

Federal Court



Cour fédérale

Date: 20250214

Docket: T-2419-23

Citation: 2025 FC 297

Ottawa, Ontario, February 14, 2025

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

JOANNA HABBOUS

Applicant

and

**ARC PHYSIO HEALTH LTD., KRYSTYNA
WILK and CHRISTINE KYNKAL
STEVENSON**

Respondents

JUDGMENT AND REASONS

I. Overview

[1] Joanna Habbous is the owner of the registered trademark PHYSIOHEALTH STUDIOS, registration No. TMA914,954 dated September 24, 2015, for physiotherapy equipment and supplies, as well as physiotherapy services, among other health-related goods and services. She brings this application for relief from claimed trademark infringement, passing off, and

depreciation of goodwill by the Respondents who initially adopted the name PHYSIO HEALTH but subsequently changed it to ARC PHYSIO HEALTH, in response to cease and desist correspondence from Ms. Habbous.

[2] Ms. Habbous asserts that PHYSIOHEALTH is the dominant feature of her registered trademark and that the marks PHYSIO HEALTH and ARC PHYSIO HEALTH, used by the Respondents for goods and services identical to her own, are confusingly similar.

[3] The Respondents counter that this application is without merit; “physio” and “health” are descriptive terms used by numerous third-party physiotherapy businesses and practitioners in their names and, thus, confusion is unlikely.

[4] Having reviewed the parties’ material, including their evidence, and considered their written and oral submissions, I find that Ms. Habbous has made out her claims, thus warranting judgment in her favour, but only as against the corporate Respondent, on the terms outlined below. Otherwise, the application will be dismissed as against the individual Respondents.

[5] The infringement and passing off claims turn on the likelihood of confusion between the parties’ marks and names which, in this case, also has a bearing on the likelihood of depreciation of goodwill. I therefore start with a summary of the background, followed by a recitation of the more specific issues disclosed by the parties’ records and submissions, and an analysis of each issue, including the issues of personal liability of the individual Respondents, and the remedies and costs to which the Ms. Habbous is entitled in the circumstances.

II. Background

A. *The Parties' Evidence*

[6] The Applicant's evidence consists of two affidavits from Ms. Habbous, one sworn on December 3, 2023 for the instant matter, and the second sworn on March 20, 2024 for Court file No. T-140-24 involving an expungement proceeding against trademark registration No. TMA914,954 for PHYSIOHEALTH STUDIOS [954 Registration] that has been discontinued. Further, the Respondents concede the validity of the 954 Registration.

[7] The Respondents' evidence consists of the affidavit of Krystyna Wilk, sworn on February 9, 2024. A second affidavit of Ms. Wilk dated February 21, 2024 is not in evidence in the proceeding presently before the Court.

[8] Both affiants were cross-examined on their affidavits. The transcript of the cross-examination of Ms. Habbous is in the Respondents' Record, while the transcript of Ms. Wilk's cross-examination is in the Applicant's Record. The Applicant's Record also contains a certified copy of the 954 Registration.

B. *The Parties*

(1) The Applicant

[9] Ms. Habbous is a registered physiotherapist with the College of Physiotherapists of Ontario. She is the owner and Clinic Director of Physiohealth Studios, an integrated

multidisciplinary clinic and studio, that she opened in downtown Toronto in 2011. Ms. Habbous applied to register the trademark PHYSIOHEALTH STUDIOS in 2013 and the 954 Registration issued in 2015.

[10] Since 2011, Ms. Habbous' clinic has provided thousands of appointments to patients, and has provided a livelihood for many medical practitioners and staff. Her sworn evidence is that her clinic has generated total revenues of approximately \$11 million since that time. This evidence was not contradicted in cross-examination.

[11] Below are photos of the exterior signage and interior signage used by Ms. Habbous at her clinic. According to Ms. Habbous, the exterior signage has been used since the clinic opened in 2011. The same or nearly the same design features displayed on exterior sign (i.e. stylized letters Ph beside the words PHYSIOHEALTH STUDIOS, with STUDIOS in smaller lettering underneath PHYSIOHEALTH, and including the colours grey and green) appear on the website for Ms. Habbous' clinic. While the interior signage is partially obscured in the first photo, the second photo appears on the Facebook social media account for the clinic. Ms. Habbous attests that the website and social media pages in evidence are representative of pages available on the website and on the Facebook and other social media accounts for at least the past 10 years. A partially obscured photo of the interior signage also appears in the Google Business Page in evidence for Physiohealth Studios.



facebook.com/physiohealthstudios



(2) The Respondents

[12] The individual Respondent Krystyna Wilk is the sole director and officer of the corporate Defendant Arc Physio Health Ltd.. The individual Respondent Christine Stevenson is a

registered physiotherapist with the College of Physiotherapists of Ontario. While Ms. Stevenson is the Clinical Director of Arc Physio Health Ltd., she is not a director or an officer, nor a shareholder, of the corporate Respondent.

[13] The corporate Respondent initially was incorporated as Physio Health Ltd. in August 2019, but changed its name to Arc Physio Health Ltd. [corporate Respondent or Arc Physio Health] in March 2023 as a result of the dispute between the parties. Below is a representation of the logo adopted by Arc Physio Health as a result of its name change; the logo is displayed on the current website at arcphysiohealth.ca:



[14] Arc Physio Health used a similar logo before the name change in 2023, without the word ARC, in connection with the medical physiotherapy clinic it has operated in Mississauga since August 2020. Since that time, the clinic has operated in a mixed commercial and residential building known as Arc Erin Mills. Shown below is a representation of the logo, before the addition of ARC, as it appeared on the previous website at physio-health.ca.



[15] While Ms. Wilk testified in cross-examination that for her “Arc” means “achieve, restore and connect,” she did not indicate this meaning in her affidavit, nor is it evident from the website

pages for Arc Physio Health at arcphysiohealth.ca in evidence which display instead the phrases “Embrace Your Life” and “Embrace Your Recovery.” I thus find it more likely on a balance of probabilities that the adoption of Arc in the corporate Respondent’s name and logo is as a result of being located in the building Arc Erin Mills where some of the other businesses also use the term Arc in their business name, such as Arc Medical Clinic, Arc Pharmacy, Arc Eyecare and Arc Dental, and Arc Animal Hospital.

[16] Prior to the corporate Respondent’s change of name, the Mississauga clinic displayed exterior signage for PHYSIO HEALTH. Representative photos from Ms. Habbous’ evidence are reproduced below.



