

COMPETITOR FACES DEFAMATION CHARGES OVER HERB GRINDER

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PRECIS: The Ontario Superior Court of Justice granted damages and injunctive relief to plaintiff for libellous statements found on a competitor's website.

In the matter of *Manson v. Moffett* [2008 CanLII 19789 (ON S.C.); 2008-05-01] brought forward by the Ontario Superior Court of Justice, plaintiff sought damages, as well as injunctive relief, for Internet libel regarding false information found on a website operated by defendant.

The facts are resumed as follows: Mr. Manson designed a device for grinding herbs and spices. The grinder is protected by a U.S.A. patent granted in March 2004, is sold in Ontario under the Canadian registered trademark SWEETLEAF and is marketed on the Internet via plaintiff's website www.sweetleafgrinder.com.

Defendant operates two websites in which he promotes GREATLEAF herb and nut grinders; a product that competes with the plaintiff's for the Ontario Market. Defendant uses metatags to misdirect plaintiff's potential customers searching for SWEETLEAF, while using a network search engine. The metatags lead to a website operated by Mr. Moffett where certain false statements appeared with regards to the validity of the Sweetleaf patent, the imminence of a class action suit and the intelligence of anyone attempting to patent such an herb grinder:

[Greenleaf Grinders are] Similar to Sweetleaf™ at a fraction of the Price! ... This recent sweetleaf™ patent will soon be re-examined. These have been around for almost 100 years, and is controlled by an expired 1905: United States Patent #00795746, Jul., 1905. ...[If] Manson has sent you a cease and desist order for selling similar grinders, please contact me to join the imminent class action law suit. Now someone is trying to patent a "DUGOUT" ROFL (rolling

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over from laughing). Unreal. Rock on Stupid People. Sweetleaf™ Is a registered Trademark Of Sweetleaf, Manson, Joel D CANADA 20 Clematis Road, Willowdale, Ontario CANADA M2J 4X2. “Greenleaf Grinders” are not Sweetleaf™ Grinder.

For liability to arise, plaintiff needed to prove that the words complained of i) were published, ii) refer to the plaintiff and iii) are defamatory in their natural meaning. To be “published”, the statements must be communicated to a third party: here, the Court reasoned that by definition, anything propagated via the Internet is intended to be exposed to a wide audience and therefore is “published”.

To decide if a statement is defamatory, the impugned words should be given their natural meaning. The written statements were false and could only have one objective in mind: to tarnish the name of Sweetleaf, Manson and subject the plaintiff to ridicule. The Court was also influenced by the juxtaposition of the plaintiff’s name and that of his patented device with regards to the language used by the defendant.

Defendant’s motivation was also inferred through an e-mail that was sent by him, addressed to the plaintiff and his lawyers. His statements asserted, amongst other things, that the defendant was launching a \$ 10M lawsuit against the law firm and a \$ 4.2M lawsuit against the plaintiff; in addition:

today I swore out a felony arrest warrant at the US Attorney’s office against Mr. Manson for [...] selling Drug paraphernalia and smuggling [...] Thank you for providing me the information proving his sweetleaf Grinders are in fact for processing Marijuana [...]

Defendant sought dismissal of plaintiff’s action, alleging that both plaintiff and his attorney have demonstrated a habit of harassing and coercing with wanton disregard to the consequences of their actions. Defendant also alleged that plaintiff’s attorneys encouraged him to proceed knowing that he had no assets in Ontario or Canada.

The Court, concerning granting of injunctive relief, raised the question of appropriateness in respect of a defendant not ordinarily residing in Ontario. The issues raised were expressly addressed in *Barrick Gold Corp. v. Lopehandia* [2003 CarswellOnt. 6075], which provides the rationale for granting such a remedy. The courts of Ontario must have jurisdiction to restrain such conduct; even if an injunction may only be enforced if the defendant enters the province personally; the injunction will operate to prevent defendant from continuing to post the defamatory messages.

Therefore, in the light of what was previously reasoned, plaintiff was granted \$20,000.00 together with interest in accordance with the *Courts of Justice Act*. Plaintiff was also granted an injunction enjoining the defendant from engaging in the impugned conduct and costs of the action fixed at \$16,000.00.

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