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FOX ON CANADIAN LAW OF COPYRIGHT AND INDUSTRIAL DESIGNS, 4th EDITION

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This comprehensive statement of Canadian law and practice has been the bedrock of Canadian copyright research and argument for more than half a century.

This release features updates to Appendix C. Tariffs and to Appendix G. Remedies Table – Misuse of Confidential Information.

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Highlights

- **Remedies Table — Misuse of Confidential Information — Damages** — Ballmer was ordered to pay \$776,000 to the Plaintiff SK plus prejudgment interest. Justice Smith concluded that the Defendants committed a breach of confidence and misappropriated SK's trade secrets concerning its manufacturing process because the information the Defendants acquired had the necessary quality of confidence, the information was communicated to or acquired by Lucy and Ballmer in circumstances giving rise to an obligation of confidence, that Ballmer communicated SK's trade secrets to Alex and KM who knew or ought to have known that Ballmer and Lucy were breaching an obligation of confidence to SK and the Defendants had made unauthorized use of SK's trade secrets to its detriment. SK brought a summary motion against Ballmer to determine the quantum of damages it suffered. The Plaintiff had resolved the action against Alex and Lucy. The Defendant KM had been unresponsive to the proceedings since the decision in the liability trial. The expert witness testified that SK had suffered damages of \$776,000. Lucy objected on the basis of the expert witness' assumption that SK would have continued to increase the price of sleeves by 5% per year, but for KM entering the market using SK's trade secrets and undercutting its prices by 40%. The expert witness assumed that Shaver-Kudell would have increased its prices at 5% per year as it did for the years 2011, 2012, and 2013. He made this determination by reviewing SK's price catalogue. KM commenced manufacturing sleeves in competition with SK in 2014 at a price that was 40% less than SK's price list. It ceased operations in 2018. The expert calculated the damages based on SK being unable to increase prices at 5% per year and due to a loss of sales from 2014 until 2018. He calculated the damages at \$36,000 in 2014, \$138,000 in 2015, \$171,000 in 2016, \$268,000 in 2017, and \$163,000 in 2018. The damages were suffered due to the loss of sales to KM and an inability to increase its prices by 5% per year as it had in the previous three years as a result of KM using SK's trade secrets and undercutting SK's prices: *Shaver-Kudell Manufacturing Inc. v. Knight Manufacturing Inc.*, 2018 ONSC 5206, 2018 CarswellOnt 14599 (Ont. S.C.J.) (Liability Decision), additional reasons 2018 CarswellOnt 19235 (Ont. S.C.J.), additional reasons 2024 ONSC 829, 2024 CarswellOnt 1578 (Ont. S.C.J.) (summary motion against Ballmer to determine damages).

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