

Saving Face: Minority Shareholder Estée Lauder Granted Interim Relief in Oppression Application Against Deciem Beauty Group

November 5, 2018

By

Toronto-based cosmetics company Deciem Beauty Group Inc. (“Deciem”) has been in the headlines following two recent decisions of the Commercial List,^[1] in which the Ontario Superior Court of Justice granted extensive urgent injunctive relief in an application under the oppression remedy provisions of the *Canada Business Corporations Act* (“CBCA”).^[2]

Summary of the Facts

Headquartered in Toronto, Deciem operates 30 stores worldwide, sells products through retailers and conducts significant online business through its website. Deciem employs approximately 400 people and is party to a broad array of commercial relationships with landlords, manufacturers, suppliers, customers, and consumers. The company has enjoyed a significant public profile thanks, in part, to a celebrity following which includes Kim Kardashian West.

Estée Lauder Cosmetics Limited (“Estée Lauder”) owns one third of the shares of Deciem. The other two-thirds of Deciem’s shares are owned by Integridad Inc., another *CBCA* corporation. Integridad is, in turn, owned 50/50 by two individuals, Mr. Cusano and Deciem’s founder, Mr. Truaxe.

The Court’s decision refers to a series of “increasingly aberrant and irrational behaviour” displayed by Deciem’s founder since early 2018.^[3] The actions and behavior are detailed in the decision, but include Mr. Truaxe posting “literally hundreds of erratic and disturbing posts on Deciem’s social media accounts and websites,” many of which were directed against Deciem’s employees, directors, shareholders, customers, suppliers, and competitors.^[4] Even then, Justice Penny took pains to “emphasize that in [his] recitation of the facts [he has] barely scratched the surface of the evidence supporting the need for urgent interim relief in this case.”^[5]

Despite documented efforts by Deciem personnel to manage the situation,^[6] matters came to a head when, on October 8, 2018, Mr. Truaxe “abruptly and unilaterally directed the employees of Deciem to cease all operations immediately.”^[7] This was done without consulting Deciem’s board of directors or any other parties to a unanimous shareholders agreement.^[8] In addition, Mr. Truaxe released a video on Deciem’s corporate Instagram account in which he stated that Deciem was shutting down all operations until further notice and alleged that “almost everyone at Deciem has been involved in a major criminal activity which involves financial crimes.”^[9] He also posted messages on Deciem’s Instagram account which were directed at banks, hotel chains, pharmacies, Deciem employees, and Hollywood celebrities, in which he stated “every one of you who has been laughing at me will with certainty face criminal prosecution.”^[10]

On October 9, 2018, employees did not show up for work, the majority of Deciem’s stores did not open and operations effectively

ceased. Deciem's online sales were halted as its website was shut down.[\[11\]](#)

The Court found that Mr. Truaxe's actions had brought Deciem "to the brink of disaster":

As a result of these unilateral and unauthorized actions, this highly successful international company is now teetering on the brink of disaster. Customers, suppliers, landlords and others have taken Mr. Truaxe's statements as, among other things, constituting anticipatory breach of Deciem's obligations and have threatened to terminate relations and or initiate litigation.[\[12\]](#)

Procedural History

Estée Lauder and its parent company, Estée Lauder Companies Inc., brought an urgent motion within an oppression application under the *CBCA* seeking, among other things, to remove Mr. Truaxe from his roles as director, officer, and co-chief executive officer of Deciem. Estée Lauder also sought orders prohibiting Mr. Truaxe from interfering with the operation of Deciem's business. Notably, Estée Lauder sought to appoint a well-known accounting firm to investigate and report to Deciem's board of directors on the public allegations made by Mr. Truaxe of criminal activity and on the financial condition of Deciem.

Part 1: The Motion for Interim Relief under the Oppression Remedy

The Court held that injunctive relief in this case requires establishing that:

(1) there is a triable issue of oppression;

(2) Estée Lauder (and Deciem) will suffer irreparable harm if the injunction is not granted (that is, harm not compensable in damages); and

(3) the balance of convenience favours granting the injunction in the sense that the harm to Estée Lauder and Deciem if the injunction is not granted will outweigh any harm suffered by Mr. Truaxe if it is.[\[13\]](#)

