

AN ORDER TO CEASE USING A CORPORATE NAME: A CONCURRENT JURISDICTION

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9042-5703 Quebec Inc. v. 9089-6663 Quebec Inc. (2003), Quebec Superior Court, No. 700-05-009674-007 (Courville J.)

This is a motion for a permanent injunction introduced by the Applicants in order to prevent the Respondent from using the corporate name "Restaurant L'Ancestral".

Facts

The Applicants have been operating a restaurant since 1988 under the name "Restaurant L'Ancestral". Since 2000, the Respondent has been operating a restaurant also called "Restaurant L'Ancestral", approximately thirty kilometres away from the Applicants' restaurant. Based on their prior use of the corporate name and on a likelihood of confusion between the two enterprises, the Applicants immediately served a ceased and desist letter on the Respondent ordering a change of its corporate name.

The Respondent proposed to settle the matter by adopting the name "Restaurant La Maison L'Ancestral II", but the Applicants remained of the view that confusion was still highly likely to occur in the mind of the consumers.

The Respondent claimed that the Applicants could not bring this case before the Quebec Superior Court (which is the court of original general jurisdiction), and that they were limited to administrative proceedings which could be

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brought before the Inspector General of Financial Institutions in accordance with the *Act Respecting the Legal Publicity of Sole Proprietorships, Partnerships and Legal Persons*.

Quebec Superior Court's decision

As to the concurrent administrative and judicial jurisdictions, Courville J. held that the administrative recourses before the Inspector General of Financial Institutions are not exclusive and do not preclude a party from simultaneously seeking a motion for permanent injunction before the Quebec Superior Court.

In the present case, the Court opined that the Applicants' rights in their image and reputation justified legal action.

With respect to the issue of likelihood of confusion, Courville J. also agreed with the Applicants' contention and concluded that there was a likelihood of confusion between the two names at issue, taking into consideration all the surrounding circumstances including the following : the Applicants had prior rights in the name "Restaurant L'Ancestral" due to prior continuous use, the two names are visually and phonetically similar, the Applicants have acquired goodwill in same, the two restaurants are in proximity to one another, and the parties' clientele overlaps.

Therefore, the Quebec Superior Court granted the Applicants' motion for permanent injunction prohibiting use of the corporate names "Restaurant L'Ancestral II" and "Restaurant La Maison L'Ancestral II".

However, the Quebec Superior Court did not grant any damages inasmuch as the Applicants did not demonstrate any monetary loss ensuing from the Respondent activities.

