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## LATE REACTION TO ALLEGED COPYRIGHT INFRINGEMENT PUSHES COURT TO DENY MOTION FOR INTERLOCUTORY INJUNCTION

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**PRECIS :** The Quebec Superior Court dismissed plaintiff's motion for interlocutory injunction regarding the alleged infringement of an exclusive copyright

In the matter of *Pagé (Éditions 36D) c. Kamar* [2009 QCCS 566 ]brought forward by the Quebec Superior Court in July 2008, plaintiff sought damages for exclusive copyright infringement and brought a motion for interlocutory injunction relief requesting that the defendants stop any sale, distribution, reproduction or use of the musical work in dispute.

### The facts

In 2001, defendants Cyril Kamar and Éditions K-Pone inc. signed a publishing agreement with plaintiff assigning to plaintiff the property and management rights of all songs and musical works written by Kamar between October 2000 and October 2003. Defendants also assigned to plaintiff the exclusive rights to publish the musical work internationally. Plaintiff agreed to take the appropriate measures to ensure the creation of the recordings and to take reasonable steps to promote the musical work. The parties also agreed on provisions with regards to profit redistribution.

In 2004, defendant Kamar signed an agreement with defendant Warner Music Canada which led to the development and sale of an album called "*La Good Life*" which enjoyed a lot of success in Quebec and in Europe. In 2006, another album called "*KMaro 10<sup>th</sup> anniversary*" was released by Warner Music Canada in collaboration with defendant Éditions K-Pone inc., an entity controlled by Kamar.

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Since the release of his album in 2004, Kamar reached a certain level of popularity in the Canadian and international markets.

### **The Allegations**

Plaintiff claims that some of the songs and musical work reproduced in the previously mentioned albums were written during the 3 year period covered by the agreement between plaintiff and defendants Cyril Kamar and Éditions K-Pone. Plaintiff therefore argues that it is the exclusive copyright holder of nine of the songs used on the 2004 and 2006 albums and that the defendants are using the songs without right thereby depriving plaintiff of the benefits to which it is entitled . As a result, plaintiff seeks injunctive relief by which it requests that the defendants stop selling, distributing, reproducing or using the musical work in dispute.

Defendants challenge the motion by arguing that plaintiff has no apparent right to injunctive relief, that no serious or irreparable harm has been established and that the disadvantages of such relief would largely exceed its benefits. Defendants also plead that the injunction should not be granted because plaintiff can use other remedies to safeguard its rights.

### **The Court's decision**

As reminded by Justice Monast, there are 3 criteria the Court must take into consideration in order to decide whether to grant or dismiss the motion for injunction. These criteria are found at sections 752 and 753 of the Code of Civil Procedure : (1) the appearance of right, (2) the existence of serious or irreparable harm and (3) the favourable balance of inconvenience.

The Court indicated that it could use its discretion to dismiss a motion for interlocutory injunction in cases where there was a long delay between plaintiff's motion and the moment it became aware of the alleged infringement (Laches defense); in this case, the Court noted that the delay was considerable. However, this argument alone could not justify the dismissal of the motion, therefore the Court had to examine each of the criteria of section 752 and of the Code of Civil Procedure

After analysing the evidence, the Court concluded that plaintiff didn't have clear appearance of right to injunctive relief because the alleged certificate attesting plaintiff as the copyright holder of certain musical works was insufficient to establish the required appearance of right.

Furthermore, the Court came to the conclusion that most of the damages have already materialized since the litigious materiel has been on the market since 2004 and 2006 and that the granting of the injunction would not change anything to the situation. The Court added that plaintiff could adequately be compensated by damages.

In light of all the Court's findings, it came to the conclusion that the balance of inconvenience was not favourable to the granting of the motion for interlocutory injunction requested by plaintiff. Therefore, the Court denied the motion, adding that it was best to let the trial judge decide on the legitimacy of the claim in light of the evidence, thereby avoiding the risk of harming the parties' rights.



