

Federal Court



Cour fédérale

Date: 20140122

Docket: T-1274-13

Citation: 2014 FC 76

Toronto, Ontario, January 22, 2014

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

**VICTORIA'S SECRET STORES BRAND
MANAGEMENT, INC. AND VICTORIA'S
SECRET (CANADA) CORP.**

Plaintiffs

and

THOMAS PINK LIMITED

Defendant

REASONS FOR ORDER AND ORDER

[1] The Defendant Thomas Pink Limited has brought this motion under the provisions of Rule 220 of the *Federal Courts Rules* for an Order dismissing the action on the basis that the Plaintiffs, collectively Victoria's Secret, do not have standing to bring this action, in that they are not "interested persons" within the meaning of section 53.2 of the *Trade-Marks Act*, RSC 1985, c. T-13. For the reasons that follow, I find that the Plaintiffs are such interested persons and therefore the action shall proceed.

[2] By an Order of Prothonotary Aalto dated October 28, 2013, the question of law that I am to determine is framed as follows:

Do the Plaintiffs have standing to prosecute the action pleaded in the Statement of Claim taking into account the provisions of the Trade-Marks Act and more particularly section 53.2 thereof?

[3] Paragraph 3 of that Order provides:

3. In determining the question in paragraph 2, all facts as pleaded in the Statement of Claim, including the facts as pleaded in the U.K. action, shall be taken as true.

[4] The UK Action referred to in paragraph 3 of the Order is Claim No: CC13PO1798 in the Patents County Court, Community Trade Marks Court, wherein Thomas Pink Limited is Claimant, and Victoria's Secret UK Limited is Defendant.

[5] In addition to the foregoing, the parties have agreed that I may take into consideration a Trade-Mark Application filed with the Canadian Trade-Marks Office by Victoria's Secret Stores Brand Management Inc., No. 1 610 249, consisting of the word PINK in stylized block letters sought to be registered for a broad range of products; including personal care products and clothing - including shirts - and an examiner's report from that Office dated 29 July, 2013; wherein the examiner considered the trade-mark to be confusing with a registered trade-mark owned by Thomas Pink, No. TMA 624,752, consisting of the word PINK in stylized block letters registered for a range of wares such as furnishings and clothing, including shirts.

PLEADINGS IN THIS ACTION

[6] The pleadings in this present action comprise only a Statement of Claim; no Defence has been filed. The Defendant has, instead, brought this motion.

[7] The relief claimed in the Statement of Claim is as follows:

1. *The plaintiffs, Victoria's Secret Stores Brand Management Inc. and Victoria's Secret (Canada) Corp. (collectively referred to as "Victoria's Secret"), claim:*

(1) a declaration that Victoria's Secret's use of PINK, VICTORIA'S SECRET PINK and the related "PINK" trade-marks and trade names listed in paragraph 7 below (together with the "VICTORIA'S SECRET PINK Marks") in association with the listed wares and services is not contrary to sections 7(b), 20 or 22 of the Trade-marks Act, with regard to the following registered trade-marks of the defendant:

(a number of Canadian Registered Trade-Marks and applications owned by Thomas Pink are listed, all include the word PINK in a block-letter design format or in combination with other words such as THOMAS PINK are listed)

(2) an injunction restraining the defendant, its servants, officers, agents, employees, related business entities, and persons or entities over which it has control from instituting, prosecuting or threatening any action against Victoria's Secret, or any of its affiliates with respect to Victoria's Secret's use of the VICTORIA'S SECRET PINK Marks;

(3) its costs of this action on the highest allowable scale, including H.S.T.; and;

(4) such further and other relief as this Court may deem just.

[8] At paragraph 2 of the Statement of Claim, the Plaintiffs identify themselves. At paragraphs 3 to 5, the Plaintiffs set out their activities with respect to the trade-mark VICTORIA'S SECRET and VICTORIA'S SECRET PINK:

3. *Itself and through a predecessor, Victoria's Secret has carried on in Canada the business of selling women's intimate and other apparel, beauty and personal products and accessories for many years, all in association with the trade-mark VICTORIA'S SECRET. Victoria's Secret has extensively advertised its wares and services in association with the trade-mark VICTORIA'S SECRET in Canada, including by way of extensive advertising originating from the United States of America in print and television media which has been viewed in Canada.*
4. *Victoria's Secret has used in Canada the VICTORIA'S SECRET PINK Marks which are the subject of Application Nos. 1,610,249 and 1,592,606 below with the noted wares and services since at least as early as October 2009.*
5. *Victoria's Secret sells products in Canada using the trade-mark VICTORIA'S SECRET, as well as numerous other trade-marks, including the VICTORIA'S SECRET PINK Marks.*

[9] At paragraph 6 of the Statement of Claim, Victoria's Secret identify themselves as owners of a number of Canadian registered trade-marks and applications, some of which are for VICTORIA'S SECRET alone; some include the word PINK in addition to other words such as VICTORIA'S SECRET. One is the trade-mark application previously referred to, which is the word PINK alone in a block-letter design.

