

TRADE-MARKS

INFRINGEMENT

Motion for summary trial under *Federal Courts Rules*, SOR/98-106, r. 213 with respect to action against defendant claiming damages, other relief for trade-mark infringement, passing off, depreciation of goodwill under *Trade-marks Act*, R.S.C., 1985, c. T-13 (Act) — Claims relating to mark “EMPOWER ME” registered by plaintiff in connection with energy awareness, conservation, efficiency services, defendant’s use of mark “emPOWERme” in connection with educational Web site — Plaintiff requesting that defendant cease, desist from using “emPOWERme” mark — Defendant pointing out that Ontario Ministry of Energy public authority under Act authorizing it to request that Registrar of Trade-marks give public notice of its adoption, use of “emPOWERme” as official mark of Government of Ontario — Registrar giving such public notice — Defendant taking position that official status of “emPOWERme” mark under Act, s. 9(1)(n)(iii) immunizing it against any claims under Act arising from its use of that mark — Main issues whether official mark status of “emPOWERme” affording defendant protection against plaintiff’s claims; whether defendant infringing plaintiff’s trade-mark, contrary to Act, ss. 19, 20;— Interpretation of s. 9(1)(n)(iii) advanced by defendant not supported by express wording of this provision — S. 9(1)(n)(iii) not conferring upon public authority any particular protection against claims for trade-mark infringement or other claims under Act. — Absent case law interpreting s. 9(1)(n)(iii) as advocated by defendant, Court should not adopt interpretation conferring statutory immunity upon public authorities without clear legislative language supporting this interpretation — Language of s. 9(1)(n)(iii) prohibiting certain activities once public notice of use of official mark given — However, not expressly conferring upon public authorities right to use official mark in manner contravening other provisions of Act — Nothing in language of s. 9(1)(n)(iii) eliminating rights already conferred upon owner of registered trade-mark — Parliament not intending that public authority be immune from any claims under Act arising from required adoption, use — Plaintiff meeting test for confusion — Defendant infringing trade-mark “EMPOWER ME” contrary to Act, s. 20 — Damages awarded — Motion granted.

QUALITY PROGRAM SERVICES INC. V. CANADA (T-1787-16, 2018 FC 971, Southcott J., judgment dated October 4, 2018, 39 pp.)