

Federal Court



Cour fédérale

**Date: 20110527**

**Docket: T-1522-08**

**Citation: 2011 FC 624**

**BETWEEN:**

**CORPORATION XPRIMA.COM**

**Plaintiff**

**and**

**IXL MARKETING INC. AND ERIC BOLDUC**

**Defendants**

**REASONS FOR TAXATION**

**TAXATION OFFICER JOHANNE PARENT**

[1] On November 17, 2010, further to the motions for summary judgment against the defendants, the Court ordered the defendants, among other things, to avoid using, and cease to use in Canada, the trade mark and trade name “AUTO 123 CRÉDIT”, with damages and interest payable to the plaintiff, with costs. On March 11, 2011, the plaintiff produced its bill of costs in Court. Instructions were issued on March 24, 2011 informing the parties that the taxation of costs would proceed in writing, and notifying them of the time limits for filing their representations.

[2] Considering the case history and the five orders or instructions of the Court allowing an alternative mode of service, the instruction concerning costs and the documents produced in connection with the taxing of the bill of costs were posted in the registries of the local offices of the Federal Court in Montreal and Quebec City, and were also sent to the defendants by regular mail and registered mail. None of the methods used to serve the plaintiff's documents and the instruction concerning costs elicited any response from the defendants, no representations were received in the Registry of the Court, nor was any request to extend the time limit.

[3] In support of its list of costs, the plaintiff produced representations and the affidavit of Marie-Claude Martel presenting the statements of expenses incurred and professional fees.

[4] I will therefore proceed with the taxing of the bill of costs in accordance with the *Federal Courts Rules*, Tariff B and my colleague's remarks in *Dahl v. Canada*, 2007 FC 192 at paragraph 2:

Effectively, the absence of any relevant representations by the Plaintiff, which could assist me in identifying issues and making a decision, leaves the bill of costs unopposed. My view, often expressed in comparable circumstances, is that the *Federal Courts Rules* do not contemplate a litigant benefiting by an assessment officer stepping away from a position of neutrality to act as the litigant's advocate in challenging given items in a bill of costs. However, the assessment officer cannot certify unlawful items, i.e. those outside the authority of the judgment and the Tariff.

As in *Dahl*, the taxing of costs in this case would have benefited greatly from comments in response. In my review of the items claimed, I will nevertheless ensure that the costs applied for are consistent with what is contemplated in the Court's decisions in the case, with Tariff B and with the *Federal Courts Rules*.

[5] The units for the preparation and filing of the statement (item 1) are allowed as claimed.

[6] Further to the outcome of the plaintiff's motions for summary judgment against the defendants filed on March 10, 2010, the units for the preparation and filing of an uncontested motion and the preparation of the pre-trial conference (item 10) and the conference call (2009-09-04) are allowed as claimed. The units for the preparation of a schedule under item 23 are allowed, but under item 27, for other services accepted for taxation purposes.

[7] Item 7 is listed in Tariff B under the heading "Discovery and Examinations", and specifies "Discovery of documents, including listing, affidavit and inspection". The affidavits of Mr Paquin, Mr Branchaud and Ms Martel do not seem to match what is specified in item 7, inasmuch as they were submitted in support of motions for summary judgment. While item 7 of Tariff B refers to the discovery of documents contemplated in rules 222 to 232 of the *Federal Courts Rules*, and is thus not applicable in this matter, item 4 of Tariff B reads: "Preparation and filing of an uncontested motion, including all materials", and seems clearly to include affidavits in support of motions. Consequently, the units claimed for the affidavits of Mr Paquin, Mr Branchaud and Ms Martel in support of motions for summary judgment are considered documents in support of motions, which are already allowed under item 4 of Tariff B, and will be disallowed under item 7.

[8] The units claimed under item 14 for appearances related to motions for summary judgment are allowed for the hearing day, October 4, 2010, but under item 6 of the Tariff. It was in fact the motions for summary judgment that were heard on October 4, rather than the examination on the merits, as contemplated by item 14. Consequently, the costs claimed under item 13 of Tariff B

under the heading “Preparation for trial or hearing” will be disallowed, since the services claimed relate to the preparation of motions for summary judgment.

