

# Intellectual Property Weekly Abstracts Bulletin — Week Of March 21

March 23, 2016

## Trademark Cases

Summary judgment for trademark infringement, passing off and other allegations is upheld on appeal

[Michaels v. Michaels Stores Procurement Company, Inc., 2016 FCA 88](#)

The Federal Court of Appeal has upheld a default judgment against the appellants, where findings of trademark infringement, passing off, depreciation of goodwill and communication of false and misleading statements were established.

The Court of Appeal held that the decision to proceed with the merits of the motion was discretionary, and the discretion was reasonably exercised. Despite having notice of the motion, the appellants did not file a responding motion record nor did they cross-examine on the affidavits.

The corporate defendant did not retain counsel or seek relief from Rule 120 of the Federal Courts Rules. **The decision to require the compliance with the Rules was upheld**, as was the decision to not allow the personal defendant to give oral evidence on return of the motion. The remedies that were awarded were upheld as being reasonable and within the Court's jurisdiction.

Lastly, the Court of Appeal refused to accept what was characterized as an aid to argument, but that the panel described as a fresh 30 page memorandum of argument that had not been delivered to respondent's counsel.

## Patent Cases

Appeal of a decision to not bifurcate a s.8 action and infringement counterclaim dismissed

[Teva Canada Limited v. Janssen Inc., 2016 FC 318](#)

The appeal of a Prothonotary's decision to refuse to bifurcate liability and quantification of an action comprising a claim pursuant to section 8 of the PM(NOC) Regulations and a patent infringement counterclaim has been dismissed.

The Court found that although one could have arrived at the opposite conclusion, to find fault with the Prothonotary's process would amount to a reweighing of the evidence, subverting the high degree of deference owed to a discretionary decision of a Prothonotary.

By

[Chantal Saunders](#), [Beverley Moore](#), [Adrian J. Howard](#)

Expertise

[Intellectual Property](#), [Copyright](#), [Patents](#), [Trademarks](#), [Licensing](#)

---

## **BLG | Canada's Law Firm**

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

[blg.com](http://blg.com)

### **BLG Offices**

#### **Calgary**

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3

T 403.232.9500  
F 403.266.1395

#### **Ottawa**

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9

T 613.237.5160  
F 613.230.8842

#### **Vancouver**

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2

T 604.687.5744  
F 604.687.1415

#### **Montréal**

1000 De La Gauchetière Street West  
Suite 900  
Montréal, QC, Canada  
H3B 5H4

T 514.954.2555  
F 514.879.9015

#### **Toronto**

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3

T 416.367.6000  
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing [unsubscribe@blg.com](mailto:unsubscribe@blg.com) or manage your subscription

preferences at [blg.com/MyPreferences](https://www.blg.com/MyPreferences). If you feel you have received this message in error please contact [communications@blg.com](mailto:communications@blg.com). BLG's privacy policy for publications may be found at [blg.com/en/privacy](https://www.blg.com/en/privacy).

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.