

CITATION: Edgewater Park Lodge Inc. v. Cadman et al., 2025 ONSC 1295
COURT FILE NO.: CV-23-00000094-0000
DATE: 2025/02/26

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Edgewater Park Lodge Inc., Applicant

AND:

Robert Cadman, Carol Cadman, and ABC Corporation, Respondents

BEFORE: Justice Robin A. Bellows

COUNSEL: *R. Brooks*, Counsel for the Applicant

T. Davis, Counsel for the Respondents

HEARD: February 10, 2025

DECISION ON APPLICATION

- [1] The applicant, Edgewater Park Lodge Inc. (hereinafter “Edgewater” or the applicant), operates a restaurant on its property under the name “Red Canoe Restaurant”, registered under the *Business Names Act*, which has been valid and maintained since July 31, 2018. The lodge and restaurant are located in Kearney, Ontario, in the District of Parry Sound.
- [2] The respondents, Robert and Carol Cadman, operate a restaurant under the name “Red Canoe Family Restaurant”. This restaurant is a sole proprietorship that has been owned by the respondents since October 2022. The business name was registered on August 25, 2023. The restaurant is located in South River, Ontario, also in the District of Parry Sound.
- [3] The application seeks a mandatory or permanent injunction against the respondents’ use of the name “Red Canoe Family Restaurant” or any similar variation of the name. The applicant also seeks to compel the cancellation of the business name pursuant to section 6(3) of the *Business Names Act*, R.S.O. 1990, c. B. 17 (hereinafter “*BNA*”) and compensation in the statutory amount of \$500 under section 6(2) of the *BNA* on the basis that the business name is the same or deceptively similar to their own.
- [4] The applicant relies, in part, on the tort of “passing off” to ground their argument for the above requested remedies.
- [5] The applicant also relies on Rule 1.04 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (hereinafter “the *Rules*”) to address any concern that the court might have with the fact that the issue comes before the court by way of an application rather than an action,

maintaining that there are no genuine facts in dispute that would require a trial in this matter.

- [6] The respondents' position is that the application must fail as it ought to have been an action, and Rule 1.04 cannot save it. The respondents submit that there are facts in issue that cannot be addressed in an application. The respondent relies on the argument that "The Red Canoe Family Restaurant" is not similar to "Red Canoe Restaurant" as a fact in issue, and questions whether Kearney is "in the area" of South River.

The Facts

- [7] The respondent, Robert Cadman, registered the business name "The Red Canoe Family Restaurant" on August 25, 2023.
- [8] The respondent, Robert Cadman, operates the business as a sole proprietor. The business is not incorporated.
- [9] The respondent, Carol Cadman, submits that she is not a proper party to this application as she is not the registrant and/or user of the name "The Red Canoe Family Restaurant". She seeks to have the application dismissed against her as having no legal or factual basis.
- [10] However, in his affidavit of December 12, 2023, at paragraph 3, he states "My wife, Carol Cadman ("Carol") and I own the restaurant together" and when cross-examined on that pleading, on January 11, 2024, at question 13, page 3, he confirms:

Q: Okay. And so, as I understand it, you and your wife are the owners and operators of the Red Canoe Family Restaurant. Is that correct?

Yes, it is.

- [11] The applicant requested to strike the third respondent named on the application as "ABC Corporation" as the record establishes that the business has not been incorporated. ABC Corporation shall be struck from this application.
- [12] The applicant claims that the respondent has directed attention to his business in such a way as to cause or be likely to cause confusion between their business and services and those of the applicant, that is, the respondent's business name is *deceptively similar* to the applicant's business name.
- [13] The applicant claims that the corporation has suffered and will continue to suffer damages and irreparable harm including:
- a. Permanent loss of goodwill and consumer confidence.
 - b. Permanent loss of market share.
 - c. Permanent damage to its reputation.
 - d. Permanent depreciation of goodwill.
 - e. Loss of revenue and profit.

