Unofficial English Translation of the Judgment of the Court

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| Girard c. 9220-8883 Québec inc. | | | | | 2022 QCCA 695 | |
| COURT OF APPEAL | | | | | | |
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| CANADA | | | | | | |
| PROVINCE OF QUEBEC | | | | | | |
| REGISTRY | | | OF QUÉBEC | | |
| No.: | 200-09-010287-214 | | | | | |
| (200-17-027868-181) | | | | | | |
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| DATE: | May 12, 2022 | | | | | |
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| CORAM: | | THE HONOURABLE | | FRANÇOIS DOYON, J.A.  JOCELYN F. RANCOURT, J.A.  MICHEL BEAUPRÉ, J.A. | | |
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| SÉBASTIEN GIRARD | | | | | | |
| APPELLANT – Defendant / Cross-plaintiff | | | | | | |
| v. | | | | | | |
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| 9220-8883 QUÉBEC INC. | | | | | | |
| 9286-3075 QUÉBEC INC. | | | | | | |
| RESPONDENTS – Plaintiffs / Cross-defendants | | | | | | |
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| JUDGMENT | | | | | | |
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1. This is an appeal from a judgment rendered on January 26, 2021, by the Superior Court, District of Québec (the Honourable Suzanne Hardy-Lemieux),[[1]](#footnote-1) granting in part the respondents’ application and essentially **(i)** declaring that the respondent 9220-8883 Québec inc. (“9220”) owns the trademarks “Levis Ville du Rock” and “Ville du Rock”, **(ii)** issuing permanent injunctions directing the appellant not to use these trademarks in Quebec and/or to stop using these trademarks, not to disseminate or allow to be disseminated and to stop disseminating any advertising reproducing the names “Lévis Ville du Rock”, “Québec Ville du Rock” or “Ville du Rock”, and not to promote or to stop operating a music contest or other event whose name includes the words “Lévis Ville du Rock”, “Québec Ville du Rock” or “Ville du Rock”, **(iii)** ordering the appellant to send the respondent 9220, within five days, the identifiers, passwords or other similar relevant information related to the “LévisVilledurock.com” domain name and Facebook page at https://facebook.com/quebecrockcontest/, and **(iv)** condemning the appellant to pay $25,000 in compensatory damages to 9220 for unfair competition and the misappropriation of the “Lévis Ville du Rock” trademark and the associated loss of profits, as well as $2,500 in punitive damages.
2. The judgment also granted in part the appellant’s cross-application and condemned 9286-3075 Québec inc. (“9286”) to pay him $17,288 with interest as of April 14, 2018.
3. The respondent 9286 concedes the last ground of appeal regarding the judge’s miscalculation of the amount of compensatory damages owed to the appellant in the cross-application. 9286 in fact confirms that the amount owed for the 645 free admissions to the shows should have been calculated on the basis of $7 per admission rather than $5. The appeal on this issue will therefore be allowed to increase the amount of this portion of the compensatory damages from $3,225 to $4,515, thereby increasing the total monetary award to be paid by 9286 to $18,578.[[2]](#footnote-2)
4. That said, the judge presided over a four-day trial, heard six witnesses, read the transcripts of the pre-trial examinations of three of those witnesses, heard rebuttal evidence, and analyzed voluminous and varied documentary evidence,[[3]](#footnote-3) part of which consisted of contracts, draft contracts, licences, correspondence, and text messages, or concerned statistical or financial matters. After taking the case under advisement for three months, she rendered the judgment under appeal, which contains 226 paragraphs.
5. Apart from the ground based on the $2 error in the cost of admission to the shows at the relevant time and her conclusion that “Ville du Rock” is a trademark, to which the Court will return later, the rest of the appeal must fail, for the reasons set out below.
6. The appellant raises eight issues in his brief. Because certain issues may be grouped together, the Court considers it appropriate to reword the issues as follows:

* **Did the judge commit a palpable and overriding error by finding that the respondents’ action was not prescribed?**
* **Did the judge commit a reviewable error by characterizing the names “Lévis Ville du Rock” and “Ville du Rock” as trademarks within the meaning of the *Trademarks Act***[[4]](#footnote-4)**(“*TA”*) or by concluding that they are not owned by the appellant?**
* **Did the judge commit a reviewable error by characterizing the “Lévis Ville du Rock” Facebook page as a “work” within the meaning of the *Copyright* *Act***[[5]](#footnote-5)**(“*CA*”)?**
* **Did the judge commit a reviewable error in assessing the damages owed, both to the respondents in the principal application and to the appellant in the cross-application?**

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**First issue: Did the judge commit a palpable and overriding error by finding that the respondents’ action was not prescribed?**

1. At the hearing, the appellant announced at the outset that this was his fundamental ground of appeal and that the others were in a way alternative. This was largely demonstrated by the duration of his submissions devoted to it. This ground does not, however, withstand scrutiny.
2. Article 2880 of the *Civil Code of Québec* (CCQ)providesthat “[t]he day on which the right of action arises determines the beginning of the period of extinctive prescription”. The moment the right of action arises is the first day on which the party becomes aware of the three constituent elements of liability, namely, fault, injury, and a causal connection. Suspicions are insufficient to constitute the beginning of the prescription period.[[6]](#footnote-6)
3. Moreover, this Court recently noted that determining the beginning of the period of extinctive prescription is a highly factual question, whose solution turns on the circumstances of each case.[[7]](#footnote-7)
4. The standard of intervention applicable to questions of fact and questions of mixed fact and law is well known. In *Gercotech inc*., this Court recalled the standard, as well as its role as an appellate court, as follows*.*:[[8]](#footnote-8)

[translation]

[7] First, with respect to pure questions of law, our Court will intervene only if the appellant successfully establishes that such an error exists and that this error affected the outcome of the case.

[8] Moreover, let us recall what is meant by a “palpable and overriding” error, that is, the standard of review applicable to questions of fact, or questions of mixed fact and law:

(a) an error is “palpable” where the litigant is able to identify it [translation] “with great economy-of-means, without it provoking a long semantic debate, and without it being necessary to review large parts of documentary and testimonial evidence that is divided and contradictory”; it is an error “that is obvious”, that one can “put one’s finger on” and that is in the nature “not of a needle in the haystack, but of a beam in the eye”;

(b) a palpable error is “overriding” where it has a “critical” impact on a finding of fact or a finding of mixed fact and law, where it [translation] “overwhelmingly precludes the judge’s finding on a question of fact and is likely to affect the outcome of the case”; to demonstrate such an error, it is not sufficient for the litigant to “pull at leaves and branches and leave the tree standing. The entire tree must fall.”

(Emphasis added)

[9] It is not the task of an appellate court to retry a case, which the appellants are asking us to do here. Iacobucci and Major JJ. reiterated this on behalf of the majority in *Housen v. Nikolaisen*:

18. The trial judge is better situated to make factual findings owing to his or her extensive exposure to the evidence, the advantage of hearingtestimony *viva voce*, and the judge’s familiarity with the case as a whole.  Because the primary role of the trial judge is to weigh and assess voluminous quantities of evidence, the expertise and insight of the trial judge in this area should be respected.

[10] Finally, need we repeat that it is the appellant who bears the heavy burden of establishing a reviewable error?

[Emphasis added; citations omitted]

1. As the Supreme Court noted in *Salomon*[[9]](#footnote-9) and *Mowatt,*[[10]](#footnote-10) the fact that an alternative factual finding could be reached by another judge, or even by this Court, based on a different ascription of weight does not mean that the trial judge has made a palpable and overriding error. Thus, an appellate court commits an error if it changes a factual finding of the trial judge based essentially on a difference of opinion as to the weight to be ascribed to the evidence.
2. In this case, the judge rejected the appellant’s arguments and determined that the prescription period for the respondents’ action began to run on April 25, 2018:

[translation]

[53] In the Court’s opinion, the prescription period for the plaintiffs’ action does not begin in May 2012, when Mr. Girard’s status changed from salaried worker to self-employed worker, but rather as of April 25, 2018, when it was announced that the contest would be transferred to the Le Bûcher bar for 2019. That is the starting point for prescription.