The Court held that the requirement of a triable issue of oppression was "more than met".[\[14\]](#) The Court concluded that Estée Lauder reasonably expected Mr. Truaxe to honour the unanimous shareholders agreement and to act honestly and in good faith and in the best interests of Deciem. The Court held that there was "ample evidence" that Mr. Truaxe had taken actions which were not only irrational, but "actively destructive of the company and its business," and that such conduct had defeated Estée Lauder's reasonable expectations.[\[15\]](#)

The Court concluded that immediate relief was necessary and appropriate in the circumstances:

Without immediate remedial action, Deciem will cease to function and go into a tail spin. Approximately 400 employees will be out of work, the company will become embroiled in a hurricane of legal proceedings and much of its value will likely evaporate.[\[16\]](#)

In considering the two remaining branches of the test, the Court was focused on the loss of jobs:

... The harm occasioned by the collapse of highly successful international business [sic] which employs about 400 people in research and development, manufacturing, sales and administration is manifestly irreparable in nature.

Finally, the loss of jobs, the loss of the business and its going concern value will far outweigh any harm to Mr. Truaxe from being temporarily removed from his position while stabilizing actions are taken to "right the ship." The balance of convenience overwhelmingly favours granting the injunctive relief sought on this motion.[\[17\]](#)

The Court held that the remedies sought fell squarely within the provisions of s. 241(3) of the *CBCA* and were all necessary to curtail the destructive behaviours at issue so that Deciem could resume normal business operations.^[18]

The Court applied s. 247 of the *CBCA*, which provides that the Court may order a director or officer or party to comply with, or restrain from acting in breach of, a unanimous shareholders agreement. The Court further applied s. 241(3)(C) of the *CBCA* to amend Deciem's unanimous shareholders agreement on the basis that amendments were required to conform to the interim orders being made.^[19]

The Court concluded that Mr. Truaxe's allegations that Deciem is "riven with criminal conduct" needed to be investigated and reported on by a qualified, independent investigator and appointed a well-known accounting firm to complete the investigation.^[20]

Deciem Part 2: Motion for Contempt and to Vary the Order

One week after the Court granted injunctive relief, Estée Lauder found itself back in Court on a motion for contempt and to seek a more explicit prohibition against communications with Deciem staff, officers and directors, etc. by Deciem's founder.

The Court declined to deal with the contempt portion of the motion after Mr. Truaxe advised he was out of the country and intended to retain counsel. However, the Court did vary its original order to clarify the prohibition on communications with Deciem personnel.

Takeaways

The Deciem case serves as a cautionary tale for minority investors, particularly those investing in industries with consumer facing operations and significant public profile. In an increasingly "instant" economy, control over corporate social media accounts represents a significant public relations and risk management consideration for companies.

In appropriate cases, injunctive relief is available on an urgent basis to take some control in the face of oppressive conduct. However, the threshold for such relief is high and the remedies available are generally reactive, rather than preventative, given the legal test.

On the other side of the coin, the Deciem case is the latest reminder that even founders with a controlling corporate stake cannot act with impunity and are answerable to other stakeholders. Where conduct crosses the line such that it is oppressive, unfairly prejudicial or unfairly disregards the interests of shareholders, creditors, directors or officers of the corporation, the Court can step in to oust a founder.

^[1] *Estée Lauder Cosmetics Inc. v. Deciem Beauty Group Inc.*, 2018 ONSC 6079 [*Deciem*] and the Endorsement of Justice Penny dated October 19, 2018.

^[2] R.S.C. 1985, c. C-44.

^[3] *Deciem*, *supra* note 1 at para. 5.

^[4] *Ibid* at para. 25.

^[5] *Ibid* at para. 18.

^[6] *Ibid* at para. 32.

[\[7\]](#) *Ibid* at para. 6.

[\[8\]](#) *Ibid*.

[\[9\]](#) *Ibid* at para. 7.

[\[10\]](#) *Ibid* at para. 8.

[\[11\]](#) *Ibid* at paras. 13-14.

[\[12\]](#) *Ibid* at para. 15.

[\[13\]](#) *Ibid* at para. 42.

[\[14\]](#) *Ibid.* at para. 44.

[\[15\]](#) *Ibid*.

[\[16\]](#) *Ibid* at para. 45.

[\[17\]](#) *Ibid* at paras. 47-48.

[\[18\]](#) *Ibid* at para. 50.

[\[19\]](#) *Ibid* at para. 51.

[\[20\]](#) *Ibid* at para. 52.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

For more information or inquiries:

Toronto

Email:



www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035