

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: AMEC E&C Services Limited v. Whitman Benn and Associates Limited et al. -
2003 NSSC 112

Date: 20030516
Docket: S.H. No. 196403
Registry: Halifax

Between:

AMEC E&C Services Limited, a body corporate

Applicant

-and-

Whitman Benn and Associates Limited, a body corporate, **Intrepid Holdings Limited**, a body
corporate, **John Bachynski** and **Aubrey Palmeter**

Respondents

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Judge: The Honourable Justice Robert W. Wright

Heard: April 22, 2003 in Chambers at Halifax, Nova Scotia

Written

Decision: May 16, 2003

Subject: Injunctions - action in tort of passing off

Summary: In February of 1999, a share purchase transaction was completed whereby all of the shares of Whitman Benn Enterprises Limited were acquired by AGRA Inc., through a subsidiary Monenco. Two of the vendor shareholders were the defendants Palmeter and Bachynski, whose employment continued with AGRA. In April of 2000, AGRA merged with AMEC Inc. with whom the employment of the defendants Palmeter and Bachynski continued.

In January of 2001, AMEC implemented a new marketing strategy, deciding to market all of its engineering services under the brand name AMEC. It thereupon amalgamated the three former Whitman Benn operating companies into a continuing company named AMEC E&C Services Limited (the plaintiff herein). The name Whitman Benn thereupon fell into general disuse, except for promotional purposes in describing the company's history and operations in various project proposals.

In March of 2002, Palmeter left the employ of AMEC and a few months later indicated his intentions

to start up a new company, reviving the use of the name Whitman Benn. No objection was voiced at the time by AMEC's management personnel to Palmetter's future intentions. Palmetter thereupon submitted an application to register the Whitman Benn name as a trademark (still in process) and initiated discussions with Bachynski who was also thinking of going out on his own.

On December 4, 2002, Bachynski incorporated a new company under the name Whitman Benn & Associates Limited and on the same date, enter into a trademark licensing agreement with a holding company owned by Palmetter. At the end of January, 2003 Bachynski left the employ of AMEC and began operations under the Whitman Benn name in direct competition with AMEC. AMEC thereupon commenced this action and applied for an interlocutory prohibitory injunction enjoining the use of the name Whitman Benn, as well as a mandatory injunction compelling Whitman Benn & Associates Limited to change its name and Mr. Palmetter's holding company to withdraw its application to register as a trademark the name Whitman Benn.

Issue: Should the injunctive relief sought be granted in the exercise of the court's discretion?

Result: The application was granted. Although the threshold test for the granting of an interlocutory mandatory injunction is higher than that for a prohibitory injunction, the court was satisfied that the plaintiff had met the requisite threshold test where it had shown a strong prima facie case, the probability of irreparable harm if the injunction were not granted and the balance of convenience in its favour. Where the underlying issue awaited final determination at trial, costs of the application were treated as costs in the cause and fixed at \$1500.

**THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S
DECISION. QUOTES MUST BE FROM THE DECISION, NOT THE COVER SHEET.**