[10] At paragraphs 7 to 12 of the Statement of Claim, Victoria's Secret pleads the manner of its use of its trade-marks in Canada:

7. *Victoria's Secret's website, www.victoriasecret.com promotes the "PINK NATION", an online community providing members with access to special offers and events. Customers may also join the PINK NATION by downloading iPad and phone "apps", gaining access to additional branded experiences, activities, interactions and e-commerce opportunities. Over 3 million fans have downloaded the PINK NATION app for iPhone® and Android®; altogether, the PINK NATION has over 5.8 million registered members and is growing daily.*
8. *Victoria's Secret has extensively promoted the VICTORIA'S SECRET PINK Marks in social media, and international publications such as Seventeen, People, and Cosmopolitan.*
9. *Victoria's Secret Stores Brand Management Inc. has prominently featured its wares in association with the VICTORIA'S SECRET PINK Marks in the Victoria's Secret Fashion Show, an annual television broadcast on the CBS network that has become one of the most anticipated fashion events of the year, with viewership of more than ten million in recent years.*
10. *Victoria's Secret uses the VICTORIA'S SECRET PINK Marks on wares, tags for wares, labels, packaging, advertising, promotions and retail store signage.*
11. *Victoria's Secret's wares bearing the VICTORIA'S SECRET PINK Marks are sold in its owned retail stores.*
12. *Sales of wares bearing the VICTORIA'S SECRET PINK Marks have been very successful, yielding sales in Canada in excess of \$125 million between 2009 and 2013.*

[11] At paragraph 13 of the Statement of Claim, the Plaintiffs identify the Defendant Thomas Pink, and its activities in Canada. At paragraph 14, the Plaintiffs allege that a corporation related to them has been sued by Thomas Pink in the United Kingdom for infringement of certain trade-

marks, including PINK. At paragraph 15, the Plaintiffs allege that they have sold their products in Canada concurrently with those of Thomas Pink without confusion:

13. *Thomas Pink Limited is a corporation incorporated under the laws of the United Kingdom with its head office at 1 Palmerston Court, London SW8 4AJ United Kingdom. Thomas Pink Limited is engaged in the sale of men's and women's formal shirts in Canada with Holt Renfrew stores in Vancouver, Calgary and Toronto. The Holt Renfrew store in Toronto is located at 50 Bloor Street West proximate Yonge Street.*
14. *Thomas Pink Limited has sued Victoria's Secret UK Limited in the United Kingdom, a company related to Victoria's Secret Stores Brand Management, Inc. for alleged infringement of its trade-marks PINK THOMAS PINK JERMYN STREET LONDON and PINK Design, components present in the defendant's Registered Trade-marks and the defendant's Unregistered Trade-marks. The claim is dated May 10, 2013 and was made without prior notice to Victoria's Secret, or Victoria's Secret UK Limited. Victoria's Secret UK Limited has denied the salient allegations in the claim.*

Concurrent Use

15. *The parties have sold their wares and provided their services in Canada concurrently without confusion as to the source of such wares and services.*

PLEADINGS IN THE UK ACTION

[12] The pleadings in the UK action as they have been presented to me comprise:

- PARTICULARS OF CLAIM served by Thomas Pink's solicitors the 10th of May 2013;

- DEFENCE AND COUNTERCLAIM signed by Victoria's Secret's solicitors July 18, 2013; and
- REPLY AND DEFENCE TO COUNTERCLAIM signed by Thomas Pink's solicitors 13 August, 2013.

[13] The Claim made by Thomas Pink against a UK Victoria's Secret affiliate in the UK is for infringement of a (European) Community Trade Mark registration in which the word PINK is prominent and a UK trade-mark registration for the word PINK in block form, and for passing off having regard to the word PINK. The Claim does refer to the use of the word PINK by affiliates of the UK Defendant in Canada and the United States. At paragraphs 22 and 26 the Claim alleges:

22. *The defendant is a member of a group of companies which trades under the name "Victoria's Secret". The group sells principally lingerie, women's wear and perfume and beauty products through retail stores, catalogues and on the Internet. The majority of its business is in the USA and Canada.*

...

