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ISSUED
FEDERAL COURT
COUR FÉDÉRALE
ÉMIS
December 12, 2024
12 décembre 2024
Janelle Wong
TOR 1

Court File No. T-

FEDERAL COURT

B E T W E E N:

APPLE INC.

Plaintiff

- and –

NEXUS DISTRIBUTION INC. O/A NEXUS CELLULAR, IRFAN BAJWA and AYESHA BUTT

Defendants

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' solicitor or, where the Plaintiff do 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.

DATED this 12th day of December, 2024 **Issued by:** _____

Address of local office: 180 Queen Street West
Suite 200
Toronto, Ontario M5V 3L6

TO: **NEXUS DISTIBUTION INC. O/A NEXUS CELLULAR**
1200 Aerowood Drive, Unit 12
Mississauga, Ontario
L4W 2S7

1090 Aerowood Drive, Unit 7
Mississauga, Ontario
L4W 1Y5

TO: **IRFAN BAJWA**
628 Beachgrass Court
Mississauga, Ontario
L4Z 3Y8

TO: **AYESHA BUTT**
628 Beachgrass Court
Mississauga, Ontario
L4Z 3Y8

AND TO: **THE ADMINISTRATOR**
Federal Court

CLAIM

1. The Plaintiff claims:

(a) a declaration that the Defendants have imported into Canada Counterfeit Apple Merchandise, defined *infra* in paragraph 17, contrary to section 51.03 of the *Trademarks Act,* RSC, 1985, c. T-13 (the "***Trademarks Act***"); and that by so doing, the Defendants have infringed and are deemed to have infringed the exclusive rights to the use in Canada of the Apple Trademarks, as that term is defined *infra* in paragraph 4, contrary to sections 19 and 20 of the *Trademarks Act*;

(b) a permanent injunction restraining the Defendants and their employees, agents, licensees and any person acting under the instructions or with the consent or authority of or in concert with the Defendants from:

(i) importing, exporting, trafficking, selling, manufacturing, promoting and/or advertising or otherwise dealing in Counterfeit Apple Merchandise and any related packaging and/or labelling; and

(ii) infringing any of the Apple Trademarks.

(c) an order pursuant to section 51.11 of the *Trademarks Act* authorizing the Plaintiff to transfer the Counterfeit Apple Merchandise, as defined *infra* in paragraph 17, in the possession, custody, and control of the Minister from Canada Border Services Agency to a storage facility of its choice;

(d) in the alternative to the relief set forth at sub-paragraph (c) herein, an Order pursuant to section 51.11 of the *Trademarks Act*, that the Counterfeit Apple Merchandise be and are hereby ordered to be stored by the Minister, in a place other than a bonded warehouse or a sufferance warehouse, as those terms are defined in subsection 2(1) of the *Customs Act*, RSC, 1985, c. 1 (2nd Supp.) (the "***Customs Act***"), provided such storage is secure, and is less costly than a bonded warehouse or a sufferance warehouse;

(e) in the further alternative to sub-paragraph (c) herein, an Order that the Counterfeit Apple Merchandise is hereby forfeited under section 39(1) of the *Customs Act;*

(f) an order authorizing the Plaintiff to, in any manner in which it sees fit, destroy and/or dispose of the Counterfeit Apple Merchandise;

(g) an order directing the Defendants to pay to the Plaintiff, or as the Plaintiff shall direct, the costs associated with the cartage, storage, destruction and/or disposal of the Counterfeit Apple Merchandise;

(h) an order directing the Defendants to pay to the Plaintiff damages, to be assessed following an examination of the Defendants on the extent of the infringement of one or any of the Apple Trademarks, and judgment for that amount;

(i) in the alternative to the relief set forth at sub-paragraph (h) herein, an order directing an accounting and payment of the Defendants' profits, made in respect of the Defendants' infringement of the Apple Trademarks, which the Plaintiff may elect after an examination of the Defendants on the issues of the extent of the infringement and the quantum of profits generated there from, and judgment for that amount;

(j) the costs of this action (including any applicable taxes);

(k) pre-judgment and post-judgment interest; and

(l) such further and other relief as this Honourable Court may deem just.

The Parties

2. Apple Inc. ("**Apple**") is a California corporation, with its principal place of business at One Apple Park Way, Cupertino, California, 95014.