[Emphasis added]

1. This ultimate conclusion, which is based on the judge’s earlier analysis in paragraphs 43 and 45 to 51 of her reasons, is supported by the evidence and is immune from review.
2. At the hearing, the appellant reiterated his position at trial and essentially asks the Court to reassess the evidence to find that the prescription period began to run at the moment the legal nature of the relationship between the parties changed from a contract of employment to a contract for services. However, not only is it not the Court’s role to reassess the evidence (notwithstanding the fact that this argument, unduly presented as a question of law, completely disregards the importance of the judge’s overall analysis of the facts), but this ground based on the change in the legal nature of the relationship between the parties does not appear in the appellant’s brief and is not relevant to determining when prescription began to run.
3. The appellant further argues that the judge erred in concluding that he tacitly renounced prescription. However, this error, if indeed it is one, which need not be decided here, would not be determinative insofar as the appellant has failed to show that it alone would cause the [translation] “entire tree” to fall. In fact, the judge ultimately found that the prescription period for the respondents’ application began on April 25, 2018,[[11]](#footnote-11) and this date is after the renunciations of prescription she identified. Facts indicating a potential renunciation of prescription or of the benefit of the time elapsed cannot be validly established if the applicable prescription period has not yet begun.

**Second issue:** **Did the judge commit a reviewable error by characterizing the names “Lévis Ville du Rock” and “Ville du Rock” as trademarks within the meaning of the *Trademarks Act* (“*TA”*) or by concluding that they are not owned by the appellant?**

1. Let us state at the outset that, should the Court conclude that the judge did not commit a reviewable error on this issue, the appellant does not question the judge’s conclusion that his actions would then constitute misappropriation of these trademarks for his own benefit, an offence of passing-off or unfair competition in violation of the *TA* and of article 1457 C.C.Q. He raises no issue in this regard in his brief and did not discuss it further at the hearing.
2. That being so, in his defence/cross-application and at trial, the appellant did not contest that “Lévis Ville du Rock” and “Ville du Rock” were trademarks. Instead, he claimed ownership of the trademarks on behalf of his company, the intervenor Productions Sébastien Girard.[[12]](#footnote-12) Surprisingly, however, on appeal, he has changed his approach completely and contests the very existence of these trademarks.
3. The *TA* scheme is based on use. Therefore, a trademark does not need to be registered to grant its owner protection and rights,[[13]](#footnote-13) which the appellant concedes in his brief.[[14]](#footnote-14)
4. It is sufficient that a sign or combination of signs qualify as a trademark to be protected. The definition of “trademark” is found in section 2 of the *TA*:

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| ***trademark*** means  **(a)** a sign or combination of signs that is used or proposed to be used by a person for the purpose of distinguishing or so as to distinguish their goods or services from those of others, or  … | ***marque de commerce*** Selon le cas :  **a)** signe ou combinaison de signes qui est employé par une personne ou que celle-ci projette d’employer pour distinguer, ou de façon à distinguer, ses produits ou services de ceux d’autres personnes;  […]  [Emphasis added] |

1. According to commentators, the key to the concept of a trademark is distinctiveness:

The key to the concept of a trademark is “distinctiveness”; that is, does it distinguish *your* goods and/or services from those of others.[[15]](#footnote-15)

[Italics in original; emphasis added]

1. In *Molson Breweries v. Labatt Brewing Co.*, the Federal Court of Appeal described the analytical framework used to determine whether a trademark is distinctive as follows:

[translation]

[43] … Distinctiveness therefore requires:

(1) that a mark and a product be associated;

(2) that the owner uses this association between the mark and its product and is manufacturing and selling the product in question; and

(3) that this association enables the owner to distinguish its product from that of others.[[16]](#footnote-16)

[Emphasis added]

1. Therefore, in the absence of distinctiveness, a sign, a combination of signs, or even words that are merely generic or descriptive cannot be characterized as a trademark.[[17]](#footnote-17) It is important to note, however, that this distinctiveness need not be *inherent* and may be acquired through *use*:

[A] word is not registrable under the Act as a trade mark which is merely descriptive of the character and quality of the goods in connection with which it is used. *…* It is, however, clear that such a descriptive word may possibly have acquired a secondary meaning, and have come to mean or indicate that the goods in connection with which it is used are the goods of a particular manufacturer:. …[[18]](#footnote-18)