26. *In the USA and Canada, Pink Brand goods are sold from stores branded "Victoria's Secret", as well as from stand-alone stores branded "PINK".*

[14] At paragraph 37(2) of its Claim in the UK, Thomas Pink refers to the allegations made in paragraphs 25 to 35 (thus, 26 above) as illustrating Victoria's Secret's "acts of infringement" in the UK:

- (2) *Pending disclosure and further investigations the claimant relies upon the uses and threatened uses of the word "PINK" in relation to the defendant's goods and services as described in paragraphs 25 to 35 above and as illustrated in the Annexes referred to in those paragraphs in support of, and as examples of, the defendant's acts of infringement.*

[15] The Defendant in the UK action, the Victoria's Secret affiliate, in its Defence and Counterclaim, in addition to its defences, sought revocation of the Community Trade Mark Registration. In its Defence, Victoria's Secret UK addressed Thomas Pink's allegation respecting its use of trade-marks in Canada. At paragraphs 32 and 33, it said:

32. *So far as the Defendant is aware there have been no instances of confusion (whether initial interest or otherwise) or association between the Claimant's business and the Defendant's business in either the United States of America or Canada. Moreover the Defendant is unaware of any alleged dilution or tarnishment of the Claimant's trade marks or business resulting from the aforesaid and extensive use of the VICTORIA'S SECRET PINK branding in either the United States of America or Canada.*
33. *At no time between 16 August 2005 and May 2013 did the Claimant suggest anything to the contrary to the Defendant despite both the Claimant and the Defendant carrying on business as aforesaid in the same or similar retail environments in the United States of America and Canada.*

[16] In its Reply in the UK action, Thomas Pink addressed Victoria's Secret's allegations respecting Canada at paragraphs 4 and 9:

4. *With regard to paragraph 19 of the defence and without prejudice to the claimant's contention that sales, advertising and promotion outside the UK/EU are irrelevant to the issues in this case:*

- (1) *The sales figures provided in paragraph 19 of the defence support the claimant's contentions made in paragraphs 22 and 23 of the particulars of claim that the majority of the defendant's and/or its corporate affiliates' business is in the USA and Canada.*
- (2) *It is admitted that the defendant and/or its corporate affiliates has substantial sales in the USA and Canada and advertises extensively in those countries under the name Victoria's Secret.*
- (3) ...
- (4) *It is also admitted that the defendant and or its corporate affiliates has a substantial number of retail stores in the USA and Canada, makes substantial sales over the Internet in the USA and Canada and has followers on Twitter and Facebook. The precise figures set out in paragraphs 19(9), 19(10) and 19(11) of the defence are not known to the claimant and are not admitted.*
- (5) ...

...

9. *With regard to paragraph 30 of the defence:*

- (1) *It is admitted that the claimant has supplied a range of men's and women's clothing in Canada since about 2009.*
- (2) *It is admitted that the Victoria's Secret Group has traded under the Pink Brand in Canada since a date not known to the claimant.*
- (3) *Paragraph 30 is otherwise not within the knowledge of the claimant and is not admitted.*

THE TRADE-MARKS ACT

[17] Section 53.2 of the *Trade-Marks Act*, which is the principal focus of the question of law at issue, provides that “any interested person” may seek an order where it appears that there has been “any act (which) has been done contrary to this Act”:

53.2 Where a court is satisfied, on application of any interested person, that any act has been done contrary to this Act, the court may make any order that it considers appropriate in the circumstances, including an order providing for relief by way of injunction and the recovery of damages or profits and for the destruction, exportation or other disposition of any offending wares, packages, labels and advertising material and of any dies used in connection therewith.

53.2 Lorsqu'il est convaincu, sur demande de toute personne intéressée, qu'un acte a été accompli contrairement à la présente loi, le tribunal peut rendre les ordonnances qu'il juge indiquées, notamment pour réparation par voie d'injonction ou par recouvrement de dommages-intérêts ou de profits, pour l'imposition de dommages punitifs, ou encore pour la disposition par destruction, exportation ou autrement des marchandises, colis, étiquettes et matériel publicitaire contrevenant à la présente loi et de toutes matrices employées à leur égard.

