

## Publisher's Note

An Update has Arrived in Your Library for:

<b>Please circulate this notice to anyone in your office who may be interested in this publication.</b> <i>Distribution List</i>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

### **INTELLECTUAL PROPERTY DISPUTES: RESOLUTIONS AND REMEDIES**

**Ronald E. Dimock**

**Release No. 9, September 2023**

---

THOMSON REUTERS®

**Customer Support**

1-416-609-3800 (Toronto & International)

1-800-387-5164 (Toll Free Canada & U.S.)

E-mail [CustomerSupport.LegalTaxCanada@TR.com](mailto:CustomerSupport.LegalTaxCanada@TR.com)

This publisher's note may be scanned electronically and photocopied for the purpose of circulating copies within your organization.

This publication is a one-stop reference for litigators and counsel advising on Intellectual Property disputes that focuses on remedies available to IP owners and stakeholders at all stages of possible dispute, from risk management, through mediation and ADR, and to all levels of litigation. This release features updates to Appendix 2C, Quantum Section – Trademark Infringement and Passing Off. This release also features an update to Appendix 4C, Industrial Design Office Practice Manual, August 1, 2023, version.

## Highlights

- **§ 2C:46.10 Blossman Gas, Inc. v. Alliance Autopropane Inc.** — As a result of the fact that no finding was made that the marks were invalid for bad faith and thus void *ab initio*, the AAP Marks constituted a complete defence to a claim of passing off based on the use of those marks to the date of judgment. Justice McHaffie concluded that Blossman established that AAP’s use of the ALLIANCE AUTOGAS Design trademark constituted passing off. Although difficult to quantify with precision, some aspect of its sales could be attributed to the use of the trademark. This unlicensed use also adversely impacted Blossman’s ability to control its trademark. The extent of that harm, and the resulting damages attributable to the use of the ALLIANCE AUTOGAS Design trademark was related to the extent and nature of AAP’s use of the trademark. Justice McHaffie noted that there was limited evidence. There was no evidence of AAP’s actual use of the mark beyond AAP failing to comply with the demands in counsel’s letters; and an instance of confusion in which a truck displayed the ALLIANCE AUTOGAS trademarks. Justice McHaffie explained that it was difficult to assess either AAP’s profits or the damages to Blossman attributable to AAP’s use of the ALLIANCE AUTOGAS Design after June 2016. Justice McHaffie’s best estimate with respect to the damage to Blossman from AAP’s passing off through use of the ALLIANCE AUTOGAS Design was \$20,000 based on the importance of the mark to Blossman; the direct use of the identical trademark by AAP; the period of AAP’s use from June 2016 to 2021; the apparent value attributed by AAP to continuing that use despite Blossman’s demands to cease; the decline in use, including after 2019; the nature of the use including the extent of use of the ALLIANCE AUTOGAS Design *vis-à-vis* that of the AAP Marks; the evidence regarding AAP’s sales, revenues, and profits during this period; and consideration of other cases related to estimates of damages in passing off or trademark infringement in the absence of specific evidence of lost sales: *Blossman Gas, Inc. v. Alliance Autopropane Inc.*, 2022 CarswellNat 5886, 2022 CarswellNat 5887, 2022 FC 1794, 2022 CF 1794 (F.C.).

## ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work

- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable
- Footnote text only appears in ProView-generated PDFs of entire sections and pages