

Federal Court



Cour fédérale

**Date: 20071205**

**Docket: T-1670-04**

**Citation: 2007 FC 1276**

[ENGLISH TRANSLATION]

**Montréal, Quebec, December 5, 2007**

**PRESENT: Richard Morneau, Esq., Prothonotary**

**BETWEEN:**

**YVON DROLET**

**Applicant/  
Defendant by Counterclaim**

**and**

**STIFTUNG GRALSBOTSCHAFT  
and  
FOUNDATION OF THE  
GRAIL MOVEMENT – CANADA**

**Respondents/  
Plaintiffs by Counterclaim**

**REASONS FOR ORDER AND ORDER**

[1] In this case, the Court is dealing with a motion by the respondents and plaintiffs by counterclaim (the respondents) under Rules 75 *et seq.* and 210 of the *Federal Courts Rules* (the Rules) to amend their defence and counterclaim (the defence) to include a new cause of action for a copyright infringement against the applicant (the amended defence).

[2] More specifically, the respondents are now seeking to accuse the applicant that its French edition of the book *In the Light of Truth* (the applicant's edition), which was published around 2001 by the applicant, is allegedly a substantial copy of the translation of the work done by and for the respondent, Stiftung Gralbotschaft, and for which the translation copyright would stand in favour of the respondents.

[3] For the reasons that follow, I have decided to refuse this amendment by the respondents.

### **Background**

[4] The current debate between the parties, and for which proceedings of ten (10) days must be held starting on April 14, 2008, that is, in just a few months, involves a different cause of action than the one sought in the amended defence.

[5] Currently, in fact, a planned publication of a new edition by the applicant leads the parties to quarrel over the validity and counterfeiting of various trademarks that are registered and held by the respondents for the literary work that are allegedly taken from the applicant's new edition. This dispute is therefore one that deals first and foremost with trademarks. Any references to the issue of copyright is limited to establishing that the copyright in the original work have been in the public domain since 1991. Thus, although the copyright component is present in that sense in the written pleadings, it did not attract the parties' attention, and especially that of the respondents before mid-October 2007, to make an *inter partes* attack for plagiarism.

[6] However, such is the case for the amended defence, which is because the representative for the respondents was allegedly required by his counsel in mid-October 2017 to conduct a comparative analysis of the respondents' translation of the work and the translation done by the applicant in its edition.

### **Analysis**

[7] Although I am aware of the freedom expressed in case law in respect of amendments (see, *inter alia*, *Canderel Ltée v. Canada*, [1994] 1 F.C. 3 (C.A.) and *VISX Inc. v. Nidek Co.*, [1998] F.C.J. No. 1766), I do not believe that it is fair or in the interest of justice in the case at hand for the amended defence to be authorized in this case. As manager of the proceedings, I believe that the arrival of the amended defence at this very advanced stage of the case would cause an irreparable injustice in terms of costs and would be contrary to the spirit of Rule 3.

[8] Indeed, and although I do not believe that it is clear and obvious that the amended defence presents a prescribed cause of action, or that this cause of action has no reasonable chance of success, the fact remains that the turn of events that led the respondents' representative to the comparative study that he said he undertook comes at a very late stage. This shows a certain negligence in the case with respect to the assessment of the respondents' potential remedies, especially since another copyright component (the fact that the copyright on the original work is in the public domain) was already reviewed by the respondents when they submitted their defence.

[9] Although this negligence is not decisive in itself (see *VISX*, above), it is nevertheless present, and furthermore, it means that the amended defence, in my opinion, is very likely to

postpone the proceedings that have already been set. In my opinion, such a postponement under the circumstances clearly represents irreparable damage in terms of costs.

[10] It seems to me that the facts, questions of law, and expert reports that the amended defence will bring about cannot be reviewed and implemented in the short time that is available before the proceedings given, in particular, the other steps or obligations that already arise from this Court's order dated November 3, 2006.

[11] Moreover, I do not consider that the deadline set by the applicant to formally respond to the motion under review has led to a significant delay with respect to the outcome of this motion.

[12] Supposing that the respondents consider having a valid and reasonable right of action for copyright infringement against the applicant, they must argue it outside this docket.

[13] This motion by the respondents will therefore be dismissed, with maximum costs from Column III of the Tariff.

[14] All other remedies sought by either party is dismissed.

### **ORDER**

The respondents' motion for an amendment is dismissed, with maximum costs from Column III of the Tariff.

All other remedies sought by either party is dismissed.

**“Richard Morneau”**

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Prothonotary

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1670-04

**STYLE OF CAUSE:** YVON DROLET  
Applicant/Defendant by Counterclaim

and

STIFTUNG GRALSBOTSCHAFT  
and  
FOUNDATION OF THE  
GRAIL MOVEMENT - CANADA  
Respondents/Plaintiffs by  
Counterclaim

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** December 3, 2007

**REASONS FOR ORDER:** PROTHONOTARY MORNEAU

**DATED:** December 5, 2007

**APPEARANCES:**

Claudette Dagenais FOR THE APPLICANT/  
DEFENDANT BY COUNTERCLAIM

Pascal Lauzon FOR THE RESPONDENTS/PLAINTIFFS  
BY COUNTERCLAIM

**SOLICITORS OF RECORD:**

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