[18] The definitions provided in section 2 of the *Trade-Marks Act* define both “person interested” and “personne intéressée”:

“person interested”

« personne intéressée »

« personne intéressée »

“person interested”

“person interested” includes any person who is affected or reasonably apprehends that he may be affected by any entry in the register, or by any act or

« personne intéressée » Sont assimilés à une personne intéressée le procureur général du Canada et quiconque est atteint ou a des motifs valables

<p><i>omission or contemplated act or omission under or contrary to this Act, and includes the Attorney General of Canada;</i></p>	<p><i>d'appréhender qu'il sera atteint par une inscription dans le registre, ou par tout acte ou omission, ou tout acte ou omission projeté, sous le régime ou à l'encontre de la présente loi.</i></p>
--	---

[19] Whereas section 53.2 speaks of “interested person” (English) or “personne intéressée” (French), nothing turns on the difference. The “interested person” in the English version is reasonably to be considered to be the “person interested” in the definition in section 2; namely, any person affected or who reasonably apprehends that he or she will be affected by any act or omission under the *Trade-Marks Act*.

[20] Section 57(1) of the *Trade-Marks Act* should also be noted, as it permits a “person interested” to apply to this Court to expunge an entry on the register, such as a registered Trade-mark:

<p><i>57. (1) The Federal Court has exclusive original jurisdiction, on the application of the Registrar or of any person interested, to order that any entry in the register be struck out or amended on the ground that at the date of the application the entry as it appears on the register does not accurately express or define the existing rights of the person appearing to be the registered owner of the mark.</i></p>	<p><i>57. (1) La Cour fédérale a une compétence initiale exclusive, sur demande du registraire ou de toute personne intéressée, pour ordonner qu'une inscription dans le registre soit biffée ou modifiée, parce que, à la date de cette demande, l'inscription figurant au registre n'exprime ou ne définit pas exactement les droits existants de la personne paraissant être le propriétaire inscrit de la marque.</i></p>
--	---

[21] Having regard to the provisions of the definition of “person interested” in section 2 of the *Trade-Marks Act*, and section 53.2 and section 57 of that *Act*, I conclude:

- a “person interested” must demonstrate that they are affected or “reasonably apprehend” that they will be affected by an act or omission done by another contrary to the provisions of the *Act*;
- section 57 is specific in being directed to expungement of entries on the register such as a registration of a trade-mark;
- section 53.2 must be broadly construed to be directed to any other act or omission done by another person, as may be contemplated by the *Act*.

JURISPRUDENCE

[22] Many of the cases in this Court and the Federal Court of Appeal dealing with a “person interested” are in context of an application to expunge a registration of a trade-mark under section 57 of the *Act*. Many of the cases are dealt with as a motion to strike, which is somewhat different than a question of law. A motion to strike is determined on the basis of an arguable cause of action; whereas a question of law is a final determination of the matter. In the present case, Victoria’s Secret is not seeking to expunge any of Thomas Pink’s registered trade-marks; rather, it is seeking, in effect, a declaration that it is free to use certain of its trade-marks, notwithstanding those registrations.

[23] I will start with two general principles. The first is derived from the Reasons of the Federal Court of Appeal in *BBM Canada v Research in Motion Limited*, 2011 FCA 151, at paragraph 28, where Dawson JA for the Court wrote that the purpose of the *Trade-Marks Act* and the “Legal Proceedings” provisions in particular (sections 52 to 61), is best met by an interpretation that promotes access to the courts that is as expeditious and proportionate as possible:

28 The Act serves two purposes: to protect consumers and to facilitate the effective branding of goods (see Mattel, Inc. v. 3894207 Canada Inc., 2006 SCC 22, [2006] 1 S.C.R. 772 at paragraphs 21 to 23). The purpose of that portion of the Act that follows under the heading "Legal Proceedings" is to provide legal redress for violations of the Act. In my view, the purpose of the Act in general, and the "Legal Proceedings" section in particular, is best met by an interpretation that promotes access to the courts that is as expeditious and proportionate as possible. To facilitate expeditious and proportionate access to justice, section 53.2 of the Act should be interpreted as permitting proceedings to be brought either by application or by action. This would allow access in an appropriate case to the more summary application process. Nothing in the wording of the Act precludes this interpretation.

