

THE ISSUE OF CONFUSION REVIEWED BY THE SUPERIOR COURT OF QUEBEC IN AN INJUNCTION CONTEXT

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Manoir Pointe-aux-Trembles inc. v. Savoie, 2006 QCCS 3888 (Superior Court of Quebec, J. Benoît Emery)

In a recent hearing held in July 2006, the Superior Court of Quebec was requested to issue a permanent injunction preventing the use by Mr. Eddy Savoie (hereinafter referred to as the "Respondant") of the expression "Manoir Pointe-aux-Trembles" as an element of his retirement home corporate name (i.e. "Les Résidences Soleil Manoir Pointe-aux-Trembles") as it was already used and registered as a trade-mark by Manoir Pointe-aux-Trembles inc. (hereinafter referred to as the "Petitioner").

1. Factual background

The Petitioner, a company operating a retirement home for self-sufficient senior citizens situated in Pointe-aux-Trembles, is requesting the issuance by the Superior Court of a permanent injunction against Mr. Eddy Savoie (hereinafter referred to as the "Respondent") in order to prevent him from using the expression "LES RÉSIDENCES SOLEIL MANOIR POINTE-AUX-TREMBLES" in association with another retirement home which would be part of a group designated as "Les Résidences Soleil".

It was submitted by the Petitioner that the Respondent's use of the corporate name "LES RÉSIDENCES SOLEIL MANOIR POINTE-AUX-TREMBLES" was creating confusion with its Trade-mark as the parties, which were carrying on business in

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the same neighbourhood, were also offering identical services that were both addressed to self-sufficient senior citizens.

Conversely, the Respondent pleaded that he was always using its trade-mark RÉSIDENCES SOLEIL MANOIR before the name of the place where the retirement home was situated. As the expression "Pointe-aux-Trembles" is referring to a geographical area that was disclaimed apart from the Trade-mark, he was therefore entitled to use it along with its trade-mark to obtain RÉSIDENCES SOLEIL MANOIR Pointe-aux-Trembles. It was also submitted that there was no possible confusion between the two names.

2. Analysis and conclusions

As mentioned in Section 20 of the *Trade-marks Act*, the right of the owner of a registered trade-mark to its exclusive use shall be deemed to be infringed by a person who sells or advertises services in association with a confusing trade-mark.

In this particular case, since the Petitioner was the owner of a registered trade-mark, the Court had to evaluate whether the Respondent's use of the trade-name RÉSIDENCES SOLEIL MANOIR POINTE-AUX-TREMBLES was creating or at least was susceptible to create confusion with the Trade-mark.

Although the Court noted that the term "manoir" (manor in English) was a common word and the expression "Pointe-aux-trembles" referred to a geographical area, it was nevertheless of the opinion that the use of the Respondent's trade-name was creating confusion with the Petitioner's Trade-mark.

Indeed, as demonstrate by the Petitioner, the arrival of a "Résidences Soleil Manoir Pointe-aux-Trembles" near its retirement home had created confusion in the targeted public, partly because of the similarity of each party services, and also because of the juxtaposition of the terms "Manoir" combined with "Pointe-aux-Trembles", which expression in its entirety was the Petitioner's Trade-mark.

To that effect, the Court underlined the fact that, of all members of the public, the senior citizens were somewhat more vulnerable than others and that consequently, the risk of confusion should be evaluated accordingly.

In light of the above, the Court therefore issued the requested permanent injunction, ordering the Respondent not to use the expression "Manoir Pointe-aux-Trembles" in reference with its new retirement home.

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