[Emphasis added; citations omitted]

1. The use of a mark in association with products or services is also a key element of the definition of “trademark” within the meaning of the *TA.* Section 4 sets out the conditions to meet this criterion with regard to services:

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| **When deemed to be used**  **4 (1)** (…)  **(2)** A trademark is deemed to be used in association with services if it is used or displayed in the performance or advertising of those services.  … | **Quand une marque de commerce est réputée employée**  **4 (1)** (…)  **(2)** Une marque de commerce est réputée employée en liaison avec des services si elle est employée ou montrée dans l’exécution ou l’annonce de ces services.  […]  [Emphasis added] |

1. In short, to benefit from protection under the *TA,* a trademark must meet the following conditions: it must be distinctive (inherently or acquired with use); it must actually be used, and this use must be associated with products or, as in this case, with services.
2. Considering these principles, what should we now make of the appellant’s ground that the judge committed a reviewable error in finding that the names “Ville du Rock” and “Lévis Ville du Rock” are trademarks owned by the respondent 9220?
3. First, the record as it stands establishes that no evidence was adduced as to continued use by either respondent of the merely descriptive and generic term or name “Ville du Rock” in association with the music contests they organized. In these matters, and in the circumstances revealed in this case, more cannot include less, such that it does not automatically follow that because “Lévis Ville du Rock” is a trademark, “Ville du Rock” is necessarily one.
4. The judge therefore committed a reviewable error in concluding that these purely generic and descriptive words alone constitute a trademark owned by 9220.
5. There is therefore reason to intervene to set aside and vary the conclusions at issue in the judgment under appeal to remove the reference to “Ville du Rock”.
6. As for “Lévis Ville du Rock”, the judge found that it is a trademark owned by the respondent 9220. From 2010 until 2018, when the dispute arose between the parties, 9220 used this name in close connection with the public music contests organized at the respondent’s establishment, the “P’tite Grenouille de Lévis”. It therefore made public, continued, and constant use of it in large-scale advertising,[[19]](#footnote-19) and this specific name therefore contributed to developing significant goodwill. Moreover, the appellant does not dispute the marked increase in goodwill associated with “Lévis Ville du Rock” between 2010 and 2018.
7. The judge correctly directed herself in law by relying on the teachings of this Court’s judgment in *Montréal Auto Prix.*[[20]](#footnote-20) In that case, which had certain similarities to the present one, the Court found that the judge had not committed a reviewable error in determining, based on the evidence and the circumstances, that the name “Montréal Auto Prix”, although appearing merely descriptive and generic at first glance, was a protected trademark within the meaning of the *TA*:

[translation]

[15] In this case, the evidence, as the trial judge noted, first reveals that the respondent has been using the term “Auto Prix” for a few years in large-scale advertising and has quickly built the reputation of its business and its services in a way that identifies and distinguishes them from other businesses in the highly competitive market of the purchase and sale of used vehicles. The respondent has been using it continuously and constantly, and all its advertising and marketing is built around this term, which is the term it goes by; it has cultivated its goodwill using this term, under which it is now known and recognized. It is the distinctive mark of the respondent’s business and services.

[16] Finally, on its own, the fact that the respondent used a mark composed of two common nouns taken from everyday speech does not prevent this mark from being distinctive and thus from being a trade-mark within the meaning of the *Trade-marks Act*. A great many marks are constituted by a combination of common nouns, which does not impair their distinctiveness so long as they are not merely descriptive.[[21]](#footnote-21)

[Emphasis added]

1. In short, and in light of the principles that emerge from this precedent, the appellant has failed to meet his burden of proving that the judge committed a palpable and overriding error in her assessment of the evidence by finding that “Lévis Ville du Rock” is a trademark owned by the respondent 9220. This finding is well supported by the evidence and is consistent with the law.
2. In his notice of appeal, as an issue in his brief, in his written arguments, or at the hearing, the appellant did not attack the part of the judgment under appeal that orders the appellant not to use, or to stop using, the name “Québec Ville du Rock”, not to disseminate it or to stop disseminating it, and not to promote it or use it in connection with a contest or an event, unlike the names “Lévis Ville du Rock” and “Ville du Rock”.[[22]](#footnote-22) In the circumstances, and what is more given that the judge noted that this name was [translation] “dissolved”,[[23]](#footnote-23) there is no need for the Court to intervene in this regard.

