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CANADIAN TRADEMARKS ACT ANNOTATED Robic Release No. 6, June 2026

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 features updates to the following sections:

- § 53.3. Unaltered State: Exportation, Sale or Distribution
- § 54. Evidence
- § 55. Jurisdiction of Federal Court
- § 57. Exclusive Jurisdiction of Federal Court
- § 58. How Proceedings Instituted
- § 59. Notice to Set out Grounds
- § 60. Registrar to Transmit Documents
- § 61. Judgments

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- § 62. Administration
- § 64. Electronic Forms and Means

Highlights

Legal Proceedings—§ 55. Jurisdiction of Federal Court—§ 55:6.0 Case Law—§ 6.1—General—The following is an excerpt from this section:

Zanin v. Ooma, Inc., 211 C.P.R. (4th) 1 (F.C.; 2025-01-10) Gascon J. [156] With respect, Mr. Zanin’s argument has been systematically rejected by recent jurisprudence confirming the validity of arbitration clauses in the federal law context, as opposed to provincial contexts. It is not disputed that an arbitration clause might be rendered invalid to the extent that it amounts to contracting out of statutory rights granted to consumers, provided that it is prohibited by the specific consumer protection law. However, this is simply not the case under the Competition Act or the Trademarks Act. In sum, while some provinces have legislated to prohibit or severely restrict arbitration clauses in the consumer context, the federal Parliament has not.

[157] Provincial consumer protection laws such as the Ontario CPA do not invalidate contracts or mandatory arbitration clauses as such. They simply preserve the jurisdiction of provincial courts for consumer contracts, and confine recourses to certain channels, such as the Ontario courts. Moreover, provincial consumer protection laws cannot oust the jurisdiction of this Court (*Murphy FCA* [*Murphy v Amway Canada Corporation*, 2013 FCA 38] at paras 31–32). The statutes underlying Mr. Zanin’s claims, namely, the Trademarks Act and the Competition Act, are federal statutes, and they cannot be conflated with provincial consumer protection laws.

Legal Proceedings—§ 55. Jurisdiction of Federal Court—§ 55:6.0 Case Law—§ 6.2—Trademarks—The following is an excerpt from this section:

Wanakome Inc. v. Martin, 2026 FCA 12 (F.C.A.; 2026-01-21) Goyette J. [affirming 2024 CarswellNat 1645 (F.C.; 2024-05-06)].

[6] It properly determined that it had jurisdiction to address the issue raised by the appellant with respect to ownership of the WANAKOME trademark, including its authority to interpret the contractual documents in evidence. The Federal Court correctly cited the legislative sources of its jurisdiction in the Federal Courts Act, R.S.C. 1985, c. F-7, and Trademarks Act as well as the jurisprudence: Federal Court Decision at paras. 45–50 citing, among other cases, *Salt Canada Inc. v. Baker*, 2020 FCA 127 at paras. 24, 31 and 40, and *Royal Doulton Tableware Ltd v Cassidy’s Ltd*, [1986] 1 FC 357 at pp. 374–376. In addition, the

Federal Court carefully measured its words to avoid straying outside its jurisdiction, recognizing that some aspects of the dispute lie outside its authority: Federal Court Decision at paras. 49, 50 and 81.

Legal Proceedings—§ 57. Exclusive Jurisdiction of Federal Court—§ 57:6.0 Case Law—§ 6.3 *Person Interested*—The following is an excerpt from this section:

fxswede AB v. Xu, 2025 CarswellNat 4985 (F.C.; 2025-11-24)
Fuhrer J.

[16] I am satisfied that fxswede meets the low threshold of establishing that it is a “person interested” as defined in the section 2 and required by subsection 57(1) of the TMA: *Unitel Communications Inc v Bell Canada*, 1995 CanLII 19220 (FCTD), 61 CPR (3d) 12 at 23; *Advanced Purification Engineering Corporation (APEC Water Systems) v iSpring Water Systems, LLC*, 2022 FC 388 at para 13.

[17] First, it is sufficient that the person seeking expungement has used the asserted trademark on which they rely in the proceeding prior to the registration of the challenged trademark: *CIBC World Markets Inc v Stenner*, 2010 FC 397 at paras 20-21; *Blue Seal Inc v Poorter*, 2020 FC 178 at para 10; *51.ca Inc v Huang*, 2024 FC 1202 at para 23.

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