[17] Ms. Wilk’s evidence contains the following photos of the changed external signage:



III. Issues

[18] With the above background in mind, I determine that the following issues apply in the circumstances:

- A. Do the Respondents' marks and names, PHYSIO HEALTH, ARC PHYSIO HEALTH and ARC PHYSIO HEALTH & Design infringe the registered trademark PHYSIOHEALTH STUDIOS under sections 19 and 20 of the *Trademarks Act*, RSC 1985, c T-13 [*TMA*]?
- B. Has Ms. Habbous established passing off under paragraph 7(b) of the *TMA*?
- C. Has Ms. Habbous shown likely depreciation of goodwill under section 22 of the *TMA*?
- D. Has Ms. Habbous shown that the individual Respondents are personally liable?
- E. To what remedies is Ms. Habbous entitled?

[19] See Annex “A” below for relevant legislative provisions.

IV. Analysis

A. *The Applicant has established infringement under section 20 of the TMA*

[20] I find that Ms. Habbous has established infringement of her registered trademark PHYSIOHEALTH STUDIOS under section 20 of the *TMA*, but not under section 19.

(1) Applicable Legal Principles

[21] Section 19 of the *TMA* provides that a trademark owner has the exclusive right to use its registered trademark throughout Canada in respect of the goods and services listed in the 954 Registration. That right is deemed infringed, according to section 20, by a person who sells, distributes, or advertises goods or services in association with a confusing trademark or trade name. To succeed on an infringement claim under section 19, the impugned trademark must be identical to the registered trademark: *Loblaws Inc v Columbia Insurance Company*, 2019 FC 961 at para 34 (citing *Gary Gurmukh Sales Ltd v Quality Goods Imd Inc*, 2014 FC 437 at para 83), *aff’d* 2021 FCA 29.

[22] Subsections 6(2) and 6(4) of the *TMA* contemplate respectively confusion between two trademarks, and confusion between a trademark and a trade name, if the use of both in the same area would be likely to lead to the inference that the goods or services associated with the business carried on under the trademark, or the trade name as the case may be, and those associated with the trademark are manufactured, sold, leased, hired or performed by the same

person, whether or not the goods or services are of the same general class or appear in the same class of the Nice Classification. The words “in the same area” mean that the confusion test is based on a hypothetical assumption that the trademarks, or the trademark and trade name, in issue are used in the same area regardless of whether this is the case: *Driving Alternative Inc v Keyz Thankz Inc*, 2014 FC 559 at para 48.

[23] Further, subsection 6(5) of the *TMA* prescribes that confusion is assessed with reference to the following five non-exhaustive factors, in the context of “all the surrounding circumstances”: (a) the inherent distinctiveness of the trademarks or trade names and the extent to which they have become known; (b) the length of time the trademarks or trade names have been in use; (c) the nature of the goods, services or business; (d) the nature of the trade; and (e) the degree of resemblance between the trademarks or trade names in appearance or sound or in the ideas suggested by them.

[24] The test to be applied in assessing these factors is one of first impression in the mind of a casual consumer somewhat in a hurry who has no more than an imperfect recollection of the prior trademark and who does not stop to consider the differences and similarities between the marks or names in issue. The Supreme Court further guides that the confusion analysis exercise is fact- and context-specific in each situation: *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée*, 2006 SCC 23 [*Veuve*] at para 20.

[25] In other words, at the moment of first impression, would the consumer of Arc Physio Health goods and services be likely to think, on a balance of probabilities, that the source of such

goods and services was the same as the source of the PHYSIOHEALTH STUDIOS goods and services?: *Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27 [*Masterpiece*] at para 41; *Mattel, Inc v 3894207 Canada Inc*, 2006 SCC 22 at para 56, citing *Canadian Schenley Distilleries Ltd v Canada's Manitoba Distillery Ltd* (1975), 25 CPR (2d) 1 at 5, [1975] FCJ No 1130. See also *Christian Dior, SA v Dion Neckwear Ltd*, 2002 FCA 29 at para 12.

(2) Section 19 Ground

[26] I determine that Ms. Habbous cannot succeed on the section 19 ground for the simple reason that there is no evidence the Respondents have used a trademark identical to the registered trademark PHYSIOHEALTH STUDIOS. Further, there is no basis in law for the argument that section 19 is implicated by the unauthorized use of the asserted dominant element (i.e. PHYSIOHEALTH) of a registered trademark.

(3) Section 20 Ground

[27] Bearing the above legal principles in mind, I turn next to the subsection 6(5) factors.

(a) *Degree of Resemblance – Paragraph 6(5)(e)*

[28] I find that this factor favours Ms. Habbous.

[29] I start with the general premise that it is appropriate to begin the confusion analysis with the degree of resemblance factor because, if the marks or names do not resemble one another, then it is unlikely that even a strong finding on other factors would lead to a determination of

likelihood of confusion. In other words, the other factors have greater significance where the marks are identical or very similar: *Masterpiece*, above at para 49; *1196278 Ontario Inc (Sassafras) v 815470 Ontario Ltd (Sassafras Coastal Kitchen & Bar)*, 2022 FC 116 at para 30.

[30] In my view, the dominant element of the registered trademark PHYSIOHEALTH STUDIOS is the coined word PHYSIOHEALTH.

[31] From August 2019 until it changed its name in March 2023 several months prior to the commencement of the proceeding presently before the Court, the corporate Respondent bore the name Physio Health Ltd., while the clinic operated as Physio Health for at least 2½ years. I pause to note that the Notice of Application concerns the Respondents' use of both PHYSIO HEALTH and ARC PHYSIO HEALTH. I add that the Respondents' submissions in this application focus, for the most part, on their use of ARC PHYSIO HEALTH, notwithstanding their longer use of PHYSIO HEALTH prior to the commencement of the proceeding.

[32] In any event, I find that there is little appreciable difference between PHYSIOHEALTH STUDIOS and PHYSIO HEALTH, such that there is a strong degree of resemblance in appearance, sound and in the ideas suggested. I agree with Ms. Habbous that the casual hurried consumer, upon encountering PHYSIO HEALTH in the marketplace, having an imperfect recollection of PHYSIOHEALTH STUDIOS, and not giving the matter much attention, likely would have thought that the goods and/or services associated with the former mark and name emanate from the same source as those associated with the latter trademark.