**Third issue: Did the judge commit a reviewable error by characterizing the “Lévis Ville du Rock” Facebook page as a “work” within the meaning of the *Copyright* *Act* (“*CA”*)?**

1. First, it should be noted that the judge found that the appellant used [translation] “the “Lévis Ville du Rock” Facebook page to appropriate, for his own benefit, the considerable goodwill built up over the years by the plaintiffs.”[[24]](#footnote-24)
2. The judge noted in passing, as she did with other points,[[25]](#footnote-25) the appellant’s lack of credibility, yet also determined that neither of the respondents ever acknowledged the appellant’s [translation] “ownership” of the “Lévis Ville du Rock” Facebook page:

[translation]

[149] At times, Mr. Girard bases his testimony on exhibits to which he refers but also largely on impressions, approximations, or rather vague memories. Consequently, he says he is convinced that he owns the “Lévis Ville du Rock” contest and its Facebook page. When subsequently questioned on the subject, he had to acknowledge that he never had anything in writing giving him this ownership. He had to admit that during his negotiations with Mr. Pouliot, in 2014 and in 2015 and 2016, he did not obtain written acknowledgement of any right whatsoever in the contest or its Facebook page.

[150] On several occasions, Mr. Girard tried to avoid the questions he was asked. He wanted to be right at any cost, even if the facts to which he was referred contradicted him.

[151] For these reasons, the Court cannot grant Mr. Girard the credibility he would like.

1. The appellant has failed to identify how the judge’s factual findings in paragraph 149 of her reasons are tainted by a palpable and overriding error in the assessment of the evidence, or in the assessment of his credibility, which is also a question of fact.[[26]](#footnote-26) These findings are clearly supported by the evidence. One need only observe that, from the start, in the [translation] “Marketing Plan” he discussed with Mr. Landry, the head of 9220, in January 2010, before he was hired, the appellant said that as a prospective employee he was prepared [translation] “to accept as tasks and responsibilities … to manage the promotion on Facebook and Twitter with the possibility of organizing contests…”. Nothing in this marketing plan or thereafter leads to the conclusion that either of the respondents acknowledged or assigned ownership of the “Lévis Ville du Rock” contest Facebook page to the appellant. Moreover, the appellant’s insistence at the hearing that the Court note the acknowledgement, even admission, by 9220 in a brief exchange of text messages between himself and Mr. Deschâtelets on February 14, 2013,[[27]](#footnote-27) leaves the Court beyond perplexed, in view of Mr. Deschâtelets’s testimony at trial where he explained the circumstances and true meaning of this exchange.
2. In fact, as the respondents correctly note, with this issue, the appellant improperly amplifies the judge’s analysis of the copyright in the Facebook page. For this reason, but also because this is not the proper case to do so and it is not necessary to do so to decide the appeal, the Court will not respond to his counsel’s invitation at the hearing [translation] “to legally characterize a Facebook page” in this judgment.
3. Moreover, the judgment under appeal does not contain any declaratory or other conclusion confirming that any of the parties owns the “copyright” in the actual Facebook page. The judge really only dealt with this issue in one sentence in paragraph 58 of her reasons where, after concluding without error that [translation] “the “Lévis Ville du Rock” Facebook page is an accessory to the contest with the same name”, she wrote, without further explanation, that:  [translation] “The “Lévis Ville du Rock” Facebook page is, in the Court’s opinion, a “work” within the meaning of the *Copyright Act*”. However, she stated the following:

[translation]

[66] In light of the evidence adduced at the hearing, the Court finds that at no time did Sébastien Girard in any way own any copyright in the “Lévis Ville du Rock” contest or in the Facebook page that is an accessory to it.

