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<p><b>CANADIAN TRADEMARKS ACT</b> <b>ANNOTATED</b> <b>Robic</b> <b>Release No. 4, April 2024</b></p>
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This comprehensive reference work sets out the original purpose and application of the Act, administrative policies, case law and secondary sources.

**What’s New in this Update:**

This release includes updates to Appendix PS and Appendix T.

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## Highlights

**Appendices—Appendix PS. Procedural Summaries—Summary of Procedure for the Resolution of Disputes Under *CIRA Domain Name Dispute Resolution Policy***—The criteria for bad faith are not exclusive, but complainants may rely on circumstances other than those enumerated to show bad faith registration: *University of British Columbia and Jagdhane, Re*, 2023 CarswellNat 501.

**Appendices—Appendix T. Quantum Table: Trade-Mark Infringement and Passing Off—General Damages for Infringement**—This quantum table has been updated with new case law, including the decision *Arc En Ciel RH c. Services Swissnova inc.*, 2023 CarswellQue 13153. The appellant had developed a proprietary psychometric test (the “AEC Method”) to evaluate personality traits, which was used primarily by human resources professionals in different organizations. The AEC Method was created using questionnaires which were the property of a third party. The respondents had an exclusive distribution deal with the appellant to distribute the AEC Method throughout Quebec (as the “NOVA Profile”) and Ontario between 2006 and 2014, when the appellant unexpectedly terminated the distribution contract. Within four months of the contract ending, the respondents created the NOVA 2.0 Profile. The appellant filed for an injunction and damages against the respondents in 2016, claiming that the “new” product was essentially a copy of the AEC Method that the respondents were passing off. The trial judge concluded that the respondents had plagiarized the work by copying a significant portion of the AEC Method. However, the judge did not grant the appellant’s request for an injunction or damages, based on a determination that the appellant did not have the legal interest required to bring the action, as they were not the copyright owners of the plagiarized work. Since the AEC Method was created using the property of a third party under a non-exclusive licence to the appellant, they did not have standing to sue for infringement. The judge did grant the appellant’s request to order the respondents to stop using their trademarks and the website “profilaec.com”. On appeal, the court noted that the appellant had demonstrated that the respondents had acted in contravention of the *Trademarks Act*, and that the appellant had suffered damages as a result, but that the appellant had failed to quantify their damages. The respondents had created confusion by creating a product and marketing it as “NOVA Profile 2.0”, a name nearly identical to a similar product belonging to the appellant. It was obvious the respondents had intended to target the same clientele as that of the appellant and had even gone so far as presenting their product as an improvement upon the appellant’s NOVA Profile. The court noted that the appellant had a right to a remedy for trademark infringement but noted that it was not simple to

quantify said damages. The court ordered the respondent companies to pay a total sum of \$10,000.

### **ProView Developments**

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