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LIFE SCIENCES LAW IN CANADA, 2ND EDITION

Adrienne M. Blanchard

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Life Sciences Law in Canada provides a roadmap for protecting the intellectual property associated with medicines, medical devices, and natural health products in Canada, for getting them on to the market and for keeping them on the market. All the legislation and regulations applicable to companies carrying on business in Canada in the life sciences, be they major, established pharmaceutical companies or small, fledgling start-ups, is examined in detail.

This release features updates to the Quantum Table – Remedies for Patent Infringement in Chapter 7. Patent Enforcement. This release also features updates to the Quantum Table. Damages Pursuant to Section 8 of the Patented Medicines (Notice of Compliance) Regulations in Chapter 8. Patented Medicines (Notice of Compliance) Regulations. This release also features updates to the Summary of Procedure for Appeals Pursuant to Section 56 of the Trademarks Act in Chapter 10. Trademarks and Domain Names. This release also features updates to Chapter 12. Privacy Law in Canada including updates to the *Personal Information Protection and Electronic Documents Act* – Amended by 2024, c. 16, s. 93; 2024, c. 17, s. 347, and updates to the case digests to the *Personal Information Protection and Electronic Documents Act*.

Highlights

Quantum Table – Remedies for Patent Infringement – Accounting of Profits – On the remitted issue, GreenBlue asserted that the Court should make common sense inferences on the overhead expenses in relation to their Woodstock, Ontario office, as it provided customer service, project support, and sales infrastructure directly tied to RootSpace sales. The Court explained that the inferences GreenBlue asked the Court to draw were problematic because GreenBlue's financial information combined expenses relating to both Canadian and American sales. The Court explained that the financial information for 2019 and 2020 was even more problematic because GreenBlue only provided

total overhead amounts. They provided no categorical breakdown of expenses and conceded that the total overhead expenses included inappropriate expenses, such as legal fees and amortization. The inclusion of those inappropriate expenses challenged the overall reliability of GreenBlue's proposed deductions. The Court explained that GreenBlue essentially asked the Court to speculate on the expenses that should be allowed. Having elected not to provide more detailed financial evidence, or expert accounting evidence, on its expenses, GreenBlue was effectively asking the Court to compensate for their failure to do so. Even if the Court were to accept the estimates provided not by expert evidence but by counsel, the remaining overhead total would still be for all North America, like the 2017 and 2018 totals. In the Court's view, GreenBlue had not provided reliable evidence on which the Court could allow the claimed deductions for 2019 and 2020. The Court concluded that there was no evidence that would allow the Court to distinguish valid expenses related to infringing Canadian sales, from irrelevant expenses related to US sales. GreenBlue bore the burden of proving its expenses and their relation to infringing sales and was in the best position to provide this information. It failed to do so.. The alternatives, to either allow deductions that include irrelevant US expenses or deny the Plaintiffs an accounting, would be unfair to the Plaintiffs. Accordingly, in not allowing deductions for the claimed overhead expenses for 2017, 2018, 2019 and 2020, GreenBlue made a profit of $593,362.61 from infringing RootSpace sales in Canada. The Court therefore awarded DeepRoot an accounting of profits of $593,362.21, plus interest: *Deeproot Green Infrastructure, LLC v. Greenblue Urban North America Inc*., 2026 FC 125 (F.C.).

Summary of Procedure to Appeals Pursuant to Section 56 of the Trademarks Act – Case Law – Additional Evidence – The Court explained that in assessing a request to file additional evidence on appeal pursuant to subsection 56(5) of the *Trademarks Act*, the Court should consider whether the interests of justice favour granting leave on the basis of all relevant factors, including: (a) the relevance, credibility, and admissibility of the evidence; (b) the materiality of the evidence; (c) the circumstances surrounding the delay in filing the evidence; and (d) whether granting leave would cause prejudice to the opposing party. This approach effectively adopts and adapts the features of Palmer as factors for consideration in accordance with the existing jurisprudence on trademark appeals. It reflects both Parliament's intent to end the unrestricted ability to file new evidence on appeal, and the unique approach to trademark appeals that Parliament has preserved through the adoption of the amended subsection 56(5). Those and any other relevant factors will be considered in assessing whether the interests of justice favour granting leave to adduce the new evidence. It was worth repeating, however, that the interests of justice include the important principles of finality, order, efficiency, and fairness in litigation: *Products Unlimited, Inc. v. Five Seasons Comfort Limited*, 2026 CarswellNat 88, 2026 CarswellNat 89, 2026 CF 48, 2026 FC 48 (F.C.).

Personal Information Protection and Electronic Documents Act – Case Law – Section 6.1 – Valid Consent – In response to the Offices' request for further proposed measures, the company committed to develop and implement, in addition to the two models, a new passive underage user detection model. This model would leverage a number of data sources, which the company explained to the Offices, and would be based on patterns of behaviour from previously identified underage user accounts. TikTok noted that this solution would be, to its knowledge, an industry first. To address the Offices' conclusions that TikTok failed to obtain youth and adult users' meaningful consent and to

be adequately transparent, TikTok committed to implement various enhancements to its privacy communications, in English and French. To address the issues raised in recommendation regarding the communication of TikTok's privacy practices to youth, aged of 13 () to 17, TikTok committed to developing two new privacy communication products designed specifically for that demographic: TikTok committed to developing a "Teen Summary" of its privacy policy, accessible through its privacy policy, and drafted to be understandable to youth. This was published on June 2nd, 2025. TikTok indicated t that the document incorporates feedback received from its Youth Council during the drafting process. Specifically, the Offices noted that the document explains that TikTok collects information about platform usage, as well as information inferred based on how users use TikTok, and informs teens that this information is used by TikTok for customizing the content they see. TikTok also committed to creating and sharing, within six months of the issuance of the report, a "Privacy Highlights Video", covering the company's practices in a clear and accessible manner, presented in a format geared towards teens. TikTok indicated that the video would explain TikTok's privacy practices, including what information TikTok collects, how it is used, privacy features, and similar topics. TikTok further explained that this video would be delivered to teen users via their TikTok inboxes and will be available in the TikTok Privacy Center. As an additional measure, in its response to the Offices' Preliminary Report of Investigation, TikTok committed to limit ad targeting for users under 18 in Canada. TikTok informed the Offices that it implemented this change on April 1st, 2025. As a result, advertisers can no longer deliver targeted ads to users under 18, other than according to generic data such as language and approximate location. TikTok advised that in the spirit of cooperation, it would implement a new "Privacy Settings Check-up" mechanism for all Canadian users (including Quebec users), which would centralize TikTok's "most important and tangible" privacy settings and allow users to more easily review, adjust and confirm those setting choices. TikTok further advised that it would notify all Canadian users about the new function. The Offices determined the matter to be well-founded and conditionally resolved, with regard to all issues: *PIPEDA* Findings # 2025-003 (September 23, 2025) (O.P.C.).

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