

C A N A D A
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-05-018560-928

S U P E R I O R C O U R T

April 6, 1993.

PRESENT: THE HONORABLE
VICTOR MELANÇON, J.S.C.

TOSSI INTERNATIONALE INC.

Plaintiff

VS

LAS VEGAS CREATIONS INC.

AND

PANTORAMA INDUSTRIES INC.

Défendants

J U D G M E N T O F C O R R E C T I O N

The undersigned, seized of a consent signed by all the attorneys in the present file, to have a judgment he rendered in chambers corrected in accordance with a draft judgment annexed to the consent,

WHEREAS the draft judgment presented is in total

JM 0160

conformity with the judgment originally signed by the undersigned;

WHEREAS the draft judgment presented contains in fact only corrections of form needed to assure a correct presentation of the english language grammar and syntax;

WHEREAS the attorneys of all parties agree and consent to the proposed corrections;

WHEREAS the undersigned justice, after revision of the draft judgment, agrees totally with the proposed corrections to his original judgment;

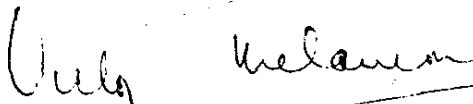
RECEIVES the consent to and the proposed draft judgment;

GIVES act to the consent;

ATTACHES the proposed draft judgment to the present judgment of corrections as a corrected judgment;

ORDERS that the corrected judgment be considered as the judgment he rendered in first place;

The whole without cost.



~~VICTOR MELANCON, J.C.S.~~

Mes Granich, Lazare, Turetsky, Coleman and St-Michael (Me Barry Coleman), attorneys for plaintiff.

Mes Smart and Biggar, attorneys for defendant Las Vegas Creations Inc.

Mes Yanoski, Brull, attorneys for defendant Pantorama Industries Inc.

C A N A D A
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO.: 500-05-018560-928

S U P E R I O R C O U R T

April the 6, 1993
(December 17, 1992)

PRESENT: THE HONOURABLE MR.
JUSTICE VICTOR MELANCON, J.C.S.

TOSSI INTERNATIONALE INC.

PLAINTIFF

VS.

LAS VEGAS CREATIONS INC.

AND

PANTORAMA INDUSTRIES INC.

DEFENDANTS

C O R R E C T E D J U D G M E N T

The undersigned, sitting in chambers, is seized of a petition to issue provisionally an interlocutory injunction known as an Anton Piller injunction considering its conclusions.

WHEREAS this motion was presented ex parté considering its special conclusions;

WHEREAS the circumstances described and the conclusions requested justify this presentation ex parté;

WHEREAS the Plaintiff in this case has already obtained the issuance of a writ of seizure before judgment pursuant to article 734 (1) C.C.P. but that the ends sought by Plaintiff will not be achieved unless they are completed by other proceedings to attain the goals foreseen in the Copyright Act;

WHEREAS the undersigned is satisfied that the Anton Piller injunction, based on common law jurisprudence from England is possible according to Canadian jurisprudence in cases related to copyright;

WHEREAS the undersigned must be satisfied, and he is so satisfied, that, as in any other case of injunction, other recourses foreseen in the law of Quebec are not sufficient and that it is necessary to resort to injunctive relief and to Common Law as is referred to both in our Code of Civil Procedure and in our jurisprudence which recognize the use of the inherent powers of the Superior Court and of each of its justices in certain circumstances;

WHEREAS Plaintiff is, according to section 38 of the Copyright Act, the presumed owner of all infringing copies;

WHEREAS the undersigned is satisfied, from the evidence produced in the form of affidavits and exhibits, and this evidence is blatant and flagrant, of the right of the Plaintiff, of the infringing copies realized, of the possible application of the Copyright Act, of the necessity for the Plaintiff to have access to Defendants' documents, computerized data and files in order to present the evidence required by the Copyright Act, and of the absence of other adequate and complete recourses in the laws of Quebec;

WHEREAS an Anton Piller order is of the utmost exceptional character and must meet the usual criteria established by jurisprudence for the issuance of an injunction (Kanetewat's case, 1975 C.A. page 166),

WHEREAS such an order is generally joined to a claim based on the Copyright Act;

WHEREAS this is exactly the present case;

WHEREAS so as to be issued such an order must relate to a context where, to present its evidence, Plaintiff must have access to documents, computerized data and files, in the hands of the Defendants;

WHEREAS such an order must be accompanied at the time of its service on Defendants by information and instructions as to the rights of the Defendants;

WHEREAS to the knowledge of the undersigned this is the first time a Plaintiff has presented a motion to obtain an Anton Piller order in this jurisdiction;

WHEREAS, nevertheless, the allegations and the evidence presented convinced the undersigned that this is a case where an Anton Piller order must be issued;

WHEREAS the undersigned has obtained the following undertakings from the Plaintiff:

(1) to make diligent efforts to serve the present Order upon the Defendants, LAS VEGAS CREATIONS INC. and PANTORAMA INDUSTRIES INC., together with the present Motion and annexed Notice of Presentation,

(2) that the right of search, entry and removal will be restricted to fashion sweatshirts which are copies of the TOSSI copyright U.S.A., QUE, DENIM, and U.S.A. STAR fashion sweatshirts as well as documentation and data appearing to relate thereto,

(3) that entry and search by or on behalf of the Plaintiffs into or onto any of the Defendants' warehouses, retail stores and premises, or those over which they have power, possession or control, will be restricted to not more than four persons in number,

(4) that the documents, data and articles seized pursuant to the Order shall, subject to further directions from the Court, and following the taking of such copies as may be required, be deposited for safe-keeping with the Prothonotary of the Court in Montreal or elsewhere, and may be utilized solely for the purpose of civil proceedings in relation to the enforcement of the Plaintiff's copyright rights

and

(5) to be bound by any Order of the Court as to damages arising out of the execution of the Order should it be set aside at a later date,

O R D E R S

1. This matter shall be heard ex parte and in camera.

2. The term of this order shall have effect until December 22nd, 1992. Service of a certified copy of this Order as transmitted by telecopier shall be deemed effective service of this Order in circumstances such that service of the Order is not otherwise possible and, in any event, on a person other than one of the Defendants.

3. This Order shall apply to:

(a) the Defendants, PANTORAMA INDUSTRIES INC., doing business under the firm names and styles of D'GALA, LEVI'S 1850, PANTORAMA, ROBERTO, COLORATTI, and STATION COTON and LAS VEGAS CREATIONS INC. and their directors, officers, administrators, shareholders, agents, employees, servants, distributors, wholesalers and retailers, and all those under their control.

and (b) such other persons having knowledge of this Order; hereinafter collectively referred to as the "Defendants";

4. The Defendants, and each of them, until further Order of this Court in this action, shall be restrained from:

(A) directly or indirectly, producing or reproducing the designs for the U.S.A., QUE, DENIM, and U.S.A. STAR sweatshirts manufactured and sold by TOSSI INTERNATIONALE INC., (the artistic works respectively identified as QUE Print, DENIM Print, U S A Big Print, and U S A Star Print), referred to in the Copyright Registration Certificates numbers 419612, 419614, 419615 and 419616, and the Copyright Assignment Certificates

numbers 44497, 44499, 44500, and 44501, or any significant part thereof or any unauthorized copy thereof, in any manner or material, or in any other way infringing the exclusive rights of TOSSI INTERNATIONALE INC. under the registered copyrights therein by manufacturing, producing, selling or offering for sale counterfeit goods or products incorporating such copyright designs;

(B) directly or indirectly, manufacturing, producing, selling, distributing for the purpose of trade, exhibiting in public by way of trade, offering for sale, importing for sale into Canada, transferring, shipping, redirecting shipment, or otherwise dealing commercially in goods which are, wholly or substantially, counterfeits and unauthorized copies of the U.S.A., QUE, DENIM, and U.S.A. STAR sweatshirts manufactured and sold by TOSSI INTERNATIONALE INC. and/or which incorporate or are based on, wholly or substantially, the designs for the U.S.A., QUE, DENIM, and U.S.A. STAR sweatshirts manufactured and sold by TOSSI INTERNATIONALE INC. (the artistic works respectively identified as QUE Print, DENIM Print, U S A Big Print, and U S A Star Print), referred to in the Copyright Registration Certificates numbers 419612, 419614, 419615 and 419616, and the Copyright Assignment Certificates numbers 44497, 44499, 44500, and 44501, or any unauthorized copy of same;

and/or (C) directly or indirectly, infringing in any way whatsoever the intellectual property rights of the Plaintiff;

5. The Defendants, and each of them, until further Order of this Court in this action, are enjoined to:

(A) forthwith deliver up to the Plaintiff's attorneys, or their agents, for delivery into the custody of Plaintiff's attorneys, at their expense, all of the following articles, computerized data and documents within Defendants' possession, custody or control namely (i) all counterfeit copies of goods

referred to in paragraph (4)(B) of the present Order, (hereinafter referred to as the counterfeits), and (ii) any documents or computerized data which appear to relate to the purchase, acquisition, shipment, importation, sale, distribution or manufacture of such goods referred to in paragraph (4)(B) of the present Order, (hereinafter referred to as the evidence),

(B) by themselves, and/or the persons appearing to be in charge of their premises, including any caretaker or superintendent at the time of serving this Order, permit the Plaintiff's attorneys, their agents, and such persons as may be authorized by such attorneys (being not more than four in number) (i) to enter forthwith, on any day at any time between 9:00 A.M. and 6:00 P.M. at their business premises, or between 7:00 A.M. and 11:00 P.M. at any other premises, into and around, and (ii) to search, their offices, warehouses, retail locations and premises for the purpose of searching for, removing and delivering into the interim custody of the Plaintiff's attorneys the evidence and counterfeits,