- [14] The applicant’s restaurant has been in operation since 2018 under the registered name “Red Canoe Restaurant”. This registration was most recently renewed effective July 19, 2023, with an expiry of July 29, 2028. The restaurant is on the property of Edgewater Park Lodge Inc., which has been incorporated and in operation since 2011.
- [15] The applicant learned of the respondents’ restaurant by way of a news article on or about July 21, 2023, wherein the headline read: “South River mainstay Antonio’s Grill reopens as the Red Canoe Family Restaurant.”
- [16] The two businesses are restaurants operating approximately 55 kilometres from each other. This is acknowledged by Mr. Cadman in his cross-examination.
- [17] At the time of this application, the respondents’ business “The Red Canoe Family Restaurant” is not in operation, but it is anticipated that it will re-open.
- [18] The applicant pleads that Edgewater has been operational since 2011 and enjoys significant goodwill with a blend of new and repeat guests. Further, that the “Red Canoe Restaurant” on the property has been in operation since 2018 and similarly enjoys goodwill.
- [19] The applicant further pleads that Edgewater’s Red Canoe Restaurant has adequately and necessarily distinguished the goods and services from that of its competitors and relies on Google Reviews of the restaurant touting a rating of 4.2/5.
- [20] The Google Reviews provided in the applicant’s materials are admissible as best evidence on the argument related to the goodwill enjoyed by Edgewater’s Red Canoe Restaurant.
- [21] The applicant is concerned that the respondents’ restaurant will tarnish the name of Edgewater’s restaurant. The applicant relies on social media posts and comments expressing “an apparent distaste for Mr. Cadman and his business.”¹ They copy several of the reviews into the pleadings. While some of the Facebook posts and Google Reviews are not verified, they are in the public domain with a connection to the name “Red Canoe Family Restaurant”. Even if the court does not accept them for the truth of the content of the review, they are evidence of interaction with the respondent and are references to a local restaurant with “Red Canoe” in the name connected to Mr. Cadman.
- [22] Insofar as Mr. Cadman does not deny interaction with the Facebook posts, the court accepts those conversations as some reliable evidence that there is some confusion as to the distinction between the two restaurants and the nature of the interactions with members of the public.
- [23] In Exhibit “A” to the affidavit of Cathy McNichol dated February 20, 2024, Mr. Cadman responds to a Facebook post dated October 3, 2022, indicating that there are two restaurants with Red Canoe in their name in the area, and that there is a Red Canoe Restaurant in

¹ Affidavit of Pamela Porter, dated September 9, 2023 at paragraph 14.

Kearney, but his is the Red Canoe *Family* Restaurant in South River. The respondents emphasize the word “family” as a sufficiently distinguishing feature in the business name.

- [24] In one reply comment, Mr. Cadman writes: “There is only 2 red Canoe restaurants in this area there is red Canoe that is in Kearney and we are the red Canoe family restaurant in a restaurant in South River” [emphasis added]. Again, this is in October 2022.
- [25] That Mr. Cadman engages with the community in an attempt to clarify or distinguish his restaurant from that of the applicant, is evidence of confusion within the community about whether there is any affiliation or connection between the two.
- [26] The applicant further relies on a Google search for “Red Canoe Restaurant”, which yields search results and image search results are a mix of both restaurants. Exhibits “K” to Pamela Porter’s affidavit shows a Google search for “red canoe restaurant” with the first 6 results. It returns 4 results for Edgewater’s Red Canoe Restaurant, and 2 results relating to the respondent and his restaurant. Exhibit “L” shows a search for “the red canoe family restaurant” which yields a “People also searched for” section that links the respondent’s restaurant name with the location of the applicant’s restaurant. It also shows a section of “Images from the Web” which includes 2 photos of the respondents, Bob and Carol Cadman at their restaurant and 3 photos relating to the applicant’s restaurant (the restaurant from the outside, a lunch menu, and the restaurant logo).
- [27] The applicant relies on further hearsay evidence that one of their employees received a gift certificate for the respondent’s business in South River. There appears to have been no attempt by the applicant to seek an affidavit from the prior employee for this evidence. The court places little to no weight on this submission.
- [28] The applicant pleads that signage, social media posts, and “other advertising materials” is causing or has caused: confusion in the marketplace, suppliers and customers mistaking one restaurant for the other, suppliers and customers believing the applicant sold its business to the respondent, potential customers attending the respondent’s restaurant in error, negative views, opinions or reputation being erroneously attached to the applicant’s business because of the behaviour of the respondent, and the goodwill of the applicant’s business being adversely affected.

