
Cynthia D. Mason
Amy Grenon

SOLICITORS OF RECORD:

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