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(Court seal)

Court File No. T-

-22

FEDERAL COURT

BETWEEN:

CanGas Propane Inc.

Plaintiff

- and -

CanaGas Incorporated

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules, serve it on the plaintiff's solicitor or, if the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court

WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the Federal Courts Rules.

Copies of the Federal Courts Rules, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

December __, 2022

Issued by: _____
(Registry Officer)

Address of local office:
The Court House
520 Spadina Crescent East
Saskatoon SK S7K 3G7

TO: CanaGas Incorporated
40-50470 Range Road 234
Leduc County AB T4X0L7

CLAIM

(a) *Prayer for relief*

1. The Plaintiff claims:

- (a) a declaration that the Defendant has infringed the Plaintiff's exclusive right to the use in Canada of the CANGAS PROPANE trademark, TMA1087775, contrary to sections 19 and 20 of the *Trademarks Act*, RSC 1985, c T-13 (hereinafter the "*Trademarks Act*");
- (b) a declaration that the Defendant has directed public attention to its goods and services in such a manner as to cause or be likely to cause confusion in Canada between its goods and services and the goods and services of the Plaintiff, contrary to subsection 7(b) of the *Trademark Act*;
- (c) a declaration that the Defendant has passed off its business, services, and goods for the business, services, and goods of the Plaintiff, contrary to subsection 7(c) of the *Trademarks Act*;

- (d) damages in excess of \$50,000 in an amount to be proven in the within action or, in the alternative, an accounting of the profits of the Defendant, whichever the Plaintiff, after due inquiry and full discovery of the Defendant, may elect;
- (e) exemplary, punitive and aggravated damages for willfully and knowingly infringing the CANGAS PROPANE trademark, with callous disregard for the Plaintiff and continuing to do so in the face of clear infringement;
- (f) an interlocutory and permanent injunction, restraining the Defendant, its respective officers, directors, employees, agents, servants, successors, affiliates, subsidiaries, related companies, all those over whom it exercises control and all other persons who have knowledge of this injunction, from either directly or indirectly:
 - (i) infringing the CANGAS PROPANE trademark contrary to sections 19 and 20 of the *Trademarks Act*;
 - (ii) directing public attention to its businesses, services or goods in such a manner as to cause or be likely to cause confusion in Canada at the time they commenced so as to direct attention to them, between its goods or services and the goods or services of the Plaintiff, contrary to subsection 7(b) of the *Trademarks Act*;
 - (v) passing off its businesses, services and goods for the businesses, services and goods of the Plaintiff contrary to subsection 7(c) of the *Trademarks Act*;
- (g) costs of this action according to Column V of Tariff B of the *Federal Court Rules*, SOR/98-106, including all disbursements and applicable GST/PST;

- (h) an order requiring the Defendant forthwith to deliver up to the Plaintiff, or destroy under oath or render non-infringing, all goods, labels, invoices, packaging, signage, advertising material, printed matter, masters for making any such material, and any other material for producing or printing such items in the possession, power, care, custody or control of the Defendant as may offend any injunctions granted herein;
- (i) pre-judgment and post-judgment interest pursuant to the *Federal Courts Act*, RSC 1985, as amended; and
- (j) such further and other relief as this Honourable Court may deem just.

(b) Parties

2. The Plaintiff, CanGas Propane Inc. (hereinafter referred to as “**CanGas Propane**”) is a corporation incorporated and existing under the laws of Saskatchewan, with its principal place of business in Saskatoon, Saskatchewan.
3. The Defendant, CanaGas Incorporated (hereinafter referred to as “**CanaGas Inc**”) is a corporation incorporated and existing under the laws of Canada, with its principal place of business in Leduc, Alberta, and its registered office in St. John’s, Newfoundland.
4. At all material times, the Plaintiff, CanGas Propane, operated throughout Saskatchewan, Alberta, British Columbia and the Northwest Territories, providing both residential and commercial sale and delivery of propane.
5. At all material times, the Defendant, CanaGas Inc, manufactured pressure tanks used for the intermodal transport of natural gas and propane in Canada and the export of natural gas and propane from Canada.

(c) *Plaintiff's trademarks*

6. CanGas Propane owns the trademark CANGAS PROPANE, TMA 1087775, registered on November 11, 2020, and used in Canada since March 30, 2018, for services described as “transportation and delivery of propane for use as fuel” (hereinafter “CANGAS PROPANE”).
7. CanGas Propane is, furthermore, the owner of Trademark Application No. 2082632 for Cangas Propane & Design,



which was filed on February 4, 2021, for services described as “transportation and delivery of propane for use as fuel” (hereinafter “Cangas Propane & Design”)

8. CanGas Propane is, furthermore, the owner of Trademark Application No. 2082631 for Cangas Flame Design,



which was filed on February 4, 2021, for services described as “transportation and delivery of propane for use as fuel” (hereinafter “Cangas Flame Design”).

