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	April 27, 2026 27 avril 2026		
	Kadara Thompson		
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Court File No. _____

FEDERAL COURT

BETWEEN:

2K4, Inc.

Applicant

-and-

Indiecan Entertainment, Inc.

Respondent

NOTICE OF APPLICATION

(Pursuant to Section 56(1) of the *Trademarks Act* R.S.C., c. T-13)

TO THE RESPONDENT:

APROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Ottawa, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with this notice of application.

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 OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: April 27, 2026

Issued by: _____

(Registry Officer)

Address of local office: 90 Sparks Street, Main Floor Ottawa, Ontario K1A 0H9

TO: **THE ADMINISTRATOR**
Federal Court
Thomas D'Arcy McGee Building
90 Sparks Street, Main Floor
Ottawa, Ontario K1A 0H9

AND TO: **Indiecan Entertainment, Inc.**
194 Glenholme Ave
York, ON M6E 3C4

AND TO: **Dipchand LLP**
401 Bay St. Suite 2100
Toronto, ON M5H 2Y4

Issued on: May 04, 2026

Issued by: Kadara Thompson (Registry Officer)

Address of Local Office: 90 Sparks Street/rue Sparks Ottawa, Ontario K1P 5R5

May M Cheng (mcheng@dipchand.com)

AND TO: **THE REGISTRAR OF TRADEMARKS**
Canadian Intellectual Property Office
Executive Office to the Registrar of
Trademarks
50 Victoria Street, Phase 1, 4th Floor
Gatineau, Quebec K1A 0C9

**Served via the Federal Court Registry
Pursuant to Rule 133 of the *Federal
Courts Rules***

APPLICATION

THE APPLICANT APPEALS to the Federal Court pursuant to section 56(1) of the *Trademarks Act*, R.S.C. 1985, c. T-13, as am., (the “**Act**”) from the decision of the Registrar of Trademarks (the “**Registrar**”), notice of which was dispatched to the parties on February 25, 2026 (2026 TMOB 33) (the “**Decision**”), refusing trademark application no. 1,995,848 (the “**Application**”) for the trademark INDICAN PICTURES (the “**Trademark**”).

THE APPLICANT MAKES APPLICATION FOR:

1. An order granting leave to the Applicant to adduce new evidence pursuant to section 56(5) of the *Act*;
2. A declaration that the Registrar erred in refusing the Application;
3. An order pursuant to section 56(1) of the *Act* allowing this appeal, setting aside the Decision, and rejecting the Respondent’s opposition to the Application;
4. An order directing that the Application be allowed and proceed to registration;
5. Costs of this Application; and
6. Such further and other relief as the Applicant may request, and this Honourable Court may permit.

THE GROUNDS FOR THE APPLICATION ARE:

7. On November 13, 2019, the Application was filed.
8. On November 2, 2022, the Respondent opposed the Application.
9. On February 25, 2026, notice of the Decision allowing the opposition was transmitted to the parties. The Respondent succeeded in its opposition on the basis of non-entitlement to use. In rendering the Decision, the Registrar concluded that, on a balance of probabilities, the Application was not registrable because it was determined that the Respondent used its “Indiecan” trademarks (the “**Indiecan Marks**”) earlier than the Applicant’s use of the Trademark, and that there was a likelihood of confusion between the Indiecan Marks and the Trademark.

10. The Decision was unreasonable and the Registrar erred in both fact and law in refusing the Application, for at least the following reasons:

- a. The Registrar erred in finding that the evidence did not establish use of the Trademark, in Canada, in association with film distribution services prior to 2011;
- b. The Registrar erred in concluding that on-screen display of the Trademark does not amount to use through advertising of film distribution and that a moviegoer would not draw a connection between the Trademark and the Applicant's film distribution services;
- c. The Registrar erred in finding that the evidence did not establish that the Applicant distributed films in Canada prior to 2011;
- d. The Registrar erred in finding that film distribution services cannot be provided in Canada by the Applicant, if such services are offered through an intermediary;
- e. The Registrar erred in concluding that the evidence of the Applicant's dealings with Canadian intermediaries did not establish use of film distribution services in Canada;
- f. The Registrar erred in discounting the significance of the SODRAC notice in establishing that the Applicant is a recognized film distributor in Canada;
- g. The Registrar erred in failing to attribute weight to the Applicant's evidence of advertisements, for reasons including that "film distribution services are not specifically referenced in these advertisements";
- h. The Registrar erred in finding that the evidence did not establish that the Applicant was willing and able to perform film distribution services in Canada prior to 2016;
- i. The Registrar erred in concluded that the evidence established that the date of first use of the Trademark in Canada in association with film distribution services was November 5, 2016; and
- j. The Registrar erred in determining that the Applicant is not the person entitled to the registration of the Trademark.

11. The Applicant used the Trademark in Canada in association with film distribution services, prior to the Respondent's first use of the Indiecan Marks in Canada;
12. The Applicant's new evidence, if permitted under section 56(5) of the *Act*, would have materially affected the Decision;
13. Sections 4, and 16 of the *Act*, and all other relevant sections; and
14. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

15. Documents in the possession of the Registrar relating to the above-noted proceeding;
16. One or more affidavits or certified copies of documents that the Applicant may serve and file pursuant to Section 56(5) of the *Act* and Rule 306 of the *Federal Courts Rules*; and
17. Such further and other material as counsel may advise and this Honourable Court may permit.

Dated: April 27, 2026



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