



APPLICABLE STANDARD FOR MOTION TO STRIKE REVIEWED

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In *Mövenpick-Holding v Inter Management Services Limited* (2008 FC 328; 2008-03-07), the Federal Court has reviewed the applicable standard for a motion to strike out parts of a counterparty's pleadings.

Mövenpick-Holding filed suit against the defendants (two companies and two individuals) under the *Trade-marks Act*, alleging violation of its MARCHÉ trademarks for restaurant services. The defendants counterclaimed that the MARCHÉ marks were invalid. Mövenpick filed a motion to strike various paragraphs of the defendants' pleadings. The prothonotary dismissed the motion and Mövenpick appealed to the Federal Court.

Mövenpick's demand to strike out certain paragraphs contained in the defendants' pleadings was made pursuant to Rule 221(1)(a) of the Federal Courts Rules, which states that a pleading may be struck out on the grounds, among others, that:

- it discloses no reasonable cause of action; and
- it is immaterial or redundant.

The court noted that the applicable standard in such a case is very high, as the moving party must satisfy the court that the allegations of fact, if demonstrated, can support a reasonable defence.

In her decision, the prothonotary had found that, with the exception of the intentional aspect of the allegations of fraudulent misrepresentations contained in the statement of defence, all facts alleged in the impugned paragraphs were relevant to the statement of defence and counterclaim, particularly with regard to the claims of confusion, passing off and depreciation of goodwill.

The court agreed with the defendants that their allegations disclosed all material facts necessary to meet the test for invalidity set out in case law (see *WCC Containers Sales Ltd v Haul-All Equipment Ltd* (2003 FC 962)). The court also noted

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that although it had jurisdiction to decide the issues raised by the parties, this should not be done prematurely at this stage of the proceedings, but at the hearing stage.

Since the court was not convinced that there was any ground to intervene and annul the prothonotary's order, Mövenpick's motion was dismissed with costs

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