[33] In my view, however, there is less resemblance between PHYSIOHEALTH STUDIOS and ARC PHYSIO HEALTH in sound, appearance and in the ideas suggested. That said, I find the significance of the word ARC as the first word in ARC PHYSIO HEALTH is attenuated somewhat in the present case. As this Court previously has noted, “[w]hile marks must be assessed in their entirety, it is still possible to focus on particular features of the mark that may have a determinative influence on the public's perception of it”: *Nature Path Foods Inc v Quaker Oats Co of Canada Ltd*, 2001 FCT 366 at para 35, citing *Pink Panther Beauty Corp v United Artists Corp*, [1998] 3 FC 534 [*Pink Panther*] at para 34, 1998 CanLII 9052 (FCA).

[34] I find here that with the name of the building where the Respondents’ business is located, Arc Erin Mills, and with the other businesses in the same building that use ARC in their name (such as, Arc Medical Clinic, Arc Pharmacy, Arc Eyecare and Arc Dental), consumers are likely, in these (surrounding) circumstances and on a balance of probabilities, to focus on the words PHYSIO HEALTH. This situation thus contributes, in my view, to the degree of resemblance between PHYSIOHEALTH STUDIOS and ARC PHYSIO HEALTH.

(b) *Inherent distinctiveness, extent known, and length of time in use – Paragraphs 6(5)(a) and 6(5)(b)*

[35] I find that overall, these factors favour Ms. Habbous.

[36] In so far as PHYSIOHEALTH STUDIOS and PHYSIO HEALTH are concerned, the combination of PHYSIOHEALTH with the addition of STUDIOS is more distinctive, in my view, than PHYSIO HEALTH. That said, Ms. Habbous admitted in cross-examination that the

prefix PHYSIO is a short form for physiotherapy, while the suffix HEALTH and the word STUDIOS (the latter adopted as an alternative to the word clinics) are ordinary words that can be found in an English dictionary. Even if PHYSIO does not cover the range of services offered by Ms. Habbous' clinic, HEALTH is a broader term that would do so in my view. I find that all three elements thus have a connotation related to the goods and services associated with the trademark PHYSIOHEALTH STUDIOS. The latter mark is highly suggestive, if not descriptive (although not necessarily clearly descriptive), and of low or weak inherent distinctiveness.

[37] I have a different view of ARC PHYSIO HEALTH by reason of the addition of ARC because the latter word, while also an ordinary English word, has no obvious connotation or meaning in relation to physiotherapy related goods and services.

[38] Notwithstanding the above finding regarding PHYSIOHEALTH STUDIOS, "...the fact that a word was descriptive [does] not necessarily prevent it from being distinctive": *Kellogg Co of Canada Ltd v Registrar of Trade Marks*, 1939 CanLII 251 (CA EXC), [1940] Ex CR 163 [Kellogg] at 166-167 (citing *Davis et al v Sussex Rubber Co Ltd* (1927), 44 RPC 412 (UK) [Davis]). The *Kellogg* court was sympathetic to the view described in *Davis* that, despite the oft-assumed antagonism between distinctive and descriptive words (i.e. if descriptiveness can be proven, distinctiveness cannot), this is a fallacy. Descriptive marks may be distinctive and vice versa. The question of whether a word or mark is or can become distinctive is a question of fact, and is not determined by whether or not it is descriptive.

[39] Here, Ms. Habbous has used PHYSIOHEALTH STUDIOS for more than a decade and her evidence is that the business has provided thousands of appointments to patients and generated approximately \$11 million dollars in total revenues in connection with the mark and name during that time. Although the Respondents point to a lack of supporting documentation to demonstrate this amount, I note that Ms. Habbous was cross-examined but no questions were put to her to undermine her sworn evidence in this regard which thus remains uncontroverted.

[40] Ms. Wilk, on the other hand, was cross-examined about her clinic's revenues. She testified that they did not have a profit yet (i.e. as of May 2024 when her the cross-examination took place). Although Ms. Wilk's affidavit contains information about referrals from Trillium Health Partners and the amount of revenue generated from each referral, there is no information about the total revenues, nor the overall numbers of patients served or appointments provided to them.

[41] Further, as the Federal Court of Appeal previously has noted, "[a] mark that has been in use a long time, versus one newly arrived on the scene, is presumed to have made a certain impression which must be given some weight": *Pink Panther*, above at para 25.

[42] In my view, the parties' evidence supports a finding that the length of time in use and extent to which the parties' respective marks and names have become known clearly favours Ms. Habbous. In other words, I determine that PHYSIOHEALTH STUDIOS has acquired significantly more distinctiveness than PHYSIO HEALTH or ARC PHYSIO HEALTH.

(c) *Nature of the parties' goods, services or business, and nature of the trade*
– Paragraphs 6(5)(c) and (d)

[43] I find that these factors also favour Ms. Habbous. The parties' evidence does not demonstrate any meaningful differences in their goods, services, business or trade.

[44] The Respondents point to their referral relationship with Trillium Health Partners and associated hospitals that account for the majority of their business. Even accepting this evidence and that it possibly represents a difference in the parties' actual channels of trade, the 954 Registration is not restricted in terms of the channels of trade. In other words, this evidence is of no consequence in the assessment of a likelihood of confusion under section 20 of the *TMA*.

[45] I add that both clinics are located in the Greater Toronto Area and target the same end consumer (i.e. those in need of health, wellness, and rehabilitation services, regardless of how referred), further increasing the risk of confusion: *Masterpiece*, above at paras 30-31.

(d) *Other surrounding circumstances*

[46] In addition to the discussion above regarding the name of the building, Arc Erin Mills, in which the Respondents' clinic is located, and that some businesses in the building have names beginning with Arc, there are two other surrounding circumstances I address next. First, the Respondents assert no actual instances of confusion in the nearly five years the parties have coexisted. Second, the Respondents point to other businesses that have names containing Physio and Health. In my view, these factors do not favour the Respondents.

(i) Coexistence

[47] I am not persuaded that there has been coexistence for an appreciable period of time, regardless of whether the applicable period of time for assessing the relevance of coexistence is five years from the time the corporate Respondent was incorporated or four years from the time the PHYSIO HEALTH (now ARC PHYSIO HEALTH) clinic opened. The Covid-19 pandemic which fell within these periods significantly hindered the growth of both businesses. Ms. Wilk for example testified in cross-examination that the attendant public health restrictions took away two years of her business during this time because patients were scared to come to the clinic.

[48] Although Ms. Habbous' cross-examination testimony includes hearsay about the reaction of a third party, familiar with her clinic, to seeing the Respondents' clinic in Mississauga (who then asked Ms. Habbous if she had opened a new location), evidence of actual confusion is not required to demonstrate a likelihood of confusion.

