

Federal Court of Appeal



Cour d'appel fédérale

Date: 20151007

Docket: A-134-15

Citation: 2015 FCA 215

**CORAM: NADON J.A.
BOIVIN J.A.
DE MONTIGNY J.A.**

BETWEEN:

**CONCIERGE CONNECTION INC. c.o.b. as
PERKOPOLIS MORGAN C. MARLOWE AND
RICHARD THOMAS JOYNT**

Appellants

and

VENNGO INC.

Respondent

Heard at Montréal, Quebec, on October 7, 2015.
Judgment delivered from the Bench at Montréal, Quebec, on October 7, 2015.

REASONS FOR JUDGMENT OF THE COURT BY:

NADON J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, on October 7, 2015).

NADON J.A.

[1] We are all agreed that the appeal must succeed.

[2] There can be no doubt that in order to obtain the *ab initio* invalidation of a registered trade-mark, it is necessary to show that the owner of the impugned trade-mark obtained the registration of the mark either by making a misrepresentation to the trade-mark office or

misleading it in a material way (see *Remo Imports Ltd. v. Jaguar Cars Limited et al*, 2007 FCA 258, at paras. 54 and 62 and *Coors Brewing Company et al v. Anheuser-Busch, LLC*, 2014 FC 716 at para. 38).

[3] In the present matter we see nothing in the pleadings which could give rise to such a determination.

[4] Consequently, on the basis of the existing pleadings, it was an error on the part of the Judge to find, as he did at paragraph 31 of his reasons, that the appellants had “engaged in wilful and negligent representations in the registration process”.

[5] Thus, the Judge erred in not interfering with the Prothonotary’s order of November 5, 2014.

[6] For these reasons, the appeal will be allowed with costs, the judgment of the Federal Court dated March 2, 2015 will be set aside and rendering the decision which ought to have been rendered, the respondent’s motion for production of an itemized breakdown by date and sell amount of the appellants’ revenue, as of April 1, 2008, will be dismissed with costs.

"Marc Nadon"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-134-15

STYLE OF CAUSE: CONCIERGE CONNECTION INC.
c.o.b. as PERKOPOLIS MORGAN
C. MARLOWE and RICHARD
THOMAS JOYNT v. VENNGO
INC.

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: OCTOBER 7, 2015

REASONS FOR JUDGMENT OF THE COURT BY: NADON J.A.
BOIVIN J.A.
DE MONTIGNY J.A.

DELIVERED FROM THE BENCH BY: NADON J.A.

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