



B E T W E E N:

CONNAUGHT LABORATORIES LIMITED

Plaintiff

- and -

DIAGNOCURE INC.

Defendant

REASONS FOR ORDER

(Delivered orally at Toronto, Ontario
Tuesday, June 17, 1997)

McGILLIS, J.:

Despite the able argument of counsel for the plaintiff, I have concluded that the application for an interim injunction must be dismissed. Even if I were to assume that the application raises a serious issue to be tried, the plaintiff has failed to establish by clear evidence that it would suffer irreparable harm, not compensable in damages, for the loss of goodwill or reputation, or for the loss of exclusivity and distinctiveness of its IMMUCYST trade-mark, resulting from the use by the defendant of the trade-mark IMMUNOCYT. In my opinion, the evidence tendered by the plaintiff to support its contention of irreparable harm is speculative in nature. Furthermore, since the two products respectively perform completely separate and unrelated functions in the treatment and diagnosis of bladder cancer, the plaintiff would not suffer any market loss as a result of any

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sales of the defendant's diagnostic test kit. In the circumstances, I am not satisfied that the issuance of an interim injunction is warranted.

Although I have rejected the application for an interim injunction on its merits, I am also of the opinion that there was no urgency in this matter. The plaintiff and defendant engaged in negotiations from November 1995 to February 1997 in an attempt to reach a commercial distribution agreement. On or about September 26, 1996, the plaintiff became aware that the defendant was using the trade-mark IMMUNOCYT in relation to the diagnostic test kit for bladder cancer. In January 1997, the parties agreed to host a breakfast meeting at the Canadian Urology Association annual meeting in Quebec City on June 22, 1997 to discuss their products. On February 10, 1997, the plaintiff gave oral notice to the defendant that it considered the use of the IMMUNOCYT trade-mark to be inappropriate. Shortly thereafter, the negotiations between the parties broke down. On February 24, 1997, the plaintiff wrote to the defendant requesting it to cease and desist from using the trade-mark IMMUNOCYT. By letter dated March 21, 1997, counsel for the defendant indicated that the defendant intended to continue using the trade-mark IMMUNOCYT in Canada. On May 26, 1997, the plaintiff instituted the present proceedings by filing a Statement of Claim. During the course of his submissions, counsel for the plaintiff argued that an interim injunction was required urgently in order to prevent the defendant from using its trade-mark at the upcoming meeting of the Canadian Urology Association. I cannot accept that argument. The plaintiff has known for approximately nine months that the defendant was using the trade-mark IMMUNOCYT. Furthermore, the plaintiff has known since at least January 1997 that the defendant intended to attend and promote its product at the meeting of the Canadian Urology Association in June 1997. In the circumstances, any urgency in this matter has arisen solely by virtue of the failure of the plaintiff to pursue its available remedies diligently and promptly. The plaintiff has therefore failed to establish the degree of urgency

required to justify the issuance of an interim injunction under Rule 469(2) of the
Federal Court Rules.

The application for an interim injunction is dismissed with costs.

"Donna McGillis"

Judge

Toronto, Ontario
June 17, 1997

FEDERAL COURT OF CANADA

Names of Counsel and Solicitors of Record

COURT NO: T-1111-97
STYLE OF CAUSE: CONNAUGHT LABORATORIES LIMITED

- and -

DIAGNOCURE INC.

DATE OF HEARING: JUNE 17, 1997
PLACE OF HEARING: TORONTO, ONTARIO
REASONS FOR ORDER BY: MCGILLIS, J.
DATED: JUNE 17, 1997

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