The Law

- [29] The applicant chose to bring this matter as an application and not an action. The applicant does not seek punitive or general damages. They seek \$500 in compensation as prescribed by statute under section 6 of the *BNA*. It states that:

6 (1) A person is entitled to recover compensation from a registrant for damages the person suffered by reason of the registration by the registrant of a name that is deceptively similar to

(a) a name registered by the person

[...]

(2) The compensation under each of clauses (1) (a) and (b) is limited to the greater of \$500 and the actual amount of damages incurred.

[30] On a plain reading, section 6(1) does not specify that the entitlement to compensation is limited to a person who brings an action.

[31] Section 6 (3) states that “[i]n giving a judgement for a plaintiff in an action brought subsection (1), the court *shall* order the Registrar to cancel the registration that was the cause of the action” (emphasis added). This subsection contemplates an action. The applicant asks that the court apply the general principle of liberal interpretation under section 1.04 of the *Rules* to consider it applicable to the application in this case.

[32] Rule 1.04 states: “These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.”

[33] Further, the court will reference Rule 2.01 which states the following:

(1) A failure to comply with these rules is an irregularity and does not render a proceeding or a step, document or order in a proceeding a nullity, and the court,

(a) may grant all necessary amendments or other relieve, on such terms as are just, to secure the just determination of the real matters in dispute, or

(b) [...]

The court shall not set aside an originating process on the ground that the proceeding should have been commenced by an originating process other than the one employed.

[34] Legislature intended the *Rules* to be construed in a liberal fashion in order to reach a just determination of every civil proceeding on its merits even in the face of procedural errors where the matter can be heard fairly and in the least expensive, most expeditious manner.

[35] The applicant relies on the common law doctrine of “passing off”. At the common law, the doctrine of “passing off” is heard as an action where evidence is called on the elements required to prove, on a balance of probabilities, the elements of the action.

[36] The Supreme Court of Canada in *Ciba-Geigy Canada Ltd. v. Apotex Inc.*, [1992] 3 SCR 120 (hereinafter “*Ciba-Geigy*”), held that there are three (3) necessary components in a passing off action: “the existence of goodwill, deception of the public due to a misrepresentation, and actual or potential damage to the plaintiff.”²

² *Ciba-Geigy Canada Ltd. v. Apotex Inc.*, [1992] 3 SCR 120 at page 132.

- [37] The first element requires a plaintiff to establish that its business enjoys a reputation of goodwill in the minds of consumers that directly associate with the plaintiff's wares, goods, or services with a distinctive selling, marketing or identifying feature that they rely on to distinguish the plaintiff's wares, goods, or services from their competitors.
- [38] This requires evidence of goodwill, and evidence of the distinctive nature of the wares, goods, and services of the applicant. In this case, the nature of Edgewater's Red Canoe Restaurant is a restaurant. The respondent's Red Canoe Family Restaurant is also a restaurant. They are in the same industry. The respondent submits that because they also advertise that they serve pizza and the applicant does not, that it is sufficiently different. It is the only menu difference that the respondents note.
- [39] The second component requires a finding that the business alleged to be "passing off" leads or is likely to lead the public to believe there is an association between the businesses or their products. Although the original requirement of an "intent to deceive" has died out, there remains the requirement, at the very least, that confusion in the minds of the public be a *likely consequence* by reason of sale, by the defendant of a product under the guise of implication that it was the plaintiff's product or equivalent.³
- [40] The Supreme Court notes "[t]he purpose of the passing-off action is thus also to prevent unfair competition. One does not have to be a fanatical moralist to understand how appropriating another person's work is, as that is certainly what is involved, and is a breach of good faith."⁴
- [41] The respondents operate a restaurant, just as the applicant does. In and of itself, that is not a problem. They are entitled to operate a restaurant. In fact, there is a restaurant in very close proximity to the respondents' restaurant. This does not pose any problem. However, the respondents conduct their restaurant business under the name "The Red Canoe Family Restaurant" and within the District, just 55 kilometres away, is a restaurant owned by the applicant that has been in business since 2018 under the name "Red Canoe Restaurant." Herein lies the problem.
- [42] The respondents' position that the names are not similar is, quite simply, disingenuous. The respondents' submissions on February 7, 2025, also contradict the evidence that in October 2022, Mr. Cadman described the restaurant in Kearney (the applicant's) as being "in the area".
- [43] The common law doctrine of passing-off typically refers to an action. The applicant, however, is not seeking punitive or general damages. The primary remedy being sought is that of an injunction.
- [44] The Ontario Court of Appeal in *1711811 Ontario Ltd. v. Buckley Insurance Brokers Ltd*, 2014 ONCA 125, at paragraphs 49-59, reviews the differences between these types of

³ Ibid., at page 133.

