

Publisher's Note

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Canadian Trade-Marks Act Annotated

This comprehensive reference work sets out the original purpose and application of the Act, administrative policies, case law and secondary sources.

This release features updates to Appendix PS4 - Trade-mark Infringement or Passing Off Proceedings brought in Federal Court of Canada — Summary of Procedure.

Highlights

• **Trade-mark Infringement or Passing Off Proceedings brought in Federal Court of Canada — Summary of Procedure — Case Law — Expert Witnesses** — Even if one accepts Bourque's view that only 16% of people interviewed were confused as to the source of the ADMIRAL NELSON'S bottle as opposed to Dr. Corbin's total of 23%, and even if one applied the statistical margin of error of 5% to those percentages because the Corbin survey has a confidence level of 95%, the percentage of people interviewed who were confused as to the source of the ADMIRAL NELSON'S bottle was not insignificant, being somewhere between 11% and 28% having regard to the 5% margin of error: *Diageo Canada Inc. v. Heaven Hill Distilleries, Inc.*, 2017 CarswellNat 2705, 2017

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CarswellNat 4306, 2017 FC 571, 2017 CF 571, 147 C.P.R. (4th) 425, 280 A.C.W.S. (3d) 599 (F.C.).

• **Trade-mark Infringement or Passing Off Proceedings brought in Federal Court of Canada — Summary of Procedure — Case Law — Proceedings by Application** — The ship had sailed on any opportunity to convert the proceeding into an action. This was a simple case requiring no more than at most two to three days of hearing on the merits. An expeditious and proportionate proceeding is best served by way of application on a written record, not through trial proceedings. When one considers all the factors to be considered on motion to convert an application to an action, the Respondents failed on all levels.: *C. Jentsch Cellars Inc. v. O'Rourke Family Vineyards Ltd.*, 2018 CarswellNat 4751, 2018 CarswellNat 5133, 2018 FC 875, 2018 CF 875 (F.C.).