[24] The second general principle that I derive is from the decision of Walsh J of this Court in *Burmah-Castrol (Canada) Ltd v Nasolco Inc* (1974), 16 CPR (2d) 193 at pages 195 to 196, where he wrote that what constitutes a “person interested” depends on the facts of each case. He wrote (in part):

While counsel for respondent referred to a number of cases dealing with the meaning of “person interested”, including [...], all of which I have examined, it is evident that what constitutes a “person interested” depends on the facts of each case and it is not necessary to go farther than the definition and examine same in the light of the allegations contained in the amended originating notice of motion and amended statement of allegations of fact relied on by applicant to determine whether these allegations indicate that

applicant may be “affected or reasonably apprehends that he may be affected” by the entry in the register of respondent’s trade mark which applicant seeks to have expunged from the register.

[25] Two particular cases should also be considered. One is *Fairmont Resort Properties Ltd v Fairmont Hotel Management, LP*, 2008 FC 876, 67 CPR (4th) 404, where the applicant operated a timeshare resort business and the respondent operated hotels; both under the name Fairmont. The applicant sought to expunge some of the hotel’s registrations, but did not do so until almost five years after the registrations had been made. After five years, registrations become “incontestable” in many circumstances, as provided by section 11.19 of the *Trade-Marks Act*. Justice Gibson, of this court, found that, notwithstanding the “low threshold” for finding that a person is a “person interested”, the applicant was not such a person. He wrote at paragraphs 7 and 54 to 56:

7 The Applicant does not allege, and has provided no evidence to support the proposition, that it has conducted its business in association with the single word "Fairmont" in any form, used in a trade-mark sense.

...

54 The Applicant, as noted earlier, did not oppose the registration of the Hotel Marks and I am unsympathetic to Mr. Knight's assertion that that was somebody else's oversight, not his. The Applicant waited only one (1) day short five of (5) years after the registration of the Hotel Marks to commence this proceeding.

55 In short, the Applicant has simply not acted as if it perceives itself to be a person affected, or who reasonably apprehends that it may be affected, by the entry of the Hotel Marks on the register or, indeed, by the use of "Fairmont", at least until quite recently, by any other business operating in the same geographical region. Any fear the Applicant may actually possess or any apprehension it may have, would appear to be of a possible act by the Respondent, that is to say its possible entry into the timeshare business, in Canada, in circumstances where there is no evidence whatsoever before the Court that such fear is well grounded. In the words quoted from

Justice Pratte in Mihaljevic v. British Columbia, above, I can find no reason on the facts of this matter to conclude other than:

...whether or not [the Respondent's] trademarks remain on the register, [the Applicant's] situation will remain the same:... . The presence of the [Respondent's] trademarks on the register does not diminish or limit in any way the rights of the [Applicant] which would not be greater if those trademarks were struck.

56 For the foregoing reasons, and noting, as cited in the foregoing authorities, that an analysis of "person interested" such as this turns on the facts of each particular case, I am not satisfied that the Applicant is a "person interested" and therefore a person entitled to bring this application. On that basis alone, this application must be dismissed.

[26] The basis for Gibson J's findings appears to be a combination of no reasonably apprehended harm and delay.

[27] The second case for consideration is the decision of Barnes J, of this Court, in *Apotex Inc v Canada (Registrar of Trade-marks)*, 2010 FC 291. In that case, a generic drug company, Apotex, wished to market pharmaceutical inhalers with a colour combination similar to that appearing in a registered trade-mark owned by a brand name drug company (GSK). Apotex wanted to expunge that registration; the brand argued that it lacked standing, as it was not a person interested. Barnes J held that Apotex had standing, as it wished to market closely resembling products. He wrote at paragraph 7:

7 I accept that the Applicants are interested parties who are entitled to bring this proceeding under s. 57 of the Act. The evidence establishes that they are pharmaceutical manufacturers of generic medications with an interest in the production and sale of products that closely resemble brand name medications. This is fundamentally a commercial interest although a collateral public interest may also

be advanced through the minimization of patient confusion. An interested person is a party whose rights may be restricted by a trade-mark registration or who has a reasonable apprehension of prejudice: see Fairmont Resort Properties Ltd. v. Fairmont Hotel Management, L.P. (2008), 2008 FC 876 at paras. 45-57, 67 C.P.R. (4th) 404. The GSK Mark obviously restricts the Applicants' interest in making a look-alike inhaler and I am satisfied that they have met the low threshold for bringing this proceeding.

[28] From this jurisprudence, I conclude:

- the provisions of the Trade-Marks Act must be construed in a manner which promotes access to the Act;
- a determination as to who is a “person interested” must be done on a case-by-case basis;
- a “person interested” must demonstrate a reasonable apprehension that a commercial interest that it has, or may have, may be affected;
- the threshold for determining whether a person is a “person interested” is low.

