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an infringement claim. An infringement claim requires proof of the use of the infringing trademark in association with the defendant's services.

In this case, the defendant's website did not make any reference to the plaintiff's registered trademarks; as such, a trademark infringement action would likely not succeed. This is likely why the plaintiff pursued a claim using the tort of passing-off.

Initial interest confusion

Interestingly, the court took the view that initial interest confusion has not been incorporated into Canadian law. Initial interest confusion is confusion that is resolved prior to the purchase of a product or service.

This view seems to be at odds with the Supreme Court of Canada's

decision in *Masterpiece Inc. v. Alavida Lifestyles Inc.* In that case, the Court found that initial interest confusion erodes the goodwill of a trademark which is a harm that trademark law is designed to remedy.

The decision of the court in this case is based (in part) on the fact that Google controls the Adword processes and search results, while the defendant only bids on the keywords and would be at a disadvantage if it could not participate in the Adwords program.

In recent cases, on different issues, the courts (in Canada and abroad) have taken issue with Google's search results/links. Caution should be exercised where one seeks an advantage from the use of a trademark of a competitor in an area where the law is evolving.

REFERENCES: Online, <http://www.barrysookman.com/2015/08/25/keyword-advertising-not-passing-off-vancouver-community-college-v-vancouver-career-college/>; online, <https://en.wikipedia.org/wiki/AdWords>; *Vancouver Community College v. Vancouver Career College (Burnaby) Inc.*, 2015 BCSC 1470, 2015 CarswellBC 2390 (B.C. S.C.); *Masterpiece Inc. v. Alavida Lifestyles Inc.*, 2011 SCC 27, 2011 CarswellNat 1613, 2011 CarswellNat 1614 (S.C.C.) at para. 73; online, <http://www.bereskinparr.com/Doc/id629> (C. Lovrics and T. Winegust); *Duffy v. Google Inc.*, [2015] SASC 170 (27 October 2015, Australia); *Equustek Solutions Inc. v. Jack*, 2015 BCCA 265, 2015 CarswellBC 1590 (B.C. C.A.) (Canada).

WHITE COLLAR CRIME

Red flags of employee fraud

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Employees should be on the lookout for warning signs of employee fraud.

Employee fraud presents a serious problem for employers. Such frauds can sometimes go unnoticed for years and are often perpetrated by highly-trusted employees. But, there are warning signs that employers can watch for, some of which may be surprising. Be on the alert for any of the following and consider whether further investigation is necessary.

Perfect attendance

Often overlooked, a key warning sign of potential fraud is perfect attendance. An employee's unexplained refusal to take sick days or vacation may simply demonstrate an exemplary commitment to the

organization, but it can also be a method of concealing fraud.

Fraudulent employees may insist on attending work so they can ensure that evidence of their wrongdoings remains concealed. Consider mandating annual vacations. Many workplace frauds are discovered when employees are forced to be away from the workplace and can no longer actively conceal their activities.

Similarly, a refusal to take promotions could indicate that an employee wishes to stay in their role to avoid detection of their fraudulent activity.

Behavioural changes

Unexplained changes in behavior should be monitored. For example, an apparent increase in stress without any identifiable new pressure, such as an increased workload, may suggest potential fraud.

Employees who are suddenly aggressive or defensive when asked reasonable questions about their

work may also be demonstrating defensive tactics to avoid detection of wrongdoing. In addition, personal issues such as excessive gambling, substance abuse, and significant financial difficulties can have a correlation with employee fraud.

Model employee

In many cases of fraud, perpetrators are "model" employees. By performing at a high level, they seek to compensate for their illicit activity and avoid raising suspicion.

Long-serving employees may also present a higher risk of fraud. They are intimately aware of the internal controls that exist to prevent fraud and may have sufficient institutional knowledge to circumvent those controls. In these cases, 360 performance reviews can sometimes assist with detection, as the fraudulent employees may not be as focused on duping their subordinates.

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A persistent, unexplained increase in daily hours worked, especially after other employees have gone home, may also indicate fraudulent activity. Though there may be an innocent reason why the model employee is always the last to leave the office, such an employee also gains the opportunity to access employer files and systems without detection, under the guise of working late. Consider tracking patterns in employee departures.

Employers should also beware a model employee's achievement of unrealistically high targets, such as sales or commissions. Especially where remuneration is linked directly to performance, such achievements may be too good to be true and may be a red flag for illegitimate activity.

Possessiveness

Suspicion may be warranted when an employee is highly possessive of internal procedures or controls. Beware employees who become involved in day-to-day operations outside the scope of their roles for unexplained reasons.

Abnormal relationships with individuals in other departments with

access to sensitive areas may also signal a coordinated fraud. Further, unusual requests for information regarding procedures or systems in areas inconsistent with an employee's responsibilities may suggest that the employee is seeking information to perpetrate a fraud.

If employees request time to prepare "properly" for internal audits, or request in-depth or unusual information about the scope of internal audits, it may indicate employees who are seeking to hide wrongdoing. Employers should provide only essential information in connection with audits.

Interactions

Some frauds involve employees dealing directly with customers or vendors to carry out the scheme. Where customers or vendors insist on dealing with a particular employee, this may suggest that they are working together to coordinate a fraud.

If the employee insists on tendering contracts to only one supplier in the face of commercially reasonable alternatives, this may also indicate an ulterior motive behind the relationship. Further, a strong interest or involvement in procurement outside

of an employee's responsibilities may be a warning sign.

On the other hand, if the customer or vendor is not complicit in the fraud, there may be a rise in customer or vendor complaints relating to missing or incorrect statements of account or transactions that they were not aware of and did not authorize. If a rise in such complaints is consistently attributable to a single employee or group of employees, consider further investigation.

Flaunted wealth

Finally, and perhaps most obviously, an unexplained, sudden change in lifestyle that includes excessive spending and displays of wealth is an indicator of potential fraud. Examples include significant purchases, such as cars, jewelry, or other big ticket items, or carrying large sums of cash.

Similarly, a new social circle associated with such an unexplained increase in wealth may be another red flag. An employee's inability to explain their new-found wealth, or an implausible explanation (such as lottery winnings) will warrant further investigation.

INTERNATIONAL TAXATION

Canada and BEPS

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The OECD has released near-final recommendations on the BEPS project to the G20

In the International Taxation article of *Legal Alert*, Volume 33, Number 12, March 2015, this writer focused on the G20/OECD BEPS crusade that had begun in February 2013, with a view to countering international tax planning that allegedly is

abusive. That report noted that the crusade

took the form of adopting ... a three year plan to develop a 15-part action plan to counter the perceived tools of abusive tax planning (or 'tax avoidance') namely base erosion and profit shifting ("BEPS").

The report went on to review the background and tax policy considerations comprising and underlying BEPS, and the status of the project at that point, and concluded with the thought that it was

premature to say whether the BEPS initiative will have the effects its sponsors had in mind.

But, with the release of the OECD's near-final recommendations on the project to the G20 on October 5, 2015, that assessment can now be attempted.

October 5 report

Prior to the advent of the BEPS project, there hadn't been many international anti avoidance rules that hadn't already been thought of and used and, thus, not available to

See International Taxation, page 78