[9] The fees claimed under item 4 of Tariff B for the motions for approval of a special mode of service (2009-01-08) and for an order concerning the confidentiality of documents in support of an affidavit (2010-09-15) will be disallowed, since in the decisions relating to them, the Court specifically stated “the whole without costs”. The units claimed under item 4 for the motion to instruct defendant IXL Marketing Inc. to comply with various conclusions (2009-03-03) and the request to the Court for instructions for the filing of a motion for confidentiality (2010-08-20) cannot be allowed, either. In connection with the Court’s decisions on each of these requests, none mentions the award of costs or states to whom, if there were any, they would be awarded. In *Janssen-Ortho Inc. v. Novopharm Ltd.* 2006 FC 1333, the Court held that “Any pre-trial Order that is silent as to costs means that no costs have been awarded to any party.” Also in accordance with that decision, a final decision by the Court awarding costs to a party does not authorize costs for interlocutory decisions in the case for which the Court has not specifically awarded costs.

[10] The units claimed under item 7 for the affidavits filed in support of the motions mentioned in paragraph 9 of this decision cannot be allowed, for the reasons stated in paragraph 7 of this decision.

[11] The units claimed for the assessment of costs (item 26) are allowed as claimed.

[12] The plaintiff claims 77 units for the services of a paralegal under item 28 of Tariff B.

Item 28 of Tariff B of the *Federal Courts Rules* states:

28. Services in a province by students-at-law, law clerks or paralegals that are of a nature that the law society of that province authorizes them to render, 50% of the amount that would be calculated for a solicitor.

In the plaintiff's representations, no justification was offered for the services of a paralegal, and nor was any information about what services they are or are not authorized to render by the Barreau du Québec. I further note, on reading the bill of costs, that all the costs for the services of a paralegal have already been claimed in the bill of costs by the solicitor of record. At this stage in the reasons, costs that were disallowed as services to be assessed for the solicitor, because it was found that they were inconsistent with Tariff B or orders by the Court, cannot be allowed for services of a paralegal. As to the other items claimed in the bill of costs for which compensation has already been made, the purpose of item 28 is not to effect duplication of costs for a service for which compensation has already been made. Since no other justification was offered to establish a distinction between services claimed for a paralegal and services claimed and allowed for the solicitor of record in respect of the same item of Tariff B, allowing costs for the services of a paralegal would result in an overpayment. For all these reasons, the claim for the services of a paralegal will be disallowed.

[13] Justification for the expenses claimed in the bill of costs is found in Marie-Claude Martel's affidavit in the form of lists of expenses with no more detail than the date on which the expenses were supposedly incurred. Having no more information than those lists, and in accordance with the reasons for this decision, I have reduced the expenses to \$3,600 in order to take into account the services claimed under Tariff B that were disallowed.

[14] The plaintiff's bill of costs is allowed in the amount of \$7,732.06.

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"Johanne Parent"  
Taxation Officer

Toronto, Ontario  
May 27, 2011

**FEDERAL COURT**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** T-1522-08

**STYLE OF CAUSE:** CORPORATION XPRIMA.COM c IXL  
MARKETING INC. ET ERIC BOLDOC

**TAXATION OF COSTS BASED ON THE RECORD WITHOUT AN APPEARANCE  
BY THE PARTIES**

**REASONS FOR TAXATION BY:** TAXATION OFFICER  
JOHANNE PARENT

**DATE OF REASONS:** May 27, 2011

**WRITTEN REMARKS:**

Olivier Tousignant FOR THE PLAINTIFF

No written remarks FOR THE DEFENDANTS

**SOLICITORS OF RECORD:**

Joli-Cœur Lacasse S.E.N.C.R.L. FOR THE PLAINTIFF  
Quebec City, Quebec

N/A FOR THE DEFENDANTS