

**Evidentiary sources identified by CorbinPartners Inc. in
Dollarama L.P. vs T.S. Action \$1+ Inc.**

On December 15, 2011 *Dollarama L.P.* commenced a legal proceeding against *T.S. Action \$1+ Inc.* in Federal Court. According to the Statement of Claim, T.S. Action \$1+ Inc. owns and operates a store in Montreal under the business name “Dollarsama” and allegedly uses “Dollaranam” and “Dollartsam” as additional business names. Further, it makes use of green and yellow colours in conjunction with the trade-names, and other trade indicia inside the stores which Dollarama claims cause confusion.

What are the evidentiary sources available to Dollarama?

Its claims of goodwill and reputation are open to support by facts of its geographical presence, advertising, client base, and sales volumes. Media publicity, Internet references and social media exchanges can also be objectively assembled and subjected to statistical analysis. Finally, public surveys of awareness and shopping experience would demonstrate the extent of reputation and goodwill. It may even be that Dollarama’s awareness fits an intuitive profile of a “well-known mark,” which carries with it a branding halo effect.

What about possible evidence of confusion?

The foundation of such possibility is in the names - DOLLARAMA already being registered, and DOLLARSAMA presenting a reader-in-a-hurry with a single mid-word letter change that may escape notice. When assessing the combination of similar names with common store-front colours and other similar trade indicia inside the store, a court may prefer to substitute judicial notice for a survey - judicial notice of whether or not “common sense” is sufficient to anticipate likelihood of confusion.

Strength of marketplace evidence cannot be anticipated in advance. However, should evidence of goodwill and reputation provide a sufficiently strong foundation, a survey of possible confusion in this case is unlikely to be worth the cost in terms of what extra value it could add.