3. The Defendant, NEXUS DISTRIBUTION INC., is a company incorporated pursuant to the laws of Ontario with a registered head office address of 1200 Aerowood Drive, Unit 12, Mississauga, Ontario, L4W 2S7.

4. NEXUS DISTRIBUTION INC. also operates under the registered business name "NEXUS CELLULAR."

5. IRFAN BAJWA is an individual residing in the province of Ontario and is a director of NEXUS DISTRIBUTION INC. O/A NEXUS CELLULAR.

6. AYESHA BUTT is an individual residing in the province of Ontario and is a director of NEXUS DISTRIBUTION INC. O/A NEXUS CELLULAR.

7. NEXUS DISTRIBUTION INC. o/a NEXUS CELLULAR, IRFAN BAJWA and AYESHA BUTT shall be referred to herein as the "**Defendants".**

8. At all material times, one or more of the Defendants owned and/or operated a wholesale distribution business for mobile devices, parts and accessories located at 1090 Aerowood Drive, Unit 7, Mississauga, Ontario, L4W 1Y5.

The Plaintiff's Rights

9. Apple is the owner of numerous Canadian trademark registrations and applications including:

a)  (**APPLE DESIGN**) (TMA690,668 and TMA1,130,563);

b) **APPLE** (TMA690,669);

c) **AIRPODS** (TMA989,948); and

d) **AIRPODS MAX** (Application No. 2071995)

(collectively referred to hereinafter as the "**Apple Trademarks**").

10. The Apple Trademarks are distinctive in Canada of authentic Apple merchandise and are recognized and very well known in Canada.

11. The Apple Trademarks are highly successful and create instant recognition and association with Apple.

12. The Plaintiff has extensively advertised, promoted, and used throughout Canada the Apple Trademarks. By reason of such advertising, promotion and use, the Apple Trademarks have become well known to the public in Canada as distinguishing the goods of the Plaintiff from the goods of others.

13. Handheld and mobile digital electronic devices, headphones, accessories and other goods bearing the Apple Trademarks are recognized and well known in Canada and signify to the Canadian public goods of superb quality and revolutionary design.

14. Apple has extensively and continuously used, advertised, and promoted the good name and the reputation of the Apple Trademarks, throughout Canada in association with the authentic Apple merchandise and the services of Apple.

15. Through the extensive use, advertising and promotion of the Apple Trademarks, Apple has established a valuable reputation and goodwill in the Apple Trademarks in Canada.

16. Authentic Apple merchandise is subject to quality control and inspection prior to being released into the stream of commerce.

17. By virtue of the foregoing, Apple enjoys a valuable reputation and has tremendous goodwill in Canada and elsewhere by virtue of the Apple Trademarks as associated with the sale of goods displaying or incorporating same.

18. As a result of the aforesaid, Apple has the exclusive right to use, or authorize others to use, in Canada, the Apple Trademarks in association with the sale or license of goods displaying and incorporating same and the right to preclude others from using any one or more of the Apple Trademarks or any which are confusing therewith.

The Defendants' Improper Conduct

19. On dates known to the Defendants, but not within the knowledge of the Plaintiff, the Defendants imported products bearing one or more of the Apple Trademarks without the Plaintiff's authorization.

20. On November 13, 2024, the Plaintiff received initial notice from Canada Border Services Agency ("**CBSA**") that it had detained a shipment of approximately 50 items, including but

not limited to, headphones ("**Counterfeit Apple Merchandise**.") A representative from Apple examined digital image samples of these items and determined they were counterfeit. On November 14, CBSA confirmed to the Plaintiff that these items were imported by the Defendant, NEXUS DISTRIBUTION INC., at the address 1090 Aerowood Drive, Unit 7, Mississauga, Ontario, L4W 1Y5.

21. CBSA has detained the Counterfeit Apple Merchandise imported by the Defendants pending disposition by this Honourable Court.

22. On November 18, 2024, the Plaintiff delivered a cease-and-desist letter to the Defendants at 1090 Aerowood Drive, Unit 7, Mississauga, Ontario, L4W 1Y5, which, amongst other things, detailed Apple's rights in and to the Apple Trademarks and asked the Defendants to contact the Plaintiff to try to resolve this matter before the statutory deadline requiring Apple to file suit to maintain the detainment. Plaintiff followed-up this request with phone calls and emails on November 28, 2024, December 4, 2024 and December 10, 2024.