(C) by themselves, and/or the persons appearing to be in charge of their premises, including any caretaker or superintendent at the time of serving this Order, provide the Plaintiff's attorneys, their agents, and such persons as may be authorized by such attorneys with access to any storage, containment or concealment facility therein, and to open any locked door therein, and to provide the key and any other means necessary for full and free access thereto,

and (D) further, disclose to such persons the whereabouts of all counterfeits and evidence and provide the names and addresses of all persons from whom they obtained or are obtaining and to whom they have supplied or are supplying the counterfeits,

6. The counterfeits and evidence delivered up pursuant to this Order shall, subject to further direction from the Court, be deposited for safekeeping with Plaintiff's attorneys, at their expense, and may be

utilized solely for the purpose of civil proceedings in relation to the enforcement of the Plaintiff's copyright rights;

7. The Prothonotary and bailiff and such other police officers, law enforcement officers and authorities in those locations where this Order is sought to be served, as may be required by Plaintiff's attorneys, or their agents, shall forthwith assist the Plaintiff's attorneys, or their agents, in carrying out the terms of this Order and, in particular, take all steps and do all things necessary to assist in the implementation of the terms of this Order and to prevent any breach or apprehended breach of the peace or any obstruction in the implementation of this Order.

8. The person serving this Order shall also serve upon each person so served a Notice of Presentation of the Motion of the Plaintiff upon which this Order is issued and/or extension of the present Order. Such Notice of Presentation shall be returnable before the Practise Division of this Court on the 22nd day of December, 1992, or so soon thereafter as an application may be heard.

9. The persons serving this order shall also serve upon each person so served, a notice of instructions to defendant as follows:

Instructions to defendant served with this order.

1) You are served with an order of injunction which speaks for itself and which you must obey under all legal penalties.

2) This order of injunction is valid up to 17:00 hours on December 22nd, 1992.

3) You may apply to the Court to vary or discharge this order, or vary the amount of security posted by Plaintiff, by yourself or your lawyers, with sufficient

notice to Plaintiff's attorneys in conformity with the provisions of the Code of Civil Procedure, together with service upon them of any supporting material to be relied upon in connection with such motion, and, in any event, all aspects of this matter shall be subject to review of this Court on December 22nd, 1992, at 9:15 A.M., or so soon thereafter as this matter may be heard, in room 2.08 of the Montreal Court House;

4) This Order is in full force up to the above mentioned date and must be obeyed under all penalties of law, even if at a later date it is varied or discharged by a judgment of this Court.

10. The Plaintiff's attorneys shall be present at the time of service of this Order to make sure that the above mentioned instructions to defendants are conveyed and understood;

11. The Defendants and all those having notice of this Order shall, for a period of one week after their learning of this Order, be restrained from:

(a) disclosing to or discussing with any other Defendant, third party or other person, the existence of these proceedings or the Order herein;
and

(b) otherwise informing or warning any other Defendant, third party, or other person, directly or indirectly, that the Plaintiff might commence proceedings or serve this Order against such party.

Notwithstanding the above, the Defendant and any other party having notice of this Order may at any time consult an attorney for the purpose of obtaining legal advice or defending these proceedings, but such attorney shall also be subject to the present prohibition against disclosure.

12. The Plaintiff shall deposit with the Prothonotary of the Superior Court security for costs only in the amount of \$3,000.00, the deposit of which is to be confirmed by him on this Order before service of the present Order;

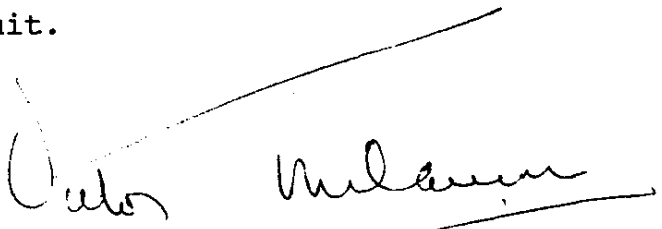
13. The Plaintiff is permitted to serve outside legal hours, and by fax to any person other than the Defendants;

14. Provisional execution is ordered notwithstanding appeal.

15. The hearing on the issuance of an interlocutory injunction herein is fixed to December 22nd, 1992 as to the two defendants mentioned in the title of this Order which Order shall be in effect until 17:00 hours on December 22nd, 1992 and must then be continued if so decided by any other order of this Court sitting in room 2.08 at the Court House, 10 St-Antoine Street East, Montreal.

the whole under all penalties of law.

Cost to follow suit.



VICTOR MELANCON, j.c.s.

Mes Granich, Lazare, Turetsky, Coleman & St.Michael
(Me Barry Coleman), attorneys for plaintiff.