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CANADIAN TRADEMARKS ACT ANNOTATED

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Release No. 3, March 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 Appendix V. Recent Trademark Cases. A new section has been added to this appendix: § V:6. Some Canadian Trademark Court Cases Decided in 2025.

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Highlights

Appendix V. Recent Trademark Cases—§ V:6. Some Canadian Trademark Court Cases Decided in 2025—The following are excerpts from this section—

- **Section 7—Prohibitions [Unfair competition**] *Toyota Jidosha Kabushiki Kaisha v. Marrand Auto Inc*., 2025 CanLII 114198 (F.C.; 2025-11-06) T. Horne A.J.

  [10] Toyota was permitted to further amend the statement of claim. The test for passing off requires a plaintiff to establish: the existence of goodwill; deception of the public due to a misrepresentation; and actual or potential harm to the plaintiff (*Ciba-Geigy v Apotex Inc*, 1992 CanLII 33 (SCC), [1992] 3 SCR 120 at 132). I concluded [in *Toyota Jidosha Kabushiki Kaisha (Toyota Motor Corporation) v Marrand Auto Inc*, 2024 FC 1776; affd 2025 FC 1105; appeal A-242-25] that **it was arguable that a damaged and unsafe car part bearing TOYOTA branding, being presented to a consumer expressly or by implication as being of the same quality as what would be sourced from a Toyota dealer, could constitute a misrepresentation that pertains to a trademark** (para 33). I also concluded that it was arguable that misrepresentation could be based on claims of implied warranty—*ie* that consumers would believe that TOYOTA parts purchased from the defendant came with a Toyota warranty, when that is not the case (para 39).

- **Section 56—Appeal**

  Provexis Nutrition Limited v. Andrews Robichaud, 212 C.P.R. (4th) 8 (F.C.; 2025-02-21) Nowak J. [reversing on add. evidence 2024 CarswellNat 1693 (Registrar; 2024-04-16)].

  [15] As the Applicant has led new evidence on this appeal under subsection 56(5) of the *Act*, **this Court must first consider the materiality of that evidence and determine whether the evidence is sufficiently substantial, significant and probative that it would have a material impact on the Registrar's Decision** (*Clorox Company of Canada, Ltd v Chloretec SEC*, 2020 FCA 76 at para 21 [*Clorox*]; and *Vivat Holdings Ltd v Levi Strauss & Co*, 2005 FC 707 at para 27).

  [16] **If the evidence is material, the Court must review that portion of the decision to which the evidence applies on a correctness standard and make its own determination on the basis of the whole of the evidence by way of a "*de novo*" review** with the benefit of the Second Ford Affidavit (*Clorox* at para 21; and *Seara Alimentos Ltda v Amira Enterprises Inc*, 2019 FCA 63 at para 22).