[Emphasis added]

1. Furthermore, although the wording is not determinative, the judge’s discussion appears in the section on “ownership” of the Facebook page, a separate concept from whether copyright exists in the Facebook page’s content.
2. That said, having found that the appellant engaged in unfair competition within the meaning of the *TA*, particularly by using the *LévisVilleduRock.*com website and the contest’s Facebook page to redirect, for his own benefit, the respondents' goodwill and the groups entered in the “Lévis Ville du Rock” contest,[[28]](#footnote-28)the judge had broad discretion under section 53.2 *TA* to make the orders that she considered appropriate in the circumstances:

**Power of court to grant relief**

53.2 (1) If 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, for punitive damages and for the destruction or other disposition of any offending goods, packaging, labels and advertising material and of any equipment used to produce the goods, packaging, labels or advertising material.

[Emphasis added]

1. In exercising this power, the judge considered it appropriate to grant the respondents the last two remedies in paragraph 218 of her judgment and in the conclusion in paragraph 219:

[translation]

**FOR THESE REASONS, THE COURT:**

…

[217] **ISSUES** a permanent injunction for the following purposes:

[218] **ORDERS** the defendant Sébastien Girard and any corporation in which he is directly or indirectly a shareholder or a director to:

…

**SEND** within five (5) days of the date this judgment is filed the identifiers, passwords and other relevant information regarding the Facebook page at “https://facebook.com/quebecrockcontest/” to the representative of the plaintiff 9220-8883 Québec inc.;

**SEND** within five (5) days of the date this judgment is filed the identifiers, passwords and other relevant information regarding the “Lévis Ville du Rock.com” domain name to the representatives of the plaintiff 9220-8883 Québec inc.;

[219] **IN THE EVENT** Mr. Girard **FAILS** to send the above information within the time specified, **ORDERS** that this judgment **FIND** that the Facebook page at “https://www.facebook.com/quebecrockcontest/” and the “Lévis Ville du Rock.com*”* domain name are owned exclusively by the plaintiff 9220-8883 Québec inc.;

1. The judge had the discretion to make these orders under the circumstances. She did not exercise this discretion non-judicially or unreasonably. Similar orders have been made in similar cases; see, for example *Thoi Bao Inc. v. 1913075 Ontario Limited*[[29]](#footnote-29) and *Kaira District Co-operative Milk Producers' Union Limited v. AMUL Canada.*[[30]](#footnote-30)
2. This ground must therefore also fail.

**Fourth issue: Did the judge commit a reviewable error in assessing the damages owed, both to the respondents in the principal application and to the appellant in the cross-application?**

1. The trial judge’s assessment of damages is also a question of fact, which requires the greatest deference, or “*surdéférence*”, according to several recent judgments of the Court.[[31]](#footnote-31)
2. It is the trial judge’s role to quantify the damages where a party is found to have breached its explicit or tacit legal or contractual obligations and such breach has caused another party injury, including, as in this case, injury to its goodwill. In such a case, although the exercise may present certain difficulties, the judge must sometimes assess the *quantum* by relying on a certain amount of approximation, estimation, and the judge’s own discretion, “based upon whatever credible evidence may be available to it”.[[32]](#footnote-32) The Court will intervene in the amount of damages only if it is the result of a palpable and overriding error in the assessment of the evidence or, in rarer cases, an error of law, or even where the amount granted offends the sense of justice because it is patently disproportionate or unreasonable.[[33]](#footnote-33)
3. That is not the situation in this case. The appellant has not shown that the judge’s quantification of the $25,000 in damages awarded to 9220 is tainted by reviewable error. The judge’s reasons in support of this amount, although the result of a certain approximation, are understandable and based on the evidence.
4. The appellant did not attack the judge’s conclusions regarding punitive damages in his original or re-amended notice of appeal. However, on October 12, 2021, three months after the respondents filed their brief contesting his right to raise this issue for the first time in his brief, the appellant filed a re-re-amended notice of appeal, alleging for the first time that the judge erred in condemning him to pay punitive damages. Thus, the appellant neither requested nor was granted leave to make this amendment to his notice of appeal, and this ground must therefore be dismissed.[[34]](#footnote-34)

**FOR THESE REASONS, THE COURT:**

1. **ALLOWS** the appeal in part, for the following purposes only:
2. **VARIES** the following orders contained in paragraphs 215 and 218 of the judgment under appeal to remove the references to “Ville du Rock” so that they read as follows:

