

Federal Court



Cour fédérale

**Date: 20131129**

**Docket: T-290-13**

**Citation: 2013 FC 1199**

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

**Ottawa, Ontario, November 29, 2013**

**PRESENT: The Honourable Mr. Justice Roy**

**BETWEEN:**

**DOMAINES PINNACLE INC.**

**Plaintiff/  
Defendant by counterclaim**

**and**

**BEAM INC.  
and  
BEAM CANADA INC.**

**Defendants/  
Plaintiffs by counterclaim**

**and**

**WHITE ROCK DISTILLERIES, INC.**

**Defendant**

**and**

**JIM BEAM BRANDS CO.**

**Plaintiff by counterclaim**

**REASONS FOR ORDER AND ORDER**

[1] Marques Constellation Quebec Inc., Constellation Brands Canada Inc., Franciscan Vineyards Inc. and Constellation Brands Inc. propose intervening in the case opposing the parties in the style of cause. Such an intervention would require the authorization of the Court pursuant to Rule 109 of the *Federal Courts Rules*, SOR/98-106 (the Rules).

[2] Prothonotary Morneau rendered an order on October 18, 2013, dismissing the motion by various corporations, collectively referred to as the “Constellation Group”, to intervene, with essentially all the rights as one of the parties, in the action brought by Domaines Pinnacle Inc. against the defendants Beam Inc. and Beam Canada Inc., as well as White Rock Distilleries, Inc. The Constellation Group is appealing this ruling under Rule 51 of the Rules.

[3] Beam Inc., Beam Canada Inc. and the defendant by counterclaim Jim Beam Brands Co. (hereinafter collectively presented as “Beam”) strongly object to the intervention of the Constellation Group, as does the defendant Domaines Pinnacle Inc. White Rock Distilleries, Inc. did not take a position on the issue before this Court. Since I share the prothonotary’s opinion, I must dismiss this appeal.

[4] Many proceedings are currently ongoing between Domaines Pinnacle Inc. and the Constellation Group. Prothonotary Morneau referred to these in his Reasons for Order. I do not believe it is necessary to refer to them in the present motion to intervene. It is only necessary to know that the debates have a common denominator and all revolve around the trademarks used by the plaintiff and the Constellation Group, in one way or another. This is where the commonality ends.

[5] In my opinion, the motion to intervene under Rule 109 of the Rules must be reviewed based on the action that was presented. That is the starting point. Paragraph 109(2)(b) of the Rules applies, and states:

**109.** (2) Notice of a motion under subsection (1) shall  
(b) describe how the proposed intervenor wishes to participate in the proceeding and how that participation will assist the determination of a factual or legal issue related to the proceeding.

**109.** (2) L'avis d'une requête présentée pour obtenir l'autorisation d'intervenir :  
b) explique de quelle manière la personne désire participer à l'instance et en quoi sa participation aidera à la prise d'une décision sur toute question de fait et de droit se rapportant à l'instance.

[6] As we will see, the issues now before the Court are limited, and are limited to the complaint the plaintiff is filing against the defendants' commercial activities. This case does not have the scope the proposed intervenors wish to grant it.

[7] With respect, I therefore do not believe that the proposed intervenors, the Constellation Group, successfully explained how their participation will assist in making a decision. In fact, all things considered, the Constellation Group is claiming that, for its interests, its presence is required to ensure complete instruction and settlement of the issues in question in this case. This is the test that can be found at Rule 104 of the Rules.

[8] But in either case, under Rule 109 or Rule 104, the proposed intervenors must have something to offer that could be related to the case between the parties. Here, Domaines Pinnacle Inc. and Beam agree that the presence of Constellation Group would not be of any assistance. I agree.

[9] This Court must consider the action in its amended form. In its original form, it might have been possible to claim that the Constellation Group not only had an interest but that its presence could have assisted the court. This is no longer the case.

[10] The action brought by Domaines Pinnacle Inc. has strict parameters. These parameters are determined and limited by the findings being sought. I shall reproduce paragraphs 42, 43 and 44 of the Statement of Claim as amended on August 29, 2013:

(H) CONCLUSION

42. The Plaintiff submits that there is confusion between the “Domaine Pinnacle” trade-mark and the “Pinnacle” trade-mark;

43. The Plaintiff submits that the Defendants actions aforesaid constitutes (*sic*) unfair competition and an act of infringement of its unregistered trade-mark contrary to sections 7b) and 7c) of the Trade-marks Act;

44. For these reasons, the Plaintiff asks this Court to order the Defendants to immediately cease to, directly or indirectly, offer for sale, market, advertise or publicize, distribute and/or sell, any of its PINNACLE vodkas or other alcoholic products in Canada or to otherwise infringe the Plaintiff’s trade-mark “Domaine Pinnacle”;

[11] The remedies sought are similar in nature and the plaintiff asks the defendants to “disgorge these profits to the Plaintiff”. The case as presented is exclusively between the parties who are fully aware of the facts and the law. This is therefore merely a claim by a plaintiff alleging that the client volume it created because of the trademark it has been using for a while unduly benefits a company that wishes to commercialize a product—vodka and eventually gin—using the PINNACLE mark. The issue is confusion, as alleged by Domaines Pinnacle Inc. between its trademark “Domaine Pinnacle” and the one used by Beam. As expressly stated by Domaines Pinnacle Inc. at paragraph 35 of its Amended Statement of Claim:

35. As will be more fully described below, there is actual and likelihood of confusion between Defendants' "Pinnacle" branded vodkas, and Plaintiff's "Domaine Pinnacle" branded alcoholic products;

[12] The issue here is the use of the trademark by Domaines Pinnacle Inc. to develop client traffic, not its registration. At the hearing, its burden will be to show that such traffic was created, that the public was misled by what will be shown to be a misrepresentation and that quantifiable damages, actual or possible, occurred.

