

was not evidence of use of the mark. Even if such correspondence related to previously sold, branded products (of which there was no evidence), there was no indication that sales of the branded products occurred in the prior three years.

Significance

As a result, the expungement decision was upheld on appeal. The lesson of this case for owners of

registered trade-marks is to take correspondence from the Trade-marks Office seriously. Ensuring that an agent and representative for service are appointed can facilitate the receipt of important correspondence and ensure that such correspondence is acted on in a timely manner.

A second lesson gleaned from this decision is for all registered trademark owners to pay attention to the requirement for use of the mark in

relation to the claimed wares or services, and to maintain evidence of such use in the event that the trademark is ever challenged.

REFERENCES: *Medos Services Corporation v. Ridout and Maybee LLP* 2013 FC 1006, 2013 Carswell-Nat 4120 (F.C.); *Evans v. Bartlam* [1937] AC 473, [1937] 2 All ER 646, at page 479.

DIRECTORS' AND OFFICERS' LIABILITY

Harsh settlement terms for insider trading accusations

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A recent settlement of insider trading allegations underscores the need for corporate insiders to carefully assess the possible materiality of information before trading securities.

As part of a recent settlement of insider trading allegations with the Alberta Securities Commission ("ASC"), Anthony Lambert, the former CEO and President of Daylight Energy Inc. ("Daylight") agreed to refrain from acting as director or officer of a reporting issuer for two years.

Lambert also paid \$229,000 to the ASC which sum represented the profit made on the impugned trade and a portion of the investigation costs.

The decision is notable in that significant sanctions were imposed by the ASC based on a broad interpretation of what constituted undisclosed material information and despite the fact that the CEO did not actually admit to any wrongdoing.

Facts

The ASC had alleged that the CEO breached the Alberta *Securities Act* (the "Act") and acted contrary to the public interest by buying 60,000 Daylight shares with knowledge that Sinopec International Petroleum Exploration and Production Co. ("SIPC") was interested in acquiring Daylight.

Daylight was an oil and gas company operating in Alberta and British Columbia. SIPC approached Daylight's financial advisors, Canaccord Financial ("Canaccord"), regarding the possibility of entering into a transaction with Daylight.

Correspondence

Canaccord subsequently sent Lambert correspondence from SIPC referring to the possibility of exploring "a major strategic investment transaction" and advising that SIPC was "interested in discussion of acquiring the whole company."

The correspondence was immediately circulated to Daylight's Vice President, General Counsel, Governance Committee Chair and external counsel, each of whom agreed that the communications were immaterial and did not raise trading issues.

Profit

Lambert subsequently purchased 60,000 shares of Daylight on the Toronto Stock Exchange. When SIPC ultimately closed an agreement to acquire Daylight four months later, Lambert realised a profit of \$129,000.

Notice of hearing

In early 2013, the ASC issued a Notice of Hearing alleging that Lambert breached s. 147(2) of the Act and acted contrary to the public interest by purchasing securities in Daylight with knowledge of an undisclosed material fact.

The ASC also claimed that Lambert violated s. 147(3) of the Act by encouraging his former wife to purchase shares in Daylight. (She, in turn, recommended that her boyfriend do the same.)

Other charges

The ASC charged both Lambert's former wife and her boyfriend with insider trading on the basis that they had acquired knowledge of the potential acquisition from Lambert and were thus in a "special relationship" with Daylight when they purchased the company's shares.

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