9. CanGas Propane has been and is engaged in the transportation and delivery of propane for use as fuel, using CANGAS PROPANE, Cangas Propane & Design and CanGas Flame Design.
10. CanGas Propane has extensively and continuously used, advertised and

promoted the CANGAS PROPANE, Cangas Propane & Design and CanGas Flame Design in Canada. CANGAS PROPANE, Cangas Propane & Design and CanGas Flame Design are well known to the public in Canada as identifying CanGas Propane's services. CanGas Propane has thereby developed a valuable and substantial goodwill in association with the CANGAS PROPANE, Cangas Propane & Design and CanGas Flame Design.

11. By virtue of Registration No. TMA108775 for CANGAS PROPANE, CanGas Propane has the exclusive right to the use throughout Canada of CanGas Propane's trademark CANGAS PROPANE.

(d) Defendant's infringing acts

12. Without license, authority, or the consent of CanGas Propane, CanaGas Inc began and continues to manufacture pressure tanks used for the intermodal transport of natural gas and propane in Canada and the export of natural gas and propane from Canada using CANAGAS and its CANAGAS logo, , which are confusingly similar to CANGAS PROPANE.

13. Further, CanaGas Inc's CANAGAS trademark and its logo,  are confusingly similar to Cangas Propane & Design () and CanGas Flame Design (). CanaGas Inc has thereby passed off its services for the services of CanGas Propane contrary to subsection 7(c) of the *Trademarks Act*. CanaGas Inc, by such acts has, furthermore, directed public attention to its services in such a way as to cause or be likely to cause confusion in Canada between its services and the services of CanGas Propane, contrary to subsection 7(b) of the *Trademarks Act*.
14. CanaGas Inc knew or ought to have known of CanGas Propane's trademark CANGAS PROPANE and registration of that trademark and nonetheless proceeded to manufacture pressure tanks used for the intermodal transport

of natural gas and propane in Canada and the export of natural gas and propane from Canada using a trademark identical to CanGas Propane's trademark or confusingly similar to CanGas Propane's trademark.

15. The full extent of CanaGas Inc's activities is at present unknown to CanGas Propane but it is known to CanaGas Inc. CanGas Propane seeks relief in relation to all infringing activities committed by CanaGas Inc.

(e) *Relief sought and quantum*

16. By its conduct and action described in paragraphs 12-15, CanaGas Inc has infringed the exclusive rights of CanGas Propane in the registered CANGAS PROPANE trademark, contrary to section 19 and 20 of the *Trademark Act*.
17. By its conduct and action described in paragraph 12-15, CanaGas Inc has furthermore directed public attention to its services in such a way as to cause or to be likely to cause confusion in Canada between its services and the services of CanGas Propane, contrary to subsection 7(b) of the *Trademarks Act*.
18. By its conduct and action described in paragraph 12-15, CanaGas Inc has furthermore passed off its services for the service of CanGas Propane, contrary to subsection 7(c) of the *Trademarks Act*.
19. CanGas Propane has not consented to any of the aforesaid acts of CanaGas Inc. CanaGas Inc accordingly has infringed and continues to infringe the CANGAS PROPANE trademark.
20. CanGas Propane has complained to CanaGas Inc regarding the aforesaid activities. CanaGas Inc has nevertheless continued the activities complained of and threatens to continue such activities unless restrained by Order of this Honourable Court.
21. By reason of its conduct and action as described above, CanaGas Inc has

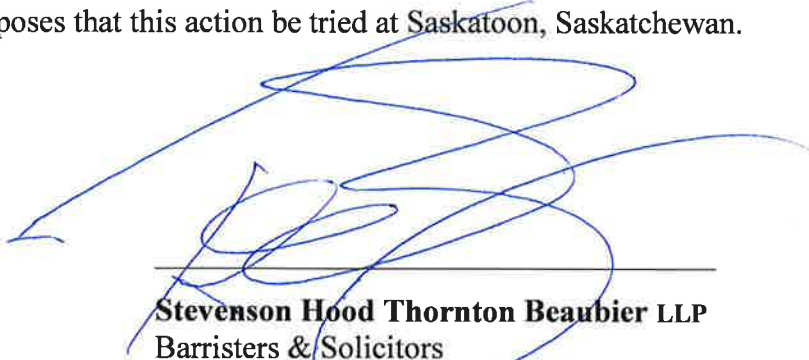
profited and will continue to profit, and CanGas Propane has suffered and will continue to suffer damage.

22. CanaGas Inc's egregious conduct in knowingly violating CanGas Propane's trademark and continuing to do with full knowledge of CanGas Propane's rights is sanctionable by punitive damages.

(f) Miscellaneous

23. CanGas Propane pleads and relies on the *Trademarks Act* and, in particular, subsections 7(b), 7(c), and sections 19 and 20.
24. CanGas Propane, therefore, respectfully requests that this action be allowed, with costs to CanGas Propane payable on a solicitor and client basis, together with all of CanGas Propane's disbursements, inclusive of expert witness fees and GST/PST.
25. The Plaintiff proposes that this action be tried at Saskatoon, Saskatchewan.

December 20, 2022



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