APPLYING THE LAW TO THE FACTS OF THIS CASE

[29] Counsel for the Defendant Thomas Pink argued that the Plaintiffs Victoria’s Secret has operated in Canada for close to five years, with sales in the neighbourhood of \$125 million, without a challenge by way of a lawsuit or otherwise made by Thomas Pink; therefore, it cannot be said to have a reasonable apprehension that it will be challenged now. When asked whether, if I were to

find that the Plaintiffs were not a “person interested”; hence, the action should be dismissed, would Thomas Pink still bring its own action; the answer was that technically, it could, but it would be in a difficult position.

[30] Counsel for the Plaintiffs Victoria’s Secret was asked whether if I found that they were not a “person interested”, would they start a new action with different or more fulsome pleadings; the answer was that they would be in a difficult position if they tried to do so.

[31] In effect, therefore, the disposition of the question of law before me will be disposition as to whether the Plaintiffs can proceed with this action, or one very much like it, and as to whether the Defendant must come to grips with this action and defend it; possibly with a counterclaim.

[32] In answer to the question of law before me, having reviewed the agreed-upon evidence and the applicable law, I find that the Plaintiffs Victoria’s Secret are a “person interested” within the meaning of section 53.2 of the *Trade-Marks Act*. I do so because the law requires me to take a large and liberal view as to the definition of such a person and, in particular, whether such a person has a “reasonable apprehension” that it might be sued by Thomas Pink under that *Act*. I find that the Plaintiffs’ apprehension is reasonable; they have already been sued in a similar fashion in the United Kingdom. Thomas Pink, in its pleadings in the UK action, has itself referenced the activities of Victoria’s Secret in Canada; thus, a reasonable person would infer that Thomas Pink is quite aware of Victoria’s Secret’s activities in Canada. A knowledgeable third party; namely, a Trade-Marks Office examiner, has expressed an opinion that confusion between the marks of the parties may likely exist. While there has been apparent peaceful co-existence in Canada for five or more years,

given the eruption of litigation warfare in the United Kingdom, there is no guarantee of continued peaceful co-existence in Canada. I conclude that the Plaintiffs have a “reasonable apprehension” that their Canadian commercial activities may be challenged by Thomas Pink by litigation or otherwise, under the *Trade-Marks Act*. The answer to the question of law put to this Court is “yes”.

CONCLUSION AND COSTS

[33] I thank Counsel for each of the parties for the candid and very professional manner in which the paperwork was prepared and the matter was argued before me. It was exemplary.

[34] The answer to the question of law is “yes”. As a result, the action will proceed. I will allow the Defendant Thomas Pink thirty (30) days to file its Defence and, if it chooses, a Counterclaim.

[35] I will fix costs of this motion, including the motion before Prothonotary Aalto, in the sum suggested by the Plaintiffs’ Counsel; namely, \$2,100. However, I will award those costs to the Plaintiffs “in the cause”; thus, only to be received by the Plaintiffs if they ultimately prevail on the merits in this action.

ORDER

FOR THE REASONS PROVIDED, THIS COURT ORDERS that:

1. The answer to the following question of law:

“Do the Plaintiffs have standing to prosecute the action pleaded in the Statement of Claim taking into account the provisions of the *Trade-Marks Act* and more particularly section 53.2 thereof?”

is “yes”.

2. The Defendant shall have a period of thirty (30) days from the date of this Order to file its Defence and, if it so chooses, a Counterclaim; and
3. Costs, fixed at the sum of \$2,100.00, are awarded to the Plaintiffs in the cause.

"Roger T. Hughes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1274-13

STYLE OF CAUSE: VICTORIA'S SECRET STORES BRAND
MANAGEMENT, INC. AND VICTORIA'S SECRET
(CANADA) CORP. v THOMAS PINK LIMITED

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 21, 2014

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

DATED: JANUARY 22, 2014

APPEARANCES:

Mr. Dale E. Schlosser

FOR THE PLAINTIFFS
(RESPONDING PARTY)

Mr. Mark L Robbins
Ms. Noelle Engle-Hardy

FOR THE DEFENDANT
(MOVING PARTY)

SOLICITORS OF RECORD:

McMillan LLP
Barristers and Solicitors
Toronto, Ontario

FOR THE PLAINTIFFS
(RESPONDING PARTY)

Bereskin & Parr
Barristers and Solicitors
Toronto, Ontario

FOR THE DEFENDANT
(MOVING PARTY)