

TRADE-MARK AND CORPORATE INDICIA USED BY AN EX-FRANCHISEE

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140 Gréber Holding Inc. v. Distribution Stéréo Plus Inc. 2005 QCCA 1030 (Court of Appeal, Province of Quebec)

1. The facts

The Respondent, Distribution Stéréo Plus Inc. (hereinafter “Stéréo Plus”), operates a network of franchised electronic appliances dealers. To this end, Stéréo Plus designed and developed a particular interior layout of the franchised stores consisting of distinctive colours, furniture, carpet, etc. The Appellant, 140 Gréber Holding Inc. (hereinafter “Gréber”), and Stéréo Plus signed a franchising contract in November 2001; Gréber adopted for its store said particular interior layout according to Stéréo Plus’ instructions.

In June 2002, Stéréo Plus cancelled the franchising contract with Gréber; said cancellation has eventually been confirmed by the Superior Court. Amongst others, Gréber was compelled by the Court to modify the interior and exterior appearance of its store in order to avoid any confusion, error, association or relation with Stéréo Plus. Since Gréber did not fully comply with the Court’s Order, Stéréo Plus filed a motion before the Superior Court in order to force Gréber to conform to its obligations. The Superior Court granted the interlocutory injunction and ordered Gréber to change the colors, carpet and furniture of its store and to cease using any sign confusing the mark STÉRÉO PLUS or any sign containing the words “Plus” and “Électronique”. Gréber appealed from that decision.

2. The Court of Appeal’s decision

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The Court of Appeal states that the interlocutory injunction only has a provisory character and the opening rules are to be strictly interpreted given that it constitutes an exceptional measure intended to maintain a *statu quo* until the decision on the merits. The Trial Judge benefits from a large discretion which must be observed by the Court of Appeal unless it is of the view that said discretion has been misused.

With respect to the general appearance of Gréber's store, the Superior Court did not commit any mistake by finding that the minor changes made by Gréber did not respect its obligation to modify the interior appearance of its store in order to avoid any confusion, error, association or relation with Stéréo Plus.

Regarding the trade name and the likelihood of confusion, the Court of Appeal is of the view that Stéréo Plus has shown a *prima facie* right which is not, however, totally clear. In these circumstances, the Court of Appeal must consider the other two elements of the injunction: the irreparable harm and the balance of inconveniences. In this respect, the Court of Appeal is of the view that Stéréo Plus did not meet its burden of proof.

Indeed, in the Court of Appeal's opinion, it is questionable to prevent Gréber from using the words "Électronique" and "Plus" in its name given that the former describes the nature of its business and the latter simply suggests excellence. The words "Électronique" and "Plus" in Gréber's name do not lead to a likelihood of confusion with Stéréo Plus' business. Therefore, contrary to the distinctive elements composing its particular interior layout (such as the colors, carpet and furniture), Stéréo Plus did not show an irreparable harm with respect to Gréber's trade name.

Consequently, the Court of Appeal partially granted the appeal and ordered Gréber to comply with the following obligations : 1) to change the carpet and the STÉRÉO PLUS sign behind the cash register and 2) not to use a name or a trade-mark creating confusion with Stéréo Plus' trade-marks.