[13] The action presented in this case is based on paragraphs 7(b) and 7(c) of the *Trade-marks Act*, RSC (1985), c T-13. This has nothing to do with the registration of the trade-mark claimed by Domaines Pinnacle Inc. which gives a specific privilege to the holder. In my opinion, this is a very specific legal remedy that in no way involves the Constellation Group. The objection of the Constellation Group before the Registrar of Trade-marks was dismissed on September 16, 2013, and the case was brought before this Court. This also has nothing to do with the proceedings to approve an alleged agreement between the plaintiff and the proposed intervenors. Domaines Pinnacle Inc., the plaintiff, is only claiming that confusion is created by Beam and White Rock Distilleries, Inc. when they commercialize their vodka using the word "Pinnacle". The trial judge shall determine whether there is such confusion and if there is a "passing off". I shall reproduce the provisions in question from the *Trade-mark Act* for ease of consultation:

7. No person shall  
[...]  
(b) direct public attention to his wares, services or business in such a way as to cause or be likely to cause confusion in Canada, at the time he commenced so to direct attention to them, between his wares, services or business and the wares, services or business of another;

7. Nul ne peut :  
[...]  
b) appeler l'attention du public sur ses marchandises, ses services ou son entreprise de manière à causer ou à vraisemblablement causer de la confusion au Canada, lorsqu'il a commencé à y appeler ainsi l'attention, entre ses marchandises, ses services ou son

(c) pass off other wares or services as and for those ordered or requested;	entreprise et ceux d'un autre; c) faire passer d'autres marchandises ou services pour ceux qui sont commandés ou demandés;
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[14] The proposed intervenors did not convince Prothonotary Morneau that they could provide assistance to the court if they were allowed to join the debate. Such was their burden. I am not any more persuaded. The action brought by the parties is a targeted one that involves only the trade-mark of Domaines Pinnacle Inc. It is exclusively this confusion and "passing off" that is at issue.

[15] Constellation Group's main focus was on paragraph 36 of the Amended Statement of Claim, which states:

36. The Plaintiff has a common law right to the exclusive use of any brand comprising the word "Pinnacle" in association with ciders and spirits;

[16] In my opinion, the parameters of the action brought can be found elsewhere than at paragraph 36. They can be found at paragraphs 42 to 44, which I have already reproduced. The essential elements of the claim are as I described at paragraph 12. The plaintiff did not challenge this issue and supported the argument presented by Beam. Therefore, the plaintiff and the defendants agree.

[17] I therefore find the appeal from the order rendered on October 18, 2013, by Prothonotary Morneau must be dismissed. In my opinion, there is no doubt that the proposed intervenors

cannot assist the Court and, at any rate, they did not demonstrate this in either their written or oral arguments, which were well presented by their lawyers.

[18] The parties agreed that they may make submissions on costs in writing. I expect to receive these arguments no later than ten days after this order and its supporting reasons are issued.

**ORDER**

The motion to appeal from the order rendered by Richard Morneau, counsel, on October 18, 2013, dismissing the motion of various corporations to intervene, with essentially all the rights as one of the parties, in the action brought by Domaines Pinnacle Inc. against the defendants Beam Inc., Beam Canada Inc. and White Rock Distilleries, Inc., is dismissed.

The parties have agreed that they may make submissions on the issue of costs in writing, within ten days after this order is issued.

“Yvan Roy”

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Judge

Certified true translation  
Elizabeth Tan, Translator



**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-290-13

**STYLE OF CAUSE:** DOMAINES PINNACLE INC. v.  
BEAM INC. and BEAM CANADA INC. and  
WHITE ROCK DISTILLERIES, INC. and  
JIM BEAM BRANDS CO.

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** November 19, 2013

**REASONS FOR ORDER  
AND ORDER:** ROY J.

**DATE OF REASONS:** November 29, 2013

**APPEARANCES:**

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DEFENDANT BY COUNTERCLAIM

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and  
FOR THE PLAINTIFF BY COUNTERCLAIM  
JIM BEAM BRANDS CO.

Mortimer Freiheit  
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Bruno Barrette

FOR THE PROPOSED INTERVENORS  
MARQUES CONSTELLATION QUEBEC INC.,  
CONSTELLATION BRANDS CANADA INC.,  
FRANCISCAN VINEYARDS INC.  
and CONSTELLATION BRANDS INC.

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