



USE OF A TRADE-NAME IN BREACH OF AN AGREEMENT: THE INTERLOCUTORY INJUNCTION'S PRINCIPLES REVIEWED BY THE ONTARIAN SUPERIOR COURT OF JUSTICE

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Islamic Society of North America (ISNA Canada) v. Shahrukh Teherany, Suraiya Teherany and 1176630 Ontario Inc., 2007 CanLII 37681 (ON S.C.) (Docket 07-CV-336270 PD2), Thorburn J., September 13, 2007

In a recent decision rendered by the Ontarian Superior Court of Justice, an interim and interlocutory injunction was granted to the Islamic Society of North America (the "Plaintiff") in order to prevent Shahrukh and Suraiya Teherany (collectively, the "Defendants") from using the *ISNA Travel Services* and *ESNA Travel's* trade-names, or any variation thereof.

In this case, 1176630 Ontario Inc. was initially incorporated by the Plaintiff as a travel agency which operated under the name *ISNA Travel Service*. In 2006, the corporation was sold to the Defendants.

One of the activities offered by both the Plaintiff and the Defendants is the organization of pilgrimages to Saudi Arabia. As contractually agreed to by the parties, the Defendants were allowed to use the *ISNA Travel Services* trade-name for an initial period of one year from the closing date, deadline which was afterward extended until July 2007, whereas the Plaintiff continuously used said trade-name.

Although the Plaintiff does not deny the Defendant's right to organize pilgrimages to Saudi Arabia, it nevertheless request that they cease using its trade-name to do so. Indeed, the Defendants have been using the *ISNA Travel Services* trade-name when obtaining visas from the Saudi Kingdom, and have also been using it in dealing with the public. As these activities are in contravention with the parties' agreement, the Plaintiff filed a motion against the Defendants.

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The Defendants, who are not disputing that they have been in breach of their agreement with the Plaintiff, suggest operating under the name *ESNA Travel*, which name is argued by the Plaintiff to be confusingly similar with its trade-name.

In considering whether or not the interlocutory injunction should be granted, the Court has to determine if (i) there is a serious issue to be tried; (ii) the Plaintiff has suffered irreparable harm; and (iii) the balance of convenience favours the moving party. Since the Defendants do not dispute their breach of the agreement, the Court has found that there is a serious issue to be tried.

Since there is a clear and non disputed breach of the agreement concluded between the parties, the Court based its decision on case law in virtue of which there is no need for the Plaintiff to establish irreparable harm, nor to demonstrate that the balance of convenience lies in its favour in order to obtain an interlocutory injunction.

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