(ii) Other business names

[49] The Respondents have not convinced me that a 2022 Ontario Reservation Report (i.e. NUANS Report) for Physio Health shows sufficient third party names containing these words that any inference can be drawn about marketplace use. More to the point, this argument was raised for the first time in oral submissions before the Court. I cannot emphasize enough the obvious prejudice to the other side of a dispute in raising last-minute arguments in oral submissions for the first time. Nor does this aid the work of the Court.

[50] According to the Respondents, the NUANS Report attached as an exhibit to Ms. Wilk's affidavit lists at least five names that appear to precede or coincide with Ms. Habbous' adoption of PHYSIOHEALTH STUDIOS in 2011. These are:

- PHYSIO HEALTH CENTRE INC. (incorporated January 12, 2010)
- PHYSIO-HEALTH AND FITNESS INC. (incorporated July 16, 1993)
- MAYA PHYSIO & HEALTH INC. (incorporated December 9, 2011)
- PHYSIOHEALTH & ZARA REHAB INC. (incorporated July 29, 2010)
- PHYSIOHEALTH REHABILITATION INC. (incorporated July 19, 2006)

[51] Had the Respondents provided evidence that any of these names is in current use in the marketplace, such evidence might have been of assistance to them. There is none, however. Nor are there any arguments about the results disclosed in the NUANS Report generally and what, if any, inferences the Court possibly could draw based on this Report. I refer, for example, to the decision of this Court in *McDowell v Laverana GmbH & Co KG*, 2017 FC 327 paras 41-46.

[52] In sum, I am satisfied that Ms. Habbous has demonstrated a likelihood of confusion between her registered trademark PHYSIOHEALTH STUDIOS and the Respondents' marks and names PHYSIO HEALTH and ARC PHYSIO HEALTH (including for clarity the corresponding corporate names, Physio Health Ltd. and Arc Physio Health Ltd.).

B. *The Applicant has established passing off under paragraph 7(b) of the TMA*

[53] I find that Ms. Habbous also has met the test for passing off under paragraph 7(b) of the *TMA*.

(1) Applicable Legal Principles

[54] The Federal Court of Appeal describes paragraph 7(b) of the *TMA* as the statutory embodiment of the common law tort of passing off: *Cheung v Target Event Production Ltd*, 2010 FCA 255 [*Cheung*] at para 20.

[55] There are three key elements of a passing off claim: (1) the existence of goodwill or reputation attached to a plaintiff's goods or services, (2) a misrepresentation to the public by the defendant resulting in deception, and (3) damage or likely damage suffered by the plaintiff: *Sadhu Singh Hamdard Trust v Navsun Holdings Ltd*, 2021 FC 602 [*Hamdard Trust*] at para 48, citing *Ciba-Geigy Canada Ltd v Apotex Inc*, 1992 CanLII 33 (SCC), [1992] 3 SCR 120 at 132.

[56] An essential threshold to establishing goodwill or reputation, and hence passing off, is the existence of enforceable trademark rights, whether registered or unregistered: *Hamdard Trust*, above at para 49, citing *Sandhu Singh Hamdard Trust v Navsun Holdings Ltd*, 2019 FCA 295 at para 39. See also *Cheung*, above at para 20.

[57] Further, the determination of deception to the public involves consideration of the likelihood of confusion under section 6 of the *TMA*: *Hamdard Trust*, above at para 51.

[58] According to paragraph 7(b), the relevant date for assessing whether passing off has occurred is the time when the Respondents began to direct attention to their goods, services or business in a manner likely to cause confusion in Canada. Because the Respondents began

operating their clinic in Mississauga in August 2020, I consider this to be the relevant timeframe for the purpose of the paragraph 7(b) analysis.

(2) Ownership Threshold

[59] I find that Ms. Habbous has shown the requisite ownership of the trademark PHYSIOHEALTH STUDIOS by reason of the certified copy of the 954 Registration in the name of Joanna Habbous contained in the Applicant's Record, and by the operation of subsection 54(3) of the *TMA*. As mentioned above, the Respondents have conceded the validity of the registration.

(3) Goodwill/Reputation

[60] I further find that Ms. Habbous has established sufficient goodwill or reputation in PHYSIOHEALTH STUDIOS to succeed in her passing off claim through her uncontroverted evidence regarding substantial total sales revenues, online advertising and promotion involving the display of the trademark, and the provision of thousands of appointments to patients in the more than 10 years her clinic has been in operation: *Mondo Foods Co Ltd v TorreMondo Industries Inc*, 2022 FC 926 at para 37. As observed by the Supreme Court of Canada, goodwill "is something generated by effort that adds to the value of the business": *Veuve*, above at para 50, citing *Manitoba Fisheries Ltd v The Queen*, 1978 CanLII 22 (SCC) at 108 (in turn quoting *Ulster Transport Authority v James Brown and Sons Ltd*, [1953] NI 79 at 109-10).

(4) Misrepresentation/Likelihood of Confusion

[61] With reference to the subsection 6(5) factors discussed above, I also am satisfied that the Applicant has shown a likelihood of confusion, and hence misrepresentation on the part of the Respondents (subject to my findings below regarding the personal liability of the individual Respondents).

[62] While the parties' actual channels of trade may differ somewhat, both clinics, as mentioned above, are located in the Greater Toronto Area and target the same end consumer.

[63] Further, while the design elements of the parties' respective trademarks differ, I am not persuaded that they are sufficient to overcome the likelihood of confusion. The Respondents argument that Ms. Habbous has not demonstrated deception to the public or misrepresentation overlooks the contemplation of "likely" confusion in paragraph 7(b) of the *TMA: Sadhu Singh Hamdard Trust v Navsun Holdings Ltd*, 2016 FCA 69 at para 21.

(5) Damage

[64] Finally, I find that Ms. Habbous' loss of control over her trademark PHYSIOHEALTH STUDIOS by reason of the Respondents' confusing marks and names satisfies the damage or likely damage element of the passing off test: *Subway IP LLC v Budway, Cannabis & Wellness Store*, 2021 FC 583 at para 34.

C. *The Applicant has shown depreciation of goodwill under section 22 of the TMA*

[65] I find Ms. Habbous has shown that the Respondents' activities likely, if not actually, depreciate the value of the goodwill attached to the trademark PHYSIOHEALTH STUDIOS, contrary to section 22 of the *TMA*.

[66] Noting that there is no requirement for PHYSIOHEALTH STUDIOS to be well known or famous, I am satisfied that Ms. Habbous meets the test for depreciation of goodwill described by the Supreme Court of Canada in *Veuve* (above at para 46).

[67] First, I observe that section 22 does not require use of the identical registered trademark to attract liability: *Toys "R" Us (Canada) Ltd v Herbs "R" Us Wellness Society*, 2020 FC 682 [Toys] at para 53. The Respondents here are using confusing marks and names that contain essentially the dominant element of Ms. Habbous' registered trademark that has acquired distinctiveness through more than 10 years of use, and for essentially the same goods, services and business as those of Ms. Habbous. I thus determine that PHYSIO HEALTH and ARC PHYSIO HEALTH are "so closely akin" to PHYSIOHEALTH that the first part of the test under section 22 has been met: *Bean Box, Inc v Roasted Bean Box Inc*, 2022 FC 499 at paras 61-63.

[68] Second, I find the goodwill attached to the registered trademark PHYSIOHEALTH STUDIOS, that Ms. Habbous has used since 2011, is sufficiently significant. In other words, this is not a case, in my view, where goodwill does not exist.

[69] Third, I disagree with the Respondents' contention that the average consumer would not make a mental connection or linkage between PHYSIOHEALTH STUDIOS and ARC PHYSIO HEALTH. Through evidence of online Google searches for "physiohealth," Ms. Habbous has shown that the results display her trademark and trade name PHYSIOHEALTH STUDIOS, in the search results for Mississauga, ON, immediately above the listing for the Respondents' ARC Physio Health Clinic. Further, I find that the necessary linkage would be made readily with the previous mark PHYSIO HEALTH.

[70] Fourth, the likely effect, in my view, is to depreciate or damage the goodwill, given Ms. Habbous' loss of control over her trademark PHYSIOHEALTH STUDIOS by reason of the Respondents' confusing marks and names.

D. *The Applicant has not shown that the individual Respondents are personally liable*

[71] Ms. Habbous' arguments have not persuaded me that the individual Respondents, Krystyna Wilk and Christine Stevenson, should be held personally liable.

[72] For personal liability to arise in the context of intellectual property infringement, "there must be circumstances showing that the individual's purpose was not just ordinary course business activity 'but the deliberate, wilful and knowing pursuit of a course of conduct that was likely to constitute infringement or reflected an indifference to the risk of it'": *Vachon Bakery Inc v Racioppo*, 2021 FC 308 [Vachon] at para 120, citing *Mentmore Manufacturing Co, Ltd et al v National Merchandising Manufacturing Co Inc et al*, 1978 CanLII 2037, 89 DLR (3d) 195 [Mentmore] at 204-205 (FCA).

[73] The sort of acts that would give rise to personal liability involve a “degree and kind of personal involvement by which the director or officer makes the [corporation’s] tortious act his own”: *Petrillo v Allmax Nutrition Inc*, 2006 FC 1199 [*Petrillo*] at para 30, citing *Mentmore*. This principle applies to large corporations and small, closely held companies alike: *Petrillo*, at para 31. As the *Mentmore* court (above at 202) observes, “[t]here is no reason why the small, one-man or two-man corporation should not have the benefit of the same approach to personal liability merely because there is generally and necessarily a greater degree of direct and personal involvement in management on the part of its shareholders and directors.”

[74] Further, the Court of Appeal for Ontario explains that there must be “some conduct on the part of those directing minds that is either tortious in itself or exhibits a separate identity or interest from that of the corporations such as to make the acts or conduct complained of those of the directing minds”: *Petrillo*, above at para 29, citing *Normart Management Ltd v West Hill Redevelopment Co Ltd*, 1998 CanLII 2447, 155 DLR (4th) 627 (ONCA). This Court more recently found that personal liability on the part of an individual who owns or controls a company will not arise even if the individual was the one who decided the company would undertake the alleged misconduct: *Vachon*, above at paras 120-122. See also *Zero Spill Systems (Int’l) Inc v 614248 Alberta Ltd*, 2009 FC 70 at para 19.

[75] In my view, there is insufficient evidence on which to conclude that either Ms. Wilk or Ms. Stevenson is personally liable. Specifically, I am not persuaded that Ms. Habbous has shown the conduct of the individual Respondents is indicative of an identity or interest separate and apart from the corporate Respondent.

[76] In her affidavit, Ms. Habbous deposed to the belief that the Respondents would change to a completely different name based on correspondence from their counsel stating that, “Physio Health Ltd. has decided to transition to a new trademark that will allow it to distinguish its business from the business of others.” Although Ms. Habbous takes issue with the addition of the word ARC to PHYSIO HEALTH and the timing of the change, the correspondence did not state directly that the Respondents would change the name to something completely different as Ms. Habbous suggests, nor is there any evidence that Ms. Habbous or her counsel sought confirmation of what the new trademark would be before PHYSIO HEALTH was changed.

[77] Based on the above, I am not persuaded that the Applicant has demonstrated that Ms. Wilk went beyond directing the corporate Respondent in the ordinary course, nor does the evidence point to her conduct as tantamount to making the infringement her own. As an example, Ms. Wilk sought and relied on legal advice at various stages, including with the incorporation of the corporate Respondent and its subsequent name change. While her reliance on legal advice, in itself, does not shield Ms. Habbous from liability, I am satisfied that it does not represent anything other than what a business owner would do in the normal course.

[78] I find that Ms. Habbous’ reliance on *Chanel S de RL v Lam Chan Kee Company Ltd*, 2016 FC 987 [*Chanel 2016*], aff’d 2017 FCA 38, is of no assistance because it is distinguishable from the circumstances here. The Court there found in an earlier proceeding that despite the efforts of the individual defendant Annie Pui Kwan Lam [Madam Lam] to divest herself of ownership in the corporate defendant Lam Chan Kee Company Ltd., Madam Lam continued to control the business: *Chanel S de RL v Kee*, 2015 FC 1091 [*Chanel 2015*] at para 16. This

finding was not displaced in the appeal of *Chanel 2015* and the redetermination ordered by the Federal Court of Appeal in *Kwan Lam v Chanel S de RL*, 2016 FCA 111, resulting in *Chanel 2016*.

[79] Based on the evidence presented, I similarly am not persuaded that that Ms. Stevenson directed the corporate Respondent to engage in any infringing activities in a manner that would attract personal liability. While she may have benefitted financially from her position as Clinical Director, and had a greater role directing daily operations for several months when Ms. Wilk was injured, a finding of personal liability, in my view, requires something more. As this Court previously has held, “simply being the person who made the decision that a company would undertake acts that infringe is not enough to create personal liability”: *Vachon*, above at para 121.

E. *The Applicant is entitled to some relief*

[80] Ms. Habbous seeks declaratory and injunctive relief, as well as compensatory and punitive damages. Having regard to my findings in this matter, I am satisfied that she is entitled to some, but not all, the relief she has requested.

[81] Ms. Habbous is entitled, in my view, to declarations that the corporate Respondent has infringed the registered trademark PHYSIOHEALTH STUDIOS under section 20 of the *TMA*, directed public attention to its goods, services and business in a manner likely to cause confusion, contrary to paragraph 7(b), and depreciated the value of the goodwill attached to the registered trademark PHYSIOHEALTH STUDIOS under section 22.

[82] Further, I determine that permanent injunctive relief flows from these findings. Section 53.2 of the *TMA* permits the Court to grant an injunction on an application. This includes a permanent injunction: *Group III International Ltd v Travelway Group International Ltd*, 2017 FCA 215 [*Group III*] at paras 1, 90-91. Given the findings of infringement, passing off, and depreciation of goodwill, Ms. Habbous is entitled to a permanent injunction to restrain the corporate Respondent from further acts of infringement, passing off and depreciation of goodwill: *Group III* at para 91.

[83] The Court also will order delivery-up or destruction of materials that bear PHYSIO HEALTH, ARC PHYSIO HEALTH, or any other mark or name confusing with PHYSIOHEALTH STUDIOS: *McDowell v A Drip of Honey*, 2024 FC 453 at paras 79-80.

[84] In addition, the Court will order the transfer of ownership of, and all rights of access, administration, and control over and to, the domain names physio-health.ca and arcphysiohealth.ca, and related relief described in the draft Judgment in the Applicant's Record, about which draft the Respondents did not raise any specific concerns in their written and oral submissions.

[85] Regarding compensatory damages, and Ms. Habbous' success in this matter as against the corporate Respondent for infringement, passing off and depreciation of goodwill, I determine that Ms. Habbous is entitled to nominal damages in the amount of \$15,000, payable by the corporate Respondent, for similar reasons articulated by Justice McHaffie in *Toys* (above at para 68) and (retired) Justice Shore in *Pick v 1180475 Alberta Ltd (Queen of Tarts)*, 2011 FC 1008 (at

para 49). Although the matter presently before me is not a case involving default, nonetheless there similarly is a lack of records and financial information of the sort described by Justice Manson in *Trans-High Corporation v Hightimes Smokeshop and Gifts Inc*, 2013 FC 1190 at para 25, to support damages at the higher end of the \$10,000 to \$25,000 range awarded by this Court in other matters, as described by Ms. Habbous in her written submissions.

[86] Finally, regarding their request for punitive damages, Ms. Habbous has failed to convince me the conduct of the corporate Respondent was malicious, oppressive or high-handed: *Whiten v Pilot Insurance Co*, 2002 SCC 18 at para 36. In my view, there is insufficient evidence to permit the Court to draw any conclusions or to make any inferences on a balance of probabilities regarding the factors to consider in a punitive damages assessment, as identified in *Louis Vuitton Malletier SA v Yang*, 2007 FC 1179 at para 47.

[87] In particular, I do not agree with Ms. Habbous' characterization of the Respondents' correspondence (to the effect that they would transition to a new trademark) as a "binding agreement" that, according to Ms. Habbous, was ignored. There is no evidence that Ms. Habbous' expectation of what would be an acceptable new trademark (i.e. "something completely different") was communicated to the Respondents or memorialized in a formal settlement agreement.

V. Conclusion

[88] For the above reasons, I conclude that Ms. Habbous has met the applicable tests for trademark infringement, passing off and depreciation of goodwill in respect of the registered

trademark PHYSIOHEALTH STUDIOS by the corporate Respondent. Ms. Habbous' application will be granted in part as against the corporate Respondent but dismissed against the individual Respondents.

VI. Costs

[89] The parties were unprepared to address costs at the end of the oral hearing. I permitted them the opportunity to make brief submissions in writing. They disagree on the appropriate quantum of costs.

[90] Having considered the parties' submissions, and with reference to the top of Column III of Tariff B of the *Federal Courts Rules*, SOR/98-106, I exercise my discretion to award Ms. Habbous all-inclusive, lump sum costs in the amount of \$10,500 payable by the corporate Respondent. I have rounded Ms. Habbous' estimate down by roughly the amount of an inappropriately claimed LawPRO fee as a disbursement because it is not a court fee.

JUDGMENT in T-2419-23

THIS COURT'S JUDGMENT is that:

1. As against the Respondent Arc Physio Health Ltd., the Court declares that Arc Physio Health Ltd. has:
 - a. infringed the registered trademark PHYSIOHEALTH STUDIOS of the Applicant Joanna Habbous [Applicant or Joanna Habbous], registration No. TMA914,954, contrary to section 20 of the *Trademarks Act*, RSC 1985, c T-13 [*TMA*];
 - b. directed public attention to Arc Physio Health Ltd.'s goods, services, or business, in such a way as to cause or be likely to cause confusion in Canada between Arc Physio Health Ltd.'s goods, services, or business, and the goods, services, or business of Joanna Habbous, contrary to paragraph 7(b) of the *TMA*;
 - c. used Joanna Habbous' registered trademark PHYSIOHEALTH STUDIOS in a manner that is likely to have the effect of depreciating the value of the goodwill attaching thereto, contrary to subsection 22(1) of the *TMA*, as a result of Arc Physio Health Ltd.'s use and adoption of the confusingly similar marks and names PHYSIO HEALTH and ARC PHYSIO HEALTH, in association with the operation, advertising, and promotion of the clinic located at 2520 Eglinton Avenue West, Units 5-6, Mississauga, Ontario, L5M 0Y4, without the consent, license, or permission of the Applicant.
2. Arc Physio Health Ltd., along with any parent, affiliate, subsidiary and all other related companies and businesses, and their respective and collective officers,

directors, employees, agents, partners, consultants, licensees, franchisees, successors, and assigns, and all others over whom any of the foregoing by themselves or through any companies or other businesses any of them now or in the future directly or indirectly exercises control or operates, are permanently enjoined from:

- a. using the registered trademark PHYSIOHEALTH STUDIOS, or any confusingly similar mark or name, in association with Arc Physio Health Ltd.'s goods or services, or any goods or services the same or overlapping with those listed in trademark registration No. TMA914,954 for PHYSIOHEALTH STUDIOS, contrary to section 20 of the *TMA*;
- b. directing public attention to their goods, services, or business, in such a way as to cause or be likely to cause confusion in Canada between their goods, services, or business, and the goods, services, or business of the Applicant, contrary to paragraph 7(b) of the *TMA*;
- c. using the registered trademark PHYSIOHEALTH STUDIOS in a manner that is likely to have the effect of depreciating the value of the goodwill attaching thereto, contrary to subsection 22(1) of the *TMA*,

including without limitation by adopting and using PHYSIO HEALTH and ARC PHYSIO HEALTH, or any other mark or name confusing with the trademark PHYSIOHEALTH STUDIOS, as or as part of any trademark, trade name, corporate name, business name, domain name, or social media account name, in association with any goods or services the same or overlapping with those listed in trademark registration No. TMA914,954 for PHYSIOHEALTH STUDIOS.

3. Arc Physio Health Ltd. shall deliver-up or destroy under oath any goods, packages, labels, and advertising and promotional materials in their possession, power or control that bear the marks and names PHYSIO HEALTH, ARC PHYSIO HEALTH, or anything confusingly similar to the trademark PHYSIOHEALTH STUDIOS, or that are or that would be contrary to this Judgment, in accordance with section 53.2 of the *TMA*.
4. Arc Physio Health Ltd. shall transfer ownership of, and all rights of access, administration, and control over and to, the domain name physio-health.ca, arcphysiohealth.ca, as well as any other domain name or third party website account name owned and/or controlled by Arc Physio Health Ltd., be it directly or indirectly, that contains, is comprised of, or is confusing with the trademark PHYSIOHEALTH STUDIOS, and shall direct, as necessary, the applicable domain name registrars or social media platforms to transfer ownership and/or all rights of access, administration, and control for and over such domain names and social media accounts to the Applicant.
5. Arc Physio Health Ltd. shall pay to the Applicant forthwith compensatory damages in the amount of \$15,000 for its violations of the *TMA*.
6. The Applicant is awarded lump sum costs in the amount of \$10,500, payable forthwith by Arc Physio Health Ltd..
7. Arc Physio Health Ltd. shall pay to the Applicant post-judgment interest on all amounts owed to her pursuant to this Judgment at the rate of 5% per annum from the date of this Judgment.

8. As against the remaining Respondents, the Applicant's application is dismissed.

"Janet M. Fuhrer"

Judge

Annex “A”: Relevant Provisions

Trademarks Act, RSC 1985, c T-13.
Loi sur les marques de commerce, LRC 1985, ch T-13.

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| <p>Confusion — trademark with other trademark</p> <p>6 (2) The use of a trademark causes confusion with another trademark if the use of both trademarks in the same area would be likely to lead to the inference that the goods or services associated with those trademarks are manufactured, sold, leased, hired or performed by the same person, whether or not the goods or services are of the same general class or appear in the same class of the Nice Classification.</p> <p>[...]</p> <p>Confusion — trade name with trademark</p> <p>(4) The use of a trade name causes confusion with a trademark if the use of both the trade name and trademark in the same area would be likely to lead to the inference that the goods or services associated with the business carried on under the trade name and those associated with the trademark are manufactured, sold, leased, hired or performed by the same person, whether or not the goods or services are of the same general class or appear in the same class of the Nice Classification.</p> <p>What to be considered</p> <p>(5) In determining whether trademarks or trade names are confusing, the court or the Registrar, as the case may be, shall have</p> | <p>Marque de commerce créant de la confusion avec une autre</p> <p>6 (2) L’emploi d’une marque de commerce crée de la confusion avec une autre marque de commerce lorsque l’emploi des deux marques de commerce dans la même région serait susceptible de faire conclure que les produits liés à ces marques de commerce sont fabriqués, vendus, donnés à bail ou loués, ou que les services liés à ces marques sont loués ou exécutés, par la même personne, que ces produits ou services soient ou non de la même catégorie générale ou figurent ou non dans la même classe de la classification de Nice.</p> <p>[...]</p> <p>Nom commercial créant de la confusion avec une marque de commerce</p> <p>(4) L’emploi d’un nom commercial crée de la confusion avec une marque de commerce lorsque l’emploi des deux dans la même région serait susceptible de faire conclure que les produits liés à l’entreprise poursuivie sous ce nom et les produits liés à cette marque sont fabriqués, vendus, donnés à bail ou loués, ou que les services liés à l’entreprise poursuivie sous ce nom et les services liés à cette marque sont loués ou exécutés, par la même personne, que ces produits ou services soient ou non de la même catégorie générale ou figurent ou non dans la même classe de la classification de Nice.</p> <p>Éléments d’appréciation</p> <p>(5) En décidant si des marques de commerce ou des noms commerciaux créent de la confusion, le tribunal ou le registraire, selon</p> |
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| <p>regard to all the surrounding circumstances including</p> <p>(a) the inherent distinctiveness of the trademarks or trade names and the extent to which they have become known;</p> <p>(b) the length of time the trademarks or trade names have been in use;</p> <p>(c) the nature of the goods, services or business;</p> <p>(d) the nature of the trade; and</p> <p>(e) the degree of resemblance between the trademarks or trade names, including in appearance or sound or in the ideas suggested by them.</p> | <p>le cas, tient compte de toutes les circonstances de l'espèce, y compris :</p> <p>a) le caractère distinctif inhérent des marques de commerce ou noms commerciaux, et la mesure dans laquelle ils sont devenus connus;</p> <p>b) la période pendant laquelle les marques de commerce ou noms commerciaux ont été en usage;</p> <p>c) le genre de produits, services ou entreprises;</p> <p>d) la nature du commerce;</p> <p>e) le degré de ressemblance entre les marques de commerce ou les noms commerciaux, notamment dans la présentation ou le son, ou dans les idées qu'ils suggèrent.</p> |
| <p>Prohibitions</p> <p>7 No person shall</p> <p>[...]</p> <p>(b) direct public attention to his goods, services or business in such a way as to cause or be likely to cause confusion in Canada, at the time he commenced so to direct attention to them, between his goods, services or business and the goods, services or business of another;</p> | <p>Interdictions</p> <p>7 Nul ne peut :</p> <p>[...]</p> <p>b) appeler l'attention du public sur ses produits, ses services ou son entreprise de manière à causer ou à vraisemblablement causer de la confusion au Canada, lorsqu'il a commencé à y appeler ainsi l'attention, entre ses produits, ses services ou son entreprise et ceux d'un autre;</p> |
| <p>Rights conferred by registration</p> <p>19 Subject to sections 21, 32 and 67, the registration of a trademark in respect of any goods or services, unless shown to be invalid, gives to the owner of the trademark the exclusive right to the use throughout Canada of the trademark in respect of those goods or services.</p> <p>Infringement</p> <p>20 (1) The right of the owner of a registered trademark to its exclusive use is deemed to be infringed by any person who is not entitled to its use under this Act and who</p> | <p>Droits conférés par l'enregistrement</p> <p>19 Sous réserve des articles 21, 32 et 67, l'enregistrement d'une marque de commerce à l'égard de produits ou services, sauf si son invalidité est démontrée, donne au propriétaire le droit exclusif à l'emploi de celle-ci, dans tout le Canada, en ce qui concerne ces produits ou services.</p> <p>Violation</p> <p>20 (1) Le droit du propriétaire d'une marque de commerce déposée à l'emploi exclusif de cette dernière est réputé être violé par une personne qui est non admise à l'employer selon la présente loi et qui :</p> |

(a) sells, distributes or advertises any goods or services in association with a confusing trademark or trade name;

(b) manufactures, causes to be manufactured, possesses, imports, exports or attempts to export any goods in association with a confusing trademark or trade name, for the purpose of their sale or distribution;

(c) sells, offers for sale or distributes any label or packaging, in any form, bearing a trademark or trade name, if

(i) the person knows or ought to know that the label or packaging is intended to be associated with goods or services that are not those of the owner of the registered trademark, and

(ii) the sale, distribution or advertisement of the goods or services in association with the label or packaging would be a sale, distribution or advertisement in association with a confusing trademark or trade name; or

(d) manufactures, causes to be manufactured, possesses, imports, exports or attempts to export any label or packaging, in any form, bearing a trademark or trade name, for the purpose of its sale or distribution or for the purpose of the sale, distribution or advertisement of goods or services in association with it, if

(i) the person knows or ought to know that the label or packaging is intended to be associated with goods or services that are not those of the owner of the registered trademark, and

(ii) the sale, distribution or advertisement of the goods or services in association with the label or packaging would be a

a) soit vend, distribue ou annonce des produits ou services en liaison avec une marque de commerce ou un nom commercial créant de la confusion;

b) soit fabrique, fait fabriquer, a en sa possession, importe, exporte ou tente d'exporter des produits, en vue de leur vente ou de leur distribution et en liaison avec une marque de commerce ou un nom commercial créant de la confusion;

c) soit vend, offre en vente ou distribue des étiquettes ou des emballages, quelle qu'en soit la forme, portant une marque de commerce ou un nom commercial alors que :

(i) d'une part, elle sait ou devrait savoir que les étiquettes ou les emballages sont destinés à être associés à des produits ou services qui ne sont pas ceux du propriétaire de la marque de commerce déposée,

(ii) d'autre part, la vente, la distribution ou l'annonce des produits ou services en liaison avec les étiquettes ou les emballages constituerait une vente, une distribution ou une annonce en liaison avec une marque de commerce ou un nom commercial créant de la confusion;

d) soit fabrique, fait fabriquer, a en sa possession, importe, exporte ou tente d'exporter des étiquettes ou des emballages, quelle qu'en soit la forme, portant une marque de commerce ou un nom commercial, en vue de leur vente ou de leur distribution ou en vue de la vente, de la distribution ou de l'annonce de produits ou services en liaison avec ceux-ci, alors que :

(i) d'une part, elle sait ou devrait savoir que les étiquettes ou les emballages sont destinés à être associés à des produits ou services qui ne sont pas ceux du propriétaire de la marque de commerce déposée,

(ii) d'autre part, la vente, la distribution ou l'annonce des produits ou services en liaison avec les étiquettes ou les

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| <p>sale, distribution or advertisement in association with a confusing trademark or trade name.</p> <p>Depreciation of goodwill</p> <p>22 (1) No person shall use a trademark registered by another person in a manner that is likely to have the effect of depreciating the value of the goodwill attaching thereto.</p> | <p>emballages constituerait une vente, une distribution ou une annonce en liaison avec une marque de commerce ou un nom commercial créant de la confusion.</p> <p>Dépréciation de l'achalandage</p> <p>22 (1) Nul ne peut employer une marque de commerce déposée par une autre personne d'une manière susceptible d'entraîner la diminution de la valeur de l'achalandage attaché à cette marque de commerce.</p> |
| <p>Power of court to grant relief</p> <p>53.2 (1) If a court is satisfied, on application of any interested person, that any act has been done contrary to this Act, the court may make any order that it considers appropriate in the circumstances, including an order providing for relief by way of injunction and the recovery of damages or profits, for punitive damages and for the destruction or other disposition of any offending goods, packaging, labels and advertising material and of any equipment used to produce the goods, packaging, labels or advertising material.</p> <p>Notice to interested persons</p> <p>(2) Before making an order for destruction or other disposition, the court shall direct that notice be given to any person who has an interest or right in the item to be destroyed or otherwise disposed of, unless the court is of the opinion that the interests of justice do not require that notice be given.</p> | <p>Pouvoir du tribunal d'accorder une réparation</p> <p>53.2 (1) Lorsqu'il est convaincu, sur demande de toute personne intéressée, qu'un acte a été accompli contrairement à la présente loi, le tribunal peut rendre les ordonnances qu'il juge indiquées, notamment pour réparation par voie d'injonction ou par recouvrement de dommages-intérêts ou de profits, pour l'imposition de dommages punitifs, ou encore pour la disposition par destruction ou autrement des produits, emballages, étiquettes et matériel publicitaire contrevenant à la présente loi et de tout équipement employé pour produire ceux-ci.</p> <p>Autres personnes intéressées</p> <p>(2) Sauf s'il estime que l'intérêt de la justice ne l'exige pas, le tribunal, avant d'ordonner la disposition des biens en cause, exige qu'un préavis soit donné aux personnes qui ont un droit ou intérêt sur ceux-ci.</p> |
| <p>Idem</p> <p>54 (3) A copy of the record of the registration of a trademark purporting to be certified to be true by the Registrar is evidence of the facts set out therein and that the person named therein as owner is the registered owner of the trademark for the purposes and within the territorial area therein defined.</p> | <p>Idem</p> <p>54 (3) Une copie de l'inscription de l'enregistrement d'une marque de commerce, donnée comme étant certifiée conforme par le registraire, fait foi des faits y énoncés et de ce que la personne y nommée comme propriétaire est le propriétaire inscrit de cette</p> |

marque de commerce aux fins et dans la
région territoriale qui y sont indiquées.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2419-23

STYLE OF CAUSE: JOANNA HABBOUS v ARC PHYSIO HEALTH LTD.,
KRYSTYNA WILK and CHRISTINE KYNKAL
STEVENSON

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 20, 2025

JUDGMENT AND REASONS: FUHRER J.

DATED: FEBRUARY 14, 2025

APPEARANCES:

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John H. Simpson FOR THE RESPONDENTS
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