

Federal Court



Cour fédérale

Date: 20170208

Docket: T-2026-13

Citation: 2017 FC 169

Vancouver, British Columbia, February 8, 2017

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

ZOE INTERNATIONAL DISTRIBUTING INC.

**Plaintiff
(Defendant by Counterclaim)**

and

**1673030 ALBERTA INC.,
VAPOUR LTD., OTC PRODUCTIONS INC.,
NIKKI'S VAPOR BAR USA, INC.,
BEST PRODUCT TECHNOLOGY**

Defendants

and

1673030 ALBERTA INC.

(Plaintiff by Counterclaim)

ORDER

UPON reading correspondence from counsel for the Plaintiff (Defendant by Counterclaim), Zoe International Distributing Inc. (“Plaintiff”);

AND UPON noting the consent of counsel for the Defendants 1673030 Alberta Inc., OTC Productions Inc. and Nikki's Vapor Bar USA, Inc., and Plaintiff by Counterclaim, 1673030 Alberta Inc., ("Consenting Defendants") to the Court pronouncing judgment in the terms of this Order;

THIS COURT:

1. Declares that as between the Plaintiff and the Consenting Defendants, the Plaintiff is the owner of the following trademark in Canada, which trademark is subsisting and valid:

Registered Trademark

JUICY TMA665,399 (the "**JUICY Registration**")

2. Declares that the Consenting Defendants, not including OTC Productions Inc., have infringed the JUICY Registration contrary to sections 19 and 20 of the *Trade-marks Act*.
3. Declares that the Consenting Defendants, not including OTC Productions Inc., have directed public attention to their goods, services and business in such a way as to cause or be likely to cause confusion in Canada between the Consenting Defendants' wares, services or business and the wares, services and business of the Plaintiff by using, without authorization, trademarks that are identical to or confusing with the JUICY Registration, contrary to section 7(b) of the *Trade-marks Act*.

4. Declares that the Consenting Defendants, not including OTC Productions Inc., have used the JUICY trademark in a manner that is likely to have the effect of depreciating the value of the goodwill attaching to the JUICY Registration, contrary to section 22 of the *Trade-marks Act*.
5. Declares that the Consenting Defendants, not including OTC Productions Inc., have passed-off their wares and business as and for those of the Plaintiff, contrary to section 7(c) of the *Trade-marks Act*. Orders that the Counterclaim is dismissed.
6. Orders that, except as may be permitted under agreement with the Plaintiff, the Consenting Defendants immediately and permanently cease all use of any trademark, trade name, business name, copyright, or design that in whole or in part reproduces or resembles the JUICY Registration, or is confusing with the JUICY Registration, or is derived from or based on the JUICY Registration, including in association with personal electronic vaporizing devices and bottled liquids for use in personal electronic vaporizing devices; however, the Licensor acknowledges that it has no exclusive right to use of the words “juice” or “e-juice”, and that the use of such terms in and of themselves do not and will not constitute confusion with the JUICY Mark, and do not and will not constitute a breach of this Consent Order provided that this does not restrict the Licensor’s rights to assert that any particular trademark is confusing with the Licensor’s JUICY trademark.
7. Orders that, without limiting the previous paragraph and except as may be permitted under agreement with the Plaintiff, the Consenting Defendants immediately and permanently cease all use of the following marks:

- (a) Juicy eJuice;
 - (b) Juicy eStick;
 - (c) Juicy Bucks;
 - (d) Juicy Shop;
 - (e) Juicy Guarantee;
 - (f) Juicy!;
 - (g) Juicy Affiliate!;
 - (h) Juicy Wholesale!;
 - (i) Juicy eJuice!;
 - (j) Juicy eJuice! and designs; and
 - (k) Juicy eJuice and designs.
8. Orders that, as between the Plaintiff and the Consenting Defendants, there shall be no damages, accounting of profits or costs payable by the Plaintiff or the Consenting Defendants, in respect of any activities to date that were the subject of this Action.
9. Orders that each party shall bear its own costs.

“Michel M.J. Shore”

Judge