

Date: 20071123

Docket: T-1003-05

Citation: 2007 FC 1228

BETWEEN:

CANADIAN TIRE CORPORATION LIMITED

Applicant

and

ACCESSOIRES D'AUTO NORDIQUES INC.

Respondent

ASSESSMENT OF COSTS – REASONS

DIANE PERRIER, ASSESSMENT OFFICER

[1] The Applicant, Canadian Tire Corporation Limited made an application by way of a statutory appeal under section 56 of the *Trade-marks Act*, R.S.C., c. T-13 for an order setting aside a decision rendered by the Opposition Board for the Registrar of Trade-marks on April 12, 2005, refusing Canadian Trade mark application number 860,710 seeking registration of the trade-mark NORDIC & Snowflake Design (the “proposed trade-mark”). On November 27, 2006, Mr. Justice Blais granted the appeal and referred the matter back to the Registrar of Trade-marks.

[2] On January 12, 2007, Mr. Justice Blais granted the following as to costs :

“1. The applicant is awarded its costs in accordance with Column III of Tariff B. 2. The matter is referred to an assessment officer for the determination of a specific award of costs, that should be made pursuant to the particular directions articulated in paragraph 18, specifically: a) The applicant is entitled to double party-to-party costs for services after January 31, 2006 as per Rule 407 ; b) No costs to be awarded for non-expert affidavit evidence c) Travel expenses for applicant’s counsel should be included in the award for costs; d) No costs to be awarded for bilingual articling student ; e) Costs for preparation of written arguments can be included in the calculation, as per item 15 of the Tariff B; and f) The applicant will be entitled to only half of the disbursements related to expert evidence provided by Mr. Yves Simard and Dr. Ruth Corbin.”

[3] On March 13, 2007 the Applicant filed its Bill of Costs requesting the assessment be done without personal appearance of the parties. Each party filed their representations. I am now ready to proceed with the assessment of costs based on the documentation on file.

[4] Counsel fees are allowed in the amount of \$12,185.76 (\$11,496. + GST (\$689.76). This figure is based on my reasoning set out in the following itemized paragraphs:

Item 1: Preparation and filing of Notice of Application is allowed as requested at 7 units. Item 1: Preparation and filing of Application record is allowed as requested at 7 units. Although the January 12, 2007 Order of Mr. Justice Blais directed at paragraph 18 that no disbursements are allowed to cover non expert evidence, this item 1 is granted as an assessable service and not as a disbursement.

Item 4 : Preparation of an unopposed motion in writing pursuant to Rules 8 and 369, dated September 14, 2005 seeking an order for an extension of time to cross-examine Denis Bérubé on

his affidavit cannot be allowed since the September 22, 2005 Order of Prothonotary Lafrenière is silent as to costs. Likewise, for item 4 for the preparation of an unopposed motion in writing pursuant to Rules 8 and 369, seeking an order extending the time period for filing the Application Record since the November 10, 2005 Order of Prothonotary Tabib is silent as to costs.

Item 5 : Preparation of a motion pursuant to Rules 8, 51, 56 and 312, seeking an order to amend paragraph 1 and to set aside paragraphs 2 and 3 of the Order of Prothonotary Lafrenière dated February 13, 2006 is allowed as requested at 7 units.

Item 6: Appearance at Applicant's motion on March 13, 2006 in Toronto seeking to amend the Order of Prothonotary Lafrenière is allowed at .5 hour based on my review of the abstract of hearing which showed the duration as being 2:00 to 2:30.

Item 4: Preparation of a motion in writing on consent, pursuant to Rule 369, granting leave to the Applicant to file an additional Supplementary Record is allowed at 7 units as requested.

Item 8: Preparation for cross-examination of Denis Bérubé is allowed at 5 units as requested.

Item 11: Paid Quebec agent's fees to attend on cross-examination of Denis Bérubé on October 7, 2005 is allowed at 6 hrs x 3 units per hour as requested.

Item 13 (a): Preparation for hearing is allowed at 5 units as requested.

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Item 13(b) : Preparation for hearing per day after first day is allowed at .6 hours x 3 units based on the abstract of hearing showing that the hearing started at 9:30 and concluded at 12:20.

Item 14 (a): Counsel fee to first counsel per hour in Court is allowed as requested at 3 units x 7.5 hours.

Item 15: Preparation of written argument is allowed at 7 units as requested.

Item 24: Travel by counsel to attend a hearing in Ottawa, Ontario, on October 22 and 24, 2006, is allowed at 5 units as requested.

Item 25: Services after judgement is allowed 1 unit as requested.

Item 26: Assessment of costs is allowed at 4 units as opposed to the requested 6 units. I consider this reasonable noting that the assessment was done without the necessity of personal appearance.

[4] It is noted that the Applicant claimed double the fees as per the Order of Mr. Justice Blais rendered on January 12, 2007 for the services assessable after January 31, 2006 which includes items 13 (a), 13 (b), 14, 15, 24, 25 and 26. In view of the above therefore fees are allowed in the amount of \$5,556.00.

[5] Disbursements corrected at \$43,498.18 will be allowed in the amount of \$42,338.78. Two of the requested disbursements may not be granted based on the wording of the January 12, 2007 Order of Mr. Justice Blais in which he stated:

“1. The applicant is awarded its costs in accordance with Column III of Tariff B. 2. The matter is referred to an assessment officer for the determination of a specific award of costs, that should be made pursuant to the particular directions articulated in paragraph 18, specifically: a) The applicant is entitled to double party-to-party costs for services after January 31, 2006 as per Rule 407 ; b) No costs to be awarded for non-expert affidavit evidence c)Travel expenses for applicant’s counsel should be included in the award for costs; d) No costs to be awarded for bilingual articling student ; e) Costs for preparation of written arguments can be included in the calculation, as per item15 of the Tariff B; and f) The applicant will be entitled to only half of the disbursements related to expert evidence provided by Mr. Yves Simard and Dr. Ruth Corbin.”

therefore disbursement listed at D5 will be reduced to \$411.40 (photocopies of the Applicant’s affidavits and also the affidavits within the Applicant’s record) and also disbursement listed at D6 will be reduced to \$748.00 (photocopies of the Applicant’s affidavits within the Applicant’s Record).

[6] The Applicant’s Bill of costs presented at \$63,420.89 is assessed in the amount of \$60,080.54. A certificate of taxation will be issued in this file.

DIANE PERRIER
ASSESSMENT OFFICER

QUEBEC (QUEBEC)
November 23, 2007

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1003-05

STYLE OF CAUSE: CANADIAN TIRE CORPORATION LIMITED – and-
ACCESSOIRES D'AUTOS NORDIQUES INC.

**ASSESSMENT OF COSTS IN WRITING WITHOUT PERSONAL APPEARANCE OF
THE PARTIES**

REASONS FOR ASSESSMENT OF COSTS: DIANE PERRIER

DATED : November 23, 2007

WRITTEN REPRESENTATIONS BY:

Mr. John S. McKeown

FOR THE APPLICANT

Me Pierre Leclerc

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Cassels Brock
Toronto (Ontario)

FOR THE APPLICANT

Reinhardt Bérubé
Ste-Foy, Quebec

FOR THE RESPONDENT