

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20180216**

**Docket: A-262-17**

**Citation: 2018 FCA 40**

**Present: LASKIN J.A.**

**BETWEEN:**

**JEREMY COOPERSTOCK**

**Appellant**

**and**

**UNITED AIRLINES, INC.**

**Respondent**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on February 16, 2018.

**REASONS FOR ORDER BY:**

**LASKIN J.A.**

**Federal Court of Appeal**



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**REASONS FOR ORDER**

**LASKIN J.A.**

[1] In June 2017 the Federal Court released its judgment and reasons for judgment in an action for trademark and copyright infringement brought by the respondent in this Court, United Airlines, Inc., against the appellant, Dr. Jeremy Cooperstock (2017 FC 616). The Federal Court found that Dr. Cooperstock, the owner and operator of the website [www.untied.com](http://www.untied.com), had infringed United's registered trademarks and copyright. It found that United was entitled to an injunction restraining Dr. Cooperstock's use of United's marks and copyrighted works, and retained jurisdiction to provide effective relief. It requested written submissions from the parties

within 45 days as to both the nature and scope of the injunction to be issued and (if the parties were unable to settle the issue of costs) as to costs. Submissions were made on both issues. The decision on both remains under reserve.

[2] Dr. Cooperstock commenced an appeal in this Court in September 2017. The parties agreed to the contents of the appeal book in October 2017, and the appeal book was filed in November 2017. Dr. Cooperstock intends to pursue the appeal.

[3] Dr. Cooperstock now moves for an order

consolidating the remaining steps in this appeal, including the delivery of the Appellant's Memorandum of Fact and Law and the hearing of the appeal, with the anticipated appeals of the Injunction Order and/or the Costs Order [...] or to [sic] 40 days after the release of those Orders if no appeal is sought by any party.

In the alternative he asks for two weeks to file his memorandum.

[4] In support of the order that he seeks, Dr. Cooperstock argues that because the judgment from which this appeal is brought and the costs order and injunction order flow from the same factual background and the same trial, it would be inefficient to require three separate panels of this Court to deal with them. He argues that the scope and content of this appeal may be materially affected by the contents of the injunction order, and that this appeal and the appeal that may be brought from the injunction order may raise common issues, which should be heard and decided together. He also submits that the injunction order may lead to an appeal by the respondent.

[5] In making these submissions Dr. Cooperstock relies on the decision of this Court in *Groupe Westco Inc. v. Nadeau Poultry Farm Limited*, 2011 FCA 13, 414 N.R. 252. In that case Sharlow J.A. granted an order holding an appeal in abeyance for 30 days after the disposition of two other appeals. The appeals all arose from a proceeding before the Competition Tribunal. The Tribunal had held Westco in contempt of an interim order and had dismissed a motion by Westco for an order interpreting the interim order. Those orders were both under appeal. The Tribunal had also sentenced Westco for contempt. Westco had brought a further appeal, from the sentencing order. There was also a cross-appeal from the sentencing order.

[6] The Court ordered that the sentencing appeal (and cross-appeal) be held in abeyance for 30 days after the disposition of the appeals from the contempt order and the interpretation order. Sharlow J.A. observed that while Westco's motion had cited rule 8 of the *Federal Courts Rules*, SOR/98-106, under which the Court has a discretion to extend a period provided by the Rules or fixed by an order, Westco could instead have relied on paragraph 50(1)(b) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, under which the Court may stay proceedings in any cause or matter if it is in the interest of justice that the proceedings be stayed. In determining that it was in the interest of justice to grant the order, she found merit in Westco's submission that the motion should be granted in the interest of efficiency. She stated (at para. 12):

If the parties are required to prepare for the sentencing appeal and cross-appeal before the other two appeals are completed, they necessarily will be required to address a number of possible outcomes of the other two appeals, some of which will not materialize. On the other hand, if Westco's motion is granted, the parties will be able to focus on their position in the sentencing appeal on the basis of the disposition of the other two appeals, which will make the appeal procedure more efficient for them and for the Court.

[7] I agree entirely with this reasoning. But in my view it does not assist Dr. Cooperstock here. Like Sharlow J.A., I have considered whether the order sought is in the interest of justice. I have concluded that it is not.

[8] First, and fundamentally, in *Westco* all of the appeals were pending appeals: orders had been made and notices of appeal had been filed. The Court was therefore in a position to gauge the relationships among the various appeals and to assess the potential efficiencies. Here, by contrast, only one appeal is pending. No injunction order and no costs order have been made. We do not know the terms of the orders that will be made. We do not know what potential grounds of appeal they may present, or what grounds will be set out in any notices of appeal that will be issued. We do not even know, if appeals are indeed commenced, who will be appellant and who respondent. Neither rule 8 nor paragraph 50(1)(b) – nor, for that matter, rule 3, on which Dr. Cooperstock also relies – is intended to operate in such a speculative context.

[9] Second, as United points out, the reasoning in *Westco* would support staying the future appeals, if and when they are commenced, not the pending appeal as Dr. Cooperstock's motion requests. The respondent in this appeal is entitled to the expeditious conduct of the pending appeal as contemplated by rule 3.

[10] Third, the primary relief that Dr. Cooperstock seeks here is consolidation. Consolidation was not in issue in *Westco*. In any event, rule 105, which authorizes an order for consolidation or hearing together, operates only "in respect of two or more proceedings." Here there is – for now, at least – only one.

[11] For these reasons, the motion is dismissed insofar as it seeks consolidation or a stay. For practical reasons I will give Dr. Cooperstock the two weeks to file his memorandum of fact and law that he requested in the alternative: it is to be filed on or before March 2, 2018. United is awarded its costs of this motion in any event of the cause. This disposition is not intended to preclude the bringing of a motion for a stay, consolidation or hearing together if and when one or more appeals from the injunction order and costs order are commenced.

"John B. Laskin"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-262-17

**STYLE OF CAUSE:** JEREMY COOPERSTOCK v.  
UNITED AIRLINES, INC.

**MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR ORDER BY:** LASKIN J.A.

**DATED:** FEBRUARY 16, 2018

**WRITTEN REPRESENTATIONS BY:**

Ren Bucholz FOR THE APPELLANT  
Andrew Lokan

Jay Zakaïb FOR THE RESPONDENT  
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