23. The Defendants have refused to comply with the Plaintiff's reasonable requests and the Plaintiff is required to commence these proceedings against the importer under the *Trademarks Act* failing which CBSA releases the shipment, including Counterfeit Apple Merchandise, to the Defendants.

24. Further, and without limitation, the Defendants knew of the Plaintiff's intellectual property rights due to their previous sale of Counterfeit Apple Merchandise since at least as early as 2018. The Plaintiff delivered a cease-and-desist letter to NEXUS DISTRIBUTION INC. O/A NEXUS CELLULAR at 1090 Aerowood Drive, Unit 7, Mississauga, Ontario, L4W 1Y5, in March 2018. The letter, among other things, detailed Apple's exclusive rights in and to its registered trademarks, including the Apple Trademarks, and requested that the Defendants immediately cease dealing in Counterfeit Apple Merchandise.

25. The Counterfeit Apple Merchandise that the Defendants are dealing in has not been authorized by the Plaintiff, is of the same general appearance as authentic Apple merchandise and is likely to cause confusion with authentic Apple merchandise.

26. The Plaintiff has never authorized the Defendants by license or otherwise to use the Apple Trademarks on any products, or to deal in goods bearing the Apple Trademarks.

27. Use by the Defendants of the Apple Trademarks in the manner described above infringes upon the Apple Trademarks and causes consumer confusion.

LIABILITY

Generally

28. By reason of the Defendants' activities as set out above, the Defendants have infringed and are deemed to have infringed the exclusive rights to the use in Canada of the Apple Trademarks, contrary to sections 19 and 20 of the *Trademarks Act*, and acted contrary to section 51.02 of the *Trademarks Act, supra.*

29. The Defendants' foresaid activities depreciate the value of the goodwill attached to the Apple Trademarks, contrary to Section 22 of the *Trademarks Act*.

Personal Liability of IRFAN BAJWA and AYESHA BUTT

30. IFRAN BAJWA and AYESHA BUTT are and have been, at all material times, the sole directors of NEXUS DISTRIBUTION INC.

31. IRFAN BAJWA and AYESHA BUTT personally and on behalf of NEXUS DISTRIBUTION INC. are dealing in Counterfeit Apple Merchandise.

32. IRFAN BAJWA and AYESHA BUTT used NEXUS DISTRIBUTION INC. to import and/or sell Counterfeit Apple Merchandise with full knowledge and reckless disregard for the rights of the Plaintiff.

33. IRFAN BAJWA and AYESHA BUTT are aware of the Plaintiff's rights in and to the Apple Trademarks and have been since at least March 2018. IRFAN BAJWA and AYESHA BUTT had knowledge that NEXUS DISTRIBUTION INC. was dealing in Counterfeit Apple Merchandise and failed to prevent the continuation of this wrongful conduct. They are personally liable for the wrongful conduct of NEXUS DISTRIBUTION INC.

DAMAGES

34. By reason of the Defendants' activities as set forth herein, the Plaintiff has suffered and continues to suffer loss, damages, and irreparable harm to its trademark rights and business reputation and the Defendants have made profits.

35. The Defendants' activities are causing serious and irreparable harm to the Plaintiff and the value of the goodwill in and to the Apple Trademarks. The Defendants will continue their wrongful acts unless restrained by Order of this Honourable Court.

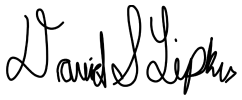
36. Full particulars of the Defendants' activities are not known to the Plaintiff, but the Plaintiff seeks relief in relation to all infringing or wrongful acts of the Defendants.

CUSTODY OF THE GOODS

37. The Plaintiff pleads and relies upon s. 51.09(4) and 51.11 of the *Trademarks Act*, to seek an Order granting delivery up and custody of any goods that bear any Apple Trademarks.

38. The Plaintiff proposes that this action be tried in Toronto, Ontario.

DATED this 12th day of December, 2024.



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Solicitors for the Plaintiff

Court File No.

FEDERAL COURT

B E T W E E N:

APPLE INC.

Plaintiff

-and-

NEXUS DISTRIBUTION INC. o/a NEXUS CELLULAR, IFRAN BAJWA and AYESHA BUTT

Defendants

STATEMENT OF CLAIM

LIPKUS LAW LLP
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Solicitors for the Plaintiff