[translation]

[215] **DECLARES** that the trademark “Lévis Ville du Rock” … used in connection with a music contest belongs to the plaintiff 9220-8883 Québec inc.;

…

[218] **ORDERS** the defendant Sébastien Girard and any corporation in which he is directly or indirectly a shareholder or a director:

**NOT TO USE AND TO STOP USING** in Quebec any trademark, trade name or corporate or business name including the words “Québec Ville du Rock”, “Lévis Ville du Rock” … or any other mark or trade name that could be confused with the name and mark “Lévis Ville du Rock” … owned by the plaintiff 9220-8883 Québec inc.;

**NOT TO DISSEMINATE AND TO STOP DISSEMINATING OR ALLOWING** any advertising to be disseminated in Quebec, on any medium in any publication whatsoever, reproducing the name “Québec Ville du Rock”, “Lévis Ville du Rock” …, the whole in relation to the promotion and operation of a contest or an event, without the written consent of the plaintiff 9220-8883 Québec inc.;

**NOT TO DISSEMINATE AND TO STOP DISSEMINATING OR ALLOWING** any advertising to be provided or disseminated in Quebec, on any medium and in any format, including but not limited to radio, television and Internet, reproducing the name “Québec Ville du Rock”, “Lévis Ville du Rock” …, the whole in relation to the promotion and operation of a contest or an event;

**NOT TO PROMOTE AND TO STOP OPERATING** a contest or an event associated with the name “Québec Ville du Rock”, “Lévis Ville du Rock” … or any other name similar to the one used by the plaintiffs in connection with the “Lévis Ville du Rock” contest;

1. **VARIES** the conclusion in paragraph 225 of the judgment under appeal to read as follows:

[225] **CONDEMNS** 9286-3075 Québec inc. to pay the defendant Sébastien Girard $18,578 with interest as of April 14, 2018;

1. **THE WHOLE** without legal costs on appeal given the mixed outcome of the appeal.

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|  | | MICHEL BEAUPRÉ, J.A. |
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| Mtre Jean-François Labadie | | |
| L2 AVOCATS | | |
| For the appellant | | |
|  | | |
| Mtre Charles Lapointe | | |
| LANGLOIS LAWYERS | | |
| For the respondents | | |
|  | | |
| Date of hearing: | May 4, 2022 | |