⁴ Ibid., at page 136.

injunctions. The court does not have the authority to grant the temporary relief in the form of an interlocutory or interim motion as there are no other proceedings to bring such a temporary order to a close.

- [45] A permanent or mandatory injunction, as is being sought, is the final remaining injunctive remedy. A permanent injunction is an extraordinary remedy. To obtain a permanent injunction, the applicant must prove, on a balance of probabilities, that it has a legal right to the injunction and that an injunction is an appropriate remedy.
- [46] A permanent injunction is granted after a final adjudication of rights.⁵
- [47] “...[I]f an action for such a remedy were sufficiently commenced, the proceeding by which such an order would be granted would involve leading and weighing of evidence, consideration of possible defences to the claim, and, if proven, consideration of the terms of the relevant order with all appropriate limitations.”⁶

Conclusion

- [48] In considering Rules 1.04 and 2.01, I find that any concerns the court had about the originating process being an application rather than an action can be remedied. This matter can achieve the just, most expeditious and least expensive determination of this proceeding on its merits by way of this process.
- [49] I find that there are no central facts at issue that would require a trial, and there are no viable defences to be raised at trial. The two businesses offer the same products – that is, they are both restaurants. They operated in relatively close proximity to one another. There is some evidence that satisfies me on a balance of probabilities that the respondents were aware of or ought to have been aware of the applicant’s restaurant prior to naming and opening their restaurant. I am also satisfied on a balance of probabilities that the name is deceptively similar that it causes or may cause confusion in customers, and with, at the very least, a potential for harm to the applicant’s business.
- [50] The respondents are free to operate their restaurant, they simply cannot operate it with a name that is deceptively similar to another in their area.
- [51] THIS COURT ORDERS that a permanent injunction is hereby granted:
- a. Enjoining and restraining the respondents from operating any business using marketing materials representing “The Red Canoe Family Restaurant” or any name similar thereto;

⁵ *Liu v. Matrikon Inc.*, 2007 ABCA 310 at para. 26, as confirmed by the Ontario Court of Appeal in *1711811 Ontario Ltd. v. Buckley Insurance Brokers Ltd.*, cited above at para. 56.

⁶ *Ibid.*, at para. 24.

- b. Enjoining and restraining the respondents from operating a business using the trade name or corporate name “The Red Canoe Family Restaurant” or any name similar thereto; and
- c. Enjoining and restraining the respondents from advertising their business under the trade name “The Red Canoe Family Restaurant” on all social and public platforms, including but not limited to, Facebook and all radio broadcast advertisements, and vehicle decals or advertisements, or using the name “The Red Canoe Family Restaurant” in any advertising of their products, goods or services, including website, metatags, metadata, and Google AdWords.

[52] THIS COURT ORDERS that the respondents shall immediately remove or cause to be removed all Facebook postings and other social media pages identifying their or any business as “The Red Canoe Family Restaurant”.

[53] THIS COURT ORDERS that the respondents shall, within 30 days of this order, pay to the applicant damages in the statutory amount of \$500.00 pursuant to section 6(1) of the *Business Names Act*.

Costs

[54] The applicant was entirely successful on the motion. Therefore, he is entitled to costs. However, based on submissions made by the parties during the hearing of the motion, the parties shall provide their submissions with respect to the issue of costs in writing, limited to three (3) typewritten pages, excluding attachments, as follows:

- a. by or on behalf of the applicant, within 14 days of the date of this decision; and
- b. by or on behalf of the respondent, within 14 days of the receipt of the applicant’s submissions.

[55] Submissions received beyond these deadlines will not be considered.

Justice R.A. Bellows

Date: February 26, 2025

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ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Edgewater Park Lodge Inc.

Applicant

– and –

Robert Cadman, Carol Cadman, and ABC Corporation

Respondent

DECISION ON APPLICATION

Justice R.A. Bellows

Released: February 26, 2025