1. *9220-8883 Québec inc. c. Girard*, 2021 QCCS 410 (the “judgment under appeal”). [↑](#footnote-ref-1)
2. $14,063 from the shared admission revenue and photography costs, as also admitted by 9286 at trial (judgment under appeal at para. 134), + $4,515 for the free admissions. [↑](#footnote-ref-2)
3. 61 exhibits from all parties. [↑](#footnote-ref-3)
4. *Trademarks Act,* R.S.C. 1985, c. T-13. [↑](#footnote-ref-4)
5. *Copyright* *Act*, R.S.C. 1985, c. C-42. [↑](#footnote-ref-5)
6. *Beaulieu c. Paquet*, 2016 QCCA 1284 at para. 17. [↑](#footnote-ref-6)
7. *Ville de Mascouche c. Architectes Rivest-Jodoin & Associé*, 2021 QCCA 859 at para. 5. [↑](#footnote-ref-7)
8. *Gercotech inc. c. Kruger inc. Master Trust (CIBC Mellon Trust Company*), 2019 QCCA 1168. [↑](#footnote-ref-8)
9. *Salomon v. Matte‑Thompson*, 2019 SCC 14 at para. 33. [↑](#footnote-ref-9)
10. *Nelson (City) v. Mowatt*, 2017 SCC 8 at para. 38. [↑](#footnote-ref-10)
11. Judgment under appeal at para. 53. [↑](#footnote-ref-11)
12. See the last declaration sought as a conclusion in the appellant and his corporation’s defence/cross-application; furthermore, during the appellant’s pre-trial examination, he confirmed that he agrees with the content of this pleading. [↑](#footnote-ref-12)
13. *Mattel, Inc. v. 3894207 Canada Inc.*,2006 SCC 22 at para. 5; *Kirkbi AG v. Ritvik Holdings Inc.*, 2005 SCC 65 at para. 58. [↑](#footnote-ref-13)
14. Appellant’s brief, Vol.1, Arguments, Part III at para. 52. [↑](#footnote-ref-14)
15. Roger T. Hughes, Sanjukta Tole & Nathan Fan, *Trademarks Act & Commentary* (Toronto: LexisNexis, 2021) at 7. [↑](#footnote-ref-15)
16. *Molson Breweries v. Labatt Brewing Co.*, [1992] F.C.A. No. 523 at para. 43 (F.C). [↑](#footnote-ref-16)
17. Donald M. Cameron*, Canadian Trademark Law Benchbook*, 3rd ed. (Toronto: Thomson Reuters, 2019) at 229–230. [↑](#footnote-ref-17)
18. *Canadian Shredded Wheat Co. v. Kellogg Co. Of Canada Ltd.*, [1938] 2 D.L.R. 145; 1938 Carswell Ont. 300 (P.C). [↑](#footnote-ref-18)
19. For example, advertising posters P-7 and D-26 and the advertising agreements with radio stations. [↑](#footnote-ref-19)
20. *9055-6473 Québec inc. c. Montréal Auto Prix*, 2006 QCCA 627. [↑](#footnote-ref-20)
21. *Ibid*. at paras. 15–16. [↑](#footnote-ref-21)
22. Judgment under appeal, orders contained in paragraph 218. [↑](#footnote-ref-22)
23. *Ibid.* at para. 191. [↑](#footnote-ref-23)
24. *Ibid*. at para. 98. [↑](#footnote-ref-24)
25. *Ibid*. at para. 152. [↑](#footnote-ref-25)
26. *R. v. Gagnon*, 2006 SCC 17 at para. 10; *Jean-Pierre c. Benhachmi*, 2018 QCCA 348 at para. 43; *Francoeur c. 4417186 Canada inc*., 2013 QCCA 191 at para. 55; *Garcia Lorenzo c. Migas (Migas Home Inspections)*,2016 QCCA 1661 at para. 8. [↑](#footnote-ref-26)
27. Exhibit D-19. [↑](#footnote-ref-27)
28. Judgment under appeal at paras. 91–92, 98, 114, 207, and 210. [↑](#footnote-ref-28)
29. *Thoi Bao Inc. v. 1913075 Ontario Limited (VO Media),* 2016 FC 1339. [↑](#footnote-ref-29)
30. *Kaira District Co-operative Milk Producers' Union Limited v. AMUL Canada*, 2021 FC 636. [↑](#footnote-ref-30)
31. See, *inter alia*, *Quenneville c. Chevalier*, 2022 QCCA 219 at para. 14; *P.E. c. G.V.*, 2021 QCCA 445 at para. 11; *Succession de Drolet c. Succession de Boilard*, 2021 QCCA 144 at para. 29; *9240-8434 Québec inc. c. Beterbiev*, 2020 QCCA 1449 at para. 21; *Beauchemin c. Wart*, 2020 QCCA 945 at para. 104. [↑](#footnote-ref-31)
32. *Succession de Drolet c. Succession de Boilard*, *supra* note 12 at paras. 26–27; *Vidéotron s.e.n.c. c. Bell Express Vu*, 2015 QCCA 422 at paras. 85–87; *Banque de Montréal c. TMI Éducaction.com inc. (Syndic de)*, 2014 QCCA 1431 at paras. 103–105; *Provigo Distribution inc. c. Supermarché A.R.G. inc*., 1995 CanLII 5512 at 74 (QC CA). [↑](#footnote-ref-32)
33. *Laniel Supérieur inc. c. Régie des alcools, des courses et des jeux*, 2019 QCCA 753 at para. 54; *Succession de G.P. c. L.P.*, 2019 QCCA 863 at para. 33; *Hydro-Québec c. Construction Kiewit cie*, 2014 QCCA 947 at para. 101. [↑](#footnote-ref-33)
34. *9323-9596 Québec inc. c. Isabel*, 2021 QCCA 69 at paras. 13­15; *Jack c. Bergeron*, 2019 QCCA 2013 at para. 9